

HORSE RACING LAW AMENDMENTS

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House Bill 4310 as referred to second committee

Sponsor: Rep. Hank Vaupel

1st Committee: Regulatory Reform

2nd Committee: Ways and Means

Complete to 5-1-19

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

BRIEF SUMMARY: House Bill 4310 would amend the Horse Racing Law to effectively authorize the Michigan Gaming Control Board (MGCB) to allow the use of advance deposit wagering for the first time in Michigan.

Of note, the bill would add a definition of *race meeting* to refer to “activities related to live horse racing including conducting and overseeing 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 had not been previously defined.

FISCAL IMPACT: House Bill 4310 has the potential to bring in new revenue and impose new regulatory costs. (See *Fiscal Information*, below, for a detailed analysis.)

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*, below). House Bill 4310 would address this issue by creating a new license required to facilitate electronic bets.

THE CONTENT OF THE BILL:

Third-party facilitator license

Under the bill, 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 MGCB to establish the terms, conditions, and appropriate fee for a third-party facilitator license, subject to the following:

- The third-party facilitator would have to 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 would have to have received from the race meeting licensee both a letter of intent and a certification that the race meeting licensee assumed and acknowledged responsibility for all conduct of its third-party facilitator.
- The third-party facilitator would have to comply with applicable conditions, suitability standards, and rules promulgated under the Horse Racing Law.

- A license issued to a third-party facilitator would terminate or expire on the date set by the racing commissioner, when the contract with the race meeting licensee to facilitate live and simulcast wagering expired, or if the license were suspended or revoked by the racing commissioner.

Pari-mutuel wagering

The act currently states that a holder of a race meeting license may 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. House Bill 4310 would delete the entire phrase. (*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 would also remove 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 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 would be responsible for the conduct of its third-party facilitators. Wagers could be placed only on live races offered at or simulcast to licensed race meetings. Race meeting licensees and their facilitators could not solicit, offer, accept, or process wagers on or in connection with other horse races or specified gambling opportunity.

A new provision would 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 as determined and approved by the racing commissioner.

Purse supplement

Under the bill, purses paid under the Michigan Agriculture Equine Industry Development Fund 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 at the time they applied to the Michigan Department of Agriculture and Rural Development (MDARD) for the purse supplement, the purse supplement would have to be in the lesser amount.

Compulsive gambling prevention

Additionally, in the current Horse Racing Law, 1/100 of 1% of the gross wagers made each year in each of the racetracks licensed under the law is deposited in the Compulsive Gaming Prevention Fund. The bill would increase 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

Currently, each holder of a race meeting license must 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 would also include in the payment, from the license holder's commission, "any wagers processed through licensed third-party facilitators operating under this act."

MCL 431.308 et seq.

BACKGROUND:

Advance deposit wagering

House Bill 4310 would effectively authorize 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.

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.

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),¹ 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.²

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.

¹https://content.govdelivery.com/attachments/MIGOV/2018/12/28/file_attachments/1130295/Veto%20Letter%204611.pdf

² 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

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 \$3.0 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.

(For additional information on horse racing, see the June 2017 House Fiscal Agency Fiscal Focus, *Horse Racing in Michigan - A Primer*.³ 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.)

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

³ http://www.house.mi.gov/hfa/PDF/Agriculture/FiscalFocus_Horse_Racing_in_Michigan.pdf

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 of 2004 and not constitutionally prohibited.

POSITIONS:

The following organizations indicated support for the bill:

Michigan Chamber of Commerce (3-12-19)

City of Detroit (3-19-19)

Michigan Thoroughbred Owners and Breeders Association (3-12-19)

Greektown Casino (3-12-19)

MGM Grand Detroit (3-12-19)

Michigan Horsemen Benevolent and Protective Association (3-12-19)

A representative of the Michigan Harness Horsemen's Association testified in opposition to the bill as written. (3-12-19)

A representative of Northville Downs testified in opposition to the bill as written. (3-12-19)

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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.