

## HORSE RACING LAW AMENDMENTS

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**House Bill 4611 (reported from committee as H-1)**

**Sponsor: Rep. Dan Lauwers**

**Committee: Agriculture**

**Complete to 5-17-17**

Analysis available at

<http://www.legislature.mi.gov>

**BRIEF SUMMARY:** House Bill 4611 amends the Horse Racing Law of 1995 to effectively authorize the Michigan Gaming Control Board (MGCB) to allow the use of advance deposit wagering for the first time in Michigan.

**FISCAL IMPACT:** House Bill 4611 has the potential both to bring in new revenue and impose new regulatory costs. (See *Fiscal Information* for additional information.)

### **THE APPARENT PROBLEM:**

Currently, according to testimony, pari-mutuel wagering may occur on a mobile phone through an application. However, this kind of betting is not anticipated or regulated in the Horse Racing Law, and does not contribute to the development or promotion of the sport through licensing fees or wagering taxes, which go to support the state-restricted Agriculture Equine Industry Development Fund (See *Fiscal Information* and *Background* sections). House Bill 4611 addresses this issue by creating a new license required to facilitate electronic bets.

### **THE CONTENT OF THE BILL:**

As noted above, House Bill 4611 would amend the Horse Racing Law of 1995 to effectively authorize the Michigan Gaming Control Board (MGCB) to allow the use of advance deposit wagering for the first time in Michigan. Specifically, the bill would do the following.

- The bill would add a definition of "race meeting" to refer to "activities related to live horse racing with the conducting and overseeing of pari-mutuel wagering on live simulcast wagering by a race meeting licensee." Although the term "race meeting" is used throughout the Horse Racing Law, the term has not been previously defined.
- The Michigan Gaming Control Board (MGCB) could issue a new class of license: a **third party facilitator** license "issued to persons contracted by the race meeting licensees to facilitate wagering on live and simulcast racing." The bill would also authorize the MGCB to establish the terms and conditions and appropriate fee for a third party facilitator license, subject to the following:
  - The third part facilitator must comply with consumer protections, as determined by the racing commissioner, to protect the public

- The third party facilitator must cooperate in any audit necessary to comply with Section 23 of the current Horse Racing Law.
  - The third party facilitator must comply with the conditions and suitability standards under Section 10(1)(e) to (f) and rules promulgated under this act.
  - A license issued to a third party facilitator under this subdivision is terminated if any of the following occur:
    - On the date and at the time set by the racing commissioner in the license.
    - The contract with the race meeting licensee to facilitate live and simulcast wagering expires.
    - The license is suspended or revoked by the racing commissioner.
- The act currently says, a holder of a race meeting license may provide a place in the race meeting grounds or enclosure at which to conduct and supervise pari-mutuel wagering on the results of horse races as permitted by this act. HB 4611 would strike the entire phrase.
  - The bill would also strike a provision that says, "a person shall 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. A person shall not provide messenger service for the placing of a bet for another person who is not a patron." The bill would replace this language with the following: "any form of pari-mutuel wagering on the results of live or simulcast horse races may only be conducted or operated by a race meeting licensee or its contracted licensed third party facilitators, as determined and approved by the racing commissioner. All wagers placed by persons within this state may be placed only in person at a licensed race meeting or electronically through a licensed third party facilitator."
  - A new provision would specify that only a race meeting licensee or its contracted licensed third party facilitator may process, accept, or solicit wagers on the results of live or simulcast horse races as determined and approved by the racing commissioner.
  - Currently, each holder of a race meeting license must pay to 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. The bill would also include, from the holder's commission, "any wagers received by licensed third party facilitators operating pursuant to this act."

Generally speaking, the Michigan Gaming Control Board (MGCB) is allowed to issue race meeting licenses, "issued annually for the succeeding year to persons to conduct live horse racing, simulcasting, and pari-mutuel wagering on the results of live and simulcast horse races at a licensed race meeting in this state under this act."

Race meeting licensees operate as the promoters and organizers of live horse racing events as well as both live-horse and simulcast wagering. Race meeting licensees receive

commissions (for example, a share of the money wagered at the racetrack, as permitted within the law.

A race meeting license authorizes a licensee to conduct live horse racing as well pari-mutuel wagering. A race meeting license is also a precondition for simulcast wagering. There are currently two race meeting licensees offering live horse racing and pari-mutuel wagering in Michigan.

### **BACKGROUND:**

The Office of Racing Commission is established in Section 3 of the Horse Racing Law and the powers and duties of the office are found primarily in Sections 3 through 6.

However, Executive Order 2009-45 abolished the Office of Racing Commissioner and the position of Racing Commissioner, and transferred the functions and powers of the Office of Racing Commissioner 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. The Executive Order also directed that the Executive Director of the MGCB perform all the functions and exercise the powers of the Racing Commissioner. In the balance of this analysis, the abbreviation "MGCB" will refer to the horse racing regulatory functions and powers of the former Office of Racing Commissioner, as transferred to the MGCB through Executive Order 2009-45.

House Bill 4611 would effectively authorize the MGCB to allow the use of advance deposit wagering for the first time in Michigan.

Advance Deposit Wagering (ADW) is a method of pari-mutuel wagering in which a patron establishes and pre-funds an account with a wagering service. The patron can then place wagers on the results of horse races by telephone or through on-line connection to the wagering service. ADW, which is legal in a number of states, allows a patron to place wagers from any smart phone or computer.

[A company offering advance deposit wagering services was one of the national sponsors of the NBC broadcast of the 2017 Kentucky Derby.]

Currently, ADW is effectively prohibited in Michigan by the language of Section 17(8) of the Horse Racing Law, which restricts pari-mutuel wagering to the licensed race meeting grounds. The section currently prohibits placing a wager outside of a race meeting grounds and prohibits wagering messenger services.

### **FISCAL INFORMATION:**

The bill would authorize the MGCB to issue *third party facilitator* licenses and would also authorize the MGCB to set the terms and conditions and appropriate fee for the license.

The amount of fee revenue cannot be reasonably estimated without knowing the number of potential licensees and the amount of the license fee.

It is not clear at this time what additional MGCB regulatory oversight would be required of third party facilitator licensees.

The State of Michigan does not tax live horse racing wagering. The state does impose a 3.5% wagering tax on simulcast racing wagers. That tax, established in Section 22 of the Horse Racing Law, generates approximately \$4.0 million per year for credit to the state-restricted Agriculture Equine Industry Development Fund (AEIDF).

If authorized and established in Michigan, ADW could expand the wagering pool subject to the distribution provisions of the Horse Racing Law. This could expand the tax base (simulcast wagering) on which the 3.5% wagering tax is assessed. We cannot reasonably estimate the potential tax revenue increase at this time.

Expanding the wagering pool could also increase the race meeting licensees' commissions and the horsemen's purse pool—the source of prize money paid to the owners of winning and placing horses. Race meeting licensee's commissions, and the Horsemen's purse pool money are private resources.

## ***ARGUMENTS:***

### ***For:***

Supporters of the bill argue that current electronic wagering disenfranchises people and entities involved in the development of live horse racing by circumventing key players in the sport. The bill is needed to ensure that revenue continues to go to important programs funded through horse racing, which would be accomplished through the creation of the third party facilitator license.

Additionally, the bill would make needed clarifications to the existing Horse Racing Law to ensure that all betting is done in a legal manner.

### ***Against:***

Opponents of the bill argue that the bill's language is vague and could create a new form of gambling, which was prohibited when Michigan voters passed Proposal 1 in 2004. Proposal 1 stated that no law could be enacted that authorizes any form of gambling without a vote of the public. Proposal 1 reads broadly in its application in forbidding any form of gaming expansion. Thus, in order for the gambling anticipated to be authorized under this bill to be constitutionally allowed, it would have to be approved at the ballot box by Michigan citizens.

### ***Response:***

Supporters of the bill state that the bill does not create a new form of gaming, but rather expands existing betting. Thus, it is not in conflict with Proposal 1 from 2004 and not constitutionally prohibited.

***POSITIONS:***

A representative from the Michigan Gaming Control Board supported the bill. (5-17-17)

A representative from the Michigan Thoroughbred Owners and Breeders Association indicated support for the bill. (5-17-17)

A representative from Michigan Farm Bureau indicated support for the bill. (5-17-17)

A representative from the Michigan Harness Horsemen's Association indicated support for the bill. (5-17-17)

A representative from the Hazel Park Raceway indicated support for the bill. (5-17-17)

A representative from the Northville Downs indicated support for the bill. (5-17-17)

A representative from the Michigan Horseman's Benevolent and Protection Association indicated support for the bill. (5-17-17)

A representative from MGM Grand Detroit opposed the bill. (5-17-17)

A representative from Greektown Casino opposed the bill. (5-17-17)

A representative from the Saginaw Chippewa Indian Tribe opposed the bill. (5-17-17)

An attorney from Dickinson Wright PLLC, and drafter of Proposal 1 from 2004, testified in opposition to the bill. (5-17-17)

A representative from the Motor City Casino opposed the bill as introduced. (5-17-17)

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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.