



Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

BILL ANALYSIS



Telephone: (517) 373-5383
Fax: (517) 373-1986

Senate Bills 504 and 505 (as enacted)
Sponsor: Senator Dave Robertson
Senate Committee: Agriculture
House Committee: Agriculture

PUBLIC ACTS 271 & 272 of 2016

Date Completed: 4-25-17

CONTENT

Senate Bill 504 amended the Horse Racing Law to do the following:

- Establish the Horse Racing Advisory Commission within the Michigan Department of Agriculture and Rural Development (MDARD).
- Specify the duties of the Horse Racing Advisory Commission.
- Remove references to a racetrack inside or outside of a "city area".
- Eliminate provisions that prescribed time restrictions for horse races.
- Require a person who wishes to conduct a thoroughbred or standardbred race meeting to program at least eight, rather than nine, 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.
- Prohibit a person who does 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.
- Eliminate a 3% fee cap on the fee an applicant can charge a licensee to receive its live signals for intertrack simulcasting.
- Modify the distribution of money to be paid to depositories of certified horsemen's organizations.
- Modify the distribution of money to various programs through the Michigan Agriculture Equine Industry Development Fund.
- Increase the tax that the holder of a race meeting license must pay on its holder's commission from 2.5% to 3.5%.
- Expand the areas in which the Commissioner may conduct individual testing for the presence of a drug or foreign substance in a horse.

Senate Bill 505 amended the Code of Criminal Procedure to include in the sentencing guidelines the offense created by Senate Bill 504.

Each bill took effect on July 1, 2016.

Senate Bill 504

Definitions

The bill defines "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.

"Horsemen's simulcast purse account" means an account maintained with a financial institution and managed by a designated agency to receive and distribute money as provided in the Law.

"Office of the racing commissioner" means 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 and Revenue Act, 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" mean the form or system of gambling in which the winner or winners divide the total amount of money bet, after deducting the net commissions.

"Standardbred" means a horse registered with the United States Trotting Association that races on designated gaits of pace or trot.

"Thoroughbred" means a thoroughbred, quarter, paint, Arabian, or other breed horse. The term does not include a standardbred.

Horse Racing Advisory Commission

The bill enacted the following provisions concerning the Horse Racing Advisory Commission created within MDARD.

The Commission consists of the following members appointed by the Governor:

- An individual who has knowledge about and expertise in horse racing in the State, and who serves as chairperson of the Commission.
- The MDARD Director, or his or her designee.
- A veterinarian.
- Two individuals from two different statewide horse racing associations.
- Two individuals who are owners or operators of two different horse racetracks in the State, or their designees.

Members of the Commission, with the exception of the MDARD Director and the Commission chairperson, must serve four-year terms or until a successor is appointed, whichever is later. If a vacancy occurs on the Commission, the Governor must make an appointment for the unexpired term in the same manner as the original appointment. The Governor may remove a member for incompetence, dereliction of duty, malfeasance, misfeasance, nonfeasance, or other good cause.

The Commission chairperson must call the first meeting. At that meeting, the Commission must elect from among its members other officers as it considers necessary or appropriate. After the first meeting, the Commission must meet at the call of the chairperson or if requested by three or more of its members. Members must serve without compensation, but may be reimbursed for their actual and necessary expenses incurred in the performance of their official duties.

The Commission is subject to the Open Meetings Act and the Freedom of Information Act.

The Commission must do all of the following: a) establish for the Commissioner procedures governing the operation and promotion of horse racing in Michigan; b) make recommendations to the Legislature on amendments to the Horse Racing Law that would improve the regulatory structure of horse racing with a goal of maintaining the long-term viability of horse racing in the State; and c) submit a report of its recommendations to the Legislature annually. The Commissioner must take under consideration the procedures established by the Commission in performing his or her duty.

Licenses, Generally

Under the Law, the Commissioner may issue certain general classes of licenses, including race meeting licenses, which are issued annually to entities to conduct live horse racing, simulcasting, and pari-mutuel wagering on the results of live and simulcast horse racing at a licensed race meeting. The Commissioner may not issue a race meeting license to an entity if it is licensed to conduct a licensed race meeting at another licensed race track in the State and the entity has a controlling interest in or co-ownership of the other licensed racetrack. Formerly, this restriction applied if the entity was licensed to conduct a licensed race meeting at another racetrack within a city area. The bill removed references to "city area" and the definition of the term from the Act.

Previously, in a city area, not more than three racetracks could be licensed, except that in a city with a population of 900,000 or more, the Commissioner could issue one additional license. A person could not be issued more than one track license, and controlling ownership and interlocking directorates among holders of track licenses were prohibited. The bill deleted these provisions.

Race Meeting License, Minimum Race Days

Under the bill, a person must apply each year to the Commissioner for a race meeting license if the person wishes to conduct a thoroughbred or standardbred 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. Previously, these provisions also applied to quarter horse, Appaloosa, American paint horse, and Arabian race meetings.

Formerly, unless a different agreement was reached by all of the race meeting licensees in a city area, a licensee could 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. Under certain circumstances, the Commissioner could waive these restrictions and authorize live horse racing at times that conflicted with the time restrictions. The bill deleted these provisions.

Under the bill, an applicant for a license to conduct a thoroughbred or standardbred race meeting must apply to conduct at least 30 days of live thoroughbred or standardbred racing during the proposed race meeting. Except for the opening and closing weeks, the applicant must apply to conduct live racing at least two days per week, with at least eight races programmed. The Commissioner must allocate at least 10 days of live horse racing to a race meeting licensee with at least six programmed live races per allocated day. Previously, the Law required applicants for race meeting licenses to apply to conduct a minimum number of days of live horse racing based on the breed of horse, whether the applicant was located in a city area, and if not, the population of county in which the applicant was located. The bill also amended other provisions to reflect the required number of live horse races (eight) and eliminated language pertaining to quarter horse, Appaloosa, American paint horse, or Arabian licenses.

Simulcast-Only Operations & Amended Licenses

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

Notwithstanding anything in the Horse Racing Law to the contrary, if the Racing Commissioner determines that one or more the conditions listed below apply and the contracted certified horsemen's organization (CHO) is in agreement, he or she may amend an existing license and simulcast permit to allow the licensee to continue simulcasting during the remaining period of the license. An amended license may 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 is valid.

The Commissioner may issue an order amending a license if he or she determines that the licensee is capable of conducting simulcast horse racing in accordance with the Law and that one or more of the following conditions exist:

- There is inadequate horse supply for the licensee to conduct a live race meeting of at least 10 days with six races per day.
- There is inadequate funding of live racing purses to support the licensee's conducting a live race meeting of at least 10 days with six races per day.
- There is no 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 must 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 is in effect. Unless otherwise provided in the contract, the payment may not be less than 25% of net commission from simulcasting if only one CHO has a contract for live race days in the State for the calendar year. If both CHOs have a contract for live race dates for the calendar year, the payment may not be more than 40% of the net commission from simulcasting. "Net commission" means the amount determined 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.

Notwithstanding anything in the Law to the contrary, if a race meeting licensee and the CHO with which the 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.

Pari-Mutuel System of Wagering & Prohibitions

Previously, any act or transaction relative to pari-mutuel wagering on the results of live or simulcast horse races had to occur or be allowed to occur only within a licensed race meeting, and a person could 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. Under the bill, instead, any act or transaction relative to pari-mutuel wagering on results of a horse race may be conducted by a race meeting license for the licensee to comply with the auditing requirements of the Law. The bill defines "act or transaction relative to pari-mutuel wagering

on the results of live or simulcast horse races" as 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.

The bill also specifies that 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 license race meeting. A person may not participate or be a party to an act or transaction relative to placing a wager or carrying a wager for placement outside of a race meeting ground. A person may not provide messenger service for the placing of a bet for another person who is not a patron. These provisions do not prohibit simulcasting or intrastate or interstate common pool wagering inside or outside the State as permitted by the Law or the rules promulgated under it.

In addition, under the bill, if a person that does not hold a race meeting license solicits or accepts wagers on the results of live or simulcast horse races from individuals in the State, the person is guilty of a felony punishable by imprisonment for up to five years, a maximum fine of \$10,000, or both. Each act of solicitation or wager that is accepted in violation of this prohibition is a separate offense.

Simulcasting

The Commission may authorize simulcasting by licensees, subject to the Law's limitations. Under the bill, except as otherwise provided, a licensee may not conduct simulcast wagering unless it conducts 30 or more live racing days in that calendar year.

Under the Law, 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 eight 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 eight (formerly nine) live races.

An applicant must make the video and audio signals of its races available for intertrack simulcasting to all licensed race meetings in the State located 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. Formerly, the fee could not exceed 3% of the total amount wagered on the intertrack simulcast at each race meeting that received the simulcast. The bill eliminated that fee cap.

Previously, all applicants conducting licensed race meetings in a city area had to authorize all other race meeting licensees in the State to conduct simulcasts of the breed for which the applicant was licensed to conduct horse racing. A licensee could not conduct an interstate simulcast of a different breed than it was licensed to race at its meetings unless the licensee had the written permission of all licensees in a city area that were licensed to race that breed. The bill eliminated these provisions.

Under the Law, a licensee licensed to conduct pari-mutuel horse racing must provide the necessary equipment to send intertrack simulcasts of the live horse races conducted at its race meeting to all other race meeting licensees in the State, and must send its intertrack simulcast signals to those licensees upon request for an agreed fee, which may not exceed 3% of the total amount wagered on the race at the receiving track. Formerly, licensees that

sent or received intertrack simulcasts had to make certain payments to the horsemen's purse pools. The bill eliminated this requirement.

The bill specifies that, unless otherwise approved by the Commissioner, a race meeting licensee may not receive and offer wages on an interstate simulcast unless it is available to all licensees in the State at the same rate.

Horsemen Simulcast Purse Pools

Under the bill, a race meeting licensee must pay an amount equal to at least 25% and not more than 40% of the net commission generated at its race meeting to a site-specific horsemen's simulcast purse account.

Previously, all money designated to be paid into the horsemen's simulcast purse pool had been deposited in a depository designated by all participating CHOs and distributed by their designated escrow agents in certain percentages. Under the bill, money paid into a horsemen's simulcast purse account must be distributed for purses for live horse races at a licensed race meeting in Michigan. Each year, all CHOs that participate in a live race meeting may receive an amount approved by order of the Commissioner to use for general expenses. Beginning on January 1 and ending December 31 of each year, the CHO is entitled to at least 5% of the site-specific horsemen's simulcast purse account as ordered by the Commissioner.

If a track license is surrendered, revoked, or escrowed, or a licensed track is closed, the Commissioner must order the horsemen's purse pool money from the track to be transferred 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. Previously, this applied only to thoroughbred tracks.

The bill requires the money to be transferred to the horsemen's simulcast purse account at any licensed racetrack where the affected CHO subsequently obtains a written contract for live horse racing with pari-mutuel wagering. If the affected CHO does not enter into a written contract within 12 months after the date that the account money can be transferred, the money must be divided equally between the accounts at the licensed tracks conducting pari-mutuel wagering. The Commissioner may rescind or modify any existing escrow orders to carry out this provision.

Money that was to be distributed to a CHO but that was placed and remains in escrow under an escrow order of the Commissioner before the bill's effective date must be used by September 1, 2017, for a race meeting conducted by the CHO and the licensee that were the subjects of the order in accordance with a contractual agreement between a race meeting licensee and the CHO. If a contractual agreement is not reached by that date, the Commissioner must order distribution of the escrowed money as follows: a) 15% to the licensee that was the subject of the order to be used for track operations and enhancements, and b) 85% to the CHO that was the subject of the order to be used for purses at any race meeting in the State for which the CHO has a contract.

Michigan Agriculture Equine Industry Development Fund

Money received by the Commissioner and the State Treasurer under the Law must be paid into the State Treasury and placed in the Michigan Agriculture Equine Industry Development Fund, which was created within the Department of Treasury and is administered by MDARD. Money in the Fund may not be spent except as appropriated by the Legislature, and the money appropriated must be spent to provide funding for agriculture and equine industry development programs as provided in the Law.

A maximum sum of 75% of the purses for standardbred harness horse races offered by fairs and races at licensed pari-mutuel racetracks must be paid to the standardbred and fair programs. Formerly, purse supplements for overnight races at fairs paid under this provision were \$1,000. Under the bill, this provision applies to fairs for which Michigan sired, Michigan bred, or Michigan-owned harness horses are eligible.

To the standardbred and fair programs, a sum must be allotted for paying special purses at fairs on two-year-old and three-year-old standardbred harness horses conceived after January 1, 1992, that are Michigan bred, or that are sired by a standardbred stallion registered with MDARD, that were leased or owned by a resident or residents of the State, and that did not serve a mare at a location outside of this State from February 1 through July 31 of the calendar year in which the conception occurred. Formerly, this provision did not refer to horses that were Michigan bred.

The bill eliminated provisions that required sums to be paid for the collection and laboratory analysis of urine, saliva, blood, and other samples from horses and licensed persons and for conducting tests described in Section 16(4)(b) (which specifies that an applicant for pari-mutuel occupational license as a racing official, jockey, driver, trainer, or groom must consent, upon application and for the duration of the licensure, to a breathalyzer test, urine test, or other noninvasive fluid test to detect the presence of alcohol or a controlled substance). Instead, money for these purposes must be allotted annually to the Commissioner.

License Fee & Tax

A licensed racetrack must pay a license fee to the Commissioner of \$1,000 annually. Previously, this fee applied to licensed racetracks located in a city area; other licensed racetracks were required to pay a \$2,000 fee.

Each holder of a race meeting license also must pay the State Treasurer, from the holder's commission, a tax in the amount of 3.5% of money wagered on interstate and intertrack simulcast races conducted at the holder's licensed race meetings. Formerly, the tax was 2.5%.

Drugs

The bill specifies that a drug or foreign substance must not be administered to a horse that is intended to be entered or is entered, or be present in a horse that participates, in a race with pari-mutuel wagering or any nonbetting race or workout that is conducted at a licensed race meeting. Formerly, the Law prohibited the administration of a drug or painkiller that was a stimulant or depressant to a horse.

Also, under the bill, a banned drug, nontherapeutic drug, or a foreign substance designated by the Commissioner as not permitted may not be present in a horse eligible to race that is stabled in the State on the grounds of a race meeting licensee, off-track training center, farm, or stable.

A drug or foreign substance may be administered to a horse that is intended to be entered or is entered, or be present in a horse that participates in a race with pari-mutuel wagering or a nonbetting race or workout only if authorized by the Commissioner for the care or treatment of horses. Previously, this provision applied only to a drug or foreign substance other than a stimulant or depressant.

The Commissioner or his or her designee must conduct random testing to detect the presence of a drug or foreign substance in all winning horses and in any other horse in each horse race and may conduct individual testing for the presence of a drug or foreign substance in any horse eligible to race within the grounds of a racetrack or off-track training center, farm, or stable. Previously, this applied only to a specific horse within the racetrack.

Senate Bill 505

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

Senate Bill 505 also revised 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 will have an overall negative fiscal impact on State and local government. The bill makes 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 does not hold a race meeting license. An increase in felony prosecutions and convictions may 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 will be approximately \$3,764 per prisoner per year. Any associated increase in fine revenue will increase funding for public libraries.

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

Senate Bill 505

The bill will have no fiscal impact on 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 is not compulsory for the sentencing judge. As penalties for felony convictions vary, the fiscal impact of any given felony conviction will depend on judicial decisions.

Fiscal Analyst: Ryan Bergan

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.