
SENATE COMMITTEE ON GOVERNMENTAL ORGANIZATION

Senator Bill Dodd

Chair

2021 - 2022 Regular

Bill No:	AB 1173	Hearing Date:	7/6/2021
Author:	Cooper		
Version:	6/29/2021 Amended		
Urgency:	No	Fiscal:	Yes
Consultant:	Brian Duke		

SUBJECT: Horse racing: thoroughbred race meetings: nonthoroughbred races: advance deposit wagering: hub agreement arbitration

DIGEST: This bill increases the number of non-Thoroughbred races that may be held by a racing association from six to eight races per calendar year. In addition, the 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.

ANALYSIS:

Existing law:

- 1) Article IV, Section 19(b) of the Constitution of the State of California provides that 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) Requires that any license granted to a racing association other than a fair be only for one type of racing, Thoroughbred, harness, or quarter horse racing, except that the CHRB may authorize the entering of Thoroughbred horses at a distance not exceeding five furlongs at Quarter horse meetings, under specified conditions.
- 4) Provides that the CHRB may authorize a racing association licensed to conduct Thoroughbred race meeting to include up to six non-Thoroughbred races per calendar year, as specified.

- 5) 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.
- 6) 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.
- 7) Specifies that the arbitrator's decision is final and binding on the parties, and further provides that, if arbitration is requested, either party may bring an action in state court to compel a party to go into arbitration or to enforce the decision of the arbitrator.

This bill:

- 1) Increases, from six to eight, the number of non-Thoroughbred races per calendar year that the CHRB may authorize for a licensed Thoroughbred race association.
- 2) 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.
- 3) 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.
- 4) Deletes existing law specifying that the arbitrator's decision is final and binding on the parties.
- 5) 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.
- 6) Makes other technical, nonsubstantive changes.

Background

Purpose of the bill. According to the author's office, "current law provides for different types of wagering on horse racing in California including Thoroughbreds, Appaloosas, Standardbreds, Quarter horses, Mules, and Arabians. Each type of breed competes in restricted races for their respective breed and generally, at designated race meets throughout California with CHRB approval. AB 1173 will simply allow thoroughbred racing associations that conduct Thoroughbred races to increase by two (six to eight) the number of non-Thoroughbred races (Arabian) per calendar year, as long as it doesn't conflict with the Northern California fair circuit, which also puts on races for the breed, and gets approval from the CHRB and the owners organization that represents Thoroughbred horsemen and horsewomen (Thoroughbred Owners of California). Given that there are over 653,000 purebred Arabian horses in the United States, these additional races will further provide Thoroughbred race meets with additional marketing opportunities to showcase and promote Arabian racing at California's premier racetracks."

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. The 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.

Existing law provides that the CHRB may authorize a Thoroughbred racing association to include up to six non-Thoroughbred races per calendar year with the consent of the organization representing Thoroughbred horsemen and horsewomen, as long as those races do not conflict with northern fair race meets without that fair's consent.

Five states currently offer wagering on Arabian horse racing. Specifically, Churchill Downs and Keeneland (both of which are in Kentucky) and Pimlico Racecourse in Maryland host grade I Arabian events as part of major race programs. At racetracks around the world, these swift purebred horses are capturing the attention and imagination of a large and growing racing public.

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 Bacerra'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 around 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 of the bill argue that this bill would 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 would 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.

Prior/Related 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.

SB 819 (Committee on Governmental Organization, Chapter 438, Statutes of 2013) among other things, provided that the CHRB may authorize pari-mutuel wagering on Breeders' Cup races to be run at the host venue and on one non-Thoroughbred race, as specified.

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

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

SUPPORT:

Los Angeles Turf Club, Inc. (Source)
California Thoroughbred Breeders Association
Thoroughbred Owners of California

OPPOSITION:

None received

ARGUMENTS IN SUPPORT: In support of the bill, the Los Angeles Turf Club writes that, "AB 1173 seeks to build on the success of AB 558 by Assembly Member Low in 2015. AB 558 authorized Santa Anita Park to race up to six races with Arabian Horses in order to promote these horses and build collaboration with the horse racing industry in the United Arab Emirates. The 2016 Races were a huge success raising hundreds of thousands of dollars for charity."

Additionally, the Thoroughbred Owners of California write in support 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."