

Date of Hearing: September 10, 2021

ASSEMBLY COMMITTEE ON GOVERNMENTAL ORGANIZATION

Jim Frazier, Chair

AB 1173 (Cooper) – As Amended September 2, 2021

**SUBJECT:** Horse racing: advance deposit wagering: hub agreement arbitration

**SUMMARY:** This bill requires the contractual compensation received by the Advance Deposit Wagering (ADW) provider to be the average of the contractual compensation specified in the hub agreement that is the subject of the arbitration and the contractual compensation set forth in the arbitration notice. Would require the arbitrator to select the set of terms that most accurately reflects the then-existing market rate of compensation for the services provided by the ADW provider based on all relevant facts and circumstances relating to California resident ADW wagering. The bill would authorize either party to bring an action in state court to review the arbitrator's decision. Specifically, **this bill:**

- 1) Requires that the contractual compensation received by the ADW provider shall be the average of the contractual compensation specified in the hub agreement that is the subject of the arbitration and the contractual compensation set forth in the arbitration case.
- 2) Requires an arbitrator to select the set of terms that most accurately reflects the then-existing market rate of compensation for the services provided by the ADW provider based on all relevant facts and circumstances relating to California resident ADW wagering.
- 3) Deletes existing law specifying that the arbitrator's decision is final and binding on the parties.
- 4) Specifies that if an arbitration is requested, either party may bring an action in state court to compel a party to go into arbitration, to review the arbitrator's decision.
- 5) Makes other technical, non-substantive changes.

**SENATE AMENDMENTS:**

- 1) Delete the provision of this bill that would have increased the number of non-thoroughbred races that may be held at a thoroughbred racing association from six to eight per year.
- 2) Change the contractual compensation received by the ADW provider to the average of the contractual compensation specified in the hub agreement that is the subject of the hub agreement arbitration and the contractual compensation set forth in the hub agreement arbitration notice.
- 3) State that the arbitrator shall select the set of terms that most accurately reflects the then-existing market rate of compensation for the services provided by the ADW provider based on all relevant facts and circumstances relating to California resident ADW wagering.
- 4) Delete the requirement that the arbitrator's decision be final and binding on the parties, and instead authorize either party to bring an action in state court to review the arbitrator's decision.

**FISCAL EFFECT:** According to the Senate Appropriations Committee, pursuant to Senate Rule 28.8, negligible state costs.

**COMMENTS:**

**Background:**

Advance Deposit Wagering. The California horse racing industry entered into a new era in 2002 with the advent of ADW (Hertzberg, Chapter 198, Statutes of 2001), which allows customers to deposit funds into an account in order to wager online and over the telephone. These wagers are commingled into pools at the host track where the races are run, and within the pari-mutuel wagering system regulated by the CHRB. Currently, eight ADW providers are operating in the state under a CHRB license. In 2020, the total amount wagered by account holders via California's ADW providers was more than \$900 million. ADW was authorized at a time when California racetracks were beginning to experience declining attendance and handle figures.

Simulcasting. Simulcasting is the process of transmitting the audio and video signal of a live racing performance from one facility to a satellite for re-transmission to other locations or venues where pari-mutuel wagering is permitted. Simulcasting provides racetracks with the opportunity to increase revenues by exporting their live racing content to as many wagering locations as possible, such as other racetracks, fair satellite facilities, and Indian casinos. Revenues increase because simulcasting provides racetracks that export their live content with additional customers in multiple locations who would not have otherwise been able to place wagers on the live racing event.

ADW legal dispute. Earlier this year, a subsidiary of Churchill Downs, Inc. that operates ADW companies sued the Thoroughbred Owners of California (TOC) for invoking state statute in an effort to bring a dispute over simulcast hub fees into binding arbitration. The CHRB was then asked to intervene in the litigation by TOC. A letter dated March 1, 2021, from then Attorney General Xavier Becerra's office, concluded that the CHRB can intervene in the litigation as a matter of right, however, "it does not appear that the challenged provision, Business and Professions Code Section 19604(a)(8)(C), will survive constitutional challenge."

Due to the COVID-19 pandemic, and resulting closure of in-person betting, wagering on horse races shifted significantly to ADWs. According to the TOC, "ADW wagering in California increased by over 40% year over year statewide in 2020 while purse generation from live tracks and OTBs dropped substantially." Existing law authorizes an ADW to enter in a hub agreement with a racetrack, a horsemen's organization, or both. However, under existing law, a horsemen's organization (or racetrack) may file a written demand for arbitration within 10 days of receiving a copy of a hub contract – TOC did so.

The dispute centered on a hub agreement reached on December 22, 2020, between Santa Anita Park and a subsidiary of Churchill Downs, Inc. that specified the percentage the ADW provider would receive on each dollar wagered by California residents via an ADW platform. The lawsuit was eventually dropped by Churchill Downs, Inc. according to a "notice of voluntary dismissal" which stated the matter was settled via an agreement "without prejudice."

Existing law sets the maximum amount an ADW company may receive for facilitating a wager at 6.5 percent. Existing law also specifies that the contractual obligation received by the ADW

provider shall be the contractual compensation specified in the hub agreement that is the subject of the hub agreement arbitration. AB 1173, instead, specifies that the compensation received by the ADW provider be the average of the contractual compensation and the contractual compensation set forth in the hub agreement arbitration notice.

In addition, AB 1173 stipulates that the arbitrator in a dispute shall select the set of terms that most accurately reflects the then-existing market rate of compensation for the services provided by the ADW provider based on all relevant facts and circumstances relating to California resident ADW wagering. This bill provides that if an arbitration is requested, either party may bring an action in state court to compel a party to go into arbitration, to review the arbitrator's decision, and deletes existing law stating that the arbitrator's decision shall be final and binding on the parties.

Purpose of the bill. According to the author's office, this bill addresses technical defects in Horse Racing Law to ensure that the process for determining fair compensation, paid to a licensed account wagering provider for processing wagers by a California resident on horse racing, is consistent with the legislative intent. State regulated and licensed ADW providers are a critical element to California's horse racing industry.

In support. The Los Angeles Turf Club, Inc. writes that "AB 1173 will remedy the challenged defects in the arbitration provisions in 19604(a)(8) by making clear that the decision of the arbitrator is not "final and binding" but rather is subject to judicial review; and, adding a standard for the arbitrator to apply in reaching his or her decision. It will also modify the rate of compensation to be paid by the company processing the wagers during the pendency of the arbitration and any subsequent court challenges so that such interim rate of compensation it is fair to all parties.

In opposition. Churchill Downs Incorporated writes, "The author's office and proponents of AB 1173 have stated publicly that the purpose of the bill is to resolve the constitutional defect in the statute identified by the Attorney General." There are additional amendments contained in the bill that go substantially beyond the constitutional fix outlined in the AG's opinion. The amendments contained in this bill add provisions to the statute dealing with compensation to be awarded ADW providers as a result of an arbitration and add additional provisions intended to direct the arbitrator to make his or her decision on compensation by looking at all relevant facts, circumstances, and the existing market rate of payments. These amendments are a continued attempt by in-state entities to maintain and leverage the statute to their advantage, which will ultimately do nothing but subject the statute to further litigation and expose the state to much broader constitutional concerns regarding its pari-mutuel statutes."

## **REGISTERED SUPPORT / OPPOSITION:**

### **Support**

Los Angeles Turf Club, Inc.  
Del Mar Thoroughbred Club  
California Thoroughbred Breeders Association  
Golden Gate Fields  
Pacific Racing Association  
Santa Anita Park  
Teamsters Public Affairs Council

Thoroughbred Owners of California

**Opposition**

Churchill Downs Incorporated

**Analysis Prepared by:** Eric Johnson / G.O. / (916) 319-2531