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DELAY EFFECTIVE DATE OF ADMINISTRATIVE RULE

House Bill 4258

Sponsor: Rep. John Pappageorge

Committee: none (direct referral to
House calendar)

Complete to 2-19-03

A SUMMARY OF HOUSE BILL 4258 AS INTRODUCED 2-19-03

The bill would amend the Horse Racing Law of 1995 (MCL 431.307a) to specify that the effective date of a proposed administrative rule, R 431.2061, pertaining to simulcast purse pool distribution, would be stayed for up to one year, under the provisions of the Administrative Procedures Act.

[In an enacting section, the bill states that it was introduced following the filing of a notice of objection by the Joint Committee on Administrative Rules, and was placed directly on the Senate and House calendars without referral to a standing committee. See Administrative rule process, below.]

Simulcast purse pool distribution – proposed administrative rule. Administrative rule R 431.2061 was submitted by the Department of Agriculture, Office of the Racing Commissioner. It reads as follows:

Rule 2061. (1) The Commissioner shall issue a simulcast purse pool distribution order, in accordance with section 19 of the act, not later than February 15 of each year.

(2) For purposes of purse pool distribution under section 19(1)(a) and (b) of the act, all of the following provisions apply:

(a) “Thoroughbred simulcasts”, “thoroughbred handle” and “thoroughbred purse pools” include handle from regulated pari-mutuel races in Michigan where jockeys ride horses as defined by R 431.1005(e) and the act.

(b) “Standardbred simulcasts”, “standardbred handle”, and “standardbred purse pools” include handle from all regulated pari-mutuel races where drivers, as defined by R 431.1005(e), drive horses in harness.

(c) Any wagering generated or occurring at a location receiving audio or visual transmissions of any race are the handle of that location and not the handle of the licensee sending or in control of sending the transmissions.

(3) All monies deposited into the horsemen’s simulcast purse pool, except an amount determined by all certified horsemen’s associations for administrative fees, shall be exclusively used for Michigan live racing purses. If all certified horsemen associations cannot agree annually on the amount of the administrative fee, and to whom it is to be paid, then the racing commissioner shall make and incorporate those determinations in the order to be issued

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annually not later than February 15. In no event shall the total aggregate administrative fees exceed 6% of all monies deposited into the horsemen's simulcast purse pool.

(4) The commissioner shall audit purse pool accounts and expenditures, and shall request and receive a full accounting of purse pool accounts.

(5) Any organization or person unlawfully interfering with the implementation or enforcement of a distribution order issued under this rule shall be subject to sanctions. Sanctions may include, but are not limited to, the revocation or suspension of a license or horsemen organization certification, or both, granted under the act.

(References to "the act" refer to the Horse Racing Law of 1995. Section 19 of the Horse Racing Law reads as follows:

(1) All money designated by this act to be paid into the horsemen's simulcast purse pool, shall be deposited in a depository designated by all participating certified horsemen's organizations and distributed by their designated escrow agent as follows:

(a) 50% of the funds generated from thoroughbred simulcasts for horsemen's purses and 35% of the funds generated from standardbred simulcasts for horsemen's purses shall be divided between all thoroughbred purse pools. The division shall be on a pro rata basis between all thoroughbred race meeting licensees based upon the percentage of total thoroughbred handle, from all sources, for the previous calendar year.

(b) 50% of the funds generated from thoroughbred simulcasts for horsemen's purses and 65% of the funds generated from standardbred simulcasts for horsemen's purses shall be divided between all standardbred purse pools. The division shall be on a pro rata basis between all standardbred race meeting licensees based upon the percentage of total standardbred handle, from all sources, for the previous calendar year.

(2) The certified horsemen's organizations and race meeting licensees shall have audit rights of the funds set forth in this section.)

Administrative rule process – JCAR notice of objection. Public Act 262 of 1999 amended the Administrative Procedures Act to modify the process for legislative review of administrative rules proposed by executive branch agencies to implement statutes. Under the new process, the Office of Regulatory Reform must submit a proposed administrative rule to the Joint Committee on Administrative Rules with a letter of transmittal. The committee then has 21 calendar days to consider the rule and to object to it by filing a notice of objection, approved by a concurrent majority of the committee. A notice of objection may be filed only if the JCAR determines that one of the following conditions apply:

- The agency lacks statutory authority for the rule.
- The agency is exceeding the statutory scope of its rule-making authority.

- There exists an emergency relating to the public health, safety, and welfare that would warrant disapproval of the rule.

- The rule is in conflict with state law.

- A substantial change in circumstances has occurred since enactment of the law upon which the proposed rule is based.

- The rule is arbitrary or capricious.

- The rule is unduly burdensome to the public or to a licensee licensed by the rule.

If the JCAR does *not* file a notice of objection to a proposed rule within 21 days, the Office of Regulatory Reform may immediately file the rule with the secretary of state, and the rule takes effect 7 days after its filing, unless a later date is indicated within the rule.

However, if the JCAR files a notice of objection, the committee chair, the alternate chair, or any member of the committee must cause bills to be introduced in both houses of the legislature. Each house must place the bill directly on its calendar. A bill introduced under this provision is to do one or more of the following:

- Rescind the rule upon its effective date.

- Repeal the statutory provision under which the rule was authorized.

- Stay the rule's effective date for up to one year.

The legislature has 21 calendar days to consider the bills, during which time the Office of Regulatory Reform may not file the rule with the secretary of state. (Under certain circumstances, this 21-day period is extended, such as when either or both houses of the legislature is not in session.)

If the legislation is defeated in either house, or if the legislation is not adopted by both houses within the 21-day period, the Office of Regulatory Reform may file the rule, and it takes effect 7 days after its filing, unless a later date is indicated within the rule. If the legislation is enacted by the legislature (and not vetoed by the governor), the rule does not take effect.

Analyst: D. Martens

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.