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THIRD READING

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Bill No: AB 1173  
Author: Cooper (D)  
Amended: 9/2/21 in Senate  
Vote: 21

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SENATE GOVERNMENTAL ORG. COMMITTEE: 15-0, 7/6/21  
AYES: Dodd, Nielsen, Allen, Archuleta, Becker, Borgeas, Bradford, Glazer,  
Hueso, Jones, Kamlager, Melendez, Portantino, Rubio, Wilk

SENATE APPROPRIATIONS COMMITTEE: Senate Rule 28.8

ASSEMBLY FLOOR: 76-0, 5/20/21 (Consent) - See last page for vote

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

**SOURCE:** Los Angeles Turf Club, Inc.

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**DIGEST:** 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 case.

*Senate Floor Amendments* of 9/2/21 delete the provision of this bill that would have increased the number of nonthoroughbred races that may be held at a thoroughbred racing association from six to eight per year.

**ANALYSIS:**

Existing law:

- 1) Provides that, pursuant to Article IV, Section 19(b) of the California Constitution, the Legislature may provide for the regulation of horse races and horse race meetings and wagering on the results.

- 2) Grants the California Horse Racing Board (CHRB) the authority to regulate the various forms of horse racing authorized in this state.
- 3) Authorizes ADW to be conducted, upon approval of CHRB, as specified; and, requires an ADW provider to include all wagers made in the appropriate parimutuel pool under a contractual agreement with the applicable host track and to deduct amounts from ADWs as specified.
- 4) Establishes procedures for the arbitration of disputes arising from hub agreements, and sets the contractual compensation received by the ADW provider as the contractual compensation specified in the hub agreement that is the subject of the hub agreement arbitration.

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, nonsubstantive changes.

## **Background**

*Purpose of this bill.* According to the author's office, "AB 1173 addresses technical defects in horseracing law to ensure that the process for determining fair compensation, paid to licensed account wagering service providers for processing wagers from California residents on live horseraces, is consistent with the

legislative intent. State regulated and licensed ADW by California residents is a critical element of the California horse racing industry with over \$1 billion wagered by California residents in 2020.”

*Horse racing in California.* Wagering on horse racing in California was legalized via a constitutional amendment in 1933 and since that time Thoroughbred and Quarter horses have been allowed to race in virtually all flat races offered in the state while Arabians have generally been restricted to racing at fair race meets throughout California. CHRB approves many different types of horse racing, including flat racing, jump racing, harness racing, and endurance racing. Each type of racing has different breeds that excel in a specific type of race and generally, entry in such races is restricted to certain breeds.

*Parimutuel wagering.* Horse racing has been taking place in California since the 1800s, but horse racing as we now know it – under the parimutuel wagering system – was not made possible until the electorate passed a constitutional amendment in 1933. The expressed intent of the Horse Racing Law is to allow parimutuel wagering on horse races. Parimutuel, from the French Pari-Mutuel or mutual betting, is a betting system in which all bets of a particular type are placed together in a pool, and payoff odds are calculated by sharing the pool among all winning bets. Parimutuel betting differs from fixed-odds betting in that the final payout is not determined until the pool is closed – in fixed-odds betting, the payout is agreed at the time the bet is sold.

*Advance Deposit Wagering.* ADW is a form of gambling that has become increasingly popular across the United States. ADW is best defined in a general sense as a form of gambling in which the bettor must fund an account before being allowed to place bets. That means you cannot place a wager on a race or event if you do not have sufficient money in your account to cover your stake. It is most usually specifically applied to off-track betting on horse racing.

*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. Existing law limits the total number of races imported by associations or fairs on a statewide basis not to exceed 50 per

day on days when live thoroughbred racing or fair racing is being conducted in the state. This bill adds the Pegasus World Cup to an existing list of exempted races under the current limit.

*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. 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 & Professions Code section 19604, subdivision (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 Churchill Downs' two ADW wagering companies which specified the percentage the ADW companies would receive on each dollar wagered by California residents using their platforms. The lawsuit was eventually dropped by Churchill Downs 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. This bill, 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.

Further, this bill specifies 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.

Supporters argue that this bill 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.

### **Related/Prior Legislation**

AB 351 (Garcia, 2021) adds the Pegasus World Cup to the group of out-of-state horseraces that are exempt from the 50-race per day limit on imported races in California. (Pending on the Senate Floor)

AB 558 (Low, Chapter 3, Statutes of 2016) allowed the CHRB to authorize a racing association licensed to conduct a Thoroughbred racing meet to include up to six non-Thoroughbred races.

AB 471 (Hertzberg, Chapter 198, Statutes of 2001) authorized, among other things, the CHRB to permit racing associations to accept ADWs, as defined.

**FISCAL EFFECT:** Appropriation: No Fiscal Com.: Yes Local: No

**SUPPORT:** (Verified 9/2/21)

Los Angeles Turf Club, Inc. (source)  
California Thoroughbred Breeders Association  
Golden Gate Fields  
Pacific Racing Association  
Santa Anita Park  
Thoroughbred Owners of California

**OPPOSITION:** (Verified 9/2/21)

Churchill Downs Incorporated

**ARGUMENTS IN SUPPORT:** In support of this bill, Los Angeles Turf Club, Inc. writes that, “AB 1173 would address some technical defects in the horseracing law to ensure that the process for determining the fair compensation to be paid to licensed account wagering service providers for processing wagers from California residents on live horseraces is consistent with the legislative intent at the time of passage of 19604(a)(8). State regulated and licensed advanced deposit wagering (ADW) by California residents is a critical element of the California horse racing industry with over \$1 billion wagered by California residents in 2020.”

**ARGUMENTS IN OPPOSITION:** Churchill Downs Incorporated writes, “According to the author’s office, AB 1173 is intended to resolve a constitutional defect in Business and Professions Code 19604 identified by the State Attorney General pursuant to a request for review by the California Horse Racing Commission. In March, the Attorney General issued an opinion indicating this code section would not likely survive a legal challenge to its constitutionality as the statute does not provide for judicial review of the arbitration proceedings set forth in the statute. The initial question relating to the constitutionality of the statute arose from a lawsuit filed by our client’s wholly-owned subsidiary Churchill Downs Technology Initiatives Company (‘CDTIC’). That lawsuit challenged the validity and enforceability of the statute. 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.”

The opponents continue that the bill “was amended at the last possible moment prior to the final hearing of the Senate Government Organization Committee on July 6 and passed out of the committee on this basis. AB 1173 does much more. There are additional amendments contained in the bill that go substantially beyond the constitutional fix outlined in the Attorney General’s opinion. The additional amendments have not been addressed by the author’s office or the proponents of the bill. In fact, the bill was presented as not changing existing law. The amendments contained in AB 1173 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 parimutuel statutes.”

ASSEMBLY FLOOR: 76-0, 5/20/21

AYES: Aguiar-Curry, Arambula, Bauer-Kahan, Bennett, Berman, Bigelow, Bloom, Boerner Horvath, Burke, Calderon, Carrillo, Cervantes, Chau, Chen, Chiu, Choi, Cooley, Cooper, Megan Dahle, Daly, Davies, Flora, Fong, Frazier, Friedman, Gabriel, Gallagher, Cristina Garcia, Eduardo Garcia, Gipson, Lorena Gonzalez, Gray, Grayson, Holden, Irwin, Jones-Sawyer, Kiley, Lackey, Lee, Levine, Low, Maienschein, Mathis, Mayes, McCarty, Medina, Mullin, Muratsuchi, Nazarian, Nguyen, O'Donnell, Patterson, Petrie-Norris, Quirk, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Salas, Santiago, Seyarto, Smith, Stone, Ting, Valladares, Villapudua, Voepel, Waldron, Ward, Akilah Weber, Wicks, Wood, Rendon

NO VOTE RECORDED: Cunningham, Kalra

Prepared by: Brian Duke / G.O. / (916) 651-1530

9/4/21 7:15:08

\*\*\*\* END \*\*\*\*