

HORSE RACING LAW AMENDMENTS

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Senate Bill 504 (proposed substitute H-1)
Senate Bill 505 (substitute S-2) as passed Senate
Sponsor: Sen. Dave Robertson
House Committee: Agriculture
Senate Committee: Agriculture
Complete to 5-25-16

Analysis available at
<http://www.legislature.mi.gov>

SUMMARY:

Senate Bill 504 would amend several existing sections of the Horse Racing Law of 1995. The bill would also add two new sections: Section 6a which would establish a new Horse Racing Advisory Commission within the Michigan Department of Agriculture and Rural Development, and Section 19b, which would provide for the distribution of money currently held in escrow by the Michigan Gaming Control Board.

Senate Bill 505 would amend Section 14d of the Code of Criminal Procedure by establishing sentencing guidelines consistent with the provisions of the Horse Racing Act of 1995 as that act would be amended by Senate Bill 504. Senate Bill 505 would take effect 90 days after the date it is enacted into law and also is tie-barred to Senate Bill 504, meaning it cannot take effect unless Senate Bill 504 is enacted into law.

A more detailed summary follows.

Senate Bill 504

Section 2: Definitions

The following terms would be added or amended by Senate Bill 504:

Commissioner or *Racing Commissioner* would mean the Executive Director of the Michigan Gaming Control Board, while *Office of the Racing Commissioner* would mean the horse racing section of the horse racing, audit, and gaming technology division of the Michigan Gaming Control Board, which operates under the direction of the Executive Director of the Michigan Gaming Control Board.

Among other things, the Horse Racing Law of 1995 established, and prescribed the powers and duties of the Office of Racing Commissioner (ORC). Executive Order 2009-45 transferred the functions and powers of the Office of Racing Commission from the Michigan Department of Agriculture to the Michigan Gaming Control Board (MGCB). The transfer is referenced as Executive Reorganization Order 2009-31 in Michigan Compiled Laws (MCL 324.99919). The effective date of the transfer was January 17, 2010.

Horsemen's simulcast purse account would mean an account maintained with a financial institution and managed by a designated agent to receive and distribute money as provided in this act.

Net commission would mean the amount determined under Section 17(3), after first deducting from the licensee's statutory commission the applicable state tax on wagering due and payable and the actual verified fee paid by the licensee to the sending host track to receive the simulcast signal.

Pari-mutuel and *pari-mutuel wagering* would mean the form or system of gambling in which the winner or winners divide the total amount of money bet, after deducting the net commission.

The act does not currently define "pari-mutuel." As commonly understood however, pari-mutuel refers to a system of wagering where persons are betting against each other to win a common pool, as opposed to competing against a "house" or game operator. Pari-mutuel wagering is the wagering system most commonly used in horse racing.

[The Horse Racing Act of 1995 provides for two types of pari-mutuel horse racing in the state: live horse racing, and *simulcasting* of horse races. Live horse racing is self-explanatory; it involves wagering on the results of races run by live horses at the race track at which the wagers are placed. Simulcast racing or Simulcasting involves the simultaneous telecast of a live horserace for pari-mutuel wagering purposes from a "host" track to a receiving track. The term "simulcast" is currently defined in Section 18(1) of the act. The bill would modify the current definition and move it to Section. 18(8).]

Standardbred would mean a horse registered with the United States Trotting Association that races on designated gaits of pace or trot. (This applies to harness racing.)

Thoroughbred would mean a thoroughbred, quarter, paint, Arabian, or other breed horse. Thoroughbred would not include a Standardbred. (This is sometimes known as flat racing.)

The bill would strike "city area" from the defined terms of Section 2. The act currently includes a definition of "city area," to mean a city with a population of 750,000 or more and every county located wholly or partly within 30 miles of the city limits. When the current Horse Racing Law was enacted in 1995, that definition represented the city of Detroit and adjacent counties, including Wayne, Oakland, and Macomb counties. Beginning with Michigan's first horse racing act, Public Act 199 of 1933, Michigan's racing law established different regulatory requirements for licensed tracks within and outside of metropolitan Detroit. Because the city of Detroit is currently under the 750,000 population threshold, there is no area that currently meets the definition of "city area."

The bill also strikes references to the term "city area" throughout the act where the term had been used to establish different provisions for licensees within a city area as compared to other licensees. By striking references to the term "city area," the bill would establish a single set of requirements for all licensees in the state.

Section 6a: Horse Racing Advisory Commission

This new section would create the Horse Racing Advisory Commission within the Michigan Department of Agriculture and Rural Development (MDARD). The membership of the commission would consist of the following persons, appointed by the governor:

- An individual with knowledge about, and expertise in, horse racing in this state. This person would serve as the commission chairperson.
- The director of MDARD, or a designee.
- The state treasurer, or a designee.
- A veterinarian.
- Two individuals from two different statewide horse racing association.
- Two individuals who are owners or operators, or designees of such individuals, of two different horse racetracks in this state.
- A member of the public.

The first members of the commission must be appointed within 90 days after the effective date of Section 6a. The state treasurer, or a designee, the veterinarian, and the two individuals from different statewide horse racing associations would serve for terms of 4 years, or until a successor is appointed, whichever is later. The governor may remove a member of the commission for incompetence, dereliction of duty, malfeasance, misfeasance, or nonfeasance in office, or any other good cause. If a vacancy occurs, the governor would make an appointment for the unexpired term in the same manner as the original appointment.

The commission would be tasked with all of the following:

- Establish procedures governing the operation and promotion of horse racing in Michigan for the Michigan Gaming Control Board (MGCB) and commissioner.
- Make recommendations to the legislature on amendments to this act that would improve the regulatory structure of horse racing in this state with a goal of maintaining the long-term viability of horse racing in Michigan.
- Submit an annual report to the legislature detailing the above recommendations it has made.

The commission's first meeting would be called by the chairperson. At that first meeting, officers would be elected from among the commission members as the commission deems necessary or appropriate. After that first meeting, the commission must meet at least quarterly, or more frequently at the call of the chairperson or if requested by three or more members. A majority of the commission members would constitute a quorum for the transaction of business at a meeting of the advisory commission, and a majority must be present and serving for official action to be taken by the advisory commission.

Members of the commission would serve without compensation, though they would be eligible for reimbursement of their actual and necessary expenses incurred in the performance of their official commission duties.

Public business conducted by the commission must be in accordance with the Open Meetings Act (PA 267 of 1976) and a writing prepared, owned, used, in the possession of,

or retained by the advisory commission in performance of an official function would be subject to the Freedom of Information Act (442 of 1976).

Section 7: Promulgation of Rules by the Commissioner

Section 7, which defines the authority of the Racing Commissioner, authorizes the Racing Commissioner to promulgate rules under the Administrative Procedures Act to accomplish a number of specified goals. The bill would include "pari-mutuel wagering and technology" among the aims of proposed administrative rules authorized under the section.

Sections 8 and 9: Horse Racing Licenses

Section 8 currently indicates that the Racing Commissioner may issue three types of licenses: occupational licenses, race meeting licenses, and track licenses. Section 9 establishes specific requirements related to track licenses. Senate Bill 504 would remove references to licensing requirements in a "city area." As a result, the bill would effectively establish uniform licensing requirements for licensees in all areas of the state.

Section 10: Race Meeting Licensee Requirements

Section 10 currently establishes race meeting license requirements and references race meetings for Thoroughbreds, Standardbreds, as well as quarter horses, Appaloosas, American paint horses, and Arabian horses. Senate Bill 504 would remove references to quarter horses, Appaloosas, American paint horses and Arabian horses in this section.

The bill would also remove specific restrictions on the conduct of live horse racing within a city area.

Section 12: Race Meeting License Requirements

Section 12 currently establishes requirements for applicants for race meeting licenses. Specifically, applicants for a race meeting license are required to apply for a minimum number of live horse racing days. These minimum requirements vary by breed and whether or not the race meeting is within a city area. The current minimums are 45 live racing days for Thoroughbred race meetings, and 75 live racing days for Standardbred race meetings – these minimums are currently higher within a city area. The section currently requires that applicants apply to conduct live horse racing at least 3 days per week for Thoroughbreds and 4 days per week for Standardbred horse, with at least 9 races programmed on each racing day.

Senate Bill 504 would establish the same minimum application requirements for both Thoroughbred and Standardbred race meetings and would eliminate the different requirements for race meetings within and outside of a city area. Both Thoroughbred and Standardbred race meeting licensees would be required to apply conduct at least 30 days of live racing during a proposed race meeting, with least two days of racing per week and at least 8 races programmed on each racing day.

The bill appears to provide the Racing Commissioner the option of allocating fewer days of live horse racing than the minimum application requirements. Senate Bill 504 would require the Racing Commissioner to allocate not fewer than 10 days of live horse racing to

a race meeting licensee with not fewer than 6 programmed live races per allocated day for both Thoroughbred and Standardbred licenses.

The bill would revise current provision dealing with consequences when a race meeting licensee is unable to comply with the minimum live racing requirements. The bill would revise this section to reflect the new minimum live racing requirements described above. Language setting separate requirements for licensees in a city area would be repealed.

Should one or more of the following be met, a race meeting license and simulcast permit may be modified by the Commissioner to allow the licensee to continue simulcasting during the remaining period of the race meeting license if the contracted certified horsemen's organization is in agreement:

- There is an inadequate supply of horses for the licensee to conduct at least 10 days of racing with at least 6 races per day.
- There is inadequate funding of race purses to support the licensee's conducting of a live race meeting of at least 10 days with 6 races per day.
- There is no certified horsemen's organization operating in Michigan.

The Racing Commissioner may also issue an order amending a race meeting license as described above if one or more of those conditions are present and the commissioner determines that the licensee is capable of conducting simulcast horse racing in accordance with the act. These amendments would only apply to allowing simulcast-only operations and would not be limitations on, or requirements for, other race meeting license agreements the racing commissioner may approve or deny.

In order to obtain an amended license and satisfy the live racing requirements, the licensee must have a written contract with a certified horsemen's organization to pay a percentage of its net commission from simulcasting to the live racing purse pool at another racetrack licensed under this act during the time when the amended license is in effect.

Unless otherwise provided in the contract, the payment must be not less than 25% of the net commission from simulcasting if only one certified horsemen's organization has a contract for live racing days in this state for that calendar year. If both certified horsemen's organizations have a contract for live race dates, the payment must be not more than 40% of the net commission from simulcasting.

If a race meeting licensee and the certified horsemen's organization with which that licensee has a contract jointly request that the licensee be allowed to conduct a live race meeting with fewer than 8 races per day, the Racing Commissioner must approve the request and issue an order amending the license accordingly.

Section 14: Race Meeting Licensee Requirements

Section 14 currently establishes additional race meeting license requirements. Under current law, all simulcasting authorized by the Racing Commissioner must be conditioned on the licensee conducting at least 9 live horse races per live horse racing day, unless this requirement is waived in writing by both the Commissioner and the certified horsemen's

organization. Senate Bill 504 would change this requirement to 7 live horse races per live horse racing day.

The bill would add a new subsection to give the Racing Commissioner the ability to promulgate rules that regulate advancements to wagering capabilities or new technologies.

Section 17: Pari-Mutuel Wagering

The bill would amend this section by setting penalties for non-authorized pari-mutuel wagering or prohibited conduct relating thereto.

Any form of pari-mutuel wagering on the results of live or simulcast horse races must only occur or be permitted to occur at a licensed race meeting. A person is prohibited from participating or being a party to any act or transaction relative to placing a wager or carrying a wager for placement outside of a race meeting ground. A person also cannot provide messenger service for the placing of a bet for another person who is not a patron.

A person that does not hold a race meeting license that solicits or accepts wagers on the results of live or simulcast horse races from individuals in Michigan would be guilty of a felony punishable by imprisonment for not more than 5 years and/or a fine of up to \$10,000. Each act of solicitation or wager that is accepted in violation of this section would be considered a separate offense.

Section 18: Simulcast Races

Section 18 currently authorizes the Racing Commissioner to authorize simulcasting by race meeting licensees. Section 18(1) currently defines "simulcast" to mean "the live transmission of video and audio signals conveying a horse race held either inside or outside this state to a licensed race meeting in this state." Senate Bill 504 would move the definition of "simulcast" to a new subsection within Section 18, subsection (8) and would strike the word "live" from the definition. The amended phrase would read: "simulcast means the transmission of video and audio signals..."

[Both the current and amended definition begin with the phrase "As used in this section:" This appears to be an anachronism in that the terms "simulcast" and "simulcasting" are used throughout the act and not only in Section 18.]

Section 18 also directs a share of the race meeting licensee's net commission from simulcast wagering to a common horsemen's purse pool established in Section 19. Under current law, the horsemen's purse pool is not site-specific.

Section 19: Site-Specific Simulcast Horsemen's Purse Pool

Section 19 currently provides for the formula distribution of the common horsemen's simulcast purse pool: first between breeds, and then pro-rated between race meeting licensees based on each licensee's prior year wagering handle.

Senate Bill 504 would make the simulcast purse pool "site-specific." The bill would direct the race meeting licensee to pay to the site-specific horsemen's simulcast purse pool not

less than 25% and not more than 40% of net commission generated from the licensee's race meeting for purses for live horse racing.

Senate Bill 504 would also authorize the Racing Commissioner to order the payment from the site-specified horsemen's simulcast purse pool an amount – not less than 5% of the site-specific horsemen's simulcast purse pool account – to certified horsemen's organizations that participate in live horse racing. The payment would be for the certified horsemen's organization's general expenses.

Section 19a: Purse Pools from Closed Race Tracks; Succession of Funds

Section 19a currently provides for the disposition of horsemen's purse pool money when a Thoroughbred track license is surrendered. Senate Bill 504 would amend this section to make it apply all race tracks – not just thoroughbred tracks. The bill would also direct that money from the horsemen's purse pool at the closed race track be transferred to the horsemen's purse pool at any licensed racetrack in the state where the affected certified horsemen's organization subsequently obtains a written contract for live horse racing with pari-mutuel wagering.

The bill also directs that if the affected certified horsemen's organization does not enter into a written contract for live horse racing with pari-mutuel wagering within 12 months, the money must equally divided equally between the horsemen's purse pools at the licensed tracks in the state. The bill authorizes the Racing Commissioner to rescind or modify any existing escrow orders to carry out the section.

Section 19b: Money in Escrow Prior to Effective Date of Act

Senate Bill 504 would add a new section to provide for distribution of money currently being held in escrow by the Racing Commissioner. The bill indicates that the escrowed money must be used by December 31, 2018, for a race meeting conducted by the race meeting licensee that was the subject of the escrow order, in accordance with the contractual agreement between the race meeting licensee and the certified horsemen's organization that was the subject of the escrow order. The bill directs that if a contractual agreement is not reached before September 1, 2017, the Racing Commissioner order the distribution of the escrowed money equally between Thoroughbred and Standardbred horses.

Section 20: Agriculture Equine Industry Development Fund

Section 20 established the Agriculture Equine Industry Development Fund as a state restricted fund and provides for the distribution of fund revenue. The amendments to this section appear to be technical in nature.

Section 22: Track Meeting License Fee/Wagering Tax

Section 22 currently provides two different track license fee amounts: \$1,000 annually for licensees within a city area and \$200 for other licensees. The bill would strike the reference to "city area" and would effectively make the annual fee for track licensees \$1,000.

In addition, Section 22 currently establishes a 3.5% wagering tax on simulcast racing wagers to be paid from the race meeting licensee's net commission. There is no tax imposed on *live horse racing* wagering. Senate Bill 504 amendments to the wagering tax provisions are technical only.

Section 27: Restrictions on Unlicensed Race Meeting and Pari-Mutuel Wagering

Senate Bill 504 would amend Section 27 to add language explicitly prohibiting unlicensed persons from conducting, assisting, aiding, or abetting race meetings or pari-mutuel wagering.

Section 30: Prohibited Substances

Section 30 deals with prohibitions on drugs or foreign substances present in race horses. Senate Bill 504 would explicitly prohibit the presence of a banned drug, a non-therapeutic drug, or a designated foreign substance in a horse eligible to race that is stabled on the grounds of a race meeting licensee, off-track training center, farm, or stable.

Section 31: Prohibited Practices

Section 31 currently describes various prohibited horse racing practices. The amendments to this section appear to be technical.

FISCAL IMPACT:

The State of Michigan does not tax *live horse racing* wagering. The state currently does impose a 3.5% wagering tax on simulcast racing wagers. That tax, established in Section 22 of the Horse Racing Act of 1995, generates approximately \$4.0 million per year for credit to the state-restricted Agriculture Equine Industry Development Fund (AEIDF). Senate Bill 504 would not change the current state simulcast wagering tax or the distribution of tax revenue.

The bill would change the current formula distribution of simulcast wagering revenue between race meeting licensees and the horsemen's purse pool. The bill would also provide for the disposition of purse pool money currently held in escrow by the Michigan Gaming Control Board. Horsemen's purse pool money is a private resource; it is not state or local revenue or a state or local asset. As a result, the proposed changes to the purse pool distribution would have no direct impact on state or local government.

The bill's creation of a new Horse Racing Advisory Commission within the MDARD would impose additional administrative costs on the department. Those costs have not been estimated at this time.

Senate Bill 504 would have an indeterminate fiscal impact on the state's correctional system and on local court systems. Information is not available on the number of persons that might be convicted under the provisions of the bill, but new felony convictions would result in increased costs related to state prisons and state probation supervision. The average cost of prison incarceration in a state facility is roughly \$35,200 per prisoner per year, a figure that includes various fixed administrative and operational costs. State costs for parole and felony probation supervision average about \$3,600 per supervised offender per year. The

fiscal impact on local court systems would depend on how the provisions of the bill affected caseloads and related administrative costs. Any increase in penal fine revenues would increase funding for local libraries, which are the constitutionally-designated recipients of those revenues.

Senate Bill 505 amends sentencing guidelines and does not have a direct fiscal impact on the state or on local units of government.

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