

1 SENATE BILL 323

2 **57TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2025**

3 INTRODUCED BY

4 Candy Spence Ezzell and James G. Townsend and William E. Sharer
5 and Larry R. Scott and Nicholas A. Paul
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10 AN ACT

11 RELATING TO HORSE RACING; PROVIDING THAT THE NEW MEXICO
12 HORSEMEN'S ASSOCIATION IS THE HORSEMEN'S GROUP REQUIRED BY THE
13 FEDERAL INTERSTATE HORSERACING ACT OF 1978; PROVIDING THAT
14 CERTAIN WAGERING AND GAMING MACHINES ARE PERMITTED ON WEEKS OF
15 RACES; PROVIDING THAT THE STATE AUDITOR MAY AUDIT RACETRACKS.
16

17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

18 SECTION 1. Section 60-1A-16 NMSA 1978 (being Laws 2007,
19 Chapter 39, Section 16) is amended to read:

20 "60-1A-16. SIMULCASTING.--

21 A. All simulcasting of horse races shall have prior
22 approval of the commission, and the commission shall adopt
23 rules concerning the simulcasting of horse races as provided in
24 this section.

25 B. A racetrack licensee shall not be allowed to

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1 simulcast horse races unless that racetrack licensee offers at
2 least seventeen days per year of pari-mutuel wagering on live
3 horse races run on the premises of the racetrack licensee.

4 C. The commission may permit exporting of a horse
5 race being run by a racetrack licensee to another racetrack
6 licensee within New Mexico or exporting of a horse race from a
7 racetrack licensee to another location holding a pari-mutuel or
8 gaming license that allows simulcasting of a horse race from
9 outside of the state or jurisdiction that licenses that out-of-
10 state facility.

11 D. The commission may permit importing by a
12 racetrack licensee of horse races that are being run at
13 racetracks outside of the state licensed by a host state.

14 E. Pari-mutuel wagering on simulcast horse races
15 shall be prohibited except on the licensed premises of a
16 racetrack licensee during the licensee's race meet at the horse
17 racetrack or on weeks when the racetrack licensee is importing
18 a race meet from another New Mexico-licensed horse racetrack.

19 F. A New Mexico-licensed horse racetrack that is
20 within a radius of eighty miles of any other New Mexico-
21 licensed horse racetrack with a race meet in progress may only
22 conduct pari-mutuel wagering on imported horse races if there
23 is a written agreement between the two racetrack licensees
24 allowing pari-mutuel wagering on imported horse races during
25 the period of time that the live horse races are taking place."

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1 SECTION 2. Section 60-1A-17 NMSA 1978 (being Laws 2007,
2 Chapter 39, Section 17) is amended to read:

3 "60-1A-17. INTERSTATE COMMON POOL WAGERING--AUTHORIZED.--

4 A. Subject to the federal Interstate Horseracing
5 Act of 1978, the commission may permit a racetrack licensee to
6 participate in interstate common pools. All provisions of the
7 Horse Racing Act that govern pari-mutuel wagering apply to
8 pari-mutuel wagering in interstate common pools except as
9 otherwise provided in this section.

10 B. Daily pari-mutuel tax and daily capital outlay
11 tax shall not be imposed upon amounts wagered in an interstate
12 common pool other than upon amounts wagered within New Mexico.

13 C. Subject to prior approval of the commission, the
14 following provisions apply when a racetrack licensee
15 participates in interstate common pools on a horse race that
16 originates outside of New Mexico:

17 (1) a racetrack licensee may combine its pari-
18 mutuel pools at the host track and other locations. The types
19 of wagering, takeout, distribution of winnings and rules of
20 racing in effect for pari-mutuel pools at the host track shall
21 govern wagers placed in New Mexico and merged into the
22 interstate common pool. Breakage for interstate common pools
23 shall be calculated in accordance with the rules governing the
24 host track and shall be distributed in a manner agreed upon by
25 the racetrack licensee in New Mexico and the host track;

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1 (2) with the concurrence of the host track, an
2 interstate common pool that excludes the host track may be
3 formed with the racetrack licensee in New Mexico and other
4 locations outside of the host state. When an interstate common
5 pool is formed pursuant to this paragraph, the commission may
6 approve types of wagering, takeout, distribution of winnings,
7 rules of racing and calculation of breakage that are different
8 from those that are in effect in New Mexico; provided that the
9 rules are applied consistently to all persons in the interstate
10 common pool;

11 (3) the racetrack licensee may deduct from
12 retainage resulting from an interstate common pool a reasonable
13 fee to be paid to the person conducting the horse race at the
14 host track for the privilege of conducting pari-mutuel wagering
15 on the race and participating in the interstate common pool and
16 for payment of costs incurred to transmit the simulcast horse
17 race; and

18 (4) provisions of New Mexico law or contracts
19 governing the distribution of daily pari-mutuel tax and daily
20 capital outlay tax and breeders' or other awards and purses
21 from the takeout from wagers placed in New Mexico shall remain
22 in effect for wagers placed in an interstate common pool;
23 provided that if the commission approves an adjustment in the
24 takeout rate, the distribution of the takeout within New Mexico
25 shall be adjusted proportionately to reflect the adjustment in

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1 the takeout rate; and provided further that with the
2 concurrence of the racetrack licensee and the organization
3 representing a majority of the breeders, horsemen or other
4 persons entitled to shares of the distribution and subject to
5 approval of the commission, the respective shares to breeders'
6 or other awards or purses may be modified.

7 D. Subject to prior approval of the commission, the
8 following provisions apply when a racetrack licensee in New
9 Mexico participates in interstate common pools as a host track:

10 (1) a racetrack licensee may permit one or
11 more of its horse races to be used for pari-mutuel wagering at,
12 and may export a horse race to, one or more licensed sites
13 outside of New Mexico. The racetrack licensee may also permit
14 pari-mutuel pools in other locations to be combined with the
15 racetrack licensee's comparable pari-mutuel wagering pools or
16 with wagering pools established in other jurisdictions. The
17 commission may modify its rules and adopt separate rules for
18 the interstate common pools and their calculation of breakage;
19 and

20 (2) except as otherwise provided in this
21 section, New Mexico law or contracts governing the distribution
22 of shares of the takeout for daily pari-mutuel tax or daily
23 capital outlay tax and breeders' or other awards and purses
24 shall remain in effect for amounts wagered within New Mexico in
25 interstate common pools; provided that with the concurrence of

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1 the racetrack licensee of the host track and the organization
2 representing a majority of the breeders, horsemen or other
3 persons entitled to shares of the distribution, and subject to
4 approval of the commission, the respective shares to breeders'
5 or other awards or purses may be modified.

6 E. When the laws and rules of the host state and
7 guest states permit, an interstate common pool may be
8 established on a regional or other basis between two or more
9 guest states and not include a merger into the host state's
10 pari-mutuel wagering pool, in which case, one of the guest
11 state's tracks shall serve as if it were the host track for the
12 purposes of calculating the pari-mutuel wagering pool. An
13 interstate common pool may include members located outside of
14 the United States. Except as otherwise set forth in commission
15 rules, participation by a person in an interstate common pool
16 with wagering facilities in one or more states or jurisdictions
17 shall not cause the participating person to be deemed to be
18 doing business in a jurisdiction other than the jurisdiction in
19 which that person is physically located.

20 F. Pursuant to the federal Interstate Horseracing
21 Act of 1978, the New Mexico horsemen's association established
22 in 1966 is designated as the horsemen's group required by that
23 act.

24 [F.] G. The commission may adopt rules necessary to
25 implement this section."

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1 SECTION 3. Section 60-1A-20 NMSA 1978 (being Laws 2007,
2 Chapter 39, Section 20, as amended) is amended to read:

3 "60-1A-20. DAILY CAPITAL OUTLAY TAX--CAPITAL OUTLAY
4 OFFSET--STATE FAIR COMMISSION DISTRIBUTION--DAILY LICENSE
5 FEES.--

6 A. A "daily capital outlay tax" of two and three-
7 sixteenths percent is imposed on the gross amount wagered each
8 day at a racetrack where horse racing is conducted on the
9 premises of a racetrack licensee and also on the gross amount
10 wagered each day when a racetrack licensee is engaged in
11 simulcasting pursuant to the Horse Racing Act. After deducting
12 the amount of offset allowed pursuant to this section, any
13 remaining daily capital outlay tax shall be paid by the
14 commission to the taxation and revenue department from the
15 retainage of a racetrack licensee from on-site wagers made on
16 the licensed premises of the racetrack licensee for deposit in
17 the general fund. Of the daily capital outlay tax imposed
18 pursuant to this subsection:

19 (1) for a class A racetrack licensee, not more
20 than one-half of the daily capital outlay tax imposed on the
21 first two hundred fifty thousand dollars (\$250,000) of the
22 daily handle may be offset by the amount that the class A
23 racetrack licensee expends for capital improvements or for
24 long-term financing of capital improvements at the racetrack
25 licensee's existing facility;

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1 (2) for a class B racetrack licensee, not more
2 than one-half of the daily capital outlay tax imposed on the
3 first two hundred fifty thousand dollars (\$250,000) of the
4 daily handle may be offset:

5 (a) in an amount not to exceed one-half
6 of the offset allowed, the amount expended by the class B
7 racetrack licensee for capital improvements; and

8 (b) in an amount not to exceed one-half
9 of the offset allowed, the amount expended by the class B
10 racetrack licensee for advertising, marketing and promoting
11 horse racing in the state;

12 (3) through December 31, 2014, for both class
13 A and class B racetrack licensees, an amount equal to one-half
14 of the daily capital outlay tax is appropriated and transferred
15 to the state fair commission for expenditure on capital
16 improvements at the state fairgrounds and for expenditure on
17 debt service on negotiable bonds issued for the state
18 fairgrounds' capital improvements; and

19 (4) on and after January 1, 2015, for both
20 class A and class B racetrack licensees, an amount equal to
21 one-half of the daily capital outlay tax is appropriated and
22 transferred to the racehorse testing fund.

23 B. An additional daily license fee of five hundred
24 dollars (\$500) shall be paid to the commission by the racetrack
25 licensee for each day of live racing on the premises of the

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1 racetrack licensee.

2 C. Accurate records shall be kept by the racetrack
3 licensee to show gross amounts wagered, retainage, breakage and
4 amounts received from interstate common pools and distributions
5 from gross amounts wagered, retainage, breakage and amounts
6 received from interstate common pools, as well as other
7 information the commission may require. Records shall be open
8 to inspection and shall be audited by the ~~[commission]~~ state
9 auditor, its authorized representatives or an independent
10 auditor selected by the commission. The commission may
11 prescribe the method in which records shall be maintained. A
12 racetrack licensee shall keep records that are accurate,
13 legible and easy to understand.

14 D. Notwithstanding any other provision of law,
15 a political subdivision of the state shall not impose an
16 occupational tax on a horse racetrack owned or operated by
17 a racetrack licensee. A political subdivision of the state
18 shall not impose an excise tax on a horse racetrack owned
19 or operated by a racetrack licensee. Local option gross
20 receipts taxes authorized by the state may be imposed to the
21 extent authorized and imposed by a subdivision of the state
22 on a horse racetrack owned or operated by a racetrack
23 licensee."

24 SECTION 4. Section 60-2E-27 NMSA 1978 (being Laws 1997,
25 Chapter 190, Section 29, as amended) is amended to read:

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1 "60-2E-27. GAMING OPERATOR LICENSEES--SPECIAL CONDITIONS
2 FOR RACETRACKS--NUMBER OF GAMING MACHINES--DAYS AND HOURS OF
3 OPERATIONS.--

4 A. A racetrack licensed by the state racing
5 commission pursuant to the Horse Racing Act to conduct live
6 horse races or simulcast races may be issued a gaming
7 operator's license to operate gaming machines on its premises
8 where live racing is conducted.

9 B. A racetrack's gaming operator's license shall
10 automatically become void if:

11 (1) the racetrack no longer holds an active
12 license to conduct pari-mutuel wagering;

13 (2) the racetrack paid gaming tax to the
14 state on its net take in an amount greater than eight million
15 dollars (\$8,000,000) in the prior fiscal year pursuant to
16 Section 60-2E-47 NMSA 1978 and fails to maintain a minimum of
17 four live race days a week with at least nine live races on
18 each race day during its licensed race meet, except as
19 provided in Subsection F of this section; or

20 (3) the racetrack paid gaming tax to the
21 state on its net take in an amount equal to eight million
22 dollars (\$8,000,000) or less in the prior fiscal year
23 pursuant to Section 60-2E-47 NMSA 1978 and fails to maintain
24 a minimum of three live race days a week with at least ten
25 live races on each day during its licensed race meets, except

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1 as provided in Subsection F of this section.

2 C. Unless a larger number is allowed pursuant to
3 Subsection D of this section, a gaming operator licensee that
4 is a racetrack may have up to six hundred licensed gaming
5 machines.

6 D. By execution of an allocation agreement,
7 signed by both the allocating racetrack and the racetrack to
8 which the allocation is made, a gaming operator licensee that
9 is a racetrack may allocate any number of its authorized
10 gaming machines to another gaming operator licensee that is a
11 racetrack. To be valid, the allocation agreement must bear
12 the written approval of the board and the state racing
13 commission, and this approval shall make specific reference
14 to the meeting at which the action of approval was taken and
15 the number of votes cast both for and against the approval.
16 By allocating a number of its authorized machines to another
17 racetrack, the allocating racetrack automatically surrenders
18 all rights to operate the number of machines allocated. No
19 racetrack shall operate or be authorized to operate more than
20 seven hundred fifty gaming machines.

21 E. Gaming machines on a racetrack gaming operator
22 licensee's premises may be played only on ~~[days]~~ weeks when
23 the racetrack is either conducting live horse races or
24 simulcasting New Mexico horse race meets. On days when
25 gaming machines are permitted to be operated, a racetrack

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1 gaming operator licensee may offer gaming machines for
2 operation for up to eighteen hours per day; provided that the
3 total number of hours in which gaming machines are operated
4 does not exceed one hundred twelve hours in a one-week period
5 beginning on Tuesday at 8:00 a.m. and ending at 8:00 a.m. on
6 the following Tuesday. A racetrack gaming operator licensee
7 may offer gaming machines for play at any time during a day;
8 provided that the total hours of operation in each day from
9 just after midnight of the previous day until midnight of the
10 current day does not exceed eighteen hours. A racetrack
11 gaming operator licensee shall determine, within the
12 limitations imposed by this subsection, the hours it will
13 offer gaming machines for operation each day and shall notify
14 the board in writing of those hours.

15 F. Maintaining fewer live race days or fewer live
16 races on each race day during a licensed race meet does not
17 constitute a failure to maintain the minimum number of live
18 race days or races as required by Paragraphs (2) and (3) of
19 Subsection B of this section if the licensee submits to the
20 board written approval by the state racing commission for the
21 licensee to vary the minimum number of live race days or
22 races, and the variance is due to:

23 (1) the inability of a racetrack gaming
24 operator licensee to fill races as published in the
25 licensee's condition book as long as the same type of

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1 canceled race is run within the following two race weeks as
2 the race season permits;

3 (2) severe weather or other act, event or
4 occurrence resulting from natural forces;

5 (3) a strike or work stoppage by jockeys or
6 other persons necessary to conduct a race or meet;

7 (4) a power outage, electrical failure or
8 failure or unavailability of any equipment or supplies
9 necessary to conduct a race or meet;

10 (5) hazardous conditions or other threats to
11 the public health or safety; or

12 (6) any other act, event or occurrence that
13 the board finds is not within the control of the licensee
14 even with the exercise of reasonable diligence or care.

15 G. Alcoholic beverages shall not be sold, served,
16 delivered or consumed in the area restricted pursuant to
17 Subsection F of Section 60-2E-26 NMSA 1978."