

HORSE RACING AMENDMENTS

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House Bill 5546 (H-1) as passed by the House

Sponsor: Rep. Kevin Daley

Committee: Agriculture

Complete to 11-28-12

A SUMMARY OF HOUSE BILL 5546 (H-1) AS PASSED BY THE HOUSE 11-19-12

The bill would make several changes to the Horse Racing Law of 1995 (MCL 431.302 et al.). Among other things, the bill would:

- Amend the definition of "pari-mutuel," pari-mutuel gaming activities," and "pari-mutuel wagering." (Sec. 2(p)).
- Require the Racing Commissioner to appoint additional deputy commissioners or special deputies as necessary (Sec. 6). [The Racing Commissioner is defined in the act as the Executive Director of the Michigan Gaming Control Board, who was ordered under Executive Reorganization Order 2009-31 to perform all the functions and exercise the powers performed by the Racing Commissioner before that position was abolished by Executive Order.]
- Requires, rather than allows, the Racing Commissioner to promulgate rules for conducting live horse racing, simulcast races and events, and pari-mutuel gaming activities (Sec. 7).
- Require rules be promulgated to provide a process by which race meeting licensees can request and obtain approval from the Racing Commissioner to conduct and offer pari-mutuel wagering and pari-mutuel game activities (Sec. 7).
- Specify that a track license for a racetrack where live racing with pari-mutuel wagering under a race meeting license was conducted in 2010 is valid and would remain valid under the Horse Racing Law. Licenses in existence in 2010 for facilities that did not offer live horse racing with pari-mutuel racing would be invalid (Sec. 9).
- Specify that, if at any time there are fewer than 5 valid track licenses, the Racing Commissioner would be required to accept applications for new track licenses from any person, regardless of whether the person conducted live horse racing with pari-mutuel wagering under a race meeting license in 2010, as long as the application is for a license for a track located where live horse racing with pari-mutuel wagering occurred in 2010 or at least 100 miles away from any other licensed track (Sec. 9).

- Specify that the current process for applying for a track license applies to applications for a *new* track license. Current law states that the Racing Commission *shall* grant a license if the applicant satisfied the requirements of the act and rules promulgated under the act. The bill changes "shall" to "may," giving the Racing Commission discretion in granting licenses (Sec. 9).
- Require the Racing Commissioner to deny an application for a new track license if approving the application would increase the number of valid licenses to more than 5 or would cause harmful competition by or among existing tracks (Sec. 9).
- Clarify that licenses may be transferred or sold by the licensee with the consent of the Racing Commissioner, unless the person seeking the sale or transfer does not meet the requirements for a new license. Transferred or sold licenses would be entitled to all privileges and subject to all requirements applicable to other licenses (Sec. 9).
- Eliminate a provision allowing the Racing Commissioner to suspend or revoke a license if a licensed premise does not conduct a licensed race meeting for two consecutive years (Sec. 9).
- Eliminate a provision that prohibits a person from being issued more than one track license (Sec. 9).
- Clarify that each holder of a track license must post a toll-free compulsive gambling helpline number at each entrance and in prominent places in other areas where pari-mutuel wagering and pari-mutuel gaming is allowed (Sec. 9a).
- Require applicants for a race meeting license to specify whether the applicant is requesting or will be requesting to conduct other pari-mutuel wager or pari-mutuel gaming and simulcasting of races and events; and what pari-mutuel wagering will be conducted on live horse racing simulcast races and events, and gaming activities, including any pari-mutuel wagering with common, linked or progressive pools (Sec. 10).
- Require applicants requesting to conduct standard-bred racing to apply for a minimum of 50 days of live racing (Sec. 10).
- Require applicants requesting to conduct thoroughbred racing to apply for a minimum of 75 days of live racing (Sec. 10).
- Require an application to specify that the applicant requests to offer at least 9 live horse races on each day of live racing allocated by the Racing Commissioner in the race meeting license, unless another number of races per day is specified in the applicant's contract with a certified horsemen's organization (Sec. 10).

- Eliminate time restrictions on when standard-bred and thoroughbred races can be held in city areas (Sec. 10).
- Require race meeting licensees to make a good-faith effort to reschedule live races on allocated live racing dates that are not held because of labor disputes, fires, adverse weather, or other causes (Sec. 12).
- Allow certified horsemen's organizations to use their own horsemen's purse pool to pay for (1) reasonable annual expenses, (2) purses for live horse races at the track where the race meeting licensee with which it has a contract operates, and (3) costs of regulation by the Racing Commissioner (Sec. 13).
- Allow certified horsemen's organizations to pay purse pool money directly to the race meeting licensee with which it has a contract for purposes expressly allowed under the act, rules promulgated under the act, or an order of the Racing Commissioner (Sec. 13).
- Require the Racing Commissioner to certify a horsemen's organization biannually if the horsemen's organization demonstrated that it met certain criteria. The H-1 Substitute differs from the introduced bill which had required the Racing Commissioner to determine annually whether to certify a horsemen's organization. A decision to not certify or revoke certification would be subject to review under the Administrative Procedures Act (Sec. 13).
- Allow a horsemen's purse pool to be audited by the Racing Commissioner, by the horsemen's organization that maintains the pool, and by the race meeting licensee (Sec. 13).
- Specify that race meeting licensees will retain as commission up to 35% of all money wagered on or fees paid to participate in any pari-mutuel wagering (Sec. 17).
- Specify that 50% of net commission from wagering on the results of live racing must be paid to the horsemen's purse pool (Sec. 17)
- Require the licensee and the horsemen's organization to provide information concerning any commission retained or withheld and any net commission paid at the request of the Commissioner (Sec. 17).
- Modify conditions under which a license to televise simulcasts can be issued (Sec. 18). The *As Passed by the House* version of the bill reflects changes to Section 18 made in the H-1 substitute as well as in a floor amendment. Changes as compared to the *As Introduced* version of the bill are found in Sec. 18(2), which established conditions under which the Racing Commissioner may authorize a licensee to broadcast simulcast races and event, and in new subsections 18(5) and 18(6), which provide for the payment of race meeting licensee commissions from

simulcast wagering and from other pari-mutuel wagering and pari-mutuel gaming activities other than live horse racing. Floor amendment 1b corrected an apparent drafting error in Sec. 18 (6), changing the word "section" to "subsection."

- Allow for the auditing of the horsemen's simulcast purse pool. (Sec. 18 (7) and Sec. 19)
- Defines "Participating Certified Horsemen's Organization" for purposes of participation in money paid under provisions of the act to the horsemen's purse pool. The H-1 substitute establishes different criteria for certified horsemen's organizations that have contracts with race meeting licensees in counties with a population under 500,000, and those with a population greater than 500,000.
- Provide for the distribution of money if a race meeting license is surrendered, revoked, or escrowed. (Sec. 19a)
- Specify that money generated from the Horse Racing Law must first be used to pay the actual costs incurred by the Department of Agriculture and Rural Development and the Office of the Commissioner in carrying out their official duties. Money generated under the act that remains at the end of the fiscal year would be deposited into the Agriculture Equine Industry Development Fund. (Sec. 20(2)) [Section 2 of the bill defines the Office of the Racing Commissioner as the Horse Racing Section of the Horse Racing, Audit, and Gaming Technology Division of the Michigan Gaming Control Board.]
- Modify payments that are made to standard-bred and fair programs.
- Transfer authority to approve presiding judges and clerks of the course at fairs to the director of the Department of Agriculture and Rural Development. (Sec. 20 (5) (g))
- Provide new definitions for "Michigan bred American Paint Horse," "Michigan bred Appaloosa Horse," "Michigan bred Arabian Horse," "Michigan bred Quarter Horse," and "Michigan bred Thoroughbred Horse." (Sec. 20(18))
- Require that each licensed racetrack pay a license fee of \$1,000. (Sec. 22(1)) [This currently applies only to racetracks located in a city area.]
- Impose on race meeting licensees a 3.5% tax on all money wagered in interstate simulcast and intertrack simulcast races at the license holder's race meetings. The bill directs payment of the tax to the State Treasurer for deposit into the Agriculture Equine Industry Development Fund established under Section 20 of the act. [The As Passed by the House version of the bill differs from the *As Introduced* version which had imposed a 16% tax on race meeting licensee commissions on the simulcasting of horse races.] (Sec. 22(3))

- Impose a 15% tax on race meeting licensees on their commissions on pari-mutuel wagering and pari-mutuel gaming activities, other than the [simulcast] wagering and gaming activities on which the 3.5% tax is paid under Subsection (3). (Sec. 22(4). Revenue from this tax would be distributed as follows:
 - 3/4 of the tax collected would be deposited in the General Fund.
 - 1/8 of the tax collected would be paid to the city, township, or village in which the licensee conducts races.
 - 1/8 of the tax collected would be paid to the county in which the licensee conducts races.
- Allow a person regulated under the act to designate certain information for the confidential use of the Racing Commissioner only and provides for a process if information that is designated as confidential is subsequently requested as part of a request for public records under the Freedom of Information Act. Specifically, the regulated person has 30 days to demonstrate the information should not be disclosed for reasons contained in the act. The Racing Commissioner would be required to release the information unless the regulated person makes a satisfactory demonstration that the information should be kept confidential. (Sec. 25)
- Specify the act does not apply to authorized casino games, lottery games, bingo or millionaire parties; gambling on Native American land; or allowable recreational card playing, bowling, redemption games, or other promotional activities. (Sec. 26).
- Repeal two obsolete provisions. Enacting Section 1 would repeal Sec. 5 of current law which requires the Racing Commissioner to take the constitutional oath of office; as mentioned earlier, the duties of that office now reside in the Executive Director of the Gaming Control Board. Enacting Section 1 would also repeal Section 35 of the current Horse Racing Law; that section repealed the prior act governing horse racing.
- Clarify the intent of the bill, specifically with respect to the definition of "pari-mutuel," "pari-mutuel gaming activities," and "pari-mutuel wagering" as defined in Section 2(p). [Enacting Section 2.]

FISCAL IMPACT:

The State of Michigan does not tax wagering on live horse racing. The state currently does impose a 3.5% wagering tax on simulcast racing wagers. That tax, imposed in Section 22 of the Horse Racing Act of 1995, is estimated to generate \$4.6 million in FY 2011-12 for credit to the state-restricted Agriculture Equine Industry Development Fund (AEIDF). Fiscal Year 2011-12 appropriations from the AEIDF were follows: \$2.3 million in the General Government budget for regulatory activities of the Racing Commission within the Michigan Gaming Control Board, and related information

technology costs; \$1.0 million for Agriculture and Rural Development budget for laboratory, information technology, and administrative costs related to horse racing programs; \$2.8 million in the Agriculture and Rural Development budget for horse racing grants and purse supplements.

House Bill 5546 as introduced would have replaced the 3.5% tax on simulcast wagers with a 16% tax on race meeting licensee commissions on simulcast races. This change was not retained in the House-passed bill; the bill retains the 3.5% tax on simulcast wagers and the current earmark of tax revenue for the AEIDF.

Both the introduced and House-passed versions of the bill establish a new 15% tax on commissions on other forms of pari-mutuel gaming authorized under the bill – forms of pari-mutuel wagering in addition to live horse racing and simulcasting.

With regard to the 15% tax on commissions on other forms of pari-mutuel gaming authorized by the bill, the bill would earmark 3/4ths of that revenue for the state General Fund, 1/8th to the city, township, or village in which the race meeting licensee conducts race meetings at a licensed track, and 1/8th to the county in which the race meeting licensee conducts race meetings at a licensed track.

The amount of tax revenue which might be generated from the tax changes proposed by House Bill 5546 cannot be reasonably estimated at this time. The amounts would depend on the amounts wagered on simulcast racing and the related race meeting licensee commissions. The amount of state tax revenue generated would also depend on the other forms of pari-mutuel gaming that would be authorized under the bill and the amounts wagered on those other forms of pari-mutuel games, and the related licensee commissions.

The most important changes made in the House-passed bill, as compared to the bill as originally introduced, have to do with the definition of "pari-mutuel," "pari-mutuel gaming activities," and "pari-mutuel wagering." The original definitions could have authorized a number of forms of gambling not in any way related to horse racing. The House-passed bill also included a new enacting section, Enacting Section 2 which clarified the meaning of the bill with respect to these definitions. Given the importance of these sections, the definitions and the enacting section are reproduced in their entirety below:

House Bill 5546, As Passed the House

Section 2(p). *"Pari-mutuel", "pari-mutuel gaming activities", and "pari-mutuel wagering" mean the form or system of gambling on races, events, games, and activities in which the winner or winners divide the total amount of money bet, after deducting all commissions, fees, and taxes. [Pari-mutuel, pari-mutuel gaming activities, and pari-mutuel wagering allowed under this act are limited to wagering on the results of horse races, but include all technology and innovations related to horse races and wagering on the results of horse races that may exist now or in the future.] Pari-mutuel, pari-mutuel gaming activities, and pari-mutuel wagering do not include banked games in which the race meeting licensee is a participant or otherwise holds a stake in the outcome of the*

game, or in which the race meeting licensee establishes a bank against which participants play. Pari-mutuel, pari-mutuel gaming activities, and pari-mutuel wagering under this act do not include a video lottery that must be authorized under the McCauley-Traxler-Law-Bowman-McNeely lottery act, 1972 PA 239, MCL 432.1 to 432.47 or any other law of this state.

Enacting section 2. *Subdivision (p) of section 2 of the horse racing law of 1995, 1995 PA 279, MCL 431.302, as added by this amendatory act, is curative, shall be applied retroactively, and is intended to correct any misinterpretation concerning the original intent of the legislature to allow all pari-mutuel wagering on the results of horse races to occur under this act subject to the regulatory authority of the racing commissioner without respect to whether the pari-mutuel wagering on the results of horse races or technology for pari-mutuel wagering on the results of horse races occurred or existed on a specific date.*

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■ 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.