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Bill Analysis
Legislative Service Commission

Sub. S.B. 125
127th General Assembly
(As Passed by the Senate)

Sens. Stivers, Clancy, Goodman, Spada, Mason, Schuler, Cates, Cafaro,
Smith, Grendell, Mumper, Wilson

BILL SUMMARY

- Authorizes live horse racing permit holders to conduct pari-mutuel wagering at their place, track, or enclosure on horse races that are telecast via an instant racing system.
- Levies a tax on amounts wagered via an instant racing system.
- Provides for the distribution of revenue retained by permit holders from amounts wagered via an instant racing system.
- Enables certain persons associated with the equine industry to establish an equine marketing program, to be funded with a portion of the revenue retained by permit holders.

CONTENT AND OPERATION

Instant racing system

Overview

(R.C. 3769.08(A), 3769.0811(A) and (B), and 3769.0812)

The bill requires the State Racing Commission, upon written request of a horse racing permit holder, to authorize the permit holder to operate on racing days an "instant racing system" at the place, track, or enclosure where the permit holder conducts horse racing.¹ Such a system allows pari-mutuel wagering on

¹ A "permit holder" means a corporation, trust, partnership, limited partnership, association, person, or group of persons issued a permit under the Horse Racing Law to conduct a horse racing meeting, other than the holder of a permit issued for a horse racing meeting at a county fair or an independent fair (R.C. 3769.25(C)--not in the bill).

audio and visual signals of horse races previously conducted at facilities inside or outside Ohio that are telecast to the permit holder's place, track, or enclosure and are displayed on individual viewing terminals installed and operated by the permit holder. The permit holder must design and operate the system so that no person is able to fast-forward the last ten seconds of a horse race. (R.C. 3769.0811(A) and (B) and 3769.0812(A) and (B).) Pari-mutuel wagering via an instant racing system is not subject to the law governing pari-mutuel wagering at satellite facilities via simulcast (R.C. 3769.08(A)).

Distribution of revenue

(R.C. 3769.03, 3769.08(A), 3769.083, 3769.085, 3769.088, 3769.0811(C), and 3769.0813)

The bill requires moneys wagered on a racing day via an instant racing system to be separated from the moneys wagered on live horse racing conducted at, and on other horse races simulcast to, the permit holder's place, track, or enclosure on that racing day. From the moneys wagered via an instant racing system on that day, the permit holder is to retain a permit holder's commission, which is an amount that does not exceed 12% of the total of those moneys. In turn, at the close of each racing day, the permit holder must pay to the Tax Commissioner, by check, draft, or money order, a tax in an amount equal to 20% of the permit holder's commission. Moneys wagered via an instant racing system are subject to only this tax and not to any other tax levied on wagering on live horse racing and simulcast horse racing at the permit holder's place, track, or enclosure. The bill requires that the tax be distributed, however, in the same manner as is currently required for the tax collected on live and simulcast horse racing. A permit holder who fails to pay the tax is subject to being assessed by the Tax Commissioner. (R.C. 3769.08(A), 3769.088, 3769.0811(C), and 3769.0813(A), (B), and (E).)

After payment of the tax from the permit holder's commission, the remaining amount of the commission--i.e., the permit holder's net commission, is to be allocated as follows (R.C. 3769.03, 3769.083(B), 3769.085(A), and 3769.0813(C) and (D)):

(1) The permit holder must pay 19% of the net commission to the permit holder's purse account. This 19% is to be distributed as follows:

- The Ohio Division of the Horsemen's Benevolent and Protective Association may direct that up to 50% of that money be designated for either horsemen's health and benevolence programs or payment into the Ohio Thoroughbred Race Fund.

- The Ohio Harness Horsemen's Association may direct that up to 50% of that money be designated for horsemen's health and benevolence programs, payment into the Ohio Standardbred Development Fund, or payment into the Ohio Fairs Fund.

(2) The permit holder must pay an amount not to exceed 1% of the net commission, as determined by rule of the State Racing Commission, into the State Racing Commission Operating Fund, as an administrative fee.

(3) The permit holder must pay an amount equal to 1% of the net commission as follows:

- Three-fourths of the amount to the Director of Agriculture for deposit in the state treasury to the credit of the fund established by the Director for an equine marketing program (see below);
- One-fourth of the amount to Horse Power Ohio, a nonprofit corporation, which is to use the money to support equine programs in Ohio, including therapeutic riding programs, programs that promote the preservation and expansion of public bridle trails and facilities, and rider education and public equine awareness programs.

However, when the aggregate amount paid by permit holders for a calendar year equals \$600,000, the permit holder is to retain, for the remainder of the calendar year, the amount that otherwise would be required to be paid as just described. Beginning in calendar year 2009, this dollar threshold is to be increased by 2% annually until it equals \$1 million.

(4) The permit holder is to retain the balance of the net commission remaining after paying the foregoing amounts.

The bill requires the State Racing Commission to deny a horse racing permit to any permit holder that has defaulted in any of the required payments described above, as well as to any successor purchaser of the place, track, or enclosure for as long as the default is not satisfied by either the seller or purchaser (R.C. 3769.03).

Equine marketing program

Background: agricultural commodity marketing programs; overview

(R.C. Chapter 924.)

Current law provides a mechanism by which producers of agricultural commodities may establish agricultural commodity marketing programs to promote their products. "Agricultural commodity" means any food, fiber, feed,



animal, or plant, or group of foods, fibers, feeds, animals, or plants, that the Director of Agriculture determines to be of the same nature, in either a natural or a processed state (R.C. 924.01(A)). The Director is required to establish procedures by which producers of Ohio agricultural commodities may propose, develop, and operate marketing programs to promote the sale and use of their products, develop new uses and markets for their products, improve methods of distributing their products to consumers, and standardize the quality of their products for specific uses (R.C. 924.02, not in the bill). The programs are funded through assessments on the commodities (R.C. 924.09). Generally, the Director must hold a hearing at least once every five years to consider the continuation of each such program (R.C. 924.12, not in the bill).

The bill enables certain persons associated with the equine industry to establish an equine marketing program in accordance with provisions of continuing law governing agricultural commodity marketing programs. Because the law originally was established for the marketing of food or fiber products, the bill makes certain changes to the law in order to accommodate an equine marketing program.

Definition of "producer"

(R.C. 924.01(H))

Under continuing law, producers may establish agricultural commodity marketing programs to promote their products. Current law defines "producer" as any person who is in the business of producing, or causing to be produced, any agricultural commodity for commercial sale. The bill specifies that when used in reference to equines, "producer" means any person who owns, breeds, or trains equines.

Presentation of referendum petition and program proposals

(R.C. 924.04)

Under continuing law, producers of an Ohio agricultural commodity may present the Director with a petition signed by the lesser of 1,000 or 20% of all such producers requesting that the Director hold a referendum to establish a marketing program for that commodity or to amend an existing program. The programs are funded through assessments on the commodities. Consequently, the petition is required to present the rate of assessment to be made on the commodity, which cannot exceed 2% of the average market price of the commodity during the preceding marketing year as defined by the United States Department of Agriculture or, if no such definition exists, by the Director.

The bill creates an exception to this assessment provision for a proposed equine marketing program or a proposed amendment to an existing equine

marketing program. In the case of such a program, the bill states that the petition is not to provide for an assessment, but it must include a specification that all money received for the program will be equitably distributed among the equine industries that are represented in the program for the purposes of carrying out the program.

Creation of operating committee for equine marketing program

(R.C. 924.04, 924.07, and 924.071)

Under continuing law, a petition to establish a marketing program also must include requirements for appointed or elected operating committees. The bill creates an exception to this requirement for a proposed equine marketing program or a proposed amendment to an existing equine marketing program by specifying that the operating committee for such a program is not to be elected (R.C. 924.04(B)(4)).

Under the bill, when the producers who vote in a referendum to create an equine marketing program favor the creation, the Director must order the program established and appoint an operating committee consisting of the following members to administer the program:

- (1) Three members representing the horse racing industry, not more than two of whom must represent the same segment of the industry;
- (2) Three members representing the equine show industry, not more than two of whom must represent the same segment of the industry;
- (3) Three members representing recreational users of equines;
- (4) Three members representing persons who use equines for agricultural purposes;
- (5) One member representing the agribusiness industry; and
- (6) One member representing the Ohio Farm Bureau Federation. (R.C. 924.071(A).)

The bill establishes staggered three-year terms for the members. Each new appointment must be made prior to the expiration date of the preceding or vacant term. (R.C. 924.071(B).)

The Director cannot appoint any member of the operating committee to serve more than three successive full three-year terms (R.C. 924.071(C)). The bill requires the Director to appoint members from a list of candidates recommended by equine producers. Insofar as possible, the members must be equitably distributed by geographic areas. Any list of candidates recommended to the

Director by producers must include not less than twice as many candidates as the number of members that are to be appointed, but in no case fewer than three names. (R.C. 924.071(D).)

The Director, or the Director's designee, is an ex officio member of the operating committee, with the right to vote (R.C. 924.071(E)). Each member of the operating committee, except the Director or the Director's designee, is entitled to actual and necessary travel and incidental expenses while attending meetings of the committee or while engaged in the performance of official responsibilities delegated to the committee. No member of the committee can receive in excess of \$30 per day, in addition to travel and incidental expenses, or for more than 24 days per year for duties performed as a member of the committee. (R.C. 924.071(F).)

No person is civilly liable for any actions taken in good faith as a member of the operating committee (R.C. 924.071(G)).

The bill excludes the operating committee of an equine marketing program from the provisions in current law governing operating committees of agricultural commodity marketing programs (R.C. 924.07(H)). However, the bill's provisions that are discussed above regarding the operating committee of an equine marketing program are similar to the provisions in current law governing the operating committees of other programs.

Funding of the program

(R.C. 924.09 and 924.10)

Continuing law establishes in the state treasury a fund for each marketing program that is established by the Director. The fund consists of the assessments collected by the Department of Agriculture for that marketing program. The money is to be disbursed by the Director to carrying out the purposes of the program and to defray the program's administrative costs.

In the case of an equine marketing program, however, the fund is to consist of money paid by persons issued a permit under the Horse Racing Law that operate instant racing systems (R.C. 924.10(A)) (see above). The bill also permits the operating committee of an equine marketing program to establish a voluntary contribution program for producers who wish to financially support the marketing program (R.C. 924.09(F)).

Inapplicability of provisions concerning processors, handlers, and distributors

(R.C. 924.01, 924.011, and 924.09)

Continuing law governing agricultural commodity marketing programs contains two distinct provisions concerning processors, handlers, and distributors of agricultural commodities. The bill specifies that, notwithstanding any language to the contrary, these provisions do not apply to an equine marketing program. (R.C. 924.011.)

One of the current law provisions that is not applicable to an equine marketing program authorizes the Director to require each handler, distributor, or processor of any Ohio agricultural commodity for which a marketing program is proposed to file with the Director, within 30 days, a properly certified report. The report must contain the names and addresses of producers from whom the handler, distributor, or processor received agricultural commodities in the preceding marketing season together with the volume marketed by each producer during that season. (R.C. 924.05, not in the bill.) The other current law provision that is not applicable to an equine marketing program authorizes the Director to require a processor, distributor, handler, or producer of an agricultural commodity for which a marketing program has been established to withhold assessments from any amounts owed to producers of the commodity and to remit them to the Director (R.C. 924.09(C)).

Continuing law defines "processor" as any person who is in the business of grading, packaging, packing, canning, freezing, dehydrating, fermenting, distilling, extracting, preserving, grinding, crushing, juicing, or in any other way preserving or changing the form of an agricultural commodity (R.C. 924.01(G)). "Distributor" means any person who sells, offers for sale, markets, or distributes an agricultural commodity that the person has purchased or acquired directly from a producer or that the person markets on behalf of a producer (R.C. 924.01(B)). "Handler" means any person who is in the business of packing, grading, selling, offering for sale, or marketing any agricultural commodity in commercial quantities as defined in a marketing program (R.C. 924.01(C)).

HISTORY

ACTION	DATE
Introduced	03-21-07
Reported, S. Finance & Financial Institutions	05-23-07
Passed Senate (25-8)	05-23-07

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