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BILL ANALYSIS



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Senate Bills 504 and 505 (as introduced 9-24-15)
Sponsor: Senator Dave Robertson
Committee: Agriculture

Date Completed: 4-14-16

CONTENT

Senate Bill 504 would amend the Horse Racing Law to do the following:

- **Require a person who wished to conduct a thoroughbred or standardbred race meeting to specify in the application a racetrack to host the race meeting that had hosted live horse racing with pari-mutuel wagering in the year before year of the bill's effective date.**
- **Require a person who wished to conduct a thoroughbred or standardbred race meeting to program at least eight, rather than 9, live horse races.**
- **Allow the Racing Commissioner, under certain conditions, to amend a race meeting license to allow the licensee to continue simulcasting during the remainder of the license.**
- **Increase the fee that may be charged to licensees for live signals for intertrack simulcasting.**
- **Prohibit a person who did not hold a race meeting license from soliciting or accepting wagers on the results of live or simulcast horse races, and prescribe a felony penalty for a violation.**
- **Modify the distribution of money to be paid to certified horsemen's organizations' depositories.**

Senate Bill 505 would amend the Code of Criminal Procedure to include in the sentencing guidelines the offense proposed by Senate Bill 504.

Senate Bill 504 would take effect 90 days after its enactment. Senate Bill 505 is tie-barred to Senate Bill 504.

Senate Bill 504

Definitions

The bill would define "commissioner" or "racing commissioner" as the Executive Director of the Michigan Gaming Control Board appointed under Section 4 of the Michigan Gaming Control and Revenue Act, who is ordered under Executive Reorganization Order (ERO) 2009-31 to perform all of the functions and exercise the powers performed by the Racing Commissioner before that position was abolished.

"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 created by Section 4 of the Michigan Gaming Control Board, which operates under the direction of the Executive Director of the Board, to which ERO 2009-31 transferred all of the authority,

powers, duties, functions, records, personnel, property, unspent balances of appropriations, allocations or other funds of the Office of Racing Commissioner that previously existed under the Horse Racing Law and was abolished by the ERO.

"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 all commissions, fees, and taxes.

Race Meeting License, Minimum Race Days

The Law requires a person to apply each year to the Commissioner for a race meeting license if the person wishes to conduct a thoroughbred, standardbred, quarter horse, Appaloosa, American paint horse, or Arabian race meeting, or a combination of those race meetings, with pari-mutuel wagering on the results of live and simulcast horse races. The application must specify, among other things, the licensed racetrack at which the proposed race meeting will be held. The bill would eliminate quarter horse, Appaloosa, American paint horse, or Arabian from the list of horses, and would require the racetrack specified in the application to have hosted live horse racing with pari-mutuel wagering in the year before year of the bill's effective date.

When an application for a race meeting license is filed, the Commissioner must conduct an investigation of the applicant and the application to determine if the requirements for a race meeting license have been met. Unless a different agreement is reached by all of the race meeting licensees in a city area, a licensee must not conduct a live Standardbred horse race before 6:45 p.m. on any day except Sunday or a live thoroughbred race after 6:45 p.m. on any day except Sunday. The bill would eliminate the time restriction for a thoroughbred race and other provisions allowing the Commissioner to authorize live horse racing at times that would conflict with the time restrictions.

The Law requires applicants to apply to conduct a minimum number of days of live horse racing depending on the type of horse and the location of the race meeting. The minimum numbers of days required are as follows:

- 45 for a thoroughbred, quarter horse, Appaloosa, American paint horse, or Arabian license in a county located outside of a city area.
- 160 for a thoroughbred, quarter horse, Appaloosa, American paint horse, or Arabian license in a city area.
- 75 for standardbred harness horse racing in a county that has a population under 250,000 and is not part of a city area.
- 100 for a standardbred race meeting license in a county that has a population over 250,000 but less than 750,000 and is not part of a city area.
- 120 for a standardbred race meeting license in a city area, for the licensee with the highest pari-mutuel handle in the previous calendar year, and 120 for all others.

In any case, the applicant must apply to have not less than nine races programmed. The bill would eliminate the references to quarter horse, Appaloosa, American paint horse, or Arabian horse would be eliminated, and would require applicants have at least eight live horse races programmed.

Simulcast-Only Operations & Amended Licenses

The bill specifies that the following provisions would apply only to amendments to a race meeting license for the purpose of allowing simulcast-only operations and would not be limitations on or requirements for other race meeting license amendments the Racing Commissioner could approve or deny.

Notwithstanding anything in the Horse Racing Law to the contrary, if the Racing Commissioner determined that one or more the conditions listed below applied, he or she could amend an existing license and simulcast permit to allow the licensee to continue simulcasting during the remaining period of the license. An amended license could be issued by the Commissioner at any time, including at the time of the initial issuance of the license for the upcoming year during which it was valid.

The Commissioner could issue an order amending a license if he or she determined that the licensee was capable of conducting simulcast horse racing in accordance with the Law and that one or more of the following conditions existed:

- There was an inadequate horse supply for the licensee to conduct a live race meeting of at least 10 days with eight races per day.
- There was inadequate funding of live racing purses to support the licensee's conducting a live race meeting of at least 10 days with eight races per day.
- There was no Certified Horseman's Organization (CHO) operating in this State.

(A CHO is an organization registered with the Office of Racing Commissioner that can demonstrate its capacity to supply horses and its abilities to assist a race meeting licensee in conducting the licensee's racing program, to monitor and improve physical conditions and controls for individuals and horses participating at licensed race meetings, and to protect the financial interests of the participating individuals.)

In order to obtain an amended license and satisfy the Law's live racing requirements, the licensee would have 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 licensed racetrack during the period when the amended license was in effect. Unless otherwise provided in the contract, the payment could not be less than 25% of net commission from simulcasting if only one CHO had a contract for live race days in the State for the calendar year. If both CHOs had a contract for live race dates for the calendar year, the payment could not be more than 40% of the net commission from simulcasting.

If there were no racetrack in the State conducting racing under the Law, the licensee would have to satisfy the live racing requirements by paying the additional simulcast tax under Section 22 instead of having the written contract.

Notwithstanding anything in the Law to the contrary, if a race meeting licensee and the CHO with which the licensee had a contract jointly requested that the licensee be allowed to conduct a live race meeting with fewer than eight races per day, the Racing Commissioner would have to approve the request and issue an order amending the license accordingly.

"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 under Section 22, the actual verified fee paid by the licensee to the sending host track to receive the simulcast signal. (Section 17(3) limits the commission a race meeting licensee may retain from wagers on live and simulcast races conducted at the licensee's race meetings. The limits are 17% of all money wagered involving straight wagers; and, without the Commissioner's approval, up to 28% on all forms of multiple wagering, or, with the Commissioner's approval, up to 35% on any form of multiple wager. Section 22 requires each race meeting licensee to pay to the State Treasurer, from the licensee's commission, a tax in the amount of 3.5% of money wagered on interstate and intertrack simulcast races conducted at the licensee's licensed race meetings.)

Pari-Mutuel System of Wagering & Prohibitions

Currently, any act or transaction relative to pari-mutuel wagering on the results of live or simulcast horse races must occur or be allowed to occur only within a licensed race meeting. The bill would delete language under which a person must not participate or be a party to any act or transaction relative to placing a wager or carrying a wager for placement outside of a race meeting ground. The bill specifies, instead, that any act or transaction relative to pari-mutuel wagering on results of a horse race could be conducted by a race meeting license for the licensee to comply with the auditing requirements of the Law. "Act or transaction relative to pari-mutuel wagering on the results of live or simulcast horse races" would mean those steps taken by a race meeting licensee to accept a wager and process it within the ordinary course of its business and in accordance with the Law.

Under the bill, if a person that did not hold a race meeting license solicited or accepted wagers on the results of live or simulcast horse races from individuals in the State, would be guilty of a felony punishable by imprisonment for a maximum of five years or a maximum fine of \$10,000, or both. Each act of solicitation or wager that was accepted in violation of this prohibition would be a separate offense.

Simulcasting

The Commission may authorize simulcasting by licensees, subject to the Law's limitations. Under the bill, for simulcast wagering to occur at any licensed track in the State, a minimum of 50 live thoroughbred racing days would have to occur in that calendar year unless otherwise approved by the thoroughbred CHO.

The holder of a race meeting license may apply to the Commissioner for a permit to televise simulcasts of horse races to viewing areas within the enclosure of the licensed racetrack. The Commissioner may issue a permit for individual race and full card simulcasts televised during, between, before, or after programmed live horse races on any day that live racing is conducted by the applicant, and also on other days during the term of the applicant's license when the applicant does not conduct live horse racing, under certain conditions. Among other things, the applicant must make a continuing good faith effort to program and conduct at least nine live horse races on each live racing date allocated to the applicant. In addition, the CHO with which the applicant has contracted must have consented to the requested simulcasts when the applicant is unable to program and conduct at least nine races. Under the bill, in both cases, least eight live horse races would be required.

If the applicant conducts its race meeting in a city area, the applicant must make the video and audio signals of its races available for intertrack simulcasting more than 12 miles from the applicant's race meeting. The applicant must charge each licensee the same fee to receive its live signals for intertrack simulcasting. The fee may not exceed 3% of the total amount wagered on the intertrack simulcast at each race meeting that receives the simulcast. The bill would eliminate that fee cap.

Under the bill, the applicant could not charge or pay a fee that exceeded 5% of the total amount wagered on an intertrack simulcast unless the Racing Commissioner approved the fee on the basis that the fee reasonably reflected the value of the simulcast racing program and that charging or paying the fee would not result in harmful competition among licensees.

Horsemen Simulcast Purse Pools

Under the Law, all money designated to be paid into the horsemen's simulcast purse pool must be deposited in a depository designated by all participating CHOs and distributed by their designated escrow agents. The bill would refer instead to the horsemen's simulcast purse

account, and would require the money payable to the account to be deposited in a depository designated by the CHO's designated escrow agent.

Currently, the money must be distributed as follows:

- 50% of the money generated from simulcasts for horsemen's purses and 35% of the funds generated from standardbred simulcasts for horsemen's purses must be divided between all thoroughbred purses.
- 50% of the money generated from thoroughbred simulcasts for horsemen's purses and 65% of the funds generated from standardbred simulcasts for horsemen's purses must be divided between all standardbred purse pools.

Under the bill, the money would have to be distributed as follows:

- 100% of the money generated from thoroughbred simulcasts would have to be deposited in a depository designated by the thoroughbred CHO.
- 100% of the money generated from standardbred simulcasts would have to be deposited in a depository designated by the standardbred CHO.

If a thoroughbred track license is surrendered, revoked, or escrowed, or a licensed thoroughbred track is closed, the Commissioner must order the horsemen's purse pool money deposited and distributed under the Law to a depository designated by a licensee on written direction of the affected CHO regardless of whether there was a racing at the licensee's location during the previous year. The bill would eliminate "thoroughbred" from this provision, and would require the Commissioner to order the money to be transferred to a depository designated as currently required.

The money would have to be transferred to the horsemen's purse pool at any licensed racetrack where the affected CHO subsequently obtained a written contract for live horse racing with pari-mutuel wagering. If the affected CHO did not enter into a written contract within nine months after the date that the pool money could be transferred, the money would have to be divided equally between the horsemen's purse pools at the licensed tracks conducting pari-mutuel wagering. The Commissioner could rescind or modify any existing escrow orders to carry out this provision.

Senate Bill 505

The bill would include the felony proposed by Senate Bill 504 in the sentencing guidelines as a Class E crime against the public trust with a statutory maximum of five years.

The bill would also amend the description of the violation of Public Act 90 of 1951, which pertains to the regulation of racing meets in Michigan.

MCL 431.302 et al. (S.B. 504)
777.14d (S.B. 505)

Legislative Analyst: Jeff Mann

FISCAL IMPACT

Senate Bill 504

The bill would have an overall negative fiscal impact on the State and local governments. The bill would make it a felony punishable by up to five years' imprisonment and a fine of up to \$10,000 for a person to solicit or accept wagers on horse races if that person did not hold a race meeting license. An increase in felony prosecutions and convictions could increase resource demands on local court systems, law enforcement, and jails and prisons. For any increase in prison intakes, in the short term, the marginal cost to State government would be

approximately \$3,764 per prisoner per year. In the long term, if the increased intake of prisoners increased the total prisoner population enough to require the Department of Corrections to open a housing unit or an entire facility, the marginal cost to State government would be approximately \$34,550 per prisoner per year. Any associated increase in fine revenue would increase funding for public libraries.

In the Department of Treasury, which houses the Michigan Gaming Control Board, regulatory and licensure changes would result in minimal administrative costs that would be within current appropriations.

Senate Bill 505

The bill would have no fiscal impact of local government and an indeterminate fiscal impact on the State, in light of the Michigan Supreme Court's July 2015 opinion in *People v. Lockridge* (in which the Court struck down portions of the sentencing guidelines law). According to one interpretation of that decision, the sentencing guidelines are advisory for all cases even after the scoring of the offense is completed. This means that the addition to the guidelines under the bill would not be compulsory for the sentencing judge. As penalties for felony convictions vary, the fiscal impact of any given felony conviction would depend on judicial decisions.

Fiscal Analyst: Ryan Bergan