

## HORSE RACING LAW: THIRD-PARTY FACILITATORS

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**House Bill 4310 as enacted**  
**Public Act 153 of 2019**

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

**Sponsor: Rep. Hank Vaupel**  
**1st House Committee: Regulatory Reform**  
**2nd House Committee: Ways and Means**  
**Senate Committee: Agriculture**  
**Complete to 4-13-20**

**BRIEF SUMMARY:** House Bill 4310 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. The bill authorizes the issuance of third-party facilitator licenses and establishes a tax of 1% on wagers processed through licensed third-party facilitators operating under the act.

**FISCAL IMPACT:** House Bill 4310 could bring in new state restricted revenue and impose new state regulatory costs. (See **Fiscal Information**, below, for a detailed analysis.)

### **THE APPARENT PROBLEM:**

According to House committee 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 Michigan Agriculture Equine Industry Development Fund (AEIDF). (See **Fiscal Information** and **Background**, below.) House Bill 4310 addresses this issue by creating a new license required to facilitate electronic bets.

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

House Bill 4310 amends the Horse Racing Law to effectively authorize MGCB to allow the use of advance deposit wagering for the first time in Michigan.

#### **Third-party facilitator license**

Under the bill, MGCB may issue a new class of license: a *third-party facilitator* license “issued to persons that have contracts with race meeting licensees to facilitate wagering on live and simulcast racing.” The bill also authorizes MGCB to establish the terms, conditions, and appropriate fee for a third-party facilitator license, subject to the following:

- The third-party facilitator must have a joint contract with all race meeting licensees and certified horsemen’s organizations in this state.
- The third-party facilitator must comply with any applicable consumer protections and cooperate with any audit necessary to comply with section 23 of the Horse Racing Law.
- The racing commissioner must have received from each race meeting licensee both a letter of intent and a certification that the race meeting licensee assumes and acknowledges responsibility for all conduct of its third-party facilitator.

- The third-party facilitator must comply with applicable conditions, suitability standards, and rules promulgated under the Horse Racing Law.
- A license issued to a third-party facilitator must terminate or expire when any of the following occur: on the date set by the racing commissioner, when the third-party facilitator's joint contract expires or is terminated as to any race meeting licensee or certified horsemen's organization, or if the license is suspended or revoked by the racing commissioner.

### **Race meeting licenses and track licenses**

If the racing commissioner issues a race meeting license to a person who has held a race meeting license after January 1, 2018, but who will be conducting race meeting at a different racetrack than under the previous licenses, the person cannot conduct pari-mutuel wagering within 35 miles of another racetrack conducting pari-mutuel wagering. Additionally, if the commissioner issues a race meeting license to a new licensee, that person cannot conduct pari-mutuel wagering within 50 miles of another racetrack conducting pari-mutuel wagering.

The commissioner must issue a race meeting license to a casino licensee upon determining that all of the act's requirements are met. The recipient of that license cannot conduct pari-mutuel wagering within 50 miles of another racetrack conducting pari-mutuel wagering.

The commissioner may issue a track license to a local unit of government that holds or has previously held a track license, without further application.

### **Pari-mutuel wagering**

The bill deletes a provision that allowed a holder of a race meeting license to provide a place on the race meeting grounds at which to conduct and supervise *pari-mutuel wagering* on the results of horse races as permitted by the act. (*Pari-mutuel wagering* is defined in the act as a form or system of gambling in which the winner or winners divide the total amount of money bet, after deducting the net commission.)

The bill also removes a provision that read, "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 replaces that language with the following: "Any form of pari-mutuel wagering on the results of live or simulcast horse races must only be conducted or operated by a race meeting licensee, which may use its contracted licensed third-party facilitators, as determined and approved by the racing commissioner."

### **Rules for race meeting licensees and third-party facilitators**

The race meeting licensee must be responsible for the conduct of its third-party facilitators. Wagers can be placed only on live races offered at or simulcast to licensed race meetings. Race meeting licensees and their facilitators cannot solicit, offer, accept, or process wagers on or in connection with other gaming or gambling opportunities.

### **Pari-mutuel horse racing disbursement account**

The bill requires race meeting licensees to pay the net commission generated from wagering on live and simulcast racing through the third-party facilitator to the pari-mutuel horse racing disbursement account. On a monthly basis, 50% of the money paid into the account must be divided equally to each certified horsemen's organization and the other 50% divided equally to each track licensee.

Additionally, if the amount allocated to the AEIDF exceeds \$8.0 million in a fiscal year, the excess amount must be allocated to the pari-mutuel horse racing disbursement account.

### **Horse Racing Advisory Commission**

The Horse Racing Advisory Commission is charged under the act with establishing the procedures for the operation and promotion of horse racing, making recommendations to the legislature for regulatory measures, and annually submitting a report on both of those topics.

The bill additionally charges the commission with expending money earned from the 1% tax imposed on wagers processed through third-party facilitators for promotion and marketing of horse racing, equine-related research, and grants for equine-related support and aftercare and programs related to horse racing.

### **Disbursement of horsemen's simulcast purse account**

The bill prohibits the Michigan Harness Horsemen's Association from expending the money it is holding in its horsemen's simulcast purse account until June 1, 2020. At that time, the association must transfer \$900,000 of that money to the Michigan Horsemen's Benevolent and Protective Association to be used only to pay purses.

### **Purse supplement**

Under the bill, purses paid under the AEIDF must be based on actual purses awarded in a race. If the actual purses awarded are less than the purse supplement amount requested by a fair or licensed pari-mutuel racetrack at the time they apply to the Michigan Department of Agriculture and Rural Development (MDARD) for the purse supplement, the purse supplement must be in the lesser amount.

### **Compulsive gambling prevention**

Previously under the Horse Racing Law, 1/100 of 1% of the gross wagers made each year in each of the racetracks licensed under the law was deposited in the Compulsive Gaming Prevention Fund. The bill increases this deposit to 1/15 of 1% of the gross wagers made each year in each of the racetracks licensed under the law.

### **Tax on money wagered**

Section 22 of the act requires each holder of a race meeting license to pay to the state treasurer, from the license holder's commission, a tax of 3.5% of money wagered on interstate and intertrack simulcast races conducted at the holder's licensed race meetings. The bill retains this provision. In addition, the bill establishes a new tax, also payable from the license holder's commission, of 1% "of wagers processed through licensed third-party

facilitators operating under this act.” In effect, the 1% tax is a tax on the newly legal activity of wagering through licensed third-party facilitators.

Section 20 of the act established the AEIDF and effectively directs that all revenue received by the racing commissioner and the state treasurer under the act be paid to the AEIDF. In section 22, the bill makes separate distribution provisions with respect to revenue from the 1% tax on wagers processed through licensed third-party facilitators operating under the act: 90% must be deposited in the AEIDF, and the remaining 10% must go to the Horse Racing Advisory Commission to be used for specific activities authorized under section 6a, namely the promotion and marketing of horse racing, equine-related research, and grants for equine-related support and aftercare and programs related to horse racing.

The bill took effect December 20, 2019.

MCL 431.308 et seq.

## ***BACKGROUND:***

### **Advance deposit wagering**

House Bill 4310 effectively authorizes MGCB to allow the use of advance deposit wagering (ADW) for the first time in Michigan.

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.

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

### **2018 veto**

This bill is part of a series of reintroductions of bills passed by the legislature in December of 2018 and vetoed by the governor. In his veto message for House Bill 4611 (last session’s version of House Bill 4310),<sup>1</sup> Governor Snyder stated simply that he was vetoing the bill because it was tie-barred to another bill (House Bill 4926, concerning internet gaming) that he had previously vetoed.<sup>2</sup>

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<sup>1</sup>[https://content.govdelivery.com/attachments/MIGOV/2018/12/28/file\\_attachments/1130295/Veto%20Letter%204611.pdf](https://content.govdelivery.com/attachments/MIGOV/2018/12/28/file_attachments/1130295/Veto%20Letter%204611.pdf)

<sup>2</sup> For the governor’s veto message concerning HBs 4926, 4927, and 4928: [https://content.govdelivery.com/attachments/MIGOV/2018/12/28/file\\_attachments/1130293/Veto%20Letter%204926%20-%204928.pdf](https://content.govdelivery.com/attachments/MIGOV/2018/12/28/file_attachments/1130293/Veto%20Letter%204926%20-%204928.pdf)

## ***FISCAL INFORMATION:***

The bill would authorize MGCB to issue *third-party facilitator* licenses and would also authorize 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 for third-party facilitator licensees. The bill could also require additional support services from MDARD to the Horse Racing Advisory Commission.

The State of Michigan has not, since the enactment of the 1995 Horse Racing Law, imposed a tax on live horse race wagering. The 1995 act did establish a 3.5% wagering tax on simulcast racing wagers “conducted at the holders licensed race meetings.” That tax, established in section 22 of the act, generates approximately \$3.0 million per year for credit to the state restricted AEIDF. The bill does not change the current 3.5% tax on simulcast wagering conducted at the holders licensed race meetings and does not change the distribution of this tax revenue to the AEIDF. Wagering on live horse racing, at least wagers on live horse racing conducted at the holders licensed race meetings, would remain untaxed.

However, the bill establishes a new tax of 1% “of wagers processed through licensed third-party facilitators operating under this act.” In effect, the 1% tax is a tax on the newly legal activity of wagering through licensed third-party facilitators.

Section 22 of the bill makes separate distribution provisions with respect to revenue from the 1% tax on wagers processed through licensed third-party facilitators operating under the act: 90% must be deposited in the AEIDF, and the remaining 10% must go to the Horse Racing Advisory Commission to be used for specific activities authorized under section 6a, namely the promotion and marketing of horse racing, equine-related research, and grants for equine-related support and aftercare and programs related to horse racing.

The amount of revenue from the new 1% tax on wagers processed through licensed third-party facilitators cannot be reasonably estimated at this time.

Note that other provisions of the bill concern race meeting licensees’ commissions and money paid to certified horsemen’s organizations and track licensees. These are private resources and do not directly affect state costs or revenues.

(For additional information on horse racing, see the June 2017 House Fiscal Agency Fiscal Focus, *Horse Racing in Michigan - A Primer*.<sup>3</sup> This publication offers a brief history of horse racing and legal gambling in Michigan; describes the statutory framework for horse racing in Michigan under the Horse Racing Law, including a description of how the act directs the distribution of money wagered on horse racing among horse racing participants; and describes state funding used in support of horse racing programs, including current wagering tax revenue and state appropriations.)

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<sup>3</sup> [http://www.house.mi.gov/hfa/PDF/Agriculture/FiscalFocus\\_Horse\\_Racing\\_in\\_Michigan.pdf](http://www.house.mi.gov/hfa/PDF/Agriculture/FiscalFocus_Horse_Racing_in_Michigan.pdf)

***ARGUMENTS:***

***For:***

Supporters of the bill argued 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 argued 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 states that no law can 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 held 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 of 2004 and not constitutionally prohibited.

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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.