

HORSE RACING LAW AMENDMENTS

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Senate Bills 504 & 505
(Public Acts 271 & 272 of 2016)
Sponsor: Sen. Dave Robertson
House Committee: Agriculture
Senate Committee: Agriculture
Complete to 7-1-16

Analysis available at
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SUMMARY:

Senate Bill 504, enacted as Public Act 271 of 2016, amends several sections of the Horse Racing Law of 1995. The bill also adds 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 certain money held in escrow by the Michigan Gaming Control Board.

Senate Bill 505, enacted as Public Act 272 of 2016, amends Section 14d of the Code of Criminal Procedure by establishing sentencing guidelines consistent with the provisions of the Horse Racing Act of 1995 as amended by Senate Bill 504. Senate Bill 505 was tie-barred to Senate Bill 504, meaning it would not have taken effect had Senate Bill 504 not also been enacted into law.

Both enacted bills became effective July 1, 2016.

A more detailed analysis of Senate Bill 504 follows.

Senate Bill 504 amendments to the Horse Racing Act of 1995

Section 2: Definitions

The following terms are 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. 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 the 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.

[Note: The Horse Racing Act of 1995 had not previously defined "pari-mutuel." As commonly understood, pari-mutuel refers to a system of wagering where persons bet 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 move this definition 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.]

City Area – The bill would strike "city area" from the defined terms of Section 2. The act currently includes a definition of "city area" that refers to 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 establishes a single set of requirements for all licensees in the state.

Section 6a: Horse Racing Advisory Commission

This new section establishes the Horse Racing Advisory Commission (HRAC) within the Michigan Department of Agriculture and Rural Development (MDARD). HRAC membership 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 HRAC chairperson.
- The director of MDARD, or a designee.
- A veterinarian.
- Two individuals from two different statewide horse racing associations.
- Two individuals who are owners or operators, or designees of such individuals, of two different horse racetracks in this state.

The bill requires that the first members of the HRAC be appointed within 90 days after the effective date of Section 6a. Of the members of the HRAC, the veterinarian, the two individuals from different statewide horse racing associations, and the two individuals who are owners or operators would serve for terms of 4 years, or until a successor is appointed, whichever is later. The Governor may remove a member of the HRAC 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 Governor made the initial appointment of six members of the HRAC on November 23, 2016.]

The HRAC is tasked with all of the following:

- Establish procedures governing the operation and promotion of horse racing in Michigan for the Racing Commissioner. The bill requires that procedures established by the HRAC must be taken under consideration by the Racing Commissioner while performing his or her duties.
- Make recommendations to the Legislature on amendments to the Horse Racing Act of 1995 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.

The bill directs the HRAC chairperson to call the first meeting. At that first meeting, officers would be elected from among the HRAC members as the HRAC deemed necessary or appropriate. After that first meeting, the HRAC would meet at the call of the chairperson or when requested by three or more members. A majority of the HRAC members would constitute a quorum for the transaction of business at a meeting of the HRAC, and a majority must be present and serving for official action to be taken by the HRAC.

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

Public business conducted by the HRAC 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 HRAC in performance of an official function would be subject to the Freedom of Information Act (PA 442 of 1976).

Sections 8 and 9: Horse Racing Licenses

Section 8 authorizes the Racing Commissioner to 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 removes references to licensing requirements in a "city area" from both of Sections 8 and 9. As a result, the bill effectively establishes uniform licensing requirements for licensees in all areas of the state.

Section 10: Race Meeting Licensee Requirements

Section 10 establishes annual *race meeting license* requirements. The section had referenced race meetings for Thoroughbreds, Standardbreds, as well as quarter horses, Appaloosas, American paint horses, and Arabian horses. Senate Bill 504 removes references to quarter horses, Appaloosas, American paint horses and Arabian horses in this section.

The bill also removes language specific to the conduct of live horse racing within a *city area*.

Section 12: Race Meeting License Requirements

Section 12 establishes requirements for race meeting license applicants. Specifically, applicants for a race meeting license are required to apply for a minimum number of live horse racing days. These minimum requirements had varied by breed and whether or not the race meeting was within a *city area*. The minimum requirements had been 45 live racing days for Thoroughbred race meetings, and 75 live racing days for Standardbred race meetings; these minimums had been higher within a *city area*. The section had required that applicants apply to conduct live horse racing at least three days per week for Thoroughbreds and four days per week for Standardbred horse, with at least nine races programmed on each racing day.

Senate Bill 504 amends Section 12 to establish the same minimum application requirements for both Thoroughbred and Standardbred race meetings. The bill also eliminates separate requirements for race meetings within and outside of a city area. Both Thoroughbred and Standardbred race meeting licensees would be required to apply to conduct at least 30 days of live racing during a proposed race meeting, with least two days of racing per week and at least eight live races programmed on each racing day.

Although Section 12 establishes a minimum number of racing days, and live races per day for race meeting license applicants, the Racing Commission has authority to allocate fewer

racing days and live races per day. However, Senate Bill 504 would limit this discretion: the Racing Commissioner would be required to allocate no fewer than 10 days of live horse racing to a race meeting licensee with no fewer than six programmed live races per allocated day.

Section 12 includes provisions dealing with consequences when a race meeting licensee is unable to comply with the minimum live racing requirements. The section had referenced the minimum number of nine live races on any racing date; Senate Bill 504 changes these references to reflect the amended minimum of eight live races on an awarded racing date.

Senate Bill 504 authorizes the Racing Commissioner to amend an existing race meeting license and simulcast permit to allow the licensee to continue simulcasting during the remaining period of the race meeting license if Racing Commissioner determines the licensee is capable of conducting simulcast horse racing in accordance with the act, the contracted Certified Horsemen's Organization (CHO) is in agreement, and one or more of the following conditions apply:

- 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 CHO operating in Michigan.

In order to obtain an amended license described above, and satisfy the live racing requirements of the act, the licensee is required to have a written contract with a CHO 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 between the licensee and the CHO, the payment must be not less than 25% of the net commission from simulcasting if only one CHO has a contract for live racing days in this state for that calendar year. If both CHOs have a contract for live race dates, the payment must be not more than 40% of the net commission from simulcasting.

The bill directs that if a race meeting licensee and the CHO with which that licensee has a contract jointly request that the licensee be allowed to conduct a live race meeting with fewer than eight 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 establishes additional race meeting license requirements. The section had required that all simulcasting authorized by the Racing Commissioner must be conditioned on the licensee conducting at least nine live horse races per live horse racing day, unless this requirement is waived in writing by both the Racing Commissioner and the CHO.

Senate Bill 504 amends this requirement so that no fewer than eight live horse races must be conducted on each live horse racing day.

Section 17: Pari-Mutuel Wagering

Section 17 is the section of the Horse Racing Act that affirmatively authorizes the pari-mutuel system of wagering on the results of horse races. The section also prescribes how pari-mutuel wagering is to be carried out.

Subsection 2 states that the holder of a race meeting license may provide a place in the race meeting grounds or enclosure at which the holder may conduct and supervise the pari-mutuel system of wagering on the results of horse races as permitted in the act. The subsection also requires the use of a totalizer or comparable odds-setting/display device if the pari-mutuel system of wagering is used at a race meeting. Senate Bill 504 strikes the underlined words, "the" and "system of" from the subsection.

Subsection 7 had restricted pari-mutuel wagering to the enclosure of a race meeting licensee, prohibited carrying wagers for placement outside a race meeting grounds, and had prohibited the use of a messenger service for placing bets—but excluded simulcast wagering from the prohibition.

Senate Bill 504 strikes most of the restrictive language of Subsection 7 and restores it in new Subsection 8. The bill revises Subsection 7 to read: "Any act or transaction relative to pari-mutuel wagering on the results of live or simulcast horse races may be conducted by a race meeting licensee under this act for the race meeting licensee to comply with the audit requirements of Section 23." The bill defines "act or transaction relative to pari-mutuel wagering on the results of live or simulcast horse races" to mean those steps taken by a race meeting licensee to accept a wager and process it with the ordinary course of its business and in accordance with this act.

As noted above, the bill moves the restrictive language of Subsection 7 to a new Subsection 8 with some modification. The differences between the original language of Subsection 7 and the new language of Subsection 8 are shown in strikeout and bold formatting, below:

*~~"Any act or transaction relative to~~ **Any form** of pari-mutuel wagering on the results of live or simulcast horse races ~~shall~~**must** only occur or be permitted to occur ~~within enclosure of~~ **at** a licensed race meeting.*

Subsection 7 language prohibiting the carrying wagers for placement outside a race meeting grounds and prohibiting the use of a messenger service for placing bets—excluding simulcast wagering from the prohibition—is both retained in Subsection 7 and duplicated in new Subsection 8, verbatim.

Senate Bill 504 also amends Section 12 by establishing specific penalties for unlicensed solicitation or acceptance of wagers on the results of horse racing. Specifically, a person that does not hold a race meeting license but solicits or accepts wagers on the results of live or simulcast horse races from individuals in Michigan is guilty of a felony punishable

by imprisonment for not more than five 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 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 retain this definition of "simulcast" and move it to a new subsection within Section 18, subsection (8).

[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(4) had directed a share of the race meeting licensee's net commission from simulcast wagering to a common horsemen's purse pool established in Section 19. This horsemen's purse pool was not site-specific. Senate Bill 504 strikes the distribution provisions currently in Section 18(4) and establishes *site-specific* horsemen's simulcast purse *account* provisions in Section 19.

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

Section 19 had provided 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 makes the simulcast purse pool "site-specific." The bill directs the race meeting licensee to pay to a *site-specific horsemen's simulcast purse account* not less than 25% and not more than 40% of net commission generated from the licensee's race meeting.

The bill directs that money paid into the site-specific horsemen's simulcast purse account must be deposited in a depository designated by the participating CHOs and distributed by their designated agent as follows:

- For purses for live horse races at a licensed race meeting in this state.
- Annually, all CHOs that participate in a live race meeting could receive an amount approved by order of the Racing Commissioner to use for general expenses. Beginning on January 1 and ending on December 31 of each year, the CHO is entitled to not less than 5% of the site-specific horsemen's simulcast purse account as ordered by the Racing Commissioner.

[Note: The money in site-specific horsemen's simulcast purse accounts provide the funds used for the purses, i.e., prize money, that horses to compete for. Or to put it another way, horse owners enter horses in races to win purses advertised by race meeting licensees, purses that are funded from the horsemen's simulcast purse account.]

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

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

The bill also directs that if the affected CHO does not enter into a written contract for live horse racing with pari-mutuel wagering within 12 months, the money must be 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 adds a new section to provide for distribution of money being held in escrow by the Racing Commissioner prior to the bill's effective date (July 1, 2016). The bill indicates that the escrowed money must be used by September 1, 2017, for a race meeting conducted by the CHO and 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 CHO that was the subject of the escrow order.

The bill directs that if a contractual agreement is not reached by September 1, 2017, the Racing Commissioner order the distribution of the escrowed money as follows:

- 85% to the CHO that was the subject of the order to be used for purses at any race meeting in this state for which the CHO has a contract.
- 15% to the race meeting licensee that was the subject of the order to be used for track operations and enhancements.

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. Senate Bill 504 amends Subsection 5 to state that the purse supplements paid under the subdivision for overnight races specify "Michigan sired, Michigan bred, or Michigan owned harness horses" as eligible. The bill would also specify "Michigan bred" for the horses eligible for two-year-old and three-year-old Standardbred special purses at fairs.

The bill also adds a new subsection to direct that an amount [from the Agriculture Equine Industry Development Fund] be allocated annually to the MGCB sufficient to pay for the collection and laboratory analysis of urine, saliva, blood, and other samples from horses and licensed individuals involved in horse racing and for the conducting of tests.

Section 22: Track Meeting License Fee/Wagering Tax

Section 22 had provided two different track license fee amounts: \$1,000 annually for licensees within a city area and \$200 for other licensees. Senate Bill 504 strikes the

reference to "city area" and would effectively make the annual fee for track licensees \$1,000.

Section 22 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 this section are technical only.

[Note: As originally enacted, Subsection 3 of Section 22 included a statement of legislative intent: that the 1995 provisions that eliminated the pari-mutuel wagering tax on live horse racing programs were not intended to diminish funding and appropriations for the Agriculture Equine Industry Development Fund and related equine industry programs. The bill adds the phrase "and altering the calculation of the tax on simulcast horse racing." However, the bill does not in fact alter the calculation of the tax on simulcast horse racing.]

Section 30: Prohibited Substances

Section 30 deals with prohibitions on drugs or foreign substances present in race horses. Senate Bill 504 explicitly prohibits 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 Senate Bill 504 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 for distribution of simulcast wagering revenue between race meeting licensees and the horsemen's simulcast purse pool/account. The bill would also provide for the disposition of certain purse pool money 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 \$36,000 per prisoner per year, a figure that includes various fixed administrative and operational costs. State costs for parole and felony probation supervision average about \$3,500 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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