

## HISTORICAL HORSE RACING

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<http://www.house.mi.gov/hfa>

**Senate Bill 661 (H-3) as referred to second House committee**

**Sponsor: Sen. Jim Ananich**

**1st House Committee: Regulatory Reform**

**2nd House Committee: Ways and Means**

**Senate Committee: Agriculture**

**Complete to 12-2-20**

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

## SUMMARY:

Senate Bill 661 would amend the Horse Racing Law to do all of the following:

- Allow pari-mutuel wagering on historical horse races at licensed racetracks under certain conditions.
- Require a local government in which a racetrack is located to adopt an ordinance approving pari-mutuel wagering on historical horse races before the Racing Commissioner could allow the racetrack to offer such wagering.
- Create a 1% tax on pari-mutuel wagering on historical horse races and direct the revenue to certain equine-related programs.
- Revise the definition of “pari-mutuel” and “pari-mutuel wagering.”
- Repeal an obsolete provision of the act.

### “Pari-mutuel wagering”

Currently, “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 commission.

The bill would instead define “pari-mutuel” and “pari-mutuel wagering” to mean a system by which the wagers on the outcome of a live horse race, run in the past or to be run in the future, are placed with, or in, a wagering pool conducted by an operator licensed or otherwise permitted to do so under the laws of the state and in which the participants do not wager against the operator.

The terms would not include wagering on a banked game in which the race meeting licensee is a participant or otherwise holds a stake in the outcome of the game, or in which the race meeting licensee established a bank against which the participants play. However, the terms would include a nonrefundable contribution to the pool to serve as a seed or guarantee. The terms also would not include a video lottery required to be authorized under the McCauley-Traxler-Law-Bowman-McNeely Lottery Act or any other law of the state.

Senate Bill 661 would amend numerous provisions that currently apply to simulcasting to apply also to pari-mutuel wagering. In addition, the bill would make several revisions that are technical in nature or that would clarify existing provisions.

### Local government approval required

Unless the legislative body for the local unit of government in which a licensed racetrack is located has adopted an ordinance authorizing the activities surrounding the conduct of pari-

mutuel wagering at the racetrack on the outcome of a live horse race run in the past (historical horse racing), the bill would prohibit the racing commissioner from allowing the holder of a race meeting license to conduct pari-mutuel wagering on historical horse races at the racetrack.

#### Tax on historical horse race wagering

The bill would require a race meeting licensee that conducts pari-mutuel wagering on the results of historical horse racing to pay to the state treasurer a tax in the amount of 1% of all money wagered on the pari-mutuel wagering in the manner and time as required by the Racing Commissioner.

Ninety percent of the new tax revenue would have to be deposited in the Michigan Agriculture Equine Industry Development Fund. The remaining 10% would have to be directed to the Horse Racing Advisory Commission to be expended only 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.

#### Repealer

The bill would repeal an obsolete provision pertaining to the distribution of money held in escrow that was required to be distributed by September 1, 2017.

MCL 431.302 et al.

### **HOUSE COMMITTEE ACTION:**

The House Committee on Regulatory Reform adopted an H-3 substitute that would make the following changes:

- Require a local government to adopt an ordinance authorizing pari-mutuel wagering on historical horse racing before a race meeting licensee could be allowed by the racing commissioner to conduct such activities.
- Delete a provision that would allow pari-mutuel wagering on historical horse races at the three casinos located in Detroit.
- Include pari-mutuel wagering in several provisions that currently pertain to simulcasting.
- Delete a provision that would geographically separate certain new race meeting licensees.
- Delete a provision allowing the Racing Commissioner to issue, without further application, a track license to a local unit of government that holds or has previously held a track license issued under the act.

### **BACKGROUND:**

#### Historical Horse Racing

Among other things, the bill would amend the definition of “pari-mutuel” to reference “wagers on the outcome of a live horse race, *run in the past* or to be run in the future...” The reference to wagering on horse races “run in the past” is understood to refer to historical horse racing, also known as instant racing. According to online sources, historical horse racing is a system for wagering in which archived horse races are replayed on electronic devices or terminals.

The date of the race, its location, and the names of the horses and jockeys are not identifiable to the bettor, although he or she is presented with the odds and can access such information as winning percentages. Once the bettor has selected a horse, identified by a number, the terminal shows a video or computer simulation of the race—or the bettor can simply see the race results and wager outcome. Players can bet on more than one race at the same time. Historical horse race wagering is currently authorized and operating at racetracks in Arkansas, Oregon, Wyoming, Kentucky, and Virginia.

### Horse Racing Law

There are currently two types of pari-mutuel horse race wagering authorized under the Horse Racing Law: live horse racing and simulcast racing. Live horse racing involves wagering on the results of races run by live horses at the racetrack at which the wagers are placed. Simulcast racing involves wagering on horse races run at racetracks other than the track at which the wagers are placed. In simulcast racing, the races and race results are broadcast in real time from a remote racetrack, either in or outside the state, to the Michigan racetrack at which wagers are made.

The distribution of money wagered on horse racing is prescribed in sections 17, 18, and 19 of the Horse Racing Law. Specifically, the law establishes the amount of commission a race meeting licensee may deduct from gross wagers and the amount of commission allocated to the horsemen's purse pool. The horsemen's purse pool is the money allocated to pay prizes to horse owners. Section 22 also establishes a 3.5% tax on simulcast wagers.

There is no tax on wagers made on live horse racing. Michigan's 3.5% wagering tax is on simulcast racing wagering only. Revenue from the simulcast wagering tax has been in steady decline since it was first instituted under the 1995 recodification of Michigan's horse racing laws. Revenue from the tax peaked at \$14.7 million in FY 1996-97 and totaled only \$1.9 million in FY 2018-19.

Revenue from the simulcast wagering tax is credited to the state-restricted Agriculture Equine Industry Development Fund (AEIDF). The AEIDF is appropriated in the Agriculture budget for horse racing programs, including for awards and horse racing purse supplements, and in the General Government budget for the horse racing regulatory activities of the Michigan Gaming Control Board (MGCB).<sup>1</sup>

Hazel Park Raceway, which had been Michigan's only licensed thoroughbred race course, closed in April 2018. Only one licensed track operated in 2018, 2019, and 2020, Northville Downs, which offers standardbred racing. Northville has been granted a race meeting license and authority to conduct simulcast racing for 2021.<sup>2</sup>

On October 31, 2019, the Michigan Gaming Control Board granted a race meeting license and simulcasting permit to AmRace & Sports, LLC. The license authorized the licensee to host 10

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<sup>1</sup> For additional information on horse racing, see the June 2017 House Fiscal Agency Fiscal Focus, Horse Racing in Michigan - A Primer, available here:

[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)

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.

<sup>2</sup> [https://www.michigan.gov/documents/mgcb/2021\\_NVD\\_Race\\_Meeting\\_License\\_10-26-20\\_706196\\_7.pdf](https://www.michigan.gov/documents/mgcb/2021_NVD_Race_Meeting_License_10-26-20_706196_7.pdf)

live racing days, on Fridays and Saturdays, from August 7, 2020, to September 5, 2020, at Sports Creek Raceway, in Swartz Creek, Michigan. The race meeting license was conditional on the successful application for a racetrack license by AmRace & Sports. AmRace and Sports subsequently withdrew its application.<sup>3</sup>

Northville Downs is currently the only horse racing facility in Michigan with a race meeting license.

The bill amends section 22, a section that was recently amended in House Bill 4310 as enacted as 2019 PA 153, an amendatory act to allow the use of advance deposit wagering for the first time in Michigan. Senate Bill 661 (H-3) appears to resolve conflicts with the provisions of 2019 PA 153.

## **BRIEF DISCUSSION:**

### **Arguments in support of the bill:**

The bill may give a future to horse racing, which has been hard hit by the COVID-19 pandemic. Historic horse racing may help introduce new fans to live racing. Though they may come for the historic racing, they may become interested in the live races. Therefore, some see the bill as having the potential to breathe new life into the sport. The bill also provides a way for the state to fulfill its statutory requirements to support horse racing. After all, horse racing benefits many other related industries such as county fairs, farmers (feed, hay, straw), breeders, truck drivers, tack manufacturers and retail, veterinarians, trainers, groomsmen, stable hands, track workers, food vendors, and equipment vendors, to name a few. Other states, even some that do not allow gambling, allow historic horse racing machines. The bill would also provide for local control and oversight. Importantly, historic horse racing is not a new form of gaming, just a new way to enjoy it (much like a new Bingo game). It isn't a new type of gaming, just a new approach.

### **Arguments in opposition to the bill:**

If the bill is deemed to constitute a new form of gambling, it could void the compacts with the Indian tribes and deprive the state from contributions from the Indian casinos. Historic horse racing would also create more competition for Michigan casinos for disposable income. Further, the bill would create one more opportunity to gamble in the state, which is problematic for those with gambling addictions.

## **FISCAL IMPACT:**

The bill would authorize pari-mutuel wagering on the results of "live horse races that are run in the past"—i.e., historical horse racing.

The bill would also amend section 22 to make wagers on historical horse racing subject to a 1% wagering tax. The amount of tax revenue which might be generated from a wagering tax on historical horse racing cannot be reasonably estimated at this time.

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<sup>3</sup> [https://www.michigan.gov/documents/mgcb/AmRace\\_Surrender\\_Order\\_2020\\_683207\\_7.pdf](https://www.michigan.gov/documents/mgcb/AmRace_Surrender_Order_2020_683207_7.pdf)

(Senate Bill 661 does not, with respect to historical horse race wagering, specify the amount of commission a race meeting licensee can deduct from wagers or how any commission would be distributed.)

The bill would also provide for the distribution of revenue generated from the 1% tax on historical horse race wagering. Specifically, the bill would allocate 90% of revenue from the new tax to the AEIDF and the remaining 10% to the Horse Racing Advisory Commission.

The Horse Racing Commission was established in section 6a of the Horse Racing Law through by 2016 PA 271. The commission was created within the Michigan Department of Agriculture and Rural Development (MDARD) to establish procedures governing the operation and promotion of horse racing in this state and to make recommendations to the legislature regarding horse racing. The Horse Racing Commission has met twice: on January 20, 2017, and on March 6, 2017.<sup>4</sup>

Wagering on historical horse races using instant racing machine terminals would represent a new wagering technology in Michigan. Establishment of a regulatory program for historical horse racing would result in additional cost to the Office of Racing Commission, within the Michigan Gaming Control Board. The amount of additional cost cannot be readily estimated at this time.

The provisions of the bill create downside risks on tribal gaming revenue sharing payments. Any of the tribes currently making revenue sharing payments to the Michigan Strategic Fund/Michigan Economic Development Corporation (MSF/MEDC) could elect to discontinue those revenue sharing payments if they deemed the provisions of this bill an expansion of gaming that voids the terms of their Tribal-State Gaming Compact. In calendar year 2018 (the last complete year of data available), payments to the MSF/MEDC for economic development purposes totaled \$53.4 million.

## **POSITIONS:**

Representatives of the following entities testified in support of the bill (2-11-20):

- Michigan Horsemen's Benevolent and Protective Association
- AmRace and Sports LLC (Sports Creek Raceway)
- United States Trotting Association
- Northville Downs
- Michigan Harness Horsemen's Association
- Exacta Systems

Representatives of the following entities indicated support for the bill (2-11-20):

- Michigan Horse Council
- Michigan Farm Bureau
- Michigan Association of Fairs and Exhibitions
- XPressbet
- TSG
- St. Joseph County Grange Fair

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<sup>4</sup> [https://www.michigan.gov/mdard/0,4610,7-125-1572\\_2885\\_79303---,00.html](https://www.michigan.gov/mdard/0,4610,7-125-1572_2885_79303---,00.html)

Mecosta County Fair  
Fowlerville Fair  
Chippewa County Fair  
Fowlerville Veterinary Clinic  
Grand River Equine Feeds  
Northern Michigan Fair and Racing Association  
Sheridan Ridge Veterinary Clinic  
Saddlewood Horseshoe Supply  
Ed Bocks Feed & Stuff  
Greg West Stables  
Snow Ridge Farm

The Michigan Gaming Control Board indicated no position on the bill. (2-11-20)

Representatives of the following entities testified in opposition to the bill (2-11-20):

FireKeepers Casino  
Nottawaseppi Huron Band of the Potawatomi  
City of Northville

Representatives of the following indicated opposition to the bill (2-11-20):

MotorCity Casino and Hotel  
MGM Grand Detroit  
Greektown Casino  
Saginaw Chippewa Indian Tribe/Soaring Eagle  
City of Detroit

Legislative Analyst: Susan Stutzky  
Fiscal Analysts: William E. Hamilton  
Ben Gielczyk

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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.