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House Bill 4310 (Substitute S-2)  
Sponsor: Representative Hank Vaupel  
House Committee: Regulatory Reform  
Ways and Means  
Senate Committee: Agriculture

Date Completed: 12-9-19

### **CONTENT**

**The bill would amend the Horse Racing Law to do the following:**

- **Allow the Racing Commissioner to issue a third party facilitator license for entities contracted to facilitate wagering on live and simulcast horse racing.**
- **Require the Racing Commissioner to establish the terms and conditions and the appropriate fee for a third party facilitator subject to certain provisions.**
- **Specify that if, after the bill's effective date, the Racing Commissioner issued a race meeting license to a person that had previously held a license but that would be conducting its race meeting under the new license at a different racetrack, that person could not conduct pari-mutuel wagering at a licensed racetrack that was within 35 miles of another licensed racetrack.**
- **Allow the Commissioner to issue, after the bill's effective date, a track license to a local unit of government that held or had previously held a track license.**
- **Require the Commissioner to issue a race meeting license to a licensed casino if he or she determined that all of the requirements of the Law for issuing a race meeting license were met.**
- **Provide that any form of pari-mutuel wagering on live or simulcast horse races could be conducted only by a race meeting licensee.**
- **Eliminate prohibitions pertaining to participating in an act or transaction relative to placing a wager outside of a race meeting ground.**
- **Specify that only a race meeting licensee or its contracted licensed third party facilitator could process, accept, or solicit wagers on the results of live or simulcast horse races.**
- **Specify that purses paid as described in the Law would have to be based on actual purses awarded in a race.**
- **If the amount allocated to the Fund under the Act or any other source exceeded \$8.0 million in a fiscal year, the excess amount would have to be allocated to the pari-mutuel horse racing disbursement account.**
- **Modify the percentage of Michigan Agriculture Equine Industry Development Fund deposited into the Compulsive Gaming Prevention Fund.**
- **Apply a prohibition against soliciting or accepting wagers on horse racing results to a person who did not hold a third party facilitator license.**

#### Third-Party Facilitator License

Under the Law, the Commissioner may issue certain general classes of licenses, including occupational licenses, race meeting licenses, and track licenses. The bill also would allow the

Commissioner to issue third party facilitator licenses for entities contracted by race meeting licensees to facilitate wagering on live and simulcast racing. The Commissioner would have to set the terms and conditions and the appropriate fee for the license, and would have to receive from the race meeting license a letter of intent and a certification that the race meeting licensee assumed and acknowledged responsibility for its third-party facilitator's conduct.

The third party facilitator would have to do the following:

- Have a contract with each race meeting licensee and each certified horsemen's association in Michigan.
- Comply with consumer protections, as determined by the Commissioner.
- Cooperate in any audit of pari-mutuel operations at a racing meeting.
- Comply with the conditions and suitability standards under Section 10(1)(e) and (f) and rules promulgated under the Law.

(Section 10(1)(e) requires a race meeting license applicant to demonstrate to the Commissioner that the applicant and any person associated with the applicant who holds a beneficial or ownership interest in the applicant's business activities, or otherwise has the ability to influence his or her business decisions is a person of good character, honesty, and integrity, possesses sufficient financial resources to conduct a race meeting, and does not pose a threat to the public. Section 10(1)(f) requires an applicant to provide any other information required by rules or by the Commissioner.)

A third party facilitator license would terminate or expire as follows: a) on the date and at the time set by the Commissioner in the license; b) when any of its contracts with a race meeting licensee or certified horsemen's organization; or c) if the Commissioner suspended or revoked the license.

#### Licensees; Restriction on Wagering

The bill specifies that if, after its effective date, the Racing Commissioner issued a race meeting license to a person that had previously held a race meeting license but that would be conducting all or part of its race meeting under the new license at a different racetrack than under the previous license, the person could not conduct pari-mutuel wagering at a licensed racetrack that was within 35 miles of another licensed racetrack at which one or more race meeting licensees could conduct pari-mutuel wagering.

If, after the bill's effective date, the Racing Commission issued a race meeting license to a person that had not held a race meeting licensed before the bill's effective date, that person could not conduct pari-mutuel wagering at a licensed racetrack that was within 50 miles of another licensed racetrack at which one or more licensees could conduct pari-mutuel wagering.

#### Track License; Previous Licensee

The Racing Commissioner must issue, without further application, a track license to a person holding a valid track license under former Public Act 327 of 1980, and maintaining or operating a licensed horse racetrack as of January 9, 1996, at which wagering by pari-mutuel methods on the results of horse racing has been conducted by a licensee. Under the bill, after the bill's effective date, the Commissioner could issue, without further application, a track license to a local unit of government that held or had previously held a track license issued under the Law.

### Grant of Race Meeting License to Casino Licensee

If the Commissioner determined that all of the requirements of the Law for issuing a race meeting license were met, he or she would have to issue a license to the holder of a casino license issued under the Michigan Gaming Control and Revenue Act. The holder of a race meeting license issued as described could not conduct pari-mutuel wagering at a licensed race track that was within 50 miles of another licensed racetrack at which one or more licensees could conduct pari-mutuel wagering.

### Wagering

The Law allows a race meeting licensee to provide a place in the race meeting grounds or enclosure at which he or she may conduct and supervise pari-mutuel wagering on the results of horse races. The bill would remove this language.

The Law specifies that any form of pari-mutuel wagering on the results of live or simulcast horse races must occur or be permitted to occur only at a licensed race meeting, and prohibits a person from participating in an act or transaction relative to placing a wager or carrying a wager for placement outside of a race meeting ground, or providing messenger service for the placing of bets for people who are not patrons. The bill would eliminate these prohibitions.

Instead, any form of pari-mutuel wagering could be conducted or operated only by a race meeting licensee, which could use its contracted licensed third party facilitator, as determined and approved by the Commissioner. The race meeting license would be responsible for the conduct of its third-party facilitator. All wagers would have to be placed by entities within the State, and could be placed only in person at a licensed race meeting or electronically through a licensed third party facilitator. The bill would prohibit a race meeting licensee or licensed third-party facilitator from soliciting, offering, accepting, or processing wagers on or in connection with other gaming or gambling products, including slot machines and casino table games.

The bill specifies that only a race meeting licensee or its contracted licensed third party facilitator could process, accept, or solicit wagers on the results of simulcast horse races as determined and approved by the Racing Commissioner.

### Penalties

The Law prohibits a person who does not hold a race meeting license from soliciting or accepting wagers on the results of live or simulcast horse races from individuals in the State. A person who violates this prohibition is guilty of a felony punishable by imprisonment for up to five years, a maximum fine of \$10,000, or both. Under the bill, the prohibition would apply to a person who did not hold a race meeting license or a third party facilitator license.

### Net Commission Distribution

A race meeting licensee must pay an amount equal to at 25% and not more than 40% of the net commission generated at the licensee's race meeting to a site-specific horsemen's simulcast purse account. The money must be deposited in a depository designated by the participating certified horsemen's organizations and distributed by their designated agent as prescribed in the Law for purses and for each certified horseman's organization to use for general expenses.

Under the bill, a race meeting licensee would have to pay the net commission generated from wagering on live and simulcast racing through its third-party facilitator to the pari-mutuel

horse racing disbursement account. On the first day of each month after the bill's effective date, money paid to that account would have to be distributed as follows: a) 50.0% to be divided equally to each certified horsemen's association, and b) 50.0% to be divided equally to each track licensee.

#### Transfer of Purse Pool Money

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 race meeting licensee on written direction of the affected certified horsemen's organization. The money must be transferred to the horsemen's simulcast purse account at a licensed racetrack where the affected organization subsequently obtains a written contract for live horse racing with pari-mutuel wagering. If the affected certified horsemen's organization does not enter into a contract for live horse racing at a track in this state within 12 months after the date when money can be transferred, the money must be divided equally between the horsemen's simulcast purse accounts at the licensed tracks conducting pari-mutuel wagering on the results of horse races. Under the bill, the contract would have to be entered into within 36 months, instead of 12 months.

The Michigan Harness Horsemen's Association could not spend the money it was holding in its horsemen's simulcast purse account that was transferred under an order of the Commissioner dated April 8, 2019, until June 1, 2020, on which date the Association would have to transfer \$900,000 of the money to the Michigan Horsemen's Benevolent and Protective Association to be used only to pay for purses.

#### Michigan Agriculture Equine Industry Development Fund; Modifications

The Law establishes the Michigan Agriculture Equine Industry Development Fund and requires money from the Fund to be spent, upon appropriation, to provide funding for agriculture and equine industry development programs enumerated in the Law, including purse supplements and awards for various horse breeding programs. Under the bill, purses paid as described in the Law would have to be based on actual purses awarded in a race. If the actual purses awarded were less than the purse supplement amount requested by a fair or licensed pari-mutuel racetrack when they applied to the Department of Agriculture and Rural Development for the supplement, the supplement would have to be the lesser amount.

If the amount allocated to the Fund under the Act or any other source exceeded \$8.0 million in a fiscal year, the excess amount would have to be allocated to the pari-mutuel horse racing disbursement account.

The Law also requires a percentage of the Fund equal to 1/100 of 1.0% of the gross wagers made each year in each of the licensed racetracks to be deposited in the Compulsive Gaming Prevention Fund. The bill would increase this percentage to 1/15 of 1.0% of the gross wagers described above. (Money from the Compulsive Gaming Prevention Fund is used for the treatment, prevention, education, training, research, and evaluation of pathological gamblers and their families and to fund the toll-free compulsive gaming helpline number.)

#### Horse Racing Advisory Commission

The Law establishes the Horse Racing Advisory Commission within the Department of Agriculture and Rural Development and specifies the membership the Commission. The Law also prescribes its duties, which include establishing for the Racing Commissioner procedures governing the operation and promotion of horse racing in Michigan and making recommendations to the Legislature on amendments to the Law that would improve the

regulatory structure of horse racing. The bill also would require the Commission to spend money it received from the 2.0% tax on money wagered on pari-mutuel wagering, as appropriated, for the following purposes:

- Promotion and marketing of horse racing.
- Equine-related research.
- Grants for equine-related support and aftercare and programs related to horse racing.

#### Simulcast Wager Tax; Apply to Wagers Processed by Facilitators

The Law requires a licensed racetrack to pay an annual license fee of \$1,000 to the Commissioner. A race meeting licensee also must pay to the State Treasurer, from the holder's commission, a tax of 3.5% of money wagered on interstate and intertrack simulcast races conducted at its race meetings. Under the bill, a race meeting licensee also would have to pay a tax of 1.0% of wagers processed through licensed third-party facilitators operating under the Law.

The 1.0% tax would have to be allocated as follows:

- 90.0% to be deposited into the Michigan Agriculture and Equine Industry Development Fund.
- 10.0% to the Horse Racing Advisory Commission to be spent in the same manner as the tax on money wagered on pari-mutuel wagering.

MCL 431.306a et al.

Legislative Analyst: Jeff Mann

#### **FISCAL IMPACT**

The bill could result in additional costs to the Office of the Racing Commission, which is located within the Michigan Gaming Control Board, and additional revenue to the State, by allowing third-party facilitator licensees to assist with processing, accepting, or soliciting wagers on live and simulcast races. There is the potential for increased wagers collected from horse races, which would result in additional revenue to the State in the form of the 3.5% tax on the money wagered on races and license fees, which is deposited into the Agriculture and Equine Industry Development Fund (AEIDF). In 2018, 97% of total wagers made were collected under simulcasting, with the remaining collected through live betting. Since the third-party facilitator licensees would assist with simulcast wagers, the total amount of wagers collected from races could increase.

For fiscal year (FY) 2017-18, the Racing Commission collected \$2.7 million in total revenue from horse racing. From FY 2013-14 to FY 2017-18, total revenue from horse racing has decreased every year from \$4.2 million to \$2.7 million, which is a \$1.5 million or 35.7% decrease over five years. Total increases are unknown, but could increase horse gaming revenue in the first full implemented year; however, it is unlikely to increase revenue to previously fiscal year levels because of the overall decreased trends in horse gaming activity in the State. However, any additional revenue collected would increase appropriations to the various equine programs and support the Michigan Department of Agriculture and Rural Development and the Racing Commission.

The bill also likely would increase administrative costs to the Racing Commission to oversee third party licensees and conduct audits. Since the bill would allow the Commission to set the appropriate fee amount without a cap, the Commission would be able to cover any additional administrative costs through license fees. At this time, it is anticipated that the increased administrative costs would be minimal.

In addition, the bill would increase the amount required to be paid annually into the Compulsive Gaming Prevention Fund (CGPF), created under Public Act 70 of 1997, from the AEIDF. Currently, an amount equal to 1/100 of 1% of the gross wagers made each year in each of the licensed racetracks must be paid into the CGPF. The bill would increase this percentage to 1/15 of 1% of wagers. The amount paid to the CGPF in FY 2017-18 was \$7,678; for FY 2018-19, it was \$6,192. While it is difficult to predict what would result for future deposits into the CGPF, those deposits would depend on the level of wagering activity, which cannot be determined currently. If the proposed percentage increase had been in place for FY 2018-19, the total deposited amount would have been \$37,152.

The bill would increase the responsibilities for the Michigan Department of Agriculture and Rural Development pertaining to the Horse Racing Advisory Commission and its duties, which include distributing grants, research funding and promoting horse racing. The Department estimates that these added responsibilities would require an additional 3.0 FTEs and \$600,000 to support all payroll, travel, and other related expenses.

The bill would have no fiscal impact on local government.

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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.