

## HISTORICAL HORSE RACING AND OTHER REVISIONS TO THE HORSE RACING LAW

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**Senate Bill 396 (S-1) as passed by the Senate**

**Sponsor: Sen. Dan Lauwers**

**House Committee: Regulatory Reform**

**Senate Committee: Agriculture**

**Revised 12-13-21**

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

### SUMMARY:

Senate Bill 396 would amend the Horse Racing Law to do all of the following:

- Revise the definition of “pari-mutuel” and “pari-mutuel wagering.”
- Authorize and regulate wagering on historical horse races at licensed racetracks.
- Create a 19% tax on adjusted gross receipts from wagering on historical horse races and earmark revenue from the tax to certain purposes.
- Revise the earmarks of money distributed from the Agriculture Equine Industry Development Fund (AEIDF) for various horse racing programs.
- Increase the track license fee from \$1,000 annually to \$50,000 annually.
- Include wagering on live horse races in the 3.5% wagering tax. (Currently the tax is assessed only on simulcast wagers.)
- Remove a provision that currently allows a local government to renew a track license without further application.
- Repeal a provision of the act dealing with certain 2018 purse pool money held in escrow.

The bill can be described as having two broad subjects: 1) the legalization and regulation of wagering on the results of horse races run in the past, i.e., historical horse racing, and 2) other revisions of the Horse Racing Law not directly related to wagering on historical horse races. This analysis reviews the two subjects separately. As a result, this legislative analysis does not necessarily follow the order of sections and amendments as found in the bill.

### WAGERING ON HISTORICAL HORSE RACES

A number of the bill’s provisions relate to the legalization and regulation of wagering on *historical horse races*. As described in detail below, those provisions include amendments to the definition of pari-mutuel wagering, the establishment of a new license for suppliers of equipment associated with wagering on historical horse races, the establishment of a new tax on historical horse race wagering, and provisions governing the distribution of revenue generated from the new tax.

Note that the bill does not use the term “historical horse racing.” However, it is understood that the bill’s references to wagers on the outcome of horse races *run in the past* 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. This legislative analysis will use the term “historical horse races” to mean wagering on horse races run in the past as used in the bill. (See **Background**, below, for additional information on historical horse racing.)

Also note that the bill, and this legislative analysis, refer to the *racing commissioner*. Executive Reorganization Order 2009-31 abolished the Office of Racing Commissioner and the position of racing commissioner and transferred the functions and powers of the Office of Racing Commissioner from the Michigan Department of Agriculture to the Michigan Gaming Control Board (MGCB).<sup>1</sup> The effective date of the transfer was January 17, 2010. The Horse Racing Law defines the term *racing commissioner* to mean the executive director of the MGCB in performing the functions and exercising the powers of the racing commissioner before that position was abolished.

### **Pari-mutuel Wagering/Historical Horse Racing**

Section 2(o) of the act currently defines *pari-mutuel* and *pari-mutuel wagering* to 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 [i.e., the net commission of the race meeting licensee]. In effect, the current language defines a form a gambling, commonly used in horse race wagering, in which participants compete against each other to win a betting pool, as opposed to forms of gambling in which participants compete against an operator or “the house.”

Section 17(1) of the act currently provides legal authority for pari-mutuel wagering on the results of live horse racing, including simulcasting.<sup>2</sup> The section states that “the pari-mutuel system of wagering on the results of horse races as permitted by this act is not unlawful. All forms of pari-mutuel wagering must be conducted under a race meeting license preapproved by the racing commissioner by rule or written order of the commissioner.”

The bill would redefine “pari-mutuel” and “pari-mutuel wagering” to mean “a method of wagering in which 1 or more patrons wager on 1 or more live horse races, whether run in the past or to be run in the future.” The definition further states that “a wager must be placed in 1 or more wagering pools, and wagers on different races or sets of races may be pooled together. Patrons may establish odds or payouts, and winning patrons share in the amounts wagered, including any carryover amounts plus any amounts provided by a race meeting licensee less any deductions required. Pools may be paid out incrementally over time.”

The terms “pari-mutuel” and “pari-mutuel wagering,” as defined in the bill, would *not* include a video lottery required to be authorized under the Lottery Act or any other law of the state.

The bill also would amend section 17(1) to provide that all forms of pari-mutuel wagering, including “pari-mutuel wagering on horse races run in the past [i.e., historical horse races] must be conducted under a race meeting license preapproved by the racing commissioner by rule or written order of the commissioner.” The bill would add a new subsection to section 17, subsection (11), governing the regulation of historical horse racing. This subsection would do all of the following:

- Prohibit the racing commissioner from allowing a race meeting licensee to conduct historical horse racing unless the legislative body where the licensed racetrack is located has adopted an ordinance authorizing historical horse racing.

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<sup>1</sup> See <http://legislature.mi.gov/doc.aspx?mcl-324-99919>

<sup>2</sup> *Simulcast* is a defined term in section 18 of the act, meaning “the live transmission of video and audio signals conveying a horse race held either inside or outside of this state to a licensed race meeting in this state.”

- Establish conditions for conducting historical horse racing if the licensed racetrack is located in a county designated as part of a competitive market area in a tribal compact or is located within 40 miles of a tribal casino.
- Require that historical horse racing terminals be located at the licensed racetrack where the license holder conducts its race meeting.
- Limit the number of *terminals* used by a race meeting licensee to 1,500. (Section 17(12)(b) would define *terminal* to mean “a self-service totalisator machine or other mechanical equipment use by a patron to place a wager on a live horse race or a historical horse race.”)<sup>3</sup>
- Require that a winning payout placed on the outcome of a historical horse race or races must not be less than the amount wagered. [This appears to apply to any one winning wager and not to the entire wagering pool, i.e., the payout for a winning \$1.00 wager could not be less than \$1.00.]
- Provide for free play allowance credits, limited to 15% of the total amount wagered each year, after payout of prizes. Free play allowance credits are defined in the bill to mean a specific dollar amount [provided by the race meeting licensee] that may be used by a player to place a wager on a historical horse race.
- Require the racing commissioner to allow the race meeting licensee to conduct historical horse racing during any hours that the race meeting licensee is allowed to conduct simulcasting.
- Require that the race meeting licensee conduct historical horse races only using equipment purchased or leased from a licensed pari-mutuel racing supplier. [See “Licensing Requirements,” below.]
- Require the race meeting licensee to allow the racing commissioner, employees and agents of the racing commissioner, and employees and agents of the state police and the Department of Attorney General to investigate and inspect the equipment used by the race meeting licensee to conduct historical horse racing.
- Authorize the racing commissioner to seize equipment by which the race meeting licensee conducts historical horse racing when the racing commissioner determines the equipment violates requirements of the Horse Racing Law or related administrative rules.

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<sup>3</sup> The term totalisator, more commonly spelled “totalizator,” generally refers to an electronic system of calculating and displaying odds. Virginia Racing Commission Regulations (May 1, 2015) define “totalizator” as an electronic data processing system for registering wagers placed on the outcomes of horse racing, deducting the retainage, calculating the mutuel pools and returns to ticket holders, and displaying approximate odds and payouts, including machines utilized in the sale and cashing of wagers.”

<https://www.vrc.virginia.gov/document/Rule%20Book%20May%202015.pdf>

Kentucky administrative rules define totalizator as the system, including hardware, software, communications equipment, and electronic devices that accepts and processes the cashing of wagers, calculates the odds and prices of the wagers, and records, displays, and stores pari-mutuel wagering information.

<https://apps.legislature.ky.gov/law/kar/title811.htm>

Section 17(2) of the Horse Racing Law currently requires the use of a totalisator visible to all patrons: “If pari-mutuel wagering is used at a race meeting, a totalisator or other device that is equal in accuracy and clearness to a totalisator and approved by the racing commissioner must be used. The odds display of the totalisator or other device must be placed in full view of the patrons.”

The authorization of use of self-service totalizators for wagering on live horse racing would appear to be new in the Horse Racing Law and in conflict with the requirements of section 17(2).

### **Breaks Not Applicable to Historical Horse Racing**

The term *breaks* is defined in section 2 of the act to mean “the cents over any multiple of 10 otherwise payable to a patron on a wager of \$1.00.” The term has to do with the way the payouts for winning live horse and simulcast wagers are rounded to the nearest ten cents.

Section 17(4) currently requires that breaks, i.e., the rounding difference not paid to winning wagers, must be retained by the race meeting licensee and paid to the city or township where the race track is located as a form of payment for services provided by the city or township.<sup>4</sup>

The bill would amend this subsection to indicate that the provisions governing breaks do not apply to breaks on wagers on historical horse racing.

### **Licensing Requirements**

Section 8 of the Horse Racing Law currently authorizes the racing commissioner to issue four different licenses associated with pari-mutuel wagering on the results of live horse racing: track licenses, race meeting licenses, occupational licenses, and third party facilitator licenses.<sup>5</sup> (These licenses are described in additional detail in **Background**, below.)

The bill would amend section 8(1) by adding a new subdivision (e) to establish a new *pari-mutuel supplier* license for persons who “provide equipment, goods, or services that directly affect wagering on horse races run in the past.” *Pari-mutuel supplier* is a term defined in section 2(p) of the bill to mean “a person that the racing commissioner has identified under the rules promulgated by the racing commissioner as requiring a license to provide equipment, goods, or services that directly affect wagering, play, and results of pari-mutuel wagering on horse races run in the past” [i.e., historical horse racing].

New section 16a of the bill defines in detail the pari-mutuel supplier license requirements, including application and license fees.

### **Simulcasting, Historical Horse Racing, and Live Horse Racing**

The Horse Racing Law of 2015 allowed for simulcast wagering on races transmitted by video or audio signal to a licensed race meeting in Michigan from other racetracks either in Michigan or from other states. However, the act, in sections 12 and 14, conditioned simulcasting on the race meeting licensee’s providing a minimum number of live horse race days at the race meeting and a minimum number of live horse races for each racing day. The sections include a number of requirements and exceptions.

Senate Bill 396 would include the terms “pari-mutuel wagering” and “conducting pari-mutuel wagering” in those sections so that the same requirements and exceptions applicable to simulcasting would also apply to historic horse racing.

### **Reporting Requirements**

The bill would add a new reporting requirement, in section 15a, for race meeting licensees regarding the operation of historical horse race wagering.

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<sup>4</sup> In 2019 and 2020, the city of Northville received \$240,141, and \$113,501, respectively, in breakage payments.

<sup>5</sup> Third party facilitator licensees are persons who facilitate wagering on live and simulcast racing through advance deposit wagering systems. Third party facilitators were recognized through 2019 amendments to the Horse Racing Law: <http://legislature.mi.gov/doc.aspx?2019-HB-4310>

### **Tax on Historical Horse Race Wagering/Distribution of Tax Revenue**

The bill would amend section 22 of the act to require a race meeting licensee that conducts pari-mutuel wagering on the results of live horse races run in the past (historical horse racing) to pay to the state treasurer tax in the amount of 19% of the adjusted gross receipts from wagers on historical horse racing. The bill defines adjusted gross receipts to mean gross receipts from wagering on historical horse races less payouts to winning wagerers.

The bill also would amends section 20a to prescribe the distribution of revenue from the new tax on historic horse race wagering. (The amendments to sections 22 and 20a are described in additional detail in Fiscal Impact, below.)

### **OTHER PROVISIONS**

#### **Limitations on Race Meeting Licenses**

The bill would strike a provision of the act (section 8(2)) that currently prohibits the racing commissioner from issuing a race meeting license to a person who was already licensed to conduct a race meeting at another licensed racetrack in Michigan.

In effect, the bill would allow a person to hold more than one race meeting license and conduct a race meeting at more than one licensed track in the state.

#### **Third Party Facilitator Licenses**

The bill would authorize the racing commissioner to issue a third party facilitator license to an internet sports betting platform provider that holds a sports betting supplier license under the Lawful Sports Betting Act. Third party facilitator licenses were first established in the Horse Racing Law by 2019 PA 153.<sup>6</sup> (The amended sections are sections 8(2) and 17(8).)

The bill also would amend section 19(2), which directs the distribution of the net commission generated from live horse and simulcast wagering made through third party facilitators to the pari-mutuel horse racing disbursement account. Specifically, current law directs the race meeting licensee to distribute the net commission 50% to each certified horsemen's organization and 50% to each *track licensee*. The bill would amend this section to make the distribution of net commission 50% to each certified horsemen's organization and 50% to each *race meeting licensee*. The new directive would be retroactive to January 1, 2020.<sup>7</sup>

Section 19(1) governs the distribution of horsemen's purse pool money generated from the licensee's race meeting (i.e., from live horse racing and simulcasting). Aside from a takedown for certified horsemen's organization "general expenses" of not less than 5% of the site-specific horsemen's purse account as ordered by the racing commissioner, the subsection directs that the purse pool account be used "for purses for live horse races at licensed racetracks in this state." Section 19(2) (which, as noted above, governs the distribution of net commission from advance deposit wagering) only requires that 50% of the amount paid to the horse racing

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<sup>6</sup> <http://legislature.mi.gov/doc.aspx?2019-HB-4310>

<sup>7</sup> This change may be a technical change to correct a drafting error in 2019 PA 153. Track licensees are not otherwise included in the distribution of revenue under the Horse Racing Law. The amendment to this section would affect the distribution of net commission if the track licensee and race meeting licensee were different entities. In addition, the bill's amendments to section 20, specifically, new section 20(15), described below, refer back to the distribution provisions of section 19(2).

disbursement account be distributed to the certified horsemen's organization. It does not require that the amounts be used for purses for live horse racing.

### **Geographic Separation of Race Meeting Licensees**

Subsections (3) and (4) of section 8 currently establish geographic restrictions on race meetings. The bill would retain, but modify, those restrictions. Specifically, the bill specifies that if the racing commissioner issued a race meeting license to a person that had held a race meeting license prior to December 20, 2019, but would be conducting all or a 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 30 miles of another licensed racetrack. (The current limitation is 35 miles.) The bill also directs that if the racing commissioner issued a race meeting license to a person who had not held a license prior to December 20, 2019, the person could not conduct pari-mutuel wagering at a licensed racetrack within 40 miles of another licensed racetrack. (The current limitation is 50 miles.)

### **Track License to Local Unit of Government**

The bill would strike a sentence from section 9(1), first included in 2019 PA 153, that had authorized 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.

### **Track Licenses – Application Deadline, Confidentiality**

The bill would amend provisions in section 9 governing applications for a track license. Specifically, the bill would authorize the racing commissioner to grant a license to an applicant, including an applicant that had previously applied and been denied after the annual deadline for 2022, 2023, or 2024 if the racing commissioner determines that the applicant and the racetrack satisfied all the other requirements of the act and related administrative rules. [Current law does not require annual renewal of track licenses. Once issued, a track license is valid as long as the annual license fee is paid, or until the license is voluntarily surrendered or is revoked as provided in the act or related administrative rules.]

The bill would establish new confidentiality requirements for the racing commissioner with respect to an application for a track license or track license renewal and would exempt materials submitted in a track license application from the Freedom of Information Act (FOIA).

The bill would amend section 22(1) to increase the annual track license fee from \$1,000 to \$50,000.

### **Race Meeting Licenses – Application Deadline, Confidentiality, Number of Licenses**

The bill would amend provisions in section 10 governing applications for a race meeting license. Specifically, the bill would authorize the racing commissioner to grant a license to an applicant, after the annual deadline for 2022, 2023, or 2024, if the racing commissioner determines that the applicant, application, and proposed race meeting satisfied all the other requirements of the act and related administrative rules. [Section 10(1) of the act requires that a person who desires to conduct a race meeting with pari-mutuel wagering on the results of live horse racing and simulcasting must apply each year for a race meeting license by September 1 of the preceding year.]

The bill would prohibit the racing commissioner from issuing more than three race meeting licenses. The bill would require the racing commissioner to issue a race meeting license to an

applicant that had held a race meeting license in the preceding year, subject to the section's other licensing requirements.

The bill also would establish new confidentiality requirements for the racing commissioner with respect to an application for a race meeting license or race meeting license renewal and would exempt materials submitted in a race meeting license application from FOIA.

### **AEIDF Distributions**

Section 20 of the act establishes the Michigan Agriculture Equine Industry Development Fund (AEIDF) and provides for the distribution of money credited to the fund from the simulcast wagering tax and various license fees. Section 20 does not govern the distribution of money from taxes on third party facilitators or from the tax on historic horse racing proposed in Senate Bill 396. (See **Fiscal Impact**, below, for information on all revenue received and distributed under the Horse Racing Law.)

The bill would make a number of changes to section 20 concerning the distribution of money in the AEIDF. Note that the provisions of Section 20 do not appear to prescribe the amounts to be appropriated from the AEIDF for specific horse racing program line items. Instead, the provisions appear to guide and limit the distribution of appropriations through reference to external factors, such as purses offered and paid at fairs and licensed tracks.

Section 20(5) prescribes the amounts that must be paid from the AEIDF for standardbred and fair programs. The bill would make the following changes to those provisions:

- Increase, from 75% to 85%, the cap on the percentage to be paid of the purses for standardbred harness horse races offered by fairs and races at licensed pari-mutuel racetracks. The bill would remove provisions regarding minimum purse supplements paid under this provision for overnight races. However, as noted below, the bill would include a new earmark for overnight races.<sup>8</sup>
- Require that the AEIDF appropriation for purses and supplements – fairs/licensed tracks be allocated as follows:
  - 30% to be used for paying purses and other associated costs for overnight races at fairs for which Michigan sired, Michigan bred, or Michigan owned harness horses are eligible.
  - 70% for paying special purses and other associated costs at fairs on two-year-old and three-year-old standardbred harness horses that meet certain conditions. [The law currently recognizes use of the appropriation for this purpose but does not currently specify an amount or percentage.]
- Increase, from 75% to 85%, the cap on the percentage to be paid of an eligible cash premium paid by a fair or exposition.<sup>9</sup>

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<sup>8</sup> Although not defined in the Horse Racing Law, *overnight race* refers to a race in which entries close a specific number of hours before running (such as 48 hours), as opposed to a stakes race for which nominations close weeks and sometimes months in advance.

<sup>9</sup> Premiums represent cash prizes paid to persons winning or placing in certain designated competitions at qualified fairs and expositions. The premium program is governed by administrative rule (R 285.811.1). Contests include judged exhibitions of livestock, horses, companion animals, agricultural products, culinary arts, education projects, demonstrations of proficiency at agricultural skills, artwork, antiques, and tractor pulling.

- Increase, from 10% to 20%, the cap on the percentage of the gross purse to pay breeders' awards to breeders of Michigan bred standardbred harness horses for each time the horse wins a race at a licensed race meeting or fair in Michigan. ["Gross purse" is not defined in the Horse Racing Law. However, the related administrative rule (R 285.810.1) defines "gross purse" to mean "the total dollar amount raced for in each individual heat of racing."]
- Increase, from \$4,000 to \$12,000, the cap on the amount allotted each year to fairs to provide training and stabling facilities for standardbred harness horses.
- Increase, from 0.25% to 0.5%, the cap on the percentage of all money wagered on live and simulcast horse races in Michigan that must be placed in a special standardbred sire stakes fund each year, all of which must be used to provide purses for races run exclusively for two-year-old and three-year-old Michigan sired standardbred horses at licensed harness race meetings in Michigan.

Section 20(6) of the act prescribes amounts that must be paid from the AEIDF for thoroughbred programs.<sup>10</sup> The bill would make the following changes to those provisions:

- Increase, from 10% to 20%, the cap on the percentage of the gross purse to pay breeders' awards to breeders of Michigan bred thoroughbred horses for each time the horse wins at a licensed race meeting in Michigan.
- Increase, from 0.25% to 0.5%, the cap on the percentage of all money wagered on live and simulcast horse races in Michigan that must be placed in a special thoroughbred sire stakes fund each year, all of which must be used to provide purses for races run exclusively for two-year-old and three-year-old and older Michigan sired thoroughbred horses at licensed thoroughbred race meetings in Michigan and awards for owners of Michigan sired horses or stallions. The bill would establish a number of new provisions regarding the special thoroughbred sire stakes fund.

The act currently requires certain amounts to be paid from the AEIDF for quarter horse programs, Appaloosa programs, Arabian programs, and American paint horse programs. The bill would eliminate those requirements.

The bill also would direct the distribution of AEIDF revenue if the amount allocated to AEIDF under the act, or any other source, exceeded a *maximum allocation amount*. The bill would define *maximum allocation amount* as the sum of \$10.0 million and \$2.0 million for each race meeting license issued under the act. If the racing commissioner issued only one race meeting license in a year, the maximum allocation amount would be \$12.0 million. If the racing commissioner issued three race meeting licenses in a year, the maximum number of race meeting licenses allowed under the bill, the maximum allocation amount would be \$16.0

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For a number of years, county and state fair premium programs were supported, in part, through state appropriations. And for a number of years, those appropriations were funded from horse racing wagering taxes. The use of horse racing wagering tax revenue for the premium program was specifically authorized through a 1972 amendment to the Horse Racing Law of 1959, and subsequently in section 20 of the 1995 Horse Racing Law. From FY 1995-96 through FY 2000-01, approximately \$1.6 million in AEIDF revenue was appropriated each year for the premium program. However, wagering on horse races, and related wagering tax revenue, began a steady decline starting in 1998. Starting in FY 2001-02 and through FY 2008-09, the premium program remained in the agriculture budget, supported by revenue from other fund sources. State appropriations for fair premiums were eliminated in the FY 2009-10 agriculture budget.

<sup>10</sup> There has been no licensed thoroughbred race meeting in Michigan since April, 2018.



million. The bill provides an inflation index which could increase the maximum allocation amount up to \$19.0 million, assuming three race meeting licenses and increases in the inflation index.

The bill requires that any amount allocated to the AEIDF in excess of the maximum allocation amount in a fiscal year be allocated to the pari-mutuel horse racing disbursement account under section 19. As noted above, the pari-mutuel horse racing disbursement account under section 19 is used for the distribution of net commissions from third party facilitators and, as provided in the bill, would be divided 50% to each certified horsemen's organization and 50% to each race meeting licensee.

### **Repealer**

The bill would repeal section 19b, a section added to the act by 2016 PA 271 that deals with the distribution of horsemen's simulcast purse pool money held in escrow.

MCL 431.302 et al.

## **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.

According to one source, "Historical racing differs from slots [slot machines] in that it uses the results of previously run horse races to generate winning combinations and pools the money being wagered by other players, as does pari-mutuel wagering."<sup>11</sup>

Historical horse race wagering is currently authorized and operating in Oregon, Wyoming, Kentucky, and Virginia. Historical horse racing appears to be authorized in Arkansas and New Hampshire, but it is not clear if historical horse racing is yet operating in those two states.

### **Horse Racing Law**

There are two types of pari-mutuel horse race wagering currently 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.

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<sup>11</sup> <https://www.bloodhorse.com/horse-racing/articles/230622/idaho-shelves-historical-racing-arkansas-gets-casinos>

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 \$2.1 million in 2019, and \$954,950 in 2020, when racing days were abbreviated due to COVID-19. Revenue from the simulcast wagering tax is credited to the state-restricted Agriculture Equine Industry Development Fund (AEIDF) created in section 20 of the Horse Racing Law. The AEIDF is appropriated in the General Government budget for horse racing regulatory activities of the MGCB and, as guided by section 20, for horse racing program line items in the Michigan Department of Agriculture and Rural Development (MDARD) budget.<sup>12</sup>

Until April 2018, there were two licensed racetracks and race meeting licensees in Michigan: Hazel Park Raceway, licensed to conduct thoroughbred racing, and Northville Downs, licensed to conduct standardbred racing.

From January 2015, when a racetrack in Swartz Creek (Sports Creek) voluntarily relinquished its 2015 standardbred race meeting license, through April 2018, there were two race meeting licensees in Michigan: Hazel Park Raceway, licensed to conduct thoroughbred racing, and Northville Downs, licensed to conduct standardbred racing.

In April 2018, Hazel Park Raceway closed and voluntarily surrendered its race meeting license, leaving Northville Downs as Michigan's only licensed track and race meeting licensee. Each year since 2018, Northville Downs has applied for, and the racing commissioner has granted, a race meeting license to conduct live horse standardbred racing, as well as simulcasting. On October 22, 2021, the racing commissioner granted to Northville Downs a race meeting license for 2022, as well as a permit to conduct simulcasting. The license allocates to Northville Downs 62 standardbred race days in 2022. Except for four major holidays (Easter, Thanksgiving, Christmas Eve, and Christmas), the license provides for simulcasting every day of the year.<sup>13</sup>

In 2019, there was an attempt to reestablish horse racing at the Swartz Creek facility. The track, closed since January 2015, had previously hosted standardbred pari-mutuel horse racing. On October 31, 2019, the racing commissioner granted a race meeting license and simulcasting permit to AmRace & Sports, LLC. The license authorized the licensee to host 10 live thoroughbred racing days, on Fridays and Saturdays, from August 7, 2020, to September 5, 2020, at Sports Creek Raceway, in Swartz Creek. Among other things, the race meeting license was conditioned on the successful application for a racetrack license by AmRace & Sports. On

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<sup>12</sup> For additional information on horse racing, see the June 2017 HFA Fiscal Focus, Horse Racing in Michigan - A Primer: [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 wagering tax revenue and state appropriations.

<sup>13</sup> [https://www.michigan.gov/documents/mgcb/2022\\_NVD\\_Race\\_Meeting\\_License\\_2021-10-27\\_739502\\_7.pdf](https://www.michigan.gov/documents/mgcb/2022_NVD_Race_Meeting_License_2021-10-27_739502_7.pdf)

March 5, 2020, AmRace & Sports, LLC withdrew its race meet license and voluntarily surrendered its 2020 race meet license and simulcast permit.

### **Licenses**

Track owners provide the track and related facilities for live horse racing and simulcasting. Track owners must be licensed under section 9 of the Horse Racing Law. Section 22 of the Horse Racing Law provides for an annual track license fee of \$1,000. A track license permits a licensee to operate a racetrack at which one or more race meeting licensees may conduct licensed race meetings. A track meeting licensee may or may not be the same entity as the race meeting licensee.

Race meeting licensees are responsible for race meeting operations and must be licensed under the Horse Racing Law. They are effectively the promoters and organizers of live horse racing events as well as both live horse and simulcast wagering. Race meeting licensees receive commissions, i.e., a share of money wagered at the racetrack. The amount of commission is prescribed in section 17 of the Horse Racing Law.

A race meeting license authorizes a licensee to conduct live horse racing as well as pari-mutuel wagering. A race meeting license is also a precondition for simulcasting. There is not a separate license fee associated with a race meeting license or simulcast permit. However, a race meeting licensee is responsible for paying, from commissions, the 3.5% simulcast wagering tax imposed in section 22 of the Horse Racing Law.

Racehorse owners, and other persons who participate in the business of horse racing at licensed racetracks as employees or contractors, are required to obtain an occupational license under section 16 the Horse Racing Law. In 2020, 722 individuals were licensed, holding 974 occupational licenses (some licensees hold more than one license). Occupational licensees include jockeys, drivers, trainers, and various track employees. There are 58 licensing categories.

Occupational licensing fees are established in section 16 (9) of the Horse Racing Law at not less than \$10 or more than \$100, as determined by the MGCB.

Horse breeders breed and raise the horses that run at licensed tracks. Breeders do not receive a direct distribution from the horsemen's purse pool and are not recognized in the Horse Racing Law, other than in section 20, which provides for certain horse racing program awards from the AEIDF to qualifying Michigan breeders.

Horse breeders are not required to be licensed; they may be licensed if they participate in pari-mutuel horse racing or pari-mutuel wagering in some other capacity, as a race horse owner for example. Horse breeders may also be, but are not necessarily, horse owners. Horse owners may be investors who simply contract with breeders for ownership rights in foals. Horse breeders are generally the only horse racing participants that have a direct agricultural connection—they breed and raise horses on farms.

Certified horsemen's organizations (CHOs) represent owners of racehorses. CHOs contract with race meeting licensees to provide the horses needed to fill out a live horse racing program over the course of a race meeting. CHOs negotiate with race meeting licensees to determine the number of race days and the prizes that the estimated horsemen's purse pool will support. The Horsemen's Benevolent and Protective Association (HBPA) is the CHO representing

thoroughbred owners. The Michigan Harness Horsemen’s Association (MHHA) is the CHO representing standardbred horse owners.

Although there is not a formal licensing requirement for CHOs under the Horse Racing Law, CHOs must be registered with and certified by the MGCB under provisions of sections 2 and 13 of that act. In addition, as described above, individual racehorse owners must obtain an occupational license.

In addition to the licensees and horse racing participants noted above, 2019 PA 153 authorized the use of third party facilitators to facilitate pari-mutuel wagering on the results of live horse and simulcast races. The amendatory act, effective December 20, 2019, authorized the racing commissioner to issue third party facilitator licenses.<sup>14</sup>

In 2020, the tax on wagers processed through third party facilitator licensees generated \$579,500 for credit to the AEIDF.

## **FISCAL IMPACT:**

Senate Bill 396 would authorize and regulate pari-mutuel wagering on the results of “live horse races that are run in the past”—i.e., historical horse racing.

The bill would amend section 22 of the Horse Racing Law to require a race meeting licensee that conducts pari-mutuel wagering on the results of live horse races run in the past (historical horse racing) to pay to the state treasurer tax in the amount of 19% of the adjusted gross receipts from wagers on historical horse racing. The bill defines adjusted gross receipts to mean gross receipts from wagering on historical horse races less payouts to winning wagerers.

The bill also would amend section 20a to prescribe the distribution of revenue from the new tax on historic horse race wagering:

- 45% to the School Aid Fund
- 13% to the city or township in which the racetrack is located
- 25% to the AEIDF
- 13% to a city with a population greater than 450,000 (Detroit).
- 4% to the Horse Racing Advisory Commission created under section 6a, to be expended as provided under section 6a(12)(d), specifically for:
  - Promotion and marketing of horse racing.
  - Equine-related research.
  - Grants for equine-related support and aftercare and programs related to horse racing.

The Horse Racing Advisory Commission was created under amendments to the Horse Racing Law made by 2016 PA 271. The amendatory legislation established the Horse Racing Commission in section 6a of the act. The commission was created within MDARD to establish procedures governing the operation and promotion of horse racing in this state and to make

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<sup>14</sup> For addition information on third party facilitator licenses, see the House Fiscal legislative analysis of House Bill 4310 (enacted as 2019 PA 153): <http://legislature.mi.gov/doc.aspx?2019-HB-4310>

recommendations to the legislature regarding horse racing. The Horse Racing Commission has met twice: on January 20, 2017, and on March 6, 2017.<sup>15</sup>

The establishment of historical horse racing at licensed race meetings in Michigan as provided in the bill could result in additional state tax revenue. The amount of revenue would be dependent on a number of factors that cannot be readily estimated at this time. Those factors include:

- The number of race meeting licensees and the number of historical horse race terminals installed and operating at licensed race tracks. Since April 2018, there has been only one race meeting licensee; the bill would authorize the racing commissioner to issue up to three race meeting licenses each year. The bill would authorize up to 1,500 terminals per race meeting license.
- An affirmative vote on historical horse racing by the city or township location.
- Adjusted gross receipts from the terminals.<sup>16</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 Commissioner, within the MGCB. 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 2019 (the last complete pre-pandemic year of data available), payments to the MSF/MEDC for economic development purposes totaled \$54.7 million.

The bill also would make changes to the Horse Racing Law not directly related to historical horse racing. Those changes would also have a fiscal impact. Specifically, the bill would amend section 22 to make wagers on live horse racing subject to the 3.5% wagering tax. Currently, the 3.5% wagering tax is assessed only on simulcast wagers. Wagering on live horse racing in 2018 and 2019 averaged \$2.2 million. Making live horse race wagering subject to the current 3.5% wagering tax would generate an additional \$77,000 annually for credit to the AEIDF, assuming annual live horse race wagering of \$2.2 million.

The bill also would increase the annual track license fee from \$1,000 to \$50,000, for credit to the AEIDF. There is currently only one licensed race track in Michigan.

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<sup>15</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)

<sup>16</sup> The bill defines adjusted gross receipts to mean gross receipts from wagering on historical horse races less payouts to winning wagerers. Adjusted gross receipts may be affected by the amount of commission the race meeting licensee takes from gross receipts from historical horse race wagers. Currently, the Horse Racing Law limits the commissions on live horse and simulcast wagering but does not limit commissions taken by third party facilitators. With respect to historical horse race wagering, Senate Bill 396 does not appear to specify the amount of commission a race meeting licensee can deduct from wagers or how any commission would be distributed.

The bill would make amendments to section 20 governing amounts appropriated from the AEIDF. It is not clear how the changes would affect the appropriations for specific horse racing program line items in the MDARD budget or the distributions from those line items. Some of the horse program or fair program items described in section 20 have not been funded from the AEIDF for several years.

The bill also would amend section 20 to require that any amount allocated to the AEIDF in excess of the maximum allocation amount, as defined in the bill, in a fiscal year, be allocated to the pari-mutuel horse racing disbursement account under section 19. The pari-mutuel horse racing disbursement account under section 19 is used for the distribution of net commissions from third party facilitators and, as provided in the bill, would be divided 50% to each certified horsemen's organization and 50% to each race meeting licensee. The bill does not require that any of the funds be used for live horse racing purses.

This provision, under circumstances defined in the bill, could result in the transfer of money from the AEIDF, a public resource, to private persons—race meeting licensees and the horse owner members of certified horsemen's organizations.

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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.