JOINT STATE GOVERNMENT COMMISSION

General Assembly of the Commonwealth of Pennsylvania

HORSE RACING IN PENNSYLVANIA

A STAFF STUDY

February 2017

Serving the General Assembly of the Commonwealth of Pennsylvania Since 1937

REPORT

Horse Racing in Pennsylvania

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The Joint State Government Commission was created in 1937 as the primary and central non-partisan, bicameral research and policy development agency for the General Assembly of Pennsylvania.[1]

A fourteen-member Executive Committee comprised of the leadership of both the House of Representatives and the Senate oversees the Commission. The seven Executive Committee members from the House of Representatives are the Speaker, the Majority and Minority Leaders, the Majority and Minority Whips, and the Majority and Minority Caucus Chairs. The seven Executive Committee members from the Senate are the President Pro Tempore, the Majority and Minority Leaders, the Majority and Minority Whips, and the Majority and Minority Caucus Chairs. By statute, the Executive Committee selects a chairman of the Commission from among the members of the General Assembly. Historically, the Executive Committee has also selected a Vice-Chair or Treasurer, or both, for the Commission. There was also a Secretary during some years.

The studies conducted by the Commission are authorized by statute or by a simple or joint resolution. In general, the Commission has the power to conduct investigations, study issues, and gather information as directed by the General Assembly. The Commission provides in-depth research on a variety of topics, crafts recommendations to improve public policy and statutory law, and works closely with legislators and their staff.

A Commission study may involve the appointment of a legislative task force, composed of a specified number of legislators from the House of Representatives or the Senate, or both, as set forth in the enabling statute or resolution. In addition to following the progress of a particular study, the principal role of a task force is to determine whether to authorize the publication of any report resulting from the study and the introduction of any proposed legislation contained in the report. However, task force authorization does not necessarily reflect endorsement of all the findings and recommendations contained in a report.

Some studies involve an appointed advisory committee of professionals or interested parties from across the Commonwealth with expertise in a particular topic; others are managed exclusively by Commission staff with the informal involvement of representatives of those entities that can provide insight and information regarding the particular topic. When a study involves an advisory committee, the Commission seeks consensus among the members.[2] Although an advisory committee member may represent a particular department, agency, association, or group, such representation does not necessarily reflect the endorsement of the department, agency, association, or group of all the findings and recommendations published in a report.

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[1] Act of July 1, 1937 (P.L.2460, No.459); (46 P.S. §§ 65 – 69).

[2] Consensus does not necessarily reflect unanimity among the advisory committee members on each individual policy or legislative recommendation. At a minimum, it reflects the views of a substantial majority of the advisory committee, gained after lengthy review and discussion.

Over the years, nearly one thousand individuals from across the Commonwealth have served as members of the Commission's numerous advisory committees or have assisted the Commission with its studies. Members of advisory committees bring a wide range of knowledge and experience to deliberations involving a particular study. Individuals from countless backgrounds have contributed to the work of the Commission, such as attorneys, judges, professors and other educators, state and local officials, physicians and other health care professionals, business and community leaders, service providers, administrators and other professionals, law enforcement personnel, and concerned citizens. In addition, members of advisory committees donate their time to serve the public good; they are not compensated for their service as members. Consequently, the Commonwealth of Pennsylvania receives the financial benefit of such volunteerism, along with the expertise in developing statutory language and public policy recommendations to improve the law in Pennsylvania.

The Commission periodically reports its findings and recommendations, along with any proposed legislation, to the General Assembly. Certain studies have specific timelines for the publication of a report, as in the case of a discrete or timely topic; other studies, given their complex or considerable nature, are ongoing and involve the publication of periodic reports. Completion of a study, or a particular aspect of an ongoing study, generally results in the publication of a report setting forth background material, policy recommendations, and proposed legislation. However, the release of a report by the Commission does not necessarily reflect the endorsement by the members of the Executive Committee, or the Chair or Vice-Chair of the Commission, of all the findings, recommendations, or conclusions contained in the report. A report containing proposed legislation may also contain official comments, which may be used in determining the intent of the General Assembly.[3]

Since its inception, the Commission has published more than 350 reports on a sweeping range of topics, including administrative law and procedure; agriculture; athletics and sports; banks and banking; commerce and trade; the commercial code; crimes and offenses; decedents, estates, and fiduciaries; detectives and private police; domestic relations; education; elections; eminent domain; environmental resources; escheats; fish; forests, waters, and state parks; game; health and safety; historical sites and museums; insolvency and assignments; insurance; the judiciary and judicial procedure; labor; law and justice; the legislature; liquor; mechanics' liens; mental health; military affairs; mines and mining; municipalities; prisons and parole; procurement; state-licensed professions and occupations; public utilities; public welfare; real and personal property; state government; taxation and fiscal affairs; transportation; vehicles; and workers' compensation.

Following the completion of a report, subsequent action on the part of the Commission may be required, and, as necessary, the Commission will draft legislation and statutory amendments, update research, track legislation through the legislative process, attend hearings, and answer questions from legislators, legislative staff, interest groups, and constituents.

[3] 1 Pa.C.S. § 1939 ("The comments or report of the commission . . . which drafted a statute may be consulted in the construction or application of the original provisions of the statute if such comments or report were published or otherwise generally available prior to the consideration of the statute by the General Assembly").

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February 28, 2017

To the Members of the General Assembly of Pennsylvania:

The Joint State Government Commission is pleased to announce the release of the report, *Horse Racing in Pennsylvania.*

Act 7 of 2016 directed the Joint State Government Commission, with the assistance of the Independent Fiscal Office, to conduct a study assessing the financial, regulatory, and market factors of horse racing in Pennsylvania. Contemporaneous with the enactment of Act 7, House Resolution 616 was adopted, directing the Joint State Government Commission, with the assistance of the Independent Fiscal Office, to conduct a study similar to the one proposed under Act 7.

The report is also available at http://jsg.legis.state.pa.us/publications.

Respectfully submitted,

Glenn J. Pasewicz
Executive Director

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INTRODUCTION

Genesis of the Study

By the year 2015, the Pennsylvania horse racing industry had been in a decline for several years. Wagering, and its resultant tax revenue, had been falling, a structural deficit loomed in the state racing fund, and insolvency was imminent. Regulatory costs had increased and concerns were expressed about the ability of the state's racing commissions to protect the wagering public and ensure the integrity of the sport in light of their fiscal condition.[4] Act No. 7 of 2016 instituted a major reform of the horse and harness racing industries, and directed the Joint State Government Commission, with the assistance of the Independent Fiscal Office, to conduct a study assessing the financial, regulatory and market factors of the horse racing industry.[5] Contemporaneous with the enactment of Act No. 7, House Resolution No. 616 was proposed and adopted, directing the Joint State Government Commission, with the assistance of the Independent Fiscal Office, to conduct a study similar to the one proposed under Act No.7. [6]

The Sport of Kings

While gambling on the outcome has always been a part of racing, in recent years the Sport of Kings has become more of a gaming option and less of a sport that tests the endurance, speed and skill of horse, rider, or driver. Horse racing is an ancient spectator sport and its history and roots are much more than just another gambling opportunity. Remnants of the *Circus Maximus* in Rome still retain images of the popular chariot races that thundered around to the cheers of thousands. In Siena, Italy, twice a year the *Il Palio*, a wild bareback race continues unabated since pre-Medieval times through the city square to prove who lives in the best neighborhood. Under the rule of Charles II, the British organized and promoted the "Sport of Kings" in the 17th century. In antebellum America, North-South political tensions manifested themselves in racing matches over which part of the country was superior in breeding and training. Post-war, during the Industrial Revolution era, horse racing grew in popularity, virtually unregulated. By 1890, 314 racetracks existed in the United States. Rapid growth, unregulated gambling and the lack of a central governing authority made it attractive and lucrative for criminal elements to invade the sport. Anti-gambling fervor took hold, and, by 1908, many states had outlawed bookmaking and only 25 tracks remained. Pari-mutuel betting was introduced from France around that time and

[4] Pennsylvania Horse and Harness Racing Commissions 2015 Annual Report, Pennsylvania Department of Agriculture

[5] Act of February 23, 2016 (P.L.15, No.7), amending the Administrative Code of 1929.

[6] House Resolution 616, P.N. 2848 (2016).

states took a much stronger regulatory stance on racing; States also found a new source of tax revenue that flourished through World War II.[7]

Development of Horse and Harness Racing in Pennsylvania

Horse racing is part of two of Pennsylvania's leading industries: agriculture and tourism.[8] Pennsylvania's horse racing industry has deep roots in agriculture. William Penn wasted little time after receiving his land grant to travel back to Europe to recruit Swiss Mennonites and German Rhinelanders to emigrate to Pennsylvania, enticing them with promises of religious and political freedom and bountiful land.[9] Decades before the Revolutionary War, German farmers were clearing land and building farms throughout Penn's Woods, the bulk of the heavy lifting done by oxen, mules, and workhorses. While other industries, such as mining, lumber, and steel have waxed and waned as key industries in Pennsylvania, agribusiness remains among the Commonwealth's top industries, along with energy, advanced manufacturing, tourism, life sciences, and film.[10] In 2012, Pennsylvania had 59,309 individual farms, encompassing 7,704,444 acres.[11] The 2012 Census of Agriculture, conducted by the United States Department of Agriculture, identified 16,426 farms (26.7 percent of total farms) in Pennsylvania where horses and ponies, numbering 119,900, could be found (this includes all breeds).[12] This number is down substantially from the 215,693 horses identified in Pennsylvania's equine industry in 2003. In 2003, the last time a statewide equine survey was undertaken, Pennsylvania's equine community provided approximately 1.14 million acres of open space, with 105,458 acres and 26,365 horses identified as solely involving the racehorse industry. Total value of Pennsylvania horses was $1.3 billion, with nearly one-third, $352 million, attributable to race horses.[13]

Agricultural societies have served as a means for farmers to share information, experiences and developments in the industry for generations. The York Fair, established in 1795, is the oldest agricultural fair and exhibition in the Commonwealth.[14] From March to October of each year, 110 different agricultural fairs take place in virtually every county in the state.[15] Pennsylvania's earliest encounters with organized horse racing occurred at the agriculture fairs of the early 1800s with the introduction of harness racing. Standardbred horses, or trotters, were popular with farmers, who found them useful to train for carriage or saddle use. "Speed trials" were frequently

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[7] "Horse Racing History," winningponies.com; "Off to the races in 1845", Smithsonian National Museum of American History, May 3, 2012, americanhistory.si.edu/blog; "Horse Racing," encyclopedia.com; "Horse Racing," Britannica.com.

[8] Pennsylvania Department of Community and Economic Development website. http://dced.pa.gov/key-industries/#.WGKyyVMrKpo.

[9] "German Settlement in Pennsylvania: An Overview," Exploring Diversity in Pennsylvania History, The Historical Society of Pennsylvania and the Balch Institute for Ethnic Studies. www.hsp.org.

[10] *Supra* note 8.

[11] Farmland Information Center, www.farmlandinfo.org.

[12] United States Department of Agriculture, National Agricultural Statistics Service, "2012 Census of Agriculture – State Data," p. 375.

[13] The Pennsylvania State University, College of Agricultural Sciences, Department of Animal and Dairy Science, "Pennsylvania's Racehorse Industry Inventory, Basic Economic and Demographic Characteristics," June 2003.

[14] "Economic Impact of Pennsylvania's Fair Industry," prepared for Pennsylvania State Association of County Fairs by Shepstone Management Company, Inc., April 2013.

[15] The 2016 Pennsylvania Fair Guide, Pennsylvania Department of Agriculture.

held at county fairs, on the justification that it was a test to determine good breeding stock.[16] While horse racing for profit was generally illegal in Pennsylvania in the 18th and 19th centuries,[17] it was more honored in the breach than the observance when it involved trotting competitions.[18] By the late 1800s, there were statutory exceptions for trotting associations and agricultural fairs.[19] Agricultural fairs have served as a tourism attraction throughout their history, bringing both intrastate and interstate tourism to their home communities. They attract over 5.5 million visitors annually, 35 percent of which come from outside the fair's home county.[20] Fifteen county fairs currently hold harness races at their annual exhibitions.[21]

Almost 60 years ago, as the General Assembly contemplated legalizing pari-mutuel wagering on horse races, a major concern was to insure that the public be protected, as well as the integrity of a business (gambling) that is inherently corruptible. As a result, this concern has evolved into the regulatory oversight and control of the racing industry through the horse and harness racing commissions, with strict rules governing licensure, and programs to address gambling addiction.

In 1959, the State Harness Racing Commission was established as an administrative commission in the Department of Agriculture and pari-mutuel wagering[22] on harness races was legalized. The act declared that any other gambling on harness racing was illegal, except as specifically authorized by the act. No more than four corporations were to be licensed to conduct pari-mutuel meets in any calendar year, and no more than 50 days of racing was authorized. The commission had authority to establish minimum and maximum admission charges to events and was charged with establishing rules and regulations regarding the use of improper devices, drugs and stimulants, and other improper acts with regards to the horses. Drivers and other race participants were licensed under the act. The principal financial beneficiaries of harness racing, other than the track owners, were the agricultural fairs.[23]

Under the 1959 act, winning tickets were the first funds paid out of the betting pool, less 15 percent of the total deposits, which were retained by the race track owner. A tax of five percent of the amount wagered each day was to be paid to the Department of Revenue out of the 15 percent

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[16] John Rickards Betts, "Agricultural Fairs and the Rise of Harness Racing," *Agricultural History*, Vol. 27, No. 2, pp. 71-75, April, 1953.

[17] See, act of February 17, 1820, Ch. XX, P.L. 20. "All racing, running, pacing or trotting of horses, mares or geldings, for money, goods or chattels or other valuable things, shall be, and hereby are declared to be common nuisances and offences against this state. . . ."

[18] "By 1825 trotting courses and horse clubs were firmly established in all the larger cities; one of the most noted was Hunting Park Course in Philadelphia." Stevenson Whitcomb Fletcher, "Pennsylvania Agriculture and Country Life, 1640-1840," Pennsylvania Historical and Museum Commission, Harrisburg, 1950.

[19] Act of May 1, 1879 (P.L.39, No. 36). The 1820 act (cited at note 11) shall "not apply to agricultural societies offering premiums for trials of speed in horse walking, trotting and pacing, or trials of speed in horses in any incorporated driving park." The 1820 act was further revised to limit its forfeiture provisions, which shall "not apply to horses used in racing by regularly incorporated trotting associations." Act of June 11, 1891 (P.L.298, No.226).

[20] *Supra* note 8.

[21] Big Butler Fair, Lycoming County Fair, Bedford County Fair, Clearfield County Fair, Wayne County Fair, Washington County Fair, Dayton (Armstrong County) Fair, Crawford County Fair, Indiana Fair, Erie County Fair, Stoneboro (Mercer County) Fair, York Fair, Gratz (Dauphin County) Fair, Bloomsburg (Columbia County) Fair, and Juniata County Fair.

[22] See Glossary for definitions of this and other terms of art relating to the horse racing and breeding industries.

[23] Act of December 22, 1959 (P.L.1978, No.728).

retainage. This five percent tax was set aside in the State Harness Racing Fund. Payroll and administrative expenses of the Harness Racing Commission were paid out of this fund first. Three-fourths of any remaining funds were paid to the General Fund. The remaining one-fourth of the tax funds (after reduction for commission expenses) was distributed to the Pennsylvania Fair Fund and divided as follows:

- $2,000 to each county agricultural society and each independent agricultural society conducting an annual fair to be used for general operations

- $2,500 to each county agricultural society and each independent agricultural society conducting harness racing at their annual county fair to be used as purse money for the races

- $500 to each county agricultural society and each independent agricultural society conducting races for two- and three-year-old colts and fillies.

Any excess remaining after these allocations was to be paid to the General Fund. If there was a shortfall in meeting the allocations to the agricultural societies, their grants were prorated.[24]

In 1967, the State Horse Racing Commission was established as an independent administrative commission charged with jurisdiction over all pari-mutuel Thoroughbred horse racing activities in Pennsylvania. Thoroughbred horse racing was defined as "that form of horse racing in which each participating horse is mounted by a jockey and engages in races on the flat but does not include steeplechase or hurdle races."[25] The act declared that any other gambling on Thoroughbred racing was illegal, except as specifically authorized by the act. No more than four corporations were to be licensed to conduct pari-mutuel meets in any calendar year, and no more than 100 days of racing were authorized. An entity licensed to conduct harness racing was prohibited from being licensed to conduct Thoroughbred racing. The commission had authority to establish minimum and maximum admission charges to events and charged with establishing rules and regulations regarding the use of improper devices, drugs and stimulants, and other improper acts with regards to the horses. Trainers, jockeys, and other race participants were licenses under the act.

Under the 1967 act, winning tickets were the first funds paid out of the betting pool, less 15 percent of the total deposits, which were retained by the race track owner. In counties of the first class, a 17 percent retainage was authorized. A tax of five percent of the amount wagered each day was to be paid to the Department of Revenue out of the retainage. In school districts of the first class, an additional two percent tax was to be paid to the school district for general school purposes. A 50 percent tax on the breakage on winning payoffs was also imposed. The breakage tax and the tax on wagers were set aside in the State Horse Racing Fund. Payroll and administrative expenses of the Horse Racing Commission were paid out of this fund first, along

[24] Act of December 22, 1959 (P.L.1978, No.728).

[25] Act of December 11, 1967 (P.L.707, No.331). This definition was changed in 1981 to mean "that form of horse racing in which each participating horse is mounted by a jockey, is duly registered with the Jockey Club, New York, New York and engages in races on the flat. Thoroughbred horse racing may include a steeplechase or hurdle race."

with payroll expenses of the Department of Revenue relating to collection of taxes and penalties under the act. Any remaining balances were transferred to the General Fund.

There are three Thoroughbred horse racetracks and three harness racetracks operating in Pennsylvania. The harness racing tracks include The Meadows, originally opened in 1963 and operated by the Washington Trotting Association in western Pennsylvania,[26] followed shortly thereafter by Pocono Downs (now Mohegan Sun Pocono) in 1965.[27] Harrah's Philadelphia opened in 2006 as Harrah's Chester. Thoroughbred racing occurs at Penn National Race Course (Hollywood Casino) in south-central Pennsylvania, which opened in 1972. In 1974, Keystone Race Track opened (subsequently named Philadelphia Park and now PARX), and they were joined by Presque Isle Downs and Casino in Erie in 2007.[28]

State Support for the Racing Industry

The Sire Stakes Fund, originally created in 1969, provides purse money for harness horses that are PA-bred and –sired racing at licensed racetracks. Purse money is also allocated to fund purses at agricultural fair harness races for PA-sired only horses. The Pennsylvania Breeding Fund, established in 1974, originally provided awards to breeders and owners of winning and placing Thoroughbreds.[29] A 1978 amendment allocated purse money for Thoroughbred races.

Within 20 years of the legalization of pari-mutuel betting on horse racing, flaws in the financial structure of the industry began to appear. The Commonwealth's response was two-fold: to create incentives for the industry to remain and further develop in Pennsylvania, along with all of the ancillary and support employment positions the industry generates in the breeding, raising, training, racing, riding, and care of racehorses;[30] and to redistribute gambling income more equitably among the three major groups of players in the industry: the track operators, the breeders, and the horsemen. The General Assembly determined that horse racing was a viable industry, founded and supported by private risk capital, creating 17,000 to 20,000 jobs and worth over $600 million a year.[31] Accordingly, the Race Horse Industry Reform Act[32] was enacted. The

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[26] Pohla Smith, "History of The Meadows," *Pittsburgh Post-Gazette*, December 13, 2007, http://old.post-gazette.com/pg/07347/841402-85.stm?cmpid=localstate.xml#ixzz4UjWyX6d0.

[27] http://www.horseracing.info/pocono-downs-race-track.html.

[28] http://www.horseracing-tracks.com/tracks/pa/menuPa.html. A few other tracks have come and gone over time, including Liberty Bell (Philadelphia, harness racing, opened in 1963) and Commodore Downs (Erie, Thoroughbred racing, opened in 1973).

[29] Act of December 30, 1974 (P.L.1115, No.358). For a more complete description of these awards, see "Thoroughbred and Standardbred Breeding*," infra.*

[30] Barn manager, barn foreman, horse trainer, assistant trainer, farrier, groom, handlers, stable/barn hands, veterinarian, geneticist, equine nutrition specialist, equine dentist, breeding manager, breeder, stallion manager, broodmare manager, foaling attendant, artificial breeding technician, bloodstock agent, race track manager, racetrack judge, jockey, racing driver, jockey valet, exercise rider, hot walker, outrider, track starter, track blacksmith, inspector, drug inspector, horse buyer, auctioneer, transportation specialist are all possible jobs related directly to breeding and racing of horses. Additionally, jobs are available in race track business-related activities (*e.g*, accountant, security guard, ticket agent), and in the general agricultural industry supplying tackle, hay, feed, etc. www.theequinest.com/horse-jobs-and-careers/ and https://www.monster.com/jobs/q-horse-racing-jobs.aspx.

[31] Pennsylvania General Assembly, Legislative Journal – House, November 24, 1981, p. 2198.

[32] Act of December 17, 1981 (P.L. 534, No. 135).

act placed both the Harness Racing and Horse Racing Commissions within the Department of Agriculture, although their individual composition and organizational rules were incorporated from the 1959 and 1967 acts, thereby maintaining the original differences between the two commissions. Financial aid in the form of promoting horse and harness racing and support for purses were added by the law for the first time. The commissions were authorized to adopt a general promotional program to assist the licensed racing corporations in increasing their attendance and average daily handle. The commissions were also authorized to make emergency financial grants to race tracks that find themselves at a competitive disadvantage when a bordering state enacts a wagering tax scheme putting Pennsylvania horse race meetings at a competitive disadvantage in purse structure. Interstate simulcasting of horse races was also approved. Advance deposit wagering, in the form of telephone account wagering, was also authorized.

The most significant aspect of the 1981 enactment was its reallocation of pari-mutuel wagering pools. Approximately $5 million in Commonwealth tax revenues from horse and harness racing was reallocated from the general fund and returned to the horse racing interests to shore up their financial status.[33] Additionally, racing proceeds were allocated for the use of school districts of the first class and to small municipalities for projects involving water facilities, sewage disposal facilities, and access roads. Funds were allocated for purses for Thoroughbred horsemen, and for purses for Pennsylvania-sired Standardbred horses.

In addition to the foregoing grants and award programs, the Pennsylvania Breeding Fund and Pennsylvania Sire Stakes Fund were re-established and the Pennsylvania Fair Fund created by this act. The Breeding Fund allocates awards to breeder, stallion and owners, with the remainder allocated among the Thoroughbred horse racing entities. Most (85 percent) of the Sire Stakes Fund was divided among the licensed harness racing entities to provide purse money for races limited to Pennsylvania-sired Standardbred horses, to be known as Sire Stakes Races. The remaining monies in the Sire Stakes Fund was divided equally, up to $20,000 per grantee, among the agricultural fairs that conduct harness races for two- and three-year old harness horses to be used as additional purse funds for races that are restricted to Pennsylvania sired horses. Any remaining monies after the agricultural fair grants is allocated among the harness racing entities.

Funds received by the Pennsylvania Fair Fund are used to help support all agricultural fairs and provide purse money for horse and harness races held at agricultural fairs that are not covered under any of the other funds. Additionally, the 1981 act created the Pennsylvania Race Horse Testing Laboratory.[34]

In 2004, it became apparent that the racing industry required further financial assistance. The General Assembly responded with the Pennsylvania Race Horse Development and Gaming Act.[35] Initially conceived in the late 1990s as a means of increasing racetrack revenue by allowing slot machines at racetracks, the concept evolved into a limited expansion of gambling in Pennsylvania for multiple purposes, although many still related to supporting the horse racing industry. In its legislative intent section, the General Assembly stated:

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[33] Pennsylvania General Assembly, Legislative Journal – House, November 24, 1981, pp. 2196 and 2201.

[34] For further information, see, "Pennsylvania Equine Toxicology Research Laboratory" *infra.*

[35] Act of July 5, 2004 (P.L.572, No.71), codified as Part II (Gaming) of Title 4 of the Pennsylvania Consolidated Statutes (relating to amusements).

The General Assembly recognizes the following public policy purposes and declares that the following objectives of the Commonwealth are to be served by this part:

(1) The primary objective of this part to which all other objectives and purposes are secondary is to protect the public through the regulation and policing of all activities involving gaming and practices that continue to be unlawful.

(2) The authorization of limited gaming by the installation and operation of slot machines as authorized in this part is intended to enhance live horse racing, breeding programs, entertainment and employment in this Commonwealth.
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(4) The authorization of limited gaming is intended to positively assist the Commonwealth's horse racing industry, support programs intended to foster and promote horse breeding and improve the living and working conditions of personnel who work and reside in and around the stable and backside areas of racetracks.
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(6) The authorization of limited gaming is intended to enhance the further development of the tourism market throughout this Commonwealth, including, but not limited to, year-round recreational and tourism locations in this Commonwealth. [36]
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The Pennsylvania Gaming Control Board was established to supervise and regulate slot machine gaming in Pennsylvania. The act created three categories of slot machine licenses. The one relevant to this study is the Category 1 slot machine license. Category 1 applicants must operate the slot machines at a licensed racetrack facility. These licensees are commonly referred to as "racinos". Minimum numbers of race days and races per day were established. Each racino must have a written live racing agreement with a horsemen's association[37] representing a majority of owners and trainers at the racetrack, which provides for input and consent from the horsemen regarding various decisions relating to the racetrack. A maximum of seven racinos were authorized by the act.

Proceeds from slot machine gaming are allocated to improve infrastructure at racetracks, provide for purses, support the Pennsylvania Breeding Fund, Pennsylvania Sire Stakes Fund and the newly created Pennsylvania Standardbred Breeders Development Fund. Additionally, funds are allocated to fund health and pension benefits for the members of the horsemen's organizations representing the owners and trainers at the racetrack where the licensee operates for the benefit of the organization's members, their families, employees, and others. A portion of those benefit funds is to be paid annually by the horsemen's organization to the Thoroughbred jockeys or Standardbred drivers organization at the racetrack for health insurance, life insurance or other benefits for active and disabled Thoroughbred jockeys and Standardbred drivers. The act also

[36] 4 Pa.C.S. § 1103.
[37] Defined as "a trade association which represents the majority of owners and trainers who own and race horses at a licensed racetrack." 4 Pa.C.S. § 1103.

established the Pennsylvania Gaming Economic Development and Tourism Fund, Compulsive Problem Gambling Treatment Fund, Property Tax Relief Fund and local law enforcement grants.

In 2010, table games at casinos were authorized by an amendment to the Race Horse Development and Gaming Act. The addition of table games was intended to help increase the income of the Category 1 licensees to improve the financial status of the track owners and operators. Taxes, in the form of 12 percent of the gross table game revenue for regular table games and 34 percent of the gross table game revenue for fully automated electronic gaming tables, benefited the General Fund. Distributions from the Race Horse Development Fund were increased substantially for the time period January 1, 2010 to June 30, 2013, providing an infusion of money to the purse account for horsemen, the Thoroughbred and Standardbred breeders' funds, the Sire Stakes Fund and the benefit programs for the horsemen, jockeys, and drivers. The distributions dropped to their 2009 levels (as established in the 2004 act) beginning in fiscal year 2013-2014. The table below provides a more detailed profile of these allocations.

Table 1
Race Horse Development Fund Allocations
Under the Race Horse Development and Gaming Act

Total Race Horse Development Fund Distribution	Act 71 (2004) Act 2004 - 1/1/2010; Fiscal Year 2013-2014 and thereafter	2010 Table Games Amendment Fiscal Year 2009-2010, beginning 1/1/2010 (six months)	2010 Table Games Amendment Fiscal Year 2010-2011 Through 2012-2013
	18% to each Category 1 licensee	**34% to the General Fund 66% to each Category 1 licensee (prorata based on total daily assessments)**	**17% to the General Fund 83% to each Category 1 licensee (prorata based on total daily assessments)**
Purse Account for Horsemen	80%	83 1/3%	83 1/3%
Breeders Fund	16%	16 2/3%	16 2/3%
Sire Stakes Fund	8%	8 1/3%	8 1/3%
Standardbred Breeders Development Fund	8%	8 1/3%	8 1/3%
Health and Pension Benefits for Horsemen	4%	Greater of 4% or $275,000; capped at $11.4 million for fiscal year 2009-2010	Greater of 4% or $220,000; capped at $11.4 million per fiscal year
Benefits for Jockeys and drivers	Min. of $250,000 of the 4% total health and pension benefits	Min. of $250,000 of the 4% total health and pension benefits	Min. of $250,000 of the 4% total health and pension benefits

Source: Act of July 5, 2004 (P.L572, No. 71)

As of 2016, slots provide almost 87 percent of the purse money paid at tracks in the Commonwealth.[38] The pari-mutuel handle only provided slightly more than 10 percent. In addition to the purse money being paid primarily by slots, $20 million of slots-funded Pennsylvania Race Horse Development Fund monies went to Thoroughbred breeders (through the Pennsylvania Breeding Fund), $17 million went to Standardbred breeders, and $11 million went to pensions for retired horsemen.[39]

In 2016, the General Assembly enacted a new race horse industry reform law, as a new Article XXVIII-D in the Administrative Code of 1929.[40] The statute combined the horse and harness racing commissions into the State Horse Racing Commission as an independent commission within the Department of Agriculture, administered through the Office of Horse Racing, which is comprised of a Bureau of Thoroughbred Horse Racing and a Bureau of Standardbred Horse Racing. The Equine Toxicology and Research Laboratory was renamed as the Race Horse Testing Division.[41] The act created a State Racing Fund and imposed a tax to be paid into the fund by licensed racing entities and secondary pari-mutuel organizations at a rate of 1.5 percent of the amount wagered each racing day on win, place or show wagers and 2.5 percent of the total amount on an exotic wager, which includes exacta, daily double, quinella, and trifecta wagers. This is an overall decrease of the rate imposed by the 1981, which ranged from 4.5 percent to 2.0 percent, based on the number of days raced.

Annually, beginning July 1, 2016, one percent of the previous fiscal year's deposits into the Pennsylvania Race Horse Development Fund are to be transferred from the Pennsylvania Race Horse Development Fund to the State Racing Fund to provide for the promotion of horse racing. Through fiscal year 2019-2020, funds from the Race Horse Development Fund are to be transferred to the State Racing fund to provide for all the costs associated with the collection and research of and testing for medication, including necessary personnel, equipment, supplies, and facilities at racetracks or other locations designated by the Commission (except holding barns or stables).

Five Standardbred racing licenses and six Thoroughbred racing licenses were approved. Secondary pari-mutuel organizations are licensed under this act. Racing entities' retainage of the pari-mutuel betting pools is very similar to that found in the 1981 act, with the exception that the minimum retention from exotic bets was increased by one percent.[42] However, the structure of the allocations of purse money and breeders' awards in Act No. 7 proved problematic.

One of the reasons for establishing the Pennsylvania Breeding Fund was to incentivize horse breeders to conduct their business in this Commonwealth. The 1981 act provided for a bonus of 20 percent of the purse to the breeder of a Pennsylvania-bred Thoroughbred finishing first,

[38] Report by Independent Fiscal Office based on preliminary data received from the Pennsylvania Gaming Control Board.
[39] Pennsylvania Gaming Control Board (PGCB), 2015 Racetrack Casino Benchmark Report, http://gamingcontrolboard.pa.gov/files/reports/2015_Pari-Mutuel_Benchmark_Report.pdf.
[40] Act of February 23, 2016 (P.L.15, No.7); the Administrative Code of 1929 citation is the act of April 9, 1929 (P.L.177, No. 175).
[41] Pennsylvania Department of Agriculture, Executive Board Resolution No. OR-16-005, April 4, 2016.
[42] These provisions are reiterated in Act No. 114 of 2016, the successor statute to Act No. 7.

second, or third in any race, 10 percent to the owner of a registered Pennsylvania sire that regularly stood in Pennsylvania at the time of conception of said Pennsylvania-bred Thoroughbred, plus 10 percent to the owner of the Pennsylvania-bred Thoroughbred if it comes in first in a race that is not restricted to Pennsylvania-bred Thoroughbreds. This was later amended in 1986 to provide for a 30 percent bonus for a Pennsylvania-bred horse "sired by a registered Pennsylvania sire" that attains a first, second, or third place finish.[43]

However, for reasons that remain unclear, the existing statutory language prescribing bonuses to "Pennsylvania-bred" horses was changed to "registered Thoroughbred racing horse sired in this Commonwealth by a registered Pennsylvania sire at the time of conception."[44] This language clearly repeals the 20 percent awards to Pennsylvania-bred horses. Previously, such horses could have been sired by an out-of-state sire, so long as they were foaled in Pennsylvania. As a result, the State Horse Racing Commission refused to disburse funds from the Pennsylvania Breeders Fund.[45]

New restrictions on advance deposit wagering were also added by Act 7. The new law prohibits "a licensed racing entity or secondary pari-mutuel organization" from accepting advance deposit wagers on races if the bettor is "located" within the "primary market area" of that race track.[46] The "primary market area" is defined as any area within a 35-mile radius from the racetrack.[47] For instance, an Internet-based advance deposit wagering company cannot take a wager from a bettor in Harrisburg who wants to wager on a horse race at Penn National Race Course, 17 miles away. In response to this new restriction, Churchill Downs Inc., which owns the TwinSpires advance deposit wagering platform, sued the Commonwealth and the Pennsylvania Horse Racing Commission, arguing that the new law restricting advance deposit wagering violates the dormant Commerce Clause of the U.S. Constitution and was passed in violation of the single-subject requirement of the Pennsylvania Constitution.[48]

To correct these issues, HB 2303 was introduced. It returned the "Pennsylvania-bred" language as it had been in the previous funding scheme, and increases breeder awards for horses which are both Pennsylvania-bred and Pennsylvania-sired to 40 percent (from the previous scheme's 30 percent). The increase in the award takes effect beginning in 2017. The bill also moves the law from The Administrative Code of 1929 to the Agriculture Code.[49] This appears to be an attempt to moot TwinSpires's single-subject violation basis for its lawsuit. It became law as Act No. 114 of 2016.[50]

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[43] Act of May 16, 1986 (P.L.205, No.63).
[44] 71 P.S. § 720.56(b).
[45] Ray S. Paulick, "Wolf: Statutory Change Needed to Restart Breeder Awards," August 8, 2016, *Paulick Report*, http://www.paulickreport.com/news/ray-s-paddock/wolf-statutory-change-needed-restart-pennsylvania-breeder-awards/.
[46] 71 P.S. § 720.50(f).
[47] 71 P.S. § 720.21.
[48] Ray S. Paulick, "Churchill Downs Inc. Lawsuit Claims New Pennsylvania Law Discriminates Against TwinSpires," *Paulick Report*, September 2, 2016, http://www.paulickreport.com/news/the-biz/churchill-downs-inc-lawsuit-claims-new-pennsylvania-law-discriminates-twinspires/.
[49] Chapter 93, Title 3 of the Pennsylvania Consolidated Statutes.
[50] Act of October 28, 2016 (P.L.913, No.114).

FINDINGS AND RECOMMENDATIONS

Act No. 7 of 2016 and House Resolution No. 616 of 2016 directed the Joint State Government Commission, with the assistance of the Independent Fiscal Office, to make findings and recommendations relating to eleven issues.

Directive #1

Potential cost savings and regulatory streamlining in the oversight of racing, including those associated with combining Pennsylvania's gaming oversight functions, such as horse racing, casino gaming and lottery, into a single, coordinated entity.

Combining Pennsylvania's gaming oversight functions will yield relatively little in cost savings, as the nature of the various forms of gaming are significant enough that separate regulatory authority is advisable.

Directive #2

The necessity, efficiency and benefits of having separate racing commissions or divisions within a single commission for thoroughbred and harness tracks.

Combining the racing commissions into a single division was a *fait accompli* under Acts No. 7 and No. 114 of 2016. It no doubt has eliminated some duplicative administrative functions, but the maintenance of the two branches of horse racing under separate bureaus under the Office of Horse Racing recognizes that there are industry-specific aspects of Thoroughbred racing and harness racing that justify some distinction between the two. The creation of a single racing commission added members of the racing industry to the industry's governing body, something that was not previously mandated. This raises some concerns about potential conflicts of interests, but significant provisions were included in the new law that specifically address such situations and should assuage concerns in that regard. At this point, no further consolidation seems necessary or feasible from an administrative perspective.

Directive #3

A determination of best regulatory practices in other jurisdictions, such as New York, Ohio and Maryland and other states or provinces, and comparing Pennsylvania's approach against the best regulatory practices in other jurisdictions.

Staff reviewed the horse racing programs in Delaware, Maryland, New Jersey, New York, Ohio, Virginia and West Virginia. With the exception of Virginia, which does not permit casino gambling, casino revenues are used to support horse racing in all of the jurisdictions studied. A portion of these funds are dedicated in varying proportions for owner and breeder awards, except in New Jersey, which has no breeder awards program. Unique among the mid-Atlantic states is Virginia, which has a program that provides awards to Virginia-bred horses who win in races in other states. Essentially, horse racing industries in the mid-Atlantic region are competing against each other using revenue taken by the state from the casinos.

There is one practice found in other jurisdictions that could be implemented in Pennsylvania if policymakers are concerned that new forms of gambling would adversely harm the horse racing industry. If the determination is made that horse racing should continue to receive support and protection from the State, any new gaming opportunities should be tied to the horse racing industry to provide a revenue stream to the Race Horse Development Fund.

Directive #4

In addition to the Auditor General's June 17, 2014 Special Performance Audit of the State Racing Fund, a determination of what safeguards and policies can be implemented to avoid future inappropriate Department of Agriculture cost allocations to the racing commissions.

Many of the concerns raised in the Auditor General's Special Performance Audit have been addressed by the Department of Agriculture since the audit was published, and some were being implemented during the course of the audit. Additionally, Acts No. 7 and 114 of 2016 statutorily addressed these allocations. The Racing Fund is required to maintain a detailed, itemized list of all expenditures from the fund. Reimbursement to the Department of Agriculture for shared administration, shared staff and shared facilities may only be made for actual expenses and records relating to the expenses and specific employee allocations must be maintained. These policies adequately provide the safeguards requested.

Directive #5

An evaluation of the cost effectiveness of the Pennsylvania Equine Toxicology Research Laboratory (PETRL) and comparing the laboratory's functions to other jurisdictions.

There are few testing laboratories comparable to Pennsylvania, as there are only approximately a dozen accredited testing laboratories in the country.[51] PETRL was compared to laboratories in New York and California that perform similar functions. New York and California have 10 and 14 tracks, respectively and are the only states with more tracks than Pennsylvania's six.[52] Pennsylvania had the lowest total laboratory costs, even though it processed approximately 10,000 more post-race samples than California. Costs per sample were also lower.

It is unlikely that the Racing Commission would switch to an unaccredited laboratory, which could result in cheaper albeit potentially less reliable results. Unless substantial savings can be demonstrated by outsourcing this testing to a similarly accredited laboratory in another state, there is no reason to do so. Given that accreditation can itself add costs and the laboratory has mostly been functionally outsourced from the department to University of Pennsylvania via contract, it is not recommended that samples be shipped out of Pennsylvania under a different arrangement for testing.

Directive #6

Consideration of the imposition of increased fines and the assessment of Pennsylvania Equine Toxicology Research Laboratory costs against those found to have engaged in the impermissible doping of race horses and examination of how to strengthen property owner rights in the ejectment of bad actors in racing.

The statutory authorization to fine up to $10,000 for each violation of the horse racing statute, rules or regulations dates from February 23, 2016. This amount doubled the previous statutory authorization of $5,000, which was initially enacted in 1959 for State Harness Racing Commission. Further increasing fines for impermissibly doping race horses at this point seems premature. Once the State Racing Commission updates its regulations to implement fines up to $10,000, the Commonwealth can then evaluate the adequacy of this new statutory amount after the commission has had some experience with its potential and actual application.

Under federal court interpretations, ejectment of licensees requires due process under certain circumstances. Because of the relationship between the State, acting through the Racing Commission, and the track operators exercising authority with racing officials under the horse racing law, ejectment is not a private action, but a public one, subject to procedural protections

[51] *See infra* p. 45, "Pennsylvania Equine Toxicology and Research Laboratory."
[52] "U.S. Horse Racing Tracks – Listed by State," http://www.officialusa.com/stateguides/horseracingtracks/, cited visited February 10, 2017.

applicable to state action against a licensee. This identification of "state action" limits the ability of the Racing Commission and its employees and subcontractors from promptly ejecting bad actors who are licensed and decide to pursue their procedural protections. If this limitation on the strength of property owners to eject is unacceptable, the statute could be amended to bypass the commission's review and allow them to bring an action of ejectment in accordance with the rules relating to a civil action whether they are doing so under a rule of racing or otherwise.

Directive #7

A determination of the economic return to the Commonwealth, racetrack operators, horsemen, breeders and other stakeholders on the investment of gaming assessments collected under the act of July 5, 2004 (P.L.572, No.71), entitled, "An act amending Title 4 (Amusements) of the Pennsylvania Consolidated Statutes, authorizing certain racetrack and other gaming; providing for regulation of gaming licensees; establishing and providing for the powers and duties of the Pennsylvania Gaming Control Board; conferring powers and imposing duties on the Department of Revenue, the Department of Health, the Office of Attorney General, the Pennsylvania State Police and the Pennsylvania Liquor Control Board; establishing the State Gaming Fund, the Pennsylvania Race Horse Development Fund, the Pennsylvania Gaming Economic Development and Tourism Fund, the Compulsive and Problem Gambling Treatment Fund and the Property Tax Relief Fund; providing for enforcement; imposing penalties; making appropriations; and making related repeals."

The Pennsylvania Race Horse Development Fund (PRHDF) receives a maximum of 12.0 percent of gross terminal revenues from slot machines. For calendar year 2016, the transfer of slots monies to the PRHDF was $235.7 million. To determine the economic impact of this assessment on the Pennsylvania economy, the Independent Fiscal Office (IFO) modeled (1) the flow of funds through the PRHDF to their ultimate use and (2) the flow of non-Pennsylvania monies into the state due to the enhanced purses funded by the PRHDF. The total impact of the slots transfer was then determined through the application of relevant Pennsylvania-specific output multipliers to the direct spending.

The IFO cautions that quantifying the economic return from the PRHDF transfer is complicated and requires the use of many assumptions. Changes in any of those assumptions may cause the results of the analysis to vary. As such, this analysis is best used to conceptualize the PRHDF transfer made to the Pennsylvania horseracing industry. The detailed analysis and results are included in the chapter called "Economic Return on Investment of Gaming Assessments Under the Pennsylvania Race Horse Development and Gaming Act."

Directive #8

A determination of the nature of thoroughbred and standardbred breeding in this Commonwealth since the enactment of the act of July 5, 2004 (P.L.572, No.71), and comparing it to the nature of breeding before enactment of the act of July 5, 2004 (P.L.572, No.71).

The number of horses born each year has a direct impact on the success of horse racing in general. If there are not enough horses to fully field each race, the horse racing industry suffers. Full fields make races more competitive, which attracts more interest in betting patrons, which leads to increased handle. Overall all, Standardbred breeders in Pennsylvania are currently experiencing more success than Thoroughbred breeders in maintaining foal populations.

From 2005 to 2010, there was a substantial increase in the number of mares bred to Pennsylvania Thoroughbred stallions and the number of foals born. This number has dropped off, and these levels have returned to their pre-2004 rates. Standardbred breeding has seen a much gentler decline in the number of registered yearlings, although there was a significant decline in the number of breeders receiving awards from 2014 to 2015. While there has been a major shortage of Standardbred foals being born in the country over all (from 10,277 in 2000 to 6,181 in 2014), Pennsylvania has largely avoided this issue. Pennsylvania has a national reputation as a leader in harness racing and Standardbred breeding, and mares and stallions continue to arrive in Pennsylvania for breeding purposes.

Under the 2016 law, the Horse Racing Commission is now required to contract with the Pennsylvania Horse Breeders' Association to administer the Breeding Fund (under prior law this was a permissive action). Because there are representatives of the breeders statutorily appointed to the State Racing Commission, care must be taken to avoid any appearance of a conflict of interest in the negotiation of this contract. The contract should be in writing, contain the entirety of the duties and responsibilities of the association in detail, and provide procedures for potential conflict of interests.

Directive #9

A determination of how Pennsylvania's race horse industry and regulatory entities can best be positioned for future success or at a minimum financial stability in an environment of declining race track patrons and handle, competition from live racing from neighboring states and the increasing availability of alternative gaming platforms, such as Internet and mobile gaming and fantasy sports. Specifically, the study shall consider options for reforming and promoting horse race meetings that will increase handle, reduce racing costs, promote the health of the horse and advance the best interests of racing fans and bettors.

In order to prosper in the future, live horse racing needs to keep its traditional base of gambling individuals satisfied and enjoying the sport as well as expand its fan base into the broader market of sports and entertainment. Greater promotion outside the industry's traditional base should be a priority to help focus on racing's identity as a sports and entertainment opportunity.

The industry can keep its traditional base happy by becoming a better product for consumers. It is viewed negatively by some as a losing proposition. To boost handle and attendance overall, it may be helpful to lower the number of mandatory race days per year and reduce takeout. Racinos compete with each other, especially on days when races are being held at multiple tracks and a coordinated effort to schedule a complementary racing circuit may help. Fewer conflicting race days could lead to fuller fields, which generally makes the races more competitive, thereby increasing attendance and resultant handle. Such a system would need to be negotiated carefully among the track operators, horsemen and breeders to ensure that all benefit.

Racing's reputation for animal welfare has come under scrutiny. While Pennsylvania has adopted the latest efforts to control and manage medication of horses, if stringent enforcement of rules and penalties for mistreatment and doping of horses occurs and is publicly reported, it could strengthen the public's trust in the industry's ability to care for these animals. Similarly, continuing and publicizing aftercare efforts could help build the public's confidence in the industry.

If the General Assembly finds that the addition of alternative gaming platforms is advisable, any expansion of gaming should be tied to the financial benefit of the horse racing industry; competition from gaming platforms that are not connected to the racinos can only draw patrons away.

Directive #10 (HR616 only)

An evaluation of the benefits and harms to Pennsylvania's race horse industry and regulated entities of the expansion of pari-mutuel wagering, advance deposit account wagering and electronic wagering to secondary pari-mutuel organizations. The evaluation shall include:

(i) Assessing the current prevalence of unlawful advance deposit account wagering and electronic wagering and ways to prevent or enforce the law against unlawful wagering.

(ii) Assessing the impact on live wagering and capital investment by and employment at licensed racing entities.

(iii) The appropriate terms, conditions and requirements that should be imposed to protect Pennsylvania's race horse industry and to insure the integrity of wagering in this Commonwealth as the expansion proceeds.

The expansion of pari-mutuel wagering, advance deposit account wagering and electronic wagering to secondary pari-mutuel organizations has mixed benefit to the horse racing industry at large and the horsemen, breeders and track operators as groups. The industry as a whole receives a financial benefit from the tax imposed on wagering at secondary pari-mutuel organizations, and the Breeding Fund and Sire Stakes Funds stand to see increased funding from this tax.

Attendance and handle at live meets at the individual tracks are likely to decline, unless other incentives to attend races in person are provided. The expansion of ADW and electronic wagering make it unnecessary to attend the track in order to bet on the races. The licensure and restrictions imposed on secondary pari-mutuel organizations, along with a limit to the number of licenses to be issued statewide, can provide some protection to the tracks. ADW has already impacted the number of off-track betting sites operated by licensed racing entities, and the loss of employment at those locations is likely to continue.

Any expansion of gaming in Pennsylvania, in order to not be detrimental to the horse racing industry, must contribute financially to the State Racing Fund. Strict licensure, audit and monitoring regulations must be imposed and strictly enforced to maintain the integrity of gaming in general. Like Caesar's wife, the horse racing industry's ties to state government require it to be beyond reproach.

Directive #11 (HR616); Directive #10 (Act 7)

An assessment of live racing marketing programs at each track and the impact on pari-mutuel wagering and public attendance on race days. This assessment shall include marketing or advertising expenditures and the return on investment of those expenditures specific to racing.

Each Category 1 licensed facility (*i.e.*, each racino) must annually report to the Racing Commission "Plans to promote live racing and increase live handle and daily attendance at the licensed racetrack in the upcoming year." It should be noted that some of the tracks' 1211 reports discuss marketing and public relations in a very general manner, and do not describe their activities in much detail.

There are specific aspects of the tracks live marketing programs that seem to have a significant impact on attendance and handle. Special event days result in increased attendance and handle at each track. Presque Isle has seen attendance double on Family Nights, and Parx, Penn National and the Meadows have each seen increased attendance and handle at special events and significant races. Some of the tracks make greater use of social media than others. Social media is an avenue to attract younger people who are not traditionally horse race fans, and all of the tracks could benefit from a strong social media presence. Penn National has engaged in coordinating events with local charities and this has also brought in non-traditional fans.

All of the tracks advertise in the form of year-round television spots, ads in national and state racing publications, local print, radio and television media spots, and print, radio and television spots in neighboring jurisdictions. All tracks have special promotions and special events, as well as public relations opportunities. Fan Appreciation Days are common to all the tracks. Monthly direct mail is also used by the tracks. Promotional giveaways can include t-shirts, hats, keychains, water bottles and posters. Most of the tracks offer some sort of players reward program that encourages people to return to the facility in the future.

The way "live attendance" is counted by the tracks does not distinguish between patrons using the track's simulcasting facility to wager on other tracks' races and patrons wagering on the race occurring at the track that is counting them as a being a live attendant. This makes it nearly impossible to determine the actual live attendance at the track of those persons who are there to bet on live racing occurring on the operator's track. This is significant, because those non-race days that are simulcast only can skew the average daily attendance on live race days to appear lower than it actually is. If the number of patrons wagering on races being run on a particular track in person is significant, then the 1211 Reports must provide a more specific breakdown of attendance by type of race day.

General Observations

During staff's review of the horse racing laws and regulations, it became clear that many of the regulations found in the Pennsylvania Code are duplicative, and extremely outdated, including references to statutes long-repealed. One area of consolidation that should be considered is a complete review and update of the horse racing regulations. Acts No. 7 and No. 114 of 2016 authorize the issuance of temporary regulations as well as new permanent regulations to implement the new provisions of the law, and this should be done expeditiously.

Currently, accurate data is difficult to obtain in this area. The last complete survey of Pennsylvania's equine industry occurred in 2002, by the Penn State University College of Agricultural Sciences, under contract from the Pennsylvania Horse and Harness Racing Commission. A new survey is long overdue, and is something the Horse Racing Commission should consider repeating.

Additionally, real-time data on the size of foal crops is not available. Notice of births only occur after the foal is registered (a voluntary act by the owner). Some method of real-time data collection should be considered in order for the Racing Commission to be able to spot trends in horse populations sooner and direct desired efforts to assist the industry more quickly.

STREAMLINING GAMING OVERSIGHT FUNCTIONS

Among the directives set forth in Act No. 7 and HR No. 616 was an analysis of the potential cost savings and regulatory streamlining in the oversight of racing, including those associated with combining Pennsylvania's gaming oversight functions, such as horse racing, casino gaming, and lottery, into a single coordinated entity. Additionally, Joint State Government Commission and the Independent Fiscal Office were directed to examine the necessity, efficiency, and benefits of having separate racing commissions or divisions within a single commission for Thoroughbred and harness tracks.

Combining Gaming Oversight

Pennsylvania has several forms of legalized gambling. These include horse racing, casino gaming, the lottery, bingo, and other small games of chance. Currently, horse racing is under the jurisdiction of the Department of Agriculture, with input from the Pennsylvania Gaming Control Board and the Department of Revenue. Casino gambling is under the jurisdiction of the Gaming Control Board. The state lottery law is administered by the Department of Revenue.[53] The Bingo Law falls primarily under the jurisdiction of the County Treasurer and District Attorney in the county where the games are held.[54] Small games of chance are under the authority of the Department of Revenue, with assistance from the Liquor Control Board, the Gaming Control Board, the State Police, and local law enforcement.[55]

It is hard to judge the response of the regulators or the industry to potential consolidation. For example, in 2016, the House Gaming Oversight Committee held a public hearing to consider the consolidation of regulatory oversight of small games of chance within the Pennsylvania Gaming Control Board. The Department of Revenue indicated a willingness to turn it over, given its relatively limited enforcement authority under the act. The charitable organizations that benefit from the small games of chance law would prefer to stay under the jurisdiction of the Department of Revenue, for fear of being "lost in shuffle" of the regulation of for-profit gaming that is the principal concern of the Gaming Control Board. The Gaming Control Board does not want jurisdiction, as small games of chance differ so greatly from the gaming activities the Board already oversees.[56] While this report can opine on potential cost savings of merging into one

[53] Act ff August 26, 1971 (P.L.351, No.91), known as the State Lottery Law; 72 P.S. §§ 3761-101 to 3761-2103.
[54] Act of July 10, 1981 (P.L.214, No.671), P.S. §§301-308.1, known the Bingo Law.
[55] Act of December 19, 1988 (P.L. 1262, No. 156), known as the Local Option Small Games of Chance Act; 72 P.S. §§ 328.101 to 328.3101.
[56] Commonwealth of Pennsylvania, House of Representatives, Gaming Oversight Committee, Transcript, "Presentation on HB 1891 (Payne) Consolidation of Regulatory Oversight of Small Games of Chance to the Pa.

entity, it cannot fully examine the administrative ramifications. Each type of gambling has its own peculiar aspects and purposes and may not be easily amenable to one administrative structure.

Potential Cost Savings of Combining Horse Racing, Casino Gaming and Lottery into One Entity

If horse racing, casino gaming, and lottery were combined under one administrative structure, it is doubtful that there would be any meaningful cost savings in the near-term and possible very minor savings in the long-term. The total FY 2016-17 operating budget of the State Racing Commission, Pennsylvania Gaming Control Board (PGCB) (Administration, General Operations and Tavern Games – Investigations) and Lottery (General Operations) is $99.3 million.[57] A new agency would likely fall under the jurisdiction of the Pennsylvania Gaming Control Board.

Potential savings from the consolidation of government entities usually comes from consolidation of human resource functions. However, in this case, the Horse Racing Commission's human resource personnel are currently part of the Department of Agriculture. It is unlikely that the Department of Agriculture would realize a significant reduction in human resource staff if Horse Racing Commission employees were moved to the PGCB. Similarly, the Pennsylvania Lottery's human resource function is housed in the Department of Revenue and would also not realize a material reduction in staffing levels as a result of the transfer of Lottery employees to the PGCB.

Another area of potential savings is the consolidation of similar job duties and elimination of duplicate services. As noted in the prior subsection, there is minimal overlap between the agencies, and the various gaming operations they regulate are quite different. As a result, there is likely little opportunity to consolidate staff duties. The exception to this conclusion could be a small number of higher-salaried staff. It is possible that minor consolidation at the top could occur if these three agencies were combined. It is estimated that the savings from such consolidation would be in the general magnitude of roughly $1 million to $2 million annually.

A final area of potential savings could be savings in non-personnel general operating expenses such as phone, internet, copiers, software licenses, *etc*. However, without significant reductions in staff, it is unlikely that consolidation would save more than a nominal amount (*i.e*., less than $100,000). It is also important to note that there would be transitional costs associated with consolidation that would likely reduce any savings in the near term.

Gaming Control Board," Monday, March 21, 2016 and written testimony submitted for the same event by the Pennsylvania Department of Revenue.
http://ldpc6.legis.state.pa.us/cfdocs/legis/TR/Public/tr_finder_public_action.cfm.

[57] 2017- 2018 Governor's Executive Budget. February 2017.

Consolidation of Thoroughbred and Harness Racing into One Entity

Although their original authorizing statutes were very similar, both racing commissions operated separately: the Harness Racing Commission under the Department of Agriculture and the Horse Racing Commission as an independent agency under the Governor's Office. The Horse Race Horse Industry Reform Act of 1981 brought the two commissions under the jurisdiction of the Department of Agriculture, but otherwise maintained their separate administrative structures.

Horse Racing Commission

Since its establishment in 1959, the Harness Racing Commission has consisted of three members, appointed by the Governor with advice and consent of Senate, and responsible for overseeing Standardbred harness racing in Pennsylvania. Similarly, the Horse Racing Commission, since its inception in 1967, has consisted of three members, also appointed by the Governor with advice and consent of Senate, with responsibility to oversee Thoroughbred horse racing in the Commonwealth.

In 1974, the Horse Breeding Fund, which is limited to Thoroughbred horses, was created. At that time, the Breeding Fund Advisory Committee was created, consisting of the following members:

- two members of the Pennsylvania Horse Breeders' Association, recommended by it
- one member representing the racetracks, recommended by them
- one member from the association presenting horsemen racing in Pennsylvania, recommended by it
- one member of the Horse Racing Commission, designated by it

The Advisory Committee was to assist and advise the Horse Racing Commission but had "no power in administrating the fund."[58] The Pennsylvania Horse Breeders' Association "as the responsible body for the registration and records of Pennsylvania-breds, shall advise the commission when called upon, shall determine the qualifications for Pennsylvania-bred horses and Pennsylvania sires" and shall annually be reimbursed for actual expenses for services rendered in its capacity as an advisor to the commission. Expenses for the advisory services of the association were the first payments to be made from the Breeders' Fund each year.[59]

Acts No. 7 and No. 114 of 2016 merged the two three-member commissions into one Horse Racing Commission within the Department of Agriculture. The Breeding Fund Advisory Committee was abolished and its membership merged into the new 10-member commission. The commission currently consists of:

[58] Act of December 30, 1974 (P.L.1115, No.358) § 17.1.
[59] *Ibid.*

- Four members appointed by the Governor as follows:
    - One individual representing the Thoroughbred horsemen's organizations in this Commonwealth selected from a list of at least 10 qualified individuals submitted by the thoroughbred horsemen's organizations.
    - One individual representing a Thoroughbred breeder organization in this Commonwealth selected from a list of at least 10 qualified individuals submitted by a thoroughbred breeder organization.
    - One individual representing the Standardbred horsemen's organizations in this Commonwealth selected from a list of at least 10 qualified individuals submitted by the Standardbred horsemen's organizations.
    - One individual representing a Standardbred breeder organization in this Commonwealth selected from a list of at least 10 qualified individuals submitted by a Standardbred breeder organization.
- One member appointed by each of the following, none of whom may be a member of a horsemen's organization or breeder organization:
    - The President pro tempore of the Senate.
    - The Minority Leader of the Senate.
    - The Speaker of the House of Representatives.
    - The Minority Leader of the House of Representatives.
    - The Secretary of Agriculture or the secretary's designee, who shall be a nonvoting ex officio member.
- One licensed doctor of veterinary medicine in this Commonwealth, who is not a member of a horsemen's organization or a breeder organization, appointed by the Governor.

This new commission contains two significant changes. First, while industry representatives were given an advisory role only with respect to the breeding fund under prior law, the new law gives them full representation on the Commission at-large. Additionally, the racetracks were mandated members of the advisory committee; they are not mandated members of the Commission, although one or more could be appointed by one of the legislative leaders.

The Commission is administered through the Office of Horse Racing, which is comprised of a Bureau of Thoroughbred Horse Racing and a Bureau of Standardbred Horse Racing. Administrative redundancies have been eliminated and the two bureaus now function separately only when it relates to Thoroughbred or Standardbred industry-specific differences. At this juncture, further consolidation does not appear feasible.

REGULATORY PRACTICES IN OTHER STATES

Act No. 7 and HR No. 616 directed the study to determine the best regulatory practices in other jurisdictions, such as New York, Ohio and Maryland and other states or provinces, and compare Pennsylvania's approach against the best regulatory practices in other jurisdictions.

Maryland

By referendum, Maryland legalized slot machines in 2008 and table games in 2012.[60] The 2012 referendum also granted permission for the state to license an additional casino in Prince George's County, now the MGM Grand at National Harbor across the Potomac River from Washington, D.C.[61] Maryland takes 20 percent of all table game revenue and diverts it to the Maryland Education Trust Fund (15 percent in the case of MGM National Harbor, as five percent is allotted to Prince George's County). The remaining 80 percent of table games revenue is retained by the casino. The amount diverted from slots varies from casino to casino, but the amount diverted to horse racing is in the form of a "purse dedication" account.[62] In other words, the bulk of the casino money diverted to horse racing ends supports purses for the winning owners.

In 2015, for example, slots and table games revenues were divided as follows: 37.3 percent, or $387 million, went to fund the Maryland Education Trust Fund; one percent, or $9.9 million, went to small, minority, and women-owned businesses; 3.5 percent, or $36 million, went to local impact grants; 1.1 percent, or $11.9 million, went to operating costs of the Maryland Lottery and Gaming Control Agency; and 51.9 percent, or $538.9 million was kept by the casinos.[63] Maryland is able to take nearly half of all casino revenue despite only taking 20 percent of table gaming revenue because it takes between 59 and 66 percent of all slot machine revenue.[64]

Approximately 5.1 percent, or $53 million, went to support horse racing in 2015.[65] Maryland does not statutorily determine how its Horse Racing Commission determines the individual recipients of its share of the casino money. Maryland's horse racing industry appears to need the support, as total handle fell from a high of $567 million in 1999 to just $173.8 million in 2014 – a 30.5 percent decline.[66] Despite the decrease in handle, the total amount paid out in

[60] Maryland Lottery and Gaming Control Agency, "Frequently Asked Questions," http://gaming.mdlottery.com/faq/.
[61] Ballotpedia, "Maryland Gaming Expansion Question, Question 7 (2012)," https://ballotpedia.org/Maryland_Gaming_Expansion_Question,_Question_7_(2012).
[62] Maryland Gaming FAQ, *Supra* note 60.
[63] Maryland Lottery and Gaming Control Agency, "Casino Gaming Fiscal Year 2015 Review," accessed December 19, 2016, http://mlgca.com/wp-content/uploads/LOTTER008906-01_FY15_MiniAnnualReport_HR.pdf.
[64] E.g. Maryland Lottery and Gaming Control Agency, "November 2016 Financial Numbers," accessed December 28, 2016, http://gaming.mdlottery.com/wp-content/uploads/2016/12/November_press_release_slots-TG.pdf.
[65] "Casino Gaming Fiscal Year 2015 Review," *Supra*, note 63.
[66] Maryland Racing Commission, "Ninety-Fifth Annual Report of the Maryland Racing Commission (2014),"

purses rose from roughly $1 million in 2009 to $8 million in 2014.[67] This dichotomy between falling handle and rising purses is explained by the increase in slot revenue funds being diverted to horse racing.

Similar to the Commonwealth, Maryland allots some portion of slots money to reward breeders and owners. The Code of Maryland Regulations allow for awards to be given to the breeders and owners of Maryland-bred horses, as well as to the owners of their sires, in accordance with a formula devised by the Racing Commission with the advice of the Maryland-Bred Race Fund Advisory Committee.[68] This regulation was promulgated in 2013 and, according to the state of Maryland, has "re-energized" that state's horse breeding industry.[69]

Delaware

Delaware legalized slots gambling with the Horse Racing Redevelopment Act of 1994. The 1994 Act was intended to – and did, according to the Delaware Department of Finance – "save" the state's horse industry, as well as provide extra money for the state's general fund.[70] Delaware opened casinos before Pennsylvania and Maryland, but now that casinos are operating throughout the mid-Atlantic region, Delaware is experiencing fierce competition for gamblers.[71] Delaware's slot machines generated $373.9 million in 2013, the lowest amount since 1998, and nearly $200 million less than the peak in 2006. This is despite the fact that Delaware had more than twice as many slot machines in 2013, than it did in 1998. Approximately 11 percent of slots revenue goes to fund horse racing purses.[72]

Delaware's horse racing industry is declining, as handle has decreased from a high of $384 million in 2000 to $135 million in 2014.[73] The decline of racing in Delaware is also apparent in total purses paid, down from a high of $38 million in 2000 to $14.7 million in 2014. This is despite purses being partially supported by slots revenue. A 2014 report issued by Delaware is the latest information available. Similar to the Commonwealth and Maryland, Delaware awards 25 percent of the race purse to breeders and owners of Delaware-residing horses that win, place, or show at Delaware Park race course.[74]

September 1, 2015, https://www.dllr.state.md.us/racing/mrcannrep2014.pdf.

[67] Maryland Racing Commission, "Report to the General Assembly," January 1, 2015, https://www.dllr.state.md.us/racing/racingvltreport.pdf.

[68] Md. Code Regs. § 09.10.01.49.

[69] "Maryland Racing Commission Report to the General Assembly," *Supra*, note 67.

[70] State of Delaware, Department of Finance, *Executive Summary of the Committee Established Pursuant to House Resolution 63*, May 30, 2003, http://finance.delaware.gov/publications/Gaming/E_SumV.pdf.

[71] Wade Malcolm, "Casino Competition Hits Delaware in the Wallet," June 20, 2013, *USA Today*, http://www.usatoday.com/story/money/business/2013/06/20/delaware-gambling-competition/2441541/.

[72] University of Nevada at Las Vegas Center for Gaming Research, "Delaware Gaming Summary," accessed December 20, 2016, http://gaming.unlv.edu/abstract/de_main.html.

[73] Delaware Thoroughbred Racing Commission 2014 Year in Review, http://dda.delaware.gov/Thoroughbred/downloads/annualrpts/2014_DTRC_AR.pdf.

[74] Delaware Certified Thoroughbred Program, "DCTP Advisory Board Update for 2017," http://dctp.weebly.com/.

West Virginia

West Virginia also uses gambling revenue to support purses and a breeder's fund. Like most other states that host horse racing, total handle is down, standing at $451.9 million in 2015, the lowest since 2000 and off the 2006 high of $776.5 million. West Virginia has only two Thoroughbred racetracks, Hollywood Casino at Charles Town Races and Mountaineer Casino Racetrack and Resort. Between these two tracks, the additional financial rewards to owners, breeders, and owners of sires (known as the Thoroughbred Development Fund) amounted to $6.6 million in 2014.[75] In 2015, total distributions from the Thoroughbred Development Fund was $5.5 million.[76]

The Mountain State had an 11 year head start on Pennsylvania legalizing slots in 1995. Table games were added in 2007. Casino gambling revenue peaked in 2007 at $973.5 million, and fell to $775 million in 2013, the last year for which data are available.[77] In its most recent 10-Q filing with the Securities & Exchange Commission, Penn National Gaming informed investors that its northeast regional operations incurred a $9 million loss, in part due to Hollywood Casino and Raceway in Charles Town, West Virginia, facing increased pressure from casinos in Maryland.[78]

The formula by which West Virginia allots funds to the Thoroughbred Development Fund and purses is not clear. However, one study commissioned by the West Virginia Racing Commission found that "casino revenue represented approximately 88 percent of the revenue to breeders and owners" from purses. Pari-mutuel wagering handle provided $12.7 million in purse money while slots provided $91.7 million. Overall, roughly 10 percent of slot revenue went to support the horse racing industry in West Virginia, down from 15 percent in 1995 when slots were first introduced.[79]

New York

New York permitted video lottery terminals ("VLTs") – a term that designates slot or video poker machines that are controlled from one central computer – to be installed at the state's racetracks, to provide "additional funds for education" and "much needed financial assistance to the racetracks."[80] The measure was legislatively approved in 2001; the first VLTs were installed in 2004 and nine of New York's racetracks now have slots. New York State takes most of the slots revenue in accordance with a progressive tax structure: racinos "are allowed to keep 32% of

[75] Annual Report of the West Virginia Racing Commission to the Governor for 2015, January 29, 2016, http://www.racing.wv.gov/SiteCollectionDocuments/Annual%20Reports/Annual%20Report%202015%2020160218e%20Book.pdf. Figure includes handle on the greyhound dog racing tracks.
[76] West Virginia Racing Commission Thoroughbred Development Fund Earnings Percentage Calculation, 2015, http://www.racing.wv.gov/SiteCollectionDocuments/Thoroughbreds/tdf2015payouts.pdf.
[77] University of Nevada at Las Vegas Center for Gaming Research, "West Virginia Gaming Summary," http://gaming.unlv.edu/abstract/wv_main.html.
[78] Penn National Gaming Inc., 3Q 2016 10-Q filing, 11/4/2016, Commission File No. 0-24206, *e at* SEC.gov.
[79] Eric Bowen et al., West Virginia University College of Business and Economics, Bureau of Business and Economic Research, "The Economic Impact of the Thoroughbred and Greyhound Racing Industries on West Virginia's Economy 2012," January 2014, http://www.racing.wv.gov/SiteCollectionDocuments/Documents/study.pdf.
[80] New York Office of the State Comptroller, "Administration of Video Lottery Terminals," Report No. 2010-S-56, July 2012, http://osc.state.ny.us/audits/allaudits/093012/10s56.pdf.

revenues from the first $50 million; 29% of revenues from $50 million to $150 million; and 26% on all revenues over $150 million."[81]

According to data from the New York State Gaming Commission, in fiscal year 2016 (April 2016 to November 2016, the last month for which data are available), New York State took in $613.2 million in "education contribution," or 45 percent of all total slot machine revenue. The operators themselves were permitted to keep $474.8 million, or 35 percent of all revenue. However, the operators were also permitted 8.5 percent of all revenues for "marketing," 10 percent for "administration," and one percent for capital investment.

The subsidies for horse racing are deducted from the 35 percent of revenue left over for the racino operator.[82] Other than federally-regulated tribal gaming), New York State does not have table games or free-standing casinos but has approved three free-standing casinos in upstate regions to be built in the coming years.[83]

Like the Commonwealth, the Empire State has a breeder's development program whereby slots revenue subsidizes awards for winning state-bred horses. Breeders are awarded 30, 15, or 15 percent of the amount of the purse for a win, place, or show, respectively, if the horse is New York-bred and New York-sired. Breeders are awarded 15, 7.5, and 7.5 percent for a win, place, or show, respectively, if the horse is New York-bred but not sired by a registered New York stallion. The owner of a New York-based stallion who sires New York-bred offspring who win, place, or show in a New York race will receive 10 percent of the purse as an award.[84] These figures are for Thoroughbred horses only.

New York State maintains a separate fund for Standardbred horses, the Agriculture and New York State Horse Breeding Development Fund.[85] According to their latest available reports, the Fund spent $13.7 million on purses for races; slightly more than $949,000 was spent on breeder's awards; approximately $131,000 on equine education; and nearly $300,000 was used for the Harry M. Zweig Grant for Equine Research.[86] It is not clear if the Standardbred horse breeder's awards are allotted according to the same formula used by Thoroughbred horses, or if a different formula is used. However, the Fund states that horses that finish fifth or better will receive some form of compensation. Additionally, New York pays a "residency award," which is a separate amount of money paid to breeders who keep their mares in New York State.[87]

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[81] University of Nevada at Las Vegas Center for Gaming Research, "New York Gaming Summary," http://gaming.unlv.edu/abstract/ny_main.html.

[82] New York State Gaming Commission, "Fiscal Year 2016/2017 – Statewide Video Gaming Totals," https://www.gaming.ny.gov/pdf/finance/Web%20Site%20Report%20-%20Statewide%20Totals.pdf.

[83] Charles V. Bagli, "New York Awards Licenses to 3 Casinos," *New York Times*, December 21, 2015, http://www.nytimes.com/2015/12/22/nyregion/new-york-awards-licenses-to-3-casinos.html.

[84] New York Thoroughbred Breeding and Development Fund, "Award Rates," http://www.nybreds.com/awards-program/award-rates/.

[85] Agriculture & New York State Horse Breeding Development Fund, http://nysirestakes.com/.

[86] Agriculture & New York State Horse Breeding Development Fund, Measurement Report 2015, http://nysirestakes.com/backend/News/news_upload/2015_Measurement_Report_468.pdf.

[87] Agriculture & New York State Horse Breeding Development Fund, "Breeding," http://nysirestakes.com/breeding/.

New York's system, whereby slots are only permitted at existing racetracks and free-standing casinos are non-existent, has appeared to stabilize New York's horse racing industry. In 2015, handle at Belmont Park, the home of the Belmont Stakes, one of the three races in the Triple Crown, was up 8 percent. Aqueduct Racetrack, in New York City, saw a 4.3 percent increase. In 2014 and 2015 both tracks were profitable independent of any slots money.[88] Overall, New York State racing handle was $1.57 billion, up slightly from the previous two years.[89]

New Jersey

New Jersey is well-known for its casinos. Unlike the Commonwealth and its other neighbors, the Garden State has had legalized casino gambling for a much longer period of time, relatively speaking. In an effort to revitalize the ailing shore town of Atlantic City, the state's residents passed a referendum in 1976 allowing for casino gambling in Atlantic City only. The referendum was followed by the 1977 enactment of the Casino Control Act ("CCA"), which governs casino establishment and operation. This was followed by the opening of International Resorts in 1978, the only casino resort in the United States outside of Las Vegas at the time. The CCA was later amended in 1984 to create the Casino Reinvestment Development Authority ("CRDA") and require casinos to invest two percent of their adjusted gross revenues into CRDA projects across the state.[90] CRDA used its funds to host beach concerts in Atlantic City, support retail and low-income housing developments in and around Atlantic City, and created a new non-profit organization designed to draw convention business to Atlantic City.[91]

New Jersey's horse racing is regulated by the New Jersey Racing Commission, which is a part of the New Jersey Office of the Attorney General.[92] New Jersey has three horse racing tracks – one Thoroughbred, one Standardbred, and one that hosts both.[93] New Jersey had a fourth track, located in Atlantic City, but it closed in 2015.[94] Two of the remaining three tracks, Meadowlands and Monmouth Park, are state-owned and operated by the New Jersey Sports & Exposition Authority.

Although no casino revenues are directly pledged to horse racing, some casino money had been making its way to the industry via the CRDA. According to one report the tracks received roughly $17 million per year from the CRDA to enhance purses. The rationale behind the CRDA

[88] Teresa Genaro, "NYRA: Handle, Income, Attendance Increase," December 9, 2015, *Blood Horse*, http://www.bloodhorse.com/horse-racing/articles/202666/nyra-handle-attendance-income-increase.
[89] New York Gaming Commission, "2014 Annual Report," June 30, 2015, https://www.gaming.ny.gov/pdf/AnnualReport2014FinalSM.pdf.
[90] Harriett Newburger *et al*., Federal Reserve Bank of Philadelphia, "Atlantic City: Past as Prologue," https://www.philadelphiafed.org/community-development/publications/special-reports/.
[91] New Jersey Casino Reinvestment Development Authority, "Annual Report 2014," http://www.njcrda.com/wp-content/uploads/CRDA-2015-Annual-Report_RS.pdf.
[92] New Jersey Horse Racing Commission, "About," http://www.nj.gov/oag/racing/about.html.
[93] New Jersey Horse Racing Commission, "New Jersey Racetracks," http://www.nj.gov/oag/racing/tracks.html.
[94] David Weinberg, "After 69 years, A.C. Race Course to Close Today," *The Press of Atlantic City*, January 16, 2015, http://www.pressofatlanticcity.com/communities/hamilton/after-years-a-c-race-course-to-close-today/article_8d026636-9c3d-11e4-a797-679a2ace9820.html.

funding was competition from Pennsylvania and New York tracks, both of which receive casino-derived revenues.[95]

This funding stream appears to be evaporating, as Atlantic City has seen five casinos close and revenue fall by more than 50 percent since 2006, with a resultant decrease in CRDA funding.[96] Additionally, according to a report completed by researchers at Rutgers, those purse-enhancing funds from the CRDA ceased as of 2010.[97]

None of the casino revenue is directed to the breeders in the form of awards, unlike Pennsylvania and other competing states. Foals bred in New Jersey have fallen 75 percent, from a peak of 1,140 in 1987 to 291 in 2008.[98] Handle on both Standardbred and Thoroughbred horse racing in New Jersey was $308.9 million in 2015,[99] down from $320 million in 2014.[100] This amount is more than Maryland and Delaware, but less than West Virginia and Pennsylvania.

Ohio

Ohio is similar in area and population to Pennsylvania. Ohio is home to seven tracks, all of them racinos offering slots gambling to patrons. None of the racinos in Ohio have table games. In addition to the racinos, there are four standalone casinos, in Toledo, Cincinnati, Cleveland, and Columbus. Ohio's tracks host Thoroughbred, Quarter Horse, and Standardbred races.[101] Total handle on Ohio tracks was $171.5 million in 2015. Handle peaked in 1998 at $628.7 million.[102] Despite having more agricultural space and four more tracks – all of which have slot machines – money wagered on Ohio races is 45 percent less than the amount wagered on New Jersey races.

Ohio funds awards for breeders with casino revenue via a fund for Standardbreds and a fund for Thoroughbreds. However, Ohio has an opaque system of distributing its share of casino revenue. In fiscal year 2016 (July 2015-June 2016), Ohio racinos took in $868.9 million in revenue, with $574.9 retained by the racinos and $291 million allotted to the Ohio lottery.[103] A

[95] Thalheimer Research Associates, Inc., "National and New Jersey Race Horse Industry Trends and Events and the Outlook for the New Jersey Thoroughbred Race Horse Industry," prepared on behalf of the New Jersey Thoroughbred Horsemen's Association, December 2010, http://www.njbreds.com/pdfs/TRA_Inc_Report.pdf.
[96] University of Nevada at Las Vegas Center for Gaming Research, "Atlantic City Gaming Revenue: Statistics for Casino, Slot, and Table Win 1978-2015," January 2016, http://gaming.unlv.edu/reports/ac_hist.pdf.
[97] Karyn Malinowski and Paul D. Gottlieb, Rutgers: The State University of New Jersey, New Brunswick "2014 State of the New Jersey Horse Racing Industry: Post-Report of the Governor's Advisory Commission on New Jersey Gaming, Sports, and Entertainment,"
http://esc.rutgers.edu/wp-content/uploads/2014/12/2014_Health_Of_Horse_Racing.pdf. (Hereinafter, "Rutgers's Report").
[98] "National and New Jersey Race Horse Industry Trends," *Supra*, note 95.
[99] New Jersey Horse Racing Commission, "2015 Annual Report,"
http://www.nj.gov/oag/racing/downloads/ar2015.pdf.
[100] New Jersey Horse Racing Commission, "2014 Annual Report,"
http://www.nj.gov/oag/racing/downloads/ar2014.pdf.
[101] Ohio State Racing Commission, "Commercial Tracks/Live Dates,"
http://www.racing.ohio.gov/Trackdates.html.
[102] Ohio State Racing Commission, "2015 Annual Report," May 16, 2016,
http://www.racing.ohio.gov/pdfs/AnnualReport.pdf.
[103] Ohio Lottery, "VLT Results for FY 2016."

total of $7.9 million in gambling revenue made its way to the horse racing industry, including distributions of $1.5 million each in awards from the Standardbred Development Fund and the Thoroughbred Race Fund. The rest went to finance purses and track maintenance.[104]

The Ohio Thoroughbred Race Fund distributes awards from a percentage of the purse ranging from 60 percent for a first place finish to 2 percent for a sixth place finish for an Ohio-bred horse. Thirty-five percent of the purse of all Ohio-funded stakes races are funded by the Thoroughbred Race Fund.[105] The broodmare (mother of a winning horse) and the stallion also receive 15 and 10 percent, respectively, of the race's purse if their offspring win, place, or show.[106] The Standardbred Development Fund is partially funded by VLT revenue and the "vast majority" of the Fund's money is spent supporting sire stakes races. However, a "portion of the fund is used to promote the breeding and racing of Ohio-bred harness horses."[107]

Virginia

Unlike the other states profiled, Virginia does not permit any casino gambling at all. Therefore, Virginia's horse racing industry cannot be buoyed by casino revenue. Despite this, Virginia still has a breeder's incentive program, paying awards funded by an additional one percent takeout. According to the Virginia Thoroughbred Association, the program also pays awards to Virginia-bred horses that win races in other states, a unique feature among breeder's incentive programs in the mid-Atlantic region. In 2015, the fund paid out $770,000 to Thoroughbred and Standardbred breeders, less than half of the $1.588 million paid in 2013.[108] Total handle on all Virginia tracks was $79.7 million in 2015, down sharply from a two-decade high of $200.9 million in 2007.[109] Virginia offers steeplechase in addition to Thoroughbred and Standardbred racing.

Conclusions

Comparing and contrasting these neighboring states to the Commonwealth, several patterns are evident. First, as is the case in the Commonwealth, the horse racing and breeding industries are heavily dependent upon casino gambling revenue in just about every state. Second, other states take considerably larger cut of casino gambling revenues, and spend it on a more diverse array of state programs. For instance, Maryland takes nearly half of all casino gambling revenues, funneling more than one-third of its take to education.

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https://www.ohiolottery.com/assets/pdf/VLT-Revenues/2016/June/VLT-Statewide-Monthly-Revenue-Report-FY-2016.pdf.

[104] Ohio 2015 Annual Report, *Supra* note 102.

[105] Ohio Thoroughbred Breeders and Owners, "Ohio Program," http://www.otbo.com/ohio-Thoroughbred-fund/ohio-program/.

[106] Tom LaMarra, "Ohio-Bred Race Fund Increases for 2016," January 29, 2016, *Blood Horse*, http://www.bloodhorse.com/horse-racing/articles/207678/ohio-bred-race-fund-increases-for-2016.

[107] Ohio State Racing Commission, "Ohio Standardbred Development Fund," http://www.racing.ohio.gov/Development.html.

[108] Virginia Thoroughbred Association, "Virginia Breeder's Fund," http://www.vabred.org/vbf/.

[109] Virginia Racing Commission, "2015 Annual Report," February 26, 2016, http://vrc.virginia.gov/document/2015%20Annual%20Report.pdf.

Third, as was evinced by Penn National Gaming Inc.'s filings with securities regulators, the market for casino gambling has become saturated and the money casino operators and state governments are able to ply from casino patrons is beginning to plateau. New York is licensing another three casinos.[110] There may come a time when casinos outside of Atlantic City begin to see financial difficulty. Delaware's casinos have already asked the state to lower their tax burden.[111]

Essentially, mid-Atlantic states' horse racing industries are competing against each other using revenue taken by the state from the casinos. As the Rutgers's report noted, "[t]rainers and owners follow the purse money and the only way racing in a state becomes sustainable is for the racing industry to offer a competitive purse structure and for a sufficient number of racing opportunities to make it worth-while to race in a particular state."[112]

A Lesson from the Great White North

Sharing a border across Lake Erie, Pennsylvania and Ontario share similar parallels in their respective jurisdictions' recent horse racing history. Like Pennsylvania and the rest of the states, Ontario, Canada, faced a decline in both the number of attendees and total handle being wagered on horse tracks in the early to mid-1990s. In 1998, the Ontario provincial government instituted the "Slots-at-Racetracks," program (SARP), whereby tracks would be permitted to have slot machines on premises with the goal of drawing bigger crowds to the tracks, generating more interest in horse racing, and shoring up the finances of those in the horse racing industry by directing 25 percent of slots revenue to horse racing.

However, it wasn't long before the "racing industry quickly became hooked on slot revenue and fractious industry groups squabbled over how best to allocate it." Further, "the industry developed a dangerous level of entitlement to the revenue from slots, a condition that deluded many into thinking the party was never going to end." *Thoroughbred Racing* somberly declared "it was inevitable from the start that the government would eventually raid horse racing's share of slot revenue."[113]

Prior to SARP, Canada was experiencing widespread economic malaise. This general economic downturn impacted the finances of Canada's most populous province, Ontario. In an attempt to generate revenue for the provincial government, not only from locals but also from American tourists who would be attracted by the favorable U.S. to Canadian Dollar exchange rate Ontario opened two free-standing commercial casinos in Windsor, across the river from Detroit. The casinos-for-revenue project was fairly successful, and the Ontario provincial government decided to expand on that success by permitting horse tracks to install slot machines.

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[110] "New York Awards Licenses," *Supra,* note 83.
[111] "Casino Competition Hits Delaware," *Supra,* note 71.
[112] "Rutgers's Report," *Super* note 97.
[113] Dave Briggs, "Ontario's Cautionary Tale: Lessons for Every Slots Jurisdiction," *Thoroughbred Racing,* April 7, 2014, https://www.thoroughbredracing.com/articles/ontario%E2%80%99s-cautionary-tale-lessons-every-slots-jurisdiction/.

Twenty percent of all slots revenue was allocated to the horse racing industry. This 20 percent was then divided evenly between the racetracks and the horsemen, who received their share in the form of increased purses. Five percent went to the local municipalities which hosted race tracks, and the remaining 75 percent went to the Ontario government. The Ontario government owned the slots, and there were no private gaming companies owning slots at the racetracks. SARP provided roughly 65 percent of Ontario purses.[114]

Soon after the construction of the casinos in Windsor and implementation of slots at the various tracks, Ontario's government began experiencing fiscal problems, until finally in 2012 it found itself with a 16 billion Canadian Dollar deficit. According to the recommendations of the Drummond Report, a study commissioned by the Ontario government to find ways to reduce the deficit and led by economist Don Drummond, the horse racing industry should "more appropriately [be] sustained by the wagering revenues it generates."[115]

Rather than simply shunt some or all of the 20 percent of slots revenue that was going to the horse racing industry to the Ontario government, Ontario decided to completely reform the gambling regime in the province, shifting it to the private sector. Second, the province would be broken up into "zones" which would each get a certain number of gaming licenses. Ontario also removed slot machines from three race tracks, although 13 other tracks still have them. The share of the revenue once dedicated to horse racing has all been shifted to the Ontario government.[116]

This reform did not, however, estimate private sector growth in the market. No new casinos were built in Ontario, and Ontario's remaining casino in Windsor, a Caesars Entertainment property, faces steep competition from three newer casinos in Detroit. For horse racing, the losses from the end of SARP meant 345 million Canadian Dollars less in purses, and resulted in a 39 percent cut in race dates, a 43 percent decline in the number of stallions standing in Ontario, the number of licensed horse owners is down 31 percent, and the number of Ontario mares bred by Standardbred breeders is down 60 percent.

Recognizing the loss to the industry from elimination of the slots funds the Ontario government pledged in 2013 to provide 500 million Canadian Dollars over five years to help support the horse racing industry.[117] In 2016, the Ontario government promised two more years of funding, bringing the total to 700 million Canadian Dollars through 2021. Currently, there is a proposal to fund the horse racing industry with 1.6 billion Canadian Dollars in a 17-year plan,

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[114] Dave Briggs, "Ontario's Cautionary Tale: How Tracks Ended Up With Slots," *Thoroughbred Racing*, April 8, 2014, https://www.thoroughbredracing.com/articles/ontario%E2%80%99s-cautionary-tale-how-tracks-ended-slots/?tid=Regulatory%20&%20Wagering.

[115] Dave Briggs, "Ontario's Cautionary Tale: Why the Slots Program Was Cancelled," *Thoroughbred Racing*, April 11, 2014, https://www.thoroughbredracing.com/articles/ontario%E2%80%99s-cautionary-tale-why-slots-program-was-cancelled/.

[116] *Ibid.*

[117] Dave Briggs, "Ontario's Cautionary Tale: What Other Jurisdictions Must Learn From Ontario," *Thoroughbred Racing*, April 11, 2014, https://www.thoroughbredracing.com/articles/ontario%E2%80%99s-cautionary-tale-what-other-jurisdictions-must-learn-ontario/.

beginning in 2022. The government of Ontario expects to receive two billion Canadian Dollars in gambling revenue through fiscal year 2016-2017, which ends in March 2017.[118]

[118] Ashley Csanady, "Ontario Liberals Mull $1.6B in Additional Subsidies for Struggling Horse-Racing Industry," *National Post*, October 16, 2016, http://news.nationalpost.com/news/canada/ontario-liberals-mull-1-6b-in-additional-subsidies-for-struggling-horse-racing-industry.

PENNSYLVANIA AUDITOR GENERAL'S SPECIAL PERFORMANCE AUDIT

In 2014, the Auditor General's office published a Special Performance Audit of the State Racing Fund, as administered by the Department of Agriculture. The issues and recommendations raised in the audit are repeated in brief here, as well as a response from the Department of Agriculture (PDA) as to what has been done in the two years following the audit. The audit found that the State Racing Fund's viability was in jeopardy due to declining wagering tax revenue, the structure of the Race Horse Industry Reform Act's limits on other sources of revenue, and the Department's use of State Racing Fund monies for expenses not directly related to the work of the Horse Racing Commission or the Harness Racing Commission.

First, the Audit noted that taxes collected on wagering had fallen sharply from 2009-2010 to 2012-2013, from $14.6 million to $11 million. Additionally, total revenue including uncashed tickets (which become property of the state), license fees, breakage (the difference between the true odds on a horse and the odds paid to the bettor rounding down to the nearest tenth), and admissions taxes (paid by the track at three cents per person), was down from $18.3 million in 2009-2010 to $14.4 million in 2012-2013.

Because of this shortfall, the State Racing Fund in 2012-2013 borrowed money from the state's General Fund and transferred costs to the PDA general government operations appropriation, Pennsylvania Sire Stakes Fund, the Department of Revenue (for the cost of collections). The State Racing Fund also cancelled two contracts, and deferred payment to a vendor. Similarly, in 2013-2014, the audit noted that the State Racing Fund borrowed money from the Pennsylvania Breeding Fund, the Pennsylvania Sire Stakes Fund, and the Pennsylvania Standardbred Breeders Development Fund, in anticipation of legislation enacting a $4.2 million transfer from the Pennsylvania Race Horse Development Fund. The State Racing Fund also transferred the cost of four employees to the PDA general government operations appropriation, and two employees to the Sire Stakes Fund.[119]

Second, the audit discovered that PDA used State Racing Fund monies to pay personnel expenses of PDA that were unrelated to the work of either the Horse Racing Commission or the Harness Racing Commission. This was done in two separate ways. First, the PDA charged the State Racing Fund directly for the personnel costs of several PDA personnel, most of whom provided limited services to the Commissions. Second, the PDA charged the Fund for "shared services," which was for services provided to the Commissions by PDA employees.

[119] Department of the Auditor General, Bureau of Special Performance Audits, *State Racing Fund as Administered by the Department of Agriculture*, June 17, 2014, http://www.paauditor.gov/audit-reports?from=&to=&type=Special+Performance&category=&county=&keywords=state+racing+fund.

Although the PDA can and does charge the State Racing Fund for actual work done by PDA staff on the Commissions' behalf, roughly $5 million in personnel costs during the four year audit period was charged to the Commissions that PDA could not account for as being related to State Racing Fund activities. PDA charged these salaries to the State Racing Fund for direct personnel costs of its own employees, without demonstrating how or to what extend these employees engaged in Commission-related responsibilities.

The Auditor General found it to be reasonable to expect that PDA would only charge expenses to the State Racing Fund if they were directly related to the work of the Commissions. PDA does not keep track of the time staff actually spend doing Commission-related work, but instead uses a cost-allocation formula to calculate how much to charge the State Racing Fund as well as the other restricted funds it manages. However, PDA did not follow the cost-allocation formula, overcharging the State Racing Fund by more than $700,000 combined in fiscal years 2011-2012 and 2012-2013. PDA related to the Auditor General that these overcharges were made to balance PDA budget in those years. This is in addition to the $5 million charged for direct personnel costs.

As a result of the declining revenue from wagering taxes and PDA's use of with State Racing Fund dollars to balance its budget, the Fund was in jeopardy of becoming financially insolvent. The audit propose several solutions. PDA should not use State Racing Fund money to balance its budget. Further, PDA should not directly bill the State Racing Fund for personnel costs until it could develop a system for its employees to document the actual amount of time spent on racing commission work.

Additionally, part of the solution for the State Racing Fund budget gap was to shore up revenues. To that end, the audit suggested that the Horse Race Industry Reform Act be amended to uncap the maximum occupational license fee, as well as to develop new revenue streams such as introducing vendor licensing fees for anyone who has a connection to wagering.[120]

Since the 2014 Auditor General's Report, Act No. 7 of 2016 was enacted to reform to the horse racing industry. Act No. 7 eliminated the separate commissions for Thoroughbreds and Standardbreds. It established the State Horse Racing Commission and the Office of Horse Racing, with the Bureau of Thoroughbred Horse Racing and the Bureau of Standardbred Horse Racing, each with oversight over the conduct of their respective breed's racing.[121] The Department's provision of shared administrative services must be billed to the State Racing Fund, but can only be for "actual costs of providing the services, staff and facilities, including salaries, benefits and expenses of employees providing the shared administrative services."[122] The Department must keep records of these expenses.

[120] Department of the Auditor General, Bureau of Special Performance Audits, *State Racing Fund as Administered by the Department of Agriculture*, June 17, 2014, http://www.paauditor.gov/audit-reports?from=&to=&type=Special+Performance&category=&county=&keywords=state+racing+fund.
[121] 71 P.S. § 720.31(a) and (d).
[122] 71 P.S. § 720.31(n).

Additionally, Act No. 7 raised the maximum allowable occupational licensing fee to $500 and broadened the category of who could be required to obtain an occupational license to "other individuals participating in horse racing and all other persons required to be licensed as determined by the commission."[123] The State Racing Fund is now overseen by the State Treasury and is funded by a 1.5% tax on win, place, or show wagers and a 2.5% tax on exotic wagers.[124] The cost of enforcement of medication rules and regulations will be paid by the slots-funded Pennsylvania Race Horse Development Fund until 2020, after which time the costs will be borne by the State Race Horse Commission.[125] The post-audit changes implemented by PDA, as well as the statutory structure established in Act No. 7 (and re-enacted in Act No. 114 of 2016)[126] should more than adequately provide the procedural safeguards sought.

[123] 71 P.S. § 720.43(a)-(b).
[124] 71 P.S. § 720.54.
[125] 71 P.S. § 720.94.
[126] Act No. 114 of 2016 moved the reform act to the Agriculture Code at Title 3, Chapter 93 of the PA Consolidated Statutes.

PENNSYLVANIA EQUINE TOXICOLOGY AND RESEARCH LABORATORY

Among the directives found in HR No. 616 and Act No. 7 for the Commission are several that relate to equine toxicology. The Commission was directed to:

- perform an evaluation of the cost effectiveness of the Pennsylvania Equine Toxicology Research Laboratory
- compare the laboratory's functions to other jurisdictions
- consider the imposition of increased fines and the assessment of Pennsylvania Equine Toxicology Research Laboratory costs against those found to have engaged in the impermissible doping of race horses
- Examine how to strengthen property owner rights in the ejectment of bad actors in racing.

Cost Effectiveness

The Research and Testing Laboratory

The Pennsylvania Equine Toxicology Research Laboratory (PETRL) "performs equine drug testing for racetracks in the Commonwealth" to screen, confirm and quantify "the presence of illegal drugs in race horse plasma or urine samples . . . to help ensure the integrity of the sport" and the welfare of the horses[127] along with safeguarding the public interest.[128] "Every winner of each race . . . has a post-race sample collected (either blood or urine – often both), and race stewards are empowered to send additional horses to the test barn following a race" with positive drug findings reported to Pennsylvania's State Horse Racing Commission.[129] In partnership with Penn Vet Equine Pharmacology Laboratory at the University of Pennsylvania, PETRL has developed sophisticated methods to identify and quantify a large number of drugs in horse blood or urine.[130] With these methods, the PETRL group has tested and analyzed over 30,000 post-race blood and

[127] Penn Vet Equine Pharmacology Lab., http://infinity.vet.upenn.edu/research/research-laboratories/research-laboratory/equine-pharmacology-laboratory (2017).
[128] 58 Pa. Code § 163.302(a).
[129] Pa. Equestrian, New Bolton Lecture: The Dope on New Drug Research & Testing, http://www.pennsylvaniaequestrian.com/news2013/june/New-Bolton-Lecture-The-Dope-on-New-Drug-Research-and-Testing.php (June 2013).
[130] https://www.vet.upenn.edu/research/research-laboratories/research-laboratory/equine-pharmacology-laboratory.

urine samples in each of the last three fiscal years.[131] The goal of the laboratory is to ensure that no foreign, performance-enhancing substances have undermined the legitimacy of race results or threatened the health of racing Thoroughbreds or Standardbreds in the Commonwealth.[132] For that purpose, PETRL receives funding through the Pennsylvania State Horse Racing Commission. Taxes "imposed on a licensed racing entity or secondary pari-mutuel organization" and collected are used to administer and enforce Pennsylvania's law relating to race horse industry reform.[133] These collected taxes and interest are appropriated to the commission and the Department of Revenue.[134] If this annual revenue is more than enough for these appropriations, half of the excess is carried forward to the next fiscal year remaining in the State Racing Fund to first be applied to the cost of equine testing with any remainder of this half available for the commission's budgeted expenses.[135]

In calendar year (CY) 2015, State Racing Commission expenditures for PETRL were $2.03 million, which comprised 16.3 percent of total spending by the research laboratory and State Racing Commission together.[136] Expenditures can be broken down into three categories, (1) Personnel services (salary and benefits, 13 percent of PETRL expenditures), (2) Operating Expenses, (laboratory supplies, equipment leases, the contract with the University of Pennsylvania, other operating expenses, 82 percent of total PETRL expenditures), (3) Non-Expense Items (administrative billing to the Pennsylvania Department of Agriculture, 5 percent of PETRL expenditures). Table 2 displays a three-year history of reported PETRL expenditures. From 2013 to 2015, expenditures for PETRL comprised roughly 16.5 percent of total Racing Commission expenditures

[131] 2016-17 Governor's Executive Budget, p. E8-10; http://www.budget.pa.gov/PublicationsAndReports/CommonwealthBudget/Documents/2016-17%20Proposed%20Budget/2016-17%20Budget%20Document%20Web.pdf.
[132] *Ibid.*
[133] 3 Pa.C.S. § 9334.
[134] 3 Pa.C.S. § 9334(c)(1).
[135] 3 Pa.C.S. § 9334(c)(2). The other half of any excessive annual revenue would be credited equally to Pa. Breeding and Sire Stakes Funds.
[136] State Racing Commissions spent $10,426,770 making the total $12,457,913. Pa. Dep't of Agric., *Pa. Horse & Harness Racing Comm's 2015 Annual Rep*. 6, http://www.agriculture.pa.gov/Protect/RacingCommission/Documents/2015%20Racing%20Annual%20Report.pdf.

Table 2
PETRL Expenditures
2013-2015

PETRL Expenditures	2013	2014	2015
Personnel	$508,202	$306,545	$262,448
Operating Expenses	$1,477,874	$1,987,189	$1,656,695
Non-Expense Items	$250,000	$112,000	$112,000
PETRL Total	$2,236,075	$2,405,733	$2,031,143
Percentage of Total[1]	16.1%	17.1%	16.3%

[1] PETRL expenditures as a percentage of total Racing Commission expenditures.

Source: PA State Racing Commission Annual Report, 2015.

Although personnel services represented slightly more than 87% of the racing commissions' expenditures, they represented only almost 13% of the research laboratory's expenditures.[137] The research laboratory's operating expenditures represented slightly more than 85½% of its spending, with slightly more than 55% of its operating expenditures paying for a contract with University of Pennsylvania.[138] These percentages of expenditures on personnel services for either the commission or the laboratory will not be perpetuated because the Pennsylvania Race Horse Testing Program shifts a portion of these percentages, chiefly to include collection of the samples. Overall, the expenditures between the racing commissions and the research laboratory decreased between one and two percent from 2014 to 2015.[139] Looking at the past six years of total expenditures reported by the racing commissions, the spending has been relatively flat in absolute dollar amounts, with the lowest amount being spent in 2015[140] and the highest amount in 2011.[141] Looking at the past three years of total expenditures reported for the research laboratory separate from the racing commissions, this spending has been relatively flat with the lowest amount in 2015 and the highest amount in 2014.[142]

[137] *Ibid.*
[138] *Ibid.*
[139] *Ibid., Pa. Horse & Harness Racing Comm's 2014 Annual Rep*. 5, http://www.agriculture.pa.gov/Protect/RacingCommission/Documents/Harness%20and%20Horse%20Annual%20Report%202014.pdf.
[140] $12,457,913, *supra* note 136.
[141] $14,203,753.25, *Pa. Racing 2011 Annual Rep.* 15, http://www.agriculture.pa.gov/Protect/RacingCommission/Documents/Harness%20and%20Horse%20Annual%20Report%202011.pdf.
[142] $2,405,733.10, *supra* note 139.

In order to assess efficiency and competitiveness, equine laboratories are often compared based on the average cost per sample analyzed. For this comparison, PETRL was compared to two other laboratories: (1) The Kenneth L. Maddy Equine Analytical Chemistry Laboratory (Maddy Lab) at University of California, Davis, which is the authorized drug-testing laboratory for California horse racing[143] and (2) New York's Equine Drug Testing Program (EDTP), which is performed by Morrisville State College in Morrisville, New York, under contract with the New York State Gaming Commission.[144] Table 3 displays cost data for the three laboratories for FY 2014-15 or FY 2015-16, and computes an average cost per sample for two labs. A brief description of the data from Table 3 follows.

Table 3
Laboratory Cost Comparison

State Fiscal Year	NY 2015-16	CA 2014-15	PA 2015-16
Lab Management	$231,711 [1]	$532,360 [3]	$275,097[5]
Research	N/a	$1,700,000 [4]	$846,061[5]
Forensics	$4,200,164 [2]	$1,987,250 [4]	$3,115,447[5,6]
Total Laboratory Costs	$4,431,875 [1,2]	$4,219,610 [4]	$3,961,508[6]
Post-Race Samples	N/a	21,277 [4]	31,128[7]
$/Sample (Drug Testing)[8]	N/a	$112	$100
$/Sample (Drug Testing & Research)	N/a	$198	$127

[1] NY Equine Medical Director Salary, Laboratory Management Salary Information not found. http://rochester.nydatabases.com/database/state-employee-salaries;
[2] NY Drug Testing Laboratory Contract, http://wwe2.osc.state.ny.us/transparency/contracts/contractresults.cfm?ID=1375707
[3] Salaries of CA Equine Medical Director, Laboratory Director, Director of Research, https://ucannualwage.ucop.edu/wage/
[4] FY 14-15 California Horse Racing Board Annual Report, http://www.chrb.ca.gov/annual_reports/2015_annual_report.pdf
[5] Penn Contract Actuals FY 15-16 Total including management = $2,066,751 (Research 846,061 + Forensics $1,220,690); Management Salaries = $275,097 and are included in the totals for Research and Forensics depending on the amount of time spent on these activities.
[6] PA Department of Agriculture PETRL Expense Actuals FY 15-16 including Penn contract = $3,961,508
[7] Post-race blood and urine samples tested at PETRL FY 15-16 (PETRL LIMS database)
[8] For CA and PA, $/Sample (Drug Testing) does not include the costs to collect samples, ship them to the laboratory, or process violations.

Source: Data and resources provided to the IFO by the Director of PETRL and the PA Racing Commission.

[143] http://www.vetmed.ucdavis.edu/whatsnew/article2.cfm?id=1553.
[144] https://www.gaming.ny.gov/horseracing/.

EDTP (New York)

Lab Management ($231,711) represents the salary of the director of the Equine Medical Program. The forensics costs ($4,200,164) represent the New York State Gaming Commission's contract with the Morrisville Auxiliary Corporation at Morrisville State College, which is where the drug testing takes place. Due to the lack of public data, research costs were not included in this analysis, which precludes the computation of an average cost per sample.

Maddy Lab (California)

Lab Management ($532,360) is comprised of the salaries of three management employees: Equine Medical Director, Laboratory Director and Director of Research. Forensics costs ($1,987,250) represent the costs to the State of California for the Maddy Lab to test and analyze 21,277 samples in FY 2014-15. Research costs are a mandated distribution that goes to U.C. Davis for equine research, which totaled $1.7 million in FY 2014-15. The total laboratory costs ($4,219,610) are equal to the sum of these three elements. Average cost per sample is calculated as follows:

- Drug testing per sample is equal to the sum of two lab management salaries (Director of Research excluded) and forensics costs ($2,377,252) divided by the number of samples analyzed (21,277).

- Drug testing and research per sample is equal to total laboratory costs ($4,219,610) divided by the number of samples analyzed (21,277).

PETRL (Pennsylvania)

Lab Management ($275,097) is comprised of the salaries of three employees at PETRL, and are also included in the research ($846,061) and forensics ($3,115,447) costs, depending on the amount of time spent in these activities by those employees. The total laboratory costs ($3,961,508) are sum of the research and forensics costs. Average cost per sample is calculated as follows:

- Drug testing per sample is equal to forensics costs ($3,115,447) divided by the number of samples analyzed (31,128).

- Drug testing and research per sample is equal to total laboratory costs ($3,961,508) divided by the number of samples analyzed (31,128).

The costs per sample tested (for testing alone and with research cost factored in) understate the actual costs incurred for the Pennsylvania Race Horse Testing Program because the cost to collect the samples are included in the program now. The Pennsylvania Race Horse Testing

Program is administered by the State Horse Racing Commission.[145] Until June 30, 2020, costs of the program are paid by appropriations allocated from the State Racing Fund and by the commission after that date.[146] The program's purposes are to:

- analyze samples from race horses for the presence any medication
- develop techniques, equipment and procedures
- collect and test race horses for the presence of medication
- ascertain permitted tolerance levels or therapeutic dose allowances for medication
- offer consultation and advice to the public on all issues regarding the medication of race horses; and
- research medication issues involving race horses.[147]

"[E]xcept holding barns or stables," the commission is required to pay "[t]he costs of all equipment, supplies and facilities, . . . to be located at race horse meeting facilities, grounds or enclosures or at other locations designated by the management committee".[148]

From July 1, 2016, to June 30, 2020, the State Racing Fund is to get weekly transfers as authorized from the Pennsylvania Race Horse Development Fund to pay for this before the commission is required to pay for this beginning in July 2020.[149] The Pennsylvania Horse Race Development Fund is funded by "a percentage of each licensed gaming entity's gross terminal revenue".[150] A percentage of this gross terminal revenue from each Category 1 licensee is distributed to the same category of licensees conducting live racing.[151] Part of this goes into an interest-bearing purse account to benefit horsemen, the Pennsylvania Breeding Fund,[152] the Pennsylvania Sire Stakes Fund,[153] the Pennsylvania Standardbred Breeders Development Fund

[145] 3 Pa.C.S. § 9372(a). During a 4-yr. period immediately prior to the 2020 date, the State Racing Fund will be using money transferred from the Pa. Race Horse Development Fund to "provide for each cost associated with the collection and research of and testing for medication," including "the cost of necessary personnel, equipment, supplies and facilities, except holding barns or stables, to be located at horse race facilities, grounds or enclosures or at other locations designated by the commission." *Ibid.* § 9374(a). These costs must "be reviewed and approved by the commission" with "[t]he transfer . . . made in 52 equal weekly installments during the fiscal year before any other distribution from the" Pa. Race Horse Development Fund. *Ibid.*

[146] 3 Pa.C.S. §§ 9372(a), 9374.

[147] 3 Pa.C.S. § 9372(b).

[148] 3 Pa.C.S. § 9373.

[149] 3 Pa.C.S. §§ 9372(a), 9374.

[150] 4 Pa.C.S. § 1405(b). This refers to slot machine wagers minus payouts from slot machine licensees. 4 Pa.C.S. § 1103.

[151] Act of Apr. 9, 1929 (P.L.343, No.176), § 1723-A.1(1). A Category 1 licensee is a slot machine licensee at a licensed racetrack facility. 4 Pa.C.S. § 1302.

[152] Part of this fund is awarded as purses to Pa.-bred thoroughbred race horses and expenses related to Pa. Breeding Fund Program. 3 Pa.C.S. § 9336.

[153] Part of this fund is distributed as purse money in Standardbred horse race meetings for Pa.-sired horses, the State Horse Racing Commission's cost of administration as well as agriculture fairs and events. 3 Pa.C.S. § 9337.

and to horsemen's organizations to pay for owners' and trainers' health and pension benefits.[154] For fiscal year 2016-2017, the Department of Revenue transferred $8,555,255 from the fund to the State Racing Fund to pay for the Pennsylvania Race Horse Testing Program and this program gets paid for before other distributions from the Pennsylvania Horse Race Development Fund that occur between July 1, 2016, and June 30, 2020.[155] From "the previous fiscal year's deposits into the Pennsylvania Race Horse Development Fund" another 1% gets transferred annually to the State Racing Fund to promote horse racing.[156] The Commonwealth's law relating to race horse industry reform is administered and enforced via money "to be appropriated from the State Racing Fund, the Pennsylvania Race Horse Development Fund and the General Fund".[157]

Except for restricted accounts, the State Racing Fund is continually appropriated to the Department of Agriculture to administer and enforce the law relating to horse race industry reform as well as to oversee and promote horse racing in Pennsylvania.[158] These funds come from a 1½% and a 2½% tax on amounts wagered and are "imposed on a licensed racing entity or secondary pari-mutuel organization", fines and licensure fees.[159] Half of any surplus in the State Racing Fund is carried to the next fiscal year to pay for the Pennsylvania Race Horse Testing Program with any remainder of that half to be applied to budgeted expenses of the State Horse Racing Commission.[160] The other half of any annual surplus in the State Racing Fund would be credited equally to the Pennsylvania Breeding Fund and the Pennsylvania Sire Stakes Fund.[161] The State Racing Fund also receives 37½% of breakage and appropriations.[162]

Primarily because the costs of collection are included in the Pennsylvania Race Horse Testing Program, laboratory (or at least programmatic) costs could effectively more than double from the $3,961,508 incurred in 2015-16 to approximately $9,676,484 in 2016-17. These additional costs are shifts from the commission to the program, at least until 2020-21.

The State Horse Racing Commission is statutorily authorized to "adopt national standards from other racing jurisdictions or commission-approved trade organizations to establish . . . uniform drug threshold levels" and "consistent sanctions for drug testing violations".[163] An applicant's or licensed racing entity's license may be revoked, suspended or not renewed "if the

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[154] Act of Apr. 9, 1929 (P.L.343, No.176), § 1723-A.1(1).

[155] *Id.* § 1723-A.1(3); 3 Pa.C.S. § 9374(a). The former provision cites a section in The Administrative Code of 1929 that is the same as and replaced with the latter provision. Based upon expenditures during the first half of fiscal yr. 2016-17, expenditures could be higher than this because the amount spent so far would double to $9,676,484.

[156] 3 Pa.C.S. § 9313.

[157] *Id.*

[158] 3 Pa.C.S. § 9334. A licensed racing entity is a licensee for live horse racing with pari-mutuel wagering; a secondary pari-mutuel organization is a licensee accepting pari-mutuel wagers (other than a licensed racing entity). *Id.* § 9301. Reimbursement to the Department of Agriculture from the State Racing Fund for administrative services and facilities shared with the State Horse Racing Commission is limited to department's actual costs. *Id.* § 9311(n).

[159] 3 Pa.C.S. §§ 9318(d), 9323(b), 9325(a), 9334. The State Racing Fund also receives some fees for other licensure and their renewals. 3 Pa.C.S. § 9352. The fund also receives funds held by licensed racing entities for uncashed tickets. 3 Pa.C.S. § 9335(a).

[160] 3 Pa.C.S. § 9334.

[161] *Ibid.*

[162] *Ibid.* Breakage is odd cents on redistributions from pari-mutuel pools. 3 Pa.C.S. § 9301. The State Racing Fund is also authorized to receive money "from any other source". 3 Pa.C.S. § 9301(e).

[163] 3 Pa.C.S. § 9312(6).

commission finds by a preponderance of the evidence that . . . any of its . . . employees or agents" haven't complied with regulations and statutory provisions "and that it would be in the public interest, convenience or necessity to . . . revoke, suspend or not renew the license."[164]

Functions Compared to Other Jurisdictions

Accreditation

The Pennsylvania Equine Toxicology and Research Laboratory is accredited for its main laboratory in West Chester and its research barn in Kennett Square "to perform qualitative identification and quantitative assay of prohibited substances . . . on Equine Fluids . . . using the following technologies": immunoassay, spectrometry and genetic analysis.[165] "Additionally, accreditation is granted to this laboratory to perform STR Typing on Equine Fluids, Tissue, and Hair Root as requested by the Pennsylvania Racing Commissions", and "[t]his laboratory also meets the requirements of any additional program requirements in the Chemical field."[166] Accreditation is "Valid To: May 31, 2018".[167] Compliance with this accreditation requires internal audits, "review of all procedures and data for technical tests"[168] and "[s]atisfactory proficiency testing results".[169] At least nine other animal drug laboratories are similarly accredited for chemical testing: Center for TOX Services in Arizona;[170] Equine Analytical Chemistry Laboratory in California;[171] Industrial Laboratories Company in Colorado;[172] PhAST Laboratory, Iowa State University Veterinary Diagnostic Laboratory;[173] LGC Science in Kentucky;[174]

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[164] 3 Pa.C.S. § 9318(f)(1)(i). An applicant is "[a] person who" applies "for permission to engage in an act or activity . . . regulated under" Pa.'s law relating to race horse industry reform. *Id.* § 9301. A licensed racing entity is "[a]ny person that has obtained a license" from the commission "to conduct live thoroughbred or harness horse race meetings . . . with pari-mutuel wagering". *Ibid.*

[165] Am. Ass'n for Lab. Accreditation, SCOPE OF ACCREDITATION TO ISO/IEC 17025:2005, https://www.a2la.org/scopepdf/0725-01.pdf?CFID=8722222&CFTOKEN=eab2c4e999392fd4-184A411A-5056-A51D-2CF6B2F4F826DA1E (last visited Oct. 31, 2016). The research barn is also accredited to perform blood gas analysis.

[166] *Ibid.*

[167] *Ibid.*

[168] Pa. State Horse Racing Comm'n, Minutes 3, http://www.agriculture.pa.gov/Protect/RacingCommission/Horse/Documents/Horse%20Meeting%20Minutes--02-19-15.pdf (Feb. 19, 2015).

[169] *Ibid.*, Minutes 3. http://www.agriculture.pa.gov/Protect/RacingCommission/Horse/Documents/Horse%20Meeting%20Minutes--09-22-15.pdf (Sept. 22,2015).

[170] Am. Ass'n for Lab. Accreditation, *supra* note 165, https://www.a2la.org/scopepdf/0670-01.pdf?CFID=8722222&CFTOKEN=eab2c4e999392fd4-184A411A-5056-A51D-2CF6B2F4F826DA1E.

[171] *Ibid.*, https://www.a2la.org/scopepdf/2205-01.pdf?CFID=8722222&CFTOKEN=eab2c4e999392fd4-184A411A-5056-A51D-2CF6B2F4F826DA1E.

[172] *Ibid.*, https://www.a2la.org/scopepdf/2239-01.pdf?CFID=8722222&CFTOKEN=eab2c4e999392fd4-184A411A-5056-A51D-2CF6B2F4F826DA1E.

[173] *Ibid.*, https://www.a2la.org/scopepdf/3849-01.pdf?CFID=8751408&CFTOKEN=18c4de596c0d8fa0-B55CCF4D-5056-A51D-2C39E68A10411973.

[174] *Ibid.*, https://www.a2la.org/scopepdf/3244-01.pdf?CFID=8722222&CFTOKEN=eab2c4e999392fd4-184A411A-5056-A51D-2CF6B2F4F826DA1E. LGC Sci. acquired HFL Sport Sci. 2010. "All Service offered by HFL now form part of the LGC Group." LGC, Sports, http://www.lgcgroup.com/sectors/sports/#.WByyOi0rKUl (2015).

Morrisville Auxiliary Corporation in New York;[175] Ohio Department of Agriculture;[176] Texas A&M Veterinary Medical Diagnostic Laboratory;[177] and, United States Equestrian Federation Drug Testing and Research Laboratory in Kentucky.[178] Other horse racing testing laboratories are also accredited for chemical testing: Dalare Associates in Philadelphia;[179] and, Truesdail Laboratories in California.[180] Another horse racing testing laboratory is also accredited for forensic testing: University of Florida Racing Laboratory.[181]

Accreditation Requirements

Accreditation Requirements focus on the elements of managerial[182] and technical[183] requirements. "Management Requirements are primarily related to the operation and effectiveness of the laboratory's quality management system. Technical Requirements includes factors that determine the correctness and reliability of the tests and calibrations performed by the laboratory."[184] Nationally recognized laboratory accreditation bodies "enter into Mutual Recognition Agreements with similar accreditation bodies in other countries" to determine whether the quality management system in a testing laboratory complies with the international standard.[185] These international standards are developed (based on a consensus) by International Organization for Standardization but certification is done by external bodies.[186] As of February 2017, 14 U.S. horse racing testing laboratories are ISO 17025 accredited:[187] Center for TOX

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[175] Am. Ass'n for Lab. Accreditation, *supra* note 165, https://www.a2la.org/scopepdf/3372-01.pdf?CFID=8756638&CFTOKEN=5e80e4f00e8e19e1-DE0C161B-5056-A51D-2C90158349E3FC0F. This corp. is not-for-profit and provides non-acad. servs. to Morrisville State College. Morrisville State College, Morrisville Auxiliary Corp., https://www.morrisville.edu/mac/. It has a contract w/N.Y. State Gaming Comm'n for a drug testing & research program. *Infra* note 144.

[176] Am. Ass'n for Lab. Accreditation, *supra* note 165, https://www.a2la.org/scopepdf/2841-01.pdf?CFID=8722222&CFTOKEN=eab2c4e999392fd4-184A411A-5056-A51D-2CF6B2F4F826DA1E.

[177] *Ibid.*, https://www.a2la.org/scopepdf/3567-01.pdf?CFID=8722222&CFTOKEN=eab2c4e999392fd4-184A411A-5056-A51D-2CF6B2F4F826DA1E.

[178] *Ibid.*, https://www.a2la.org/scopepdf/2838-01.pdf?CFID=8722222&CFTOKEN=eab2c4e999392fd4-184A411A-5056-A51D-2CF6B2F4F826DA1E.

[179] ANSI-ASQ Nat'l Accreditation Bd., http://search.anab.org/public/organization_files/Dalare-Associates-Cert-and-Scope-File-03-02-2016_1456943761.pdf. Accreditation is "Valid To: 01/16/2018".

[180] *Ibid.*, http://search.anab.org/public/organization_files/Truesdail-Laboratories-Inc-Cert-and-Scope-File-06-01-2016_1464800964.pdf.

[181] *Ibid.*, http://search.anab.org/public/organization_files/University-of-Florida-Racing-Laboratory-Cert-and-Scope-File-10-07-2016_1475856069.pdf.

[182] Org.; Quality sys.; Document control; Rev. of requests, tenders & contracts; Subcontracting of tests & calibrations; Purchasing servs. & supplies; Serv. to client; Complaints; Control of nonconforming testing &/or calibration work; Corrective action; Preventive action; Control of records; Internal audits; Mgmt. revs.. Quality Network, ISO 17025 Competence of Testing & Calibration Labs., https://www.quality.co.uk/custpage.htm (last modified 2006).

[183] Gen.; Personnel - Accommodation & envtl. conditions; Test & calibration methods & method validation; Equip.; Measurement traceability; Sampling; Handling of test & calibration items; Assuring the quality of test & calibration results; Reporting the results. *Ibid.*

[184] ANSI-ASQ Nat'l Accreditation Bd., ISO/IEC 17025, http://anab.org/programs/isoiec-17025/ (2016).

[185] United Nations Indus. Dev. Org., *Complying with ISO 17025* iii, http://www.ankaratto.com/wp-content/uploads/2015/07/Complying_with_ISO_17025_A_practical_guidebook.pdf (2009).

[186] Int'l Org. for Standardization, Certification, http://www.iso.org/iso/home/standards/certification.htm, http://www.iso.org/iso/home/standards_development.htm. Am. Nat'l Standards Inst. is the U.S. member to this indep., non-governmental int'l org.. *Ibid.*, http://www.iso.org/iso/home/about.htm, http://www.iso.org/iso/home/about/iso_members/iso_member_body.htm?member_id=2188.

[187] Racing Medication & Testing Consortium Lab. Accreditation Status, http://rmtcnet.com/wp-

Services in Arizona; Dalare Associates in Philadelphia; Equine Analytical Chemistry Laboratory in California; Industrial Laboratories Company in Colorado; PhAST Laboratory, Iowa State University Veterinary Diagnostic Laboratory; LGC Science in Kentucky; Morrisville Auxiliary Corporation[188] in New York; Ohio Department of Agriculture; Pennsylvania Equine Toxicology and Research Laboratory; Texas A&M Veterinary Medical Diagnostic Laboratory; Truesdail Laboratories in California; United States Equestrian Federation Drug Testing and Research Laboratory[189] in Kentucky; University of Illinois at Chicago Analytical Forensic Testing Laboratory; and, University of Florida Racing Laboratory.

> ISO 17025 is the main standard used by testing and calibration laboratories. . . . Updates to ISO 17025 have introduced greater emphasis on the responsibilities of senior management, and explicit requirements for continual improvement of the management system itself, and particularly, communication with the customer. Laboratories use ISO 17025 to implement a quality system aimed at improving their ability to consistently produce valid results. Since the standard is about competence, accreditation is simply a formal recognition of a demonstration of that competence. A prerequisite for a laboratory to become accredited is to have a documented quality management system. Regular internal audits are expected to indicate opportunities to make the test or calibration better than it was.[190]

Racing Medication and Testing Consortium

Racing Medication and Testing Consortium works "to develop and promote uniform rules and testing standards at the national level; coordinate research and educational programs that seek to ensure the integrity of racing and the health and welfare of racehorses and participants; and to protect the interests of the racing public."[191] This testing consortium also accredits laboratories and has accredited eight of the 14 U.S. horse racing testing laboratories that are ISO 17025 accredited:[192] Equine Analytical Chemistry Laboratory and Truesdail Laboratories in California, Industrial Laboratories Company in Colorado, LGC Science in Kentucky, New York Drug Testing and Research Program,[193] Ohio Department of Agriculture, Pennsylvania Equine Toxicology and Research Laboratory and Texas A&M Veterinary Medical Diagnostic Laboratory. University of Illinois at Chicago Analytical Forensic Testing Laboratory is seeking accreditation this testing consortium.[194] These laboratories test horse racing samples for 30 of the 34 racing jurisdictions:

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content/uploads/Laboratory-Accreditation-Status-February-2017.pdf. This source identifies 13 instead of 14 laboratories.

[188] This corporation is not-for-profit and provides non-academic services to Morrisville State College. Morrisville State College, Morrisville Auxiliary Corp., https://www.morrisville.edu/mac/. It has a contract with the N.Y. State Gaming Commission for a drug testing and research program. *Infra* note 144.

[189] Am. Ass'n for Lab. Accreditation, *supra* note 165.

[190] Actlabs, ISO/IEC 17025—General requirements for the competence of testing and calibration labs, http://www.actlabs.com/page.aspx?menu=60&app=206&cat1=732&tp=2.

[191] Racing Medication and Testing Consortium, Background, http://rmtcnet.com/national-uniform-medication-program/ (2016).

[192] *Ibid.*, Lab. Accreditation Status, http://rmtcnet.com/wp-content/uploads/Laboratory-Accreditation-Status-February-2017.pdf (Feb. 2017). This source identifies 13 instead of 14 laboratories.

[193] "[P]erformed by Morrisville State College . . . under contract with the New York State Gaming Commission." N.Y. State Gaming Comm'n, Horse Racing, https://gaming.ny.gov/horseracing/edrugtest.php.

[194] Racing Medication and Testing Consortium, *supra* note 191.

Arkansas, Arizona, California, Colorado, Delaware, Idaho, Illinois, Indiana, Kentucky, Massachusetts, Maryland, Maine, Minnesota, North Dakota, Nebraska, New Jersey, New Mexico, Nevada, New York, Ohio, Oklahoma, Oregon, Pennsylvania, Texas, Virginia, Washington, West Virginia, Wyoming & Puerto Rico.[195]

There are only approximately a little more than a dozen accredited laboratories in this country that do this kind of testing. It is unlikely that the commission would switch to an unaccredited laboratory, which could result in cheaper albeit potentially less reliable results. Unless substantial savings can be demonstrated by outsourcing this testing to a similarly accredited laboratory in another state, there is no reason to do so. Given that accreditation can itself add costs and the laboratory has mostly been functionally outsourced from the department to University of Pennsylvania via contract, it is not recommended that samples be shipped out of Pennsylvania under a different arrangement for testing.

Fines

Other than against patrons, the State Horse Racing Commission "may impose administrative fines upon any licensed or unlicensed racing entity, association or person participating in horse racing . . . for a violation of" Pennsylvania's law relating to race horse industry reform "or rule or regulation of the commission" up to "$10,000 for each violation."[196] The fines are to "be deposited in the State Racing Fund and may be appropriated" to enforce this law.[197]

"[W]hen a licensed racing entity conducts a horse race meeting with pari-mutuel wagering", State Horse Racing Commission is statutorily required to have rules or regulations in effect "to control the use and administration of any medication and the use and administration of any device that affects the performance of a race horse. The commission may establish permitted tolerance levels and therapeutic dose allowances for all medication to be used or administered to a race horse."[198] It is required to "adopt a comprehensive schedule of equine drugs, medications, therapeutic substances or metabolic derivatives which are authorized to be administered to race horses, including tolerance levels. . . . [T]o properly determine the schedule of drugs and the tolerance levels under this subsection, the commission" is authorized to research or contract with a vendor to research and "may consult with the Pennsylvania State Board of Veterinary Medicine, academic institutes and associations representing the majority of the horse owners and experts."[199]

From 2011 to 2015, the Commonwealth collected fines ranging from a low of $239,485 in 2014[200] to a high of $289,480 in 2011.[201] The amount of fines collected for the successive years

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[195] *Ibid.*
[196] 3 Pa.C.S. § 9325(a). "Each day may be considered a separate violation." The administrative fines apply to horse racing with pari-mutuel wagering.
[197] *Ibid.*
[198] 3 Pa.C.S. § 9371(a).
[199] *Ibid.*
[200] Pa. Dep't of Agric., *supra* note 136, at 4.
[201] *Ibid.*, *Pa. Racing 2011 Annual Rep*. 10,

decreased until rebounding in 2015 but averaged $262,081 annually during this five-year period. With a collection of fines during this period falling below $251,465 in only one year, these amounts collected could be characterized as essentially flat.

The statutory authorization to fine up to $10,000 for each violation dates from February 23, 2016.[202] This amount doubled the previous statutory authorization of $5,000, which was initially enacted in 1959 for the State Harness Racing Commission.[203] Adjusted for inflation, $5,000 in 1959 would be approximately $41,238.32 in 2016.[204] The doubled amount authorized last year is only approximately 24% of what it would be if adjusted for inflation, but the fine may apply for each day of a violation[205] so that a continuing violation could result in a fine of more than $10,000.

Once temporary rules replace the existent ones,[206] this higher, statutory amount can then more than double the current limit of $5,000 in the preexistent rules. Further increasing fines for impermissibly doping race horses a year after the potential fines could be more than double an amount authorized for a 57-year period but before the doubled amount is implemented is unwarranted. Instead, the State Horse Racing Commission should update its rules to implement fines up to $10,000 and then the Commonwealth can evaluate the adequacy of this new statutory amount after the commission has had some experience with its potential and actual application.

Penalties for violations "of these rules or regulations" are to be established in the commission's "rules or regulations."[207]

Assessment of Laboratory Costs Against Persons Who Dope Horses

To cover the costs of the Pennsylvania Race Horse Testing Program, approximately $9,676,484 in laboratory costs (for collection of samples, testing them and research) would need to be raised rather than just the $3,961,508 currently in place (for testing the samples and research). Assuming 31,128 samples are analyzed, that would apportion an assessed cost of $310.86 per sample instead of $127.27.[208]

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http://www.agriculture.pa.gov/Protect/RacingCommission/Documents/Harness%20and%20Horse%20Annual%20Report%202011.pdf.

[202] Act of Feb. 23, 2016 (P.L.15, No.7), §§ 4, 6(1)(i), adding § 2825-D to the act of Apr. 9, 1929 (P.L.177, No.175). The same provision was subsequently moved to 3 Pa.C.S. § 9325 by the act of Oct. 28, 2016 (P.L.913, No.114), §§ 4, 5.

[203] Act of Dec. 22, 1959 (P.L.1978, No.728), § 10. The same amount statutorily authorized for State Horse Racing Comm'n dates from 1967. Act of Dec. 11, 1967 (P.L.707, No.331), § 12.

[204] Bureau of Labor Statistics, U.S. Dep't of Labor, CPI Inflation Calculator, https://data.bls.gov/cgi-bin/cpicalc.pl?cost1=5%2C000&year1=1959&year2=2016 (last visited Feb. 13, 2017). The same amount adjusted for inflation from 1967 to 2016 would be $35,929.19. .

[205] *Supra* note 202.

[206] Preexistent rules apply until replaced by temporary or permanent ones. 3 Pa.C.S. § 9311(h).

[207] 3 Pa.C.S. § 9371(b).

[208] *See* Table 3.

Currently, owners or trainers must only pay to test split samples when they request a retest, but the thoroughbred horse owner or trainer must pay only if the retested sample confirms the initial positive result for a violation.[209] Any horse can be tested after a race.[210] Since the Pennsylvania Race Horse Development Fund otherwise benefits horsemen, shifting the cost of testing directly to owners or trainers essentially targets the same source. Whether in the form of a fine, which would be unaffordable since considerably fewer than 31,128 violations would occur, or an assessment, which would have to be frequent enough to keep the allocated cost per sample tested low, shifting the programmatic costs entirely to a fine or assessment would be unfair, unrealistic and subject to abuse to gin up testing to cover costs rather than to protect the horses and maintain the integrity of the contests.

Half a year's experience into the current manner of funding this program provides inadequate data to develop a recommendation how this program should be funded 3½ years from now. It is entirely possible that the *status quo* will need to be perpetuated because there is no obvious, fair and realistic alternative at this juncture. The multi-year laboratory and rental contracts for this program are yet to be renewed this year, which means that one cannot base any projections on these costs that have not yet been determined (to say nothing of personnel and supply costs several years from now). A more sensible and honest evaluation of how to realistically fund this testing program will need wait to be reconsidered approximately 2½ years from now when its prospective and continuing costs as well as anticipated revenue sources from prospective sources will be more contemporaneous to realistically decide this. Considering that the commission does not retain unexpended amounts from the wager tax, it does not have an opportunity to create a reserve to cover the testing program.[211] As it stands, up to half of the unexpended funds are already carried forward to cover the costs of this testing program.[212] After three years of experience with this funding, it is possible that its reconsideration will result in a recognition that it needs to be perpetuated rather than returned to the commission's expense.

Ejectment of Bad Actors

The State Horse Racing Commission is a commission within "Department of Agriculture to independently regulate the operations of horse racing, the conduct of pari-mutuel wagering and the promotion and marketing of horse racing in this Commonwealth".[213] Specifically, the commission's jurisdiction and regulatory authority is over the following:

- Pari-mutuel wagering and other horse racing activities in this Commonwealth.
- A licensed person engaged in pari-mutuel horse racing activities.

[209] 58 Pa. Code §§ 163.318(d)(2), 183.353(b). Also, "[a] trainer who claims a horse has the right to . . . post-race test sample drawn" but must pay for the test unless it is required by the rules of thoroughbred racing. § 163.262(b).
[210] 58 Pa. Code §§ 163.313, 183.352(a).
[211] 3 Pa.C.S. § 9334(c)(2).
[212] 3 Pa.C.S. § 9334(c)(2(i).
[213] 3 Pa.C.S. § 9311(a).

- Out-of-competition drug testing, which shall include the random drug testing of any horse entered in a race, notwithstanding the physical location of the horse, stabled on the grounds or shipped into a licensed racing entity's facility.

- The conduct of horse racing in this Commonwealth.[214]

Accordingly, it is statutorily required to promulgate rules and regulations to administer and enforce Pennsylvania's law relating to race horse industry reform.[215] Preexistent rules and regulations remain in Title 58 of the Pennsylvania Code as a part relating to horse racing commission[216] and a part relating to harness racing commission.[217]

Any person licensed by the commission . . . and employed at . . . the racetrack" may be refused "admission to and" ejected from the racetrack enclosure by a licensed racing entity "if the person's presence is deemed detrimental to the best interests of horse racing and" the cited reasons for that determination are written.[218] A relevant factor the commission may consider to determine whether an applicant is qualified to be licensed or relicensed is its "[c]ompliance . . . with applicable statutes and administrative regulations.[219] The refusal to admit or ejectment is effective immediately "unless a supersedeas has been granted by the bureau director."[220] The person refused admission or ejected can obtain a hearing before the commission for its decision on the matter.[221] "An individual found within a racetrack or racetrack enclosure after" ejectment could be convicted of a summary offense and could be fined up to $500.[222]

Violators of rules of thoroughbred horse racing are "subject to ejection from the grounds and to fine, suspension or ruling off."[223] The stewards may exclude or eject from premises and enclosures of the association a person who:

- Is disqualified for corrupt practice on the turf in any country.

- Is under an order of suspension or revocation or has been denied a license or ruled off by a racing commission or board of stewards.

- Is an improper or objectionable person . . . .[224]

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[214] 3 Pa.C.S. § 9311(e).
[215] 3 Pa.C.S. § 9311(h)(2).
[216] 58 Pa. Code pt. IV, which is for thoroughbred racing, § 161.1.
[217] 58 Pa. Code pt. V.
[218] 3 Pa.C.S. § 9326(a). The racetrack enclosure includes "the grandstand, frontside and backside facilities and all primary, nonprimary, contiguous and noncontiguous locations of the licensed racing entity . . . specifically approved by the commission for . . . pari-mutuel system of wagering on the results of horse racing". *Id.* § 9301. Agreements with licensed racing entities concerning labor management relation and the "hiring of designated classes of . . . employees or contractors specified by the commission or any other" prescribed contract must be filed with the commission. *Id.* § 9333.
[219] 3 Pa.C.S. § 9353(b)(6).
[220] 3 Pa.C.S. § 9326(a).
[221] *Ibid.*
[222] 3 Pa.C.S. § 9327(b).
[223] 58 Pa. Code § 163.6(b).
[224] 58 Pa. Code § 163.340(g).

"The Commission or an association licensed by" it may "deny access to or to eject from facilities of a track a patron or licensee whose presence or conduct is deemed detrimental to the best interests of racing or to the orderly conduct of a racing meet."[225] At that time "or immediately following ejectment of or denial of access to a licensee, the association or Commission agents " must "advise the licensee in writing of his right to demand a hearing . . . . . [T]he ejectee" may "demand a hearing upon the ejection" by writing "the association in question and . . . the Commission" within "48 hours following receipt by the ejectee of the notice confirming ejection. . . . Notice of the date and time of the hearing shall be forwarded to the most current licensed address of the ejectee and to the executive office of the association."[226]

An informal but recorded hearing is held "before a hearing officer" whose "detailed summary of the hearing" is prepared "for review by the Commission."[227] A person "attending or participating in hearings" may be represented by his own counsel and "examine and cross-examine witnesses and . . . see written matters that are introduced into the record or used in evidence".[228] The commission has 48 hours following either the hearing or its receipt of the transcript to finally decide dependent upon whether the ejectee wants it to have a completed transcript of the hearing or a final summary report.[229] "The Commission may eject a patron from the enclosure at any time. The patron" may also be heard "regarding the ejection", but that hearing is "limited to the question of whether the ejection was arbitrary or capricious".[230]

Wagering at nonprimary locations is limited to approved pari-mutuel machines; "[a] person making a handbook or wagering with a handbook, or soliciting wagers to be made on races received" there "on races elsewhere" must "be ejected . . . denied further admission."[231] Ejections from a nonprimary location may be made by the commission or a licensed corporation "under the same circumstances as set forth in the" statute or rules of thoroughbred horse racing.[232] "A person ejected from the racetrack enclosure of a licensed corporation" must also "be excluded from all nonprimary locations of the licensed corporation."[233] Conversely, "[a] person ejected from a nonprimary location" must also "be excluded from the racetrack enclosure and all nonprimary locations of the licensed corporation."[234]

"[S]ecurity personnel" may "interrogate and eject from the race meeting grounds or enclosure any person suspected of violating any rule or regulation promulgated by the Commission. . . . [A]ny person whose presence there is . . . inconsistent with the orderly or proper

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[225] 58 Pa. Code § 165.231(a).
[226] 58 Pa. Code § 165.231(b)(c).
[227] 58 Pa. Code § 165.231(d). Formerly, the comm'n needn't hold a hearing w/in 48 hours but rather schedule a hearing as soon as possible. *Luzzi v. Horse Racing Comm'n*, 548 A.2d 659, 663 (Pa. Commw. Ct. 1988). This has been changed by a determination that promptly scheduling a hearing "at some undefined point in the future" is "constitutionally infirm under the Due Process Clause of" U.S. Const. amend. XIV. *Moreno v. Penn Nat'l Gaming*, 904 F.Supp.2d 414, 426 (M.D.Pa. 2012).
[228] 58 Pa. Code § 165.231(e)(1).
[229] 58 Pa. Code § 165.231(e)(2).
[230] 58 Pa. Code § 165.231(f).
[231] 58 Pa. Code § 171.63(b). A nonprimary location is where "a licensed corporation conducts . . . pari-mutuel wagering other than its racetrack." § 171.1.
[232] 58 Pa. Code § 171.64(a).
[233] 58 Pa. Code § 171.64(b).
[234] 58 Pa. Code § 171.64(c).

conduct of a race meeting or . . . detrimental to the best interest of harness racing" may be refused admission and ejected.[235] "Any person utilizing . . . any" gambling "device, sign, action or mechanism" to transmit or communicate "any information with regard to any race from within the track grounds to the outside" must "be expelled from the grounds and denied further admission to any association track."[236] "[B]y order of the judges", the same mandatory expulsion and denial of further admission applies to someone "making a handbook on the grounds of any association . . . and any owner, driver or other person interested in any horse" at the "meeting . . . wagering with . . . any . . . handbook".[237] Any person "whose conduct is . . . detrimental to the best interest of harness racing, or who is . . . an undesirable person, may be removed, excluded or expelled from the track."[238] A person wagering with a handbook must "be ejected from the nonprimary location and denied further admission."[239]

"The Commission or a licensed corporation may eject a person from a nonprimary location under the same circumstances as set forth in the" statute or harness racing rules.[240] "A person ejected from the racetrack enclosure of a licensed corporation" must "be excluded from all nonprimary locations of the licensed corporation. . . . A person ejected from a nonprimary location" must "be excluded from the racetrack enclosure and all nonprimary locations of the licensed corporation."[241]

Depending on the circumstances, these ejectments are either permissive or mandatory and they might occur to comply with Thoroughbred or harness racing rules or otherwise, but ejectments and exclusions may not be based upon "the race, creed, color, sex, sexual orientation, national origin or religion of that person."[242]

There are conflicting judicial rulings that affect the timeliness and validity of these ejectments. There is also potential review of these ejectments in either a Pennsylvania or a U.S. court. Among the conflicting rulings in these two judicial fora, it seems as though distinguishing differing facts might be the best way to harmonize these rulings. Further complicating the analysis are the arcane jurisdictional bases for when a federal court might be able to review a state action. "[F]ederal district courts may not exercise jurisdiction over suits that are essentially appeals from state-court judgments."[243] Nonetheless, a person who claims his that his federal constitutional rights were violated by a state's statute, regulation or custom may sue in federal court for redress.[244] This means that a constitutional right must have been deprived by state rather than private conduct for one to obtain relief in federal court for this claim.[245] Common law, property rights are broad enough to exclude individuals from private property,[246] but "when the state officials with delegated

[235] 58 Pa. Code § 183.340.
[236] 58 Pa. Code § 185.133.
[237] 58 Pa. Code § 185.134.
[238] 58 Pa. Code § 185.254.
[239] 58 Pa. Code § 189.63(b).
[240] 58 Pa. Code § 189.64(a).
[241] 58 Pa. Code § 189.64(b), (c).
[242] 3 Pa.C.S. § 9327(a)(2).
[243] *Guerrero v. Bensalem Racing Ass'n*, 25 F.Supp.3d 573, 582 (E.D.Pa. 2014).
[244] 42 U.S.C. § 1983.
[245] *Guerrero*, 25 F.Supp.3d at 590.
[246] *Fitzgerald v. Mountain Laurel Racing*, 607 F.2d 589, 597 (3d Cir. 1979).

authority to enforce state laws or regulations [p]articipate with management in the decisional process to expel for a violation of a State Commission Rule"—it becomes a state action rather than the exercise of a private property right.[247] Even if "the racing officials' salaries are paid by" a private, licensee, when they act "pursuant to their delegated authority from the State to oversee the conduct of the races", that can create close nexus between the regulator and the regulated licensee.[248] This can be distinguished from a licensee ejecting someone for violating state law when "no official possessing delegated state authority participated with management in the decisional process" to eject that person.[249]

Decades ago, U.S. Supreme Court ruled that a trainer's suspension under state law was "unconstitutional for lack of assurance of a prompt postsuspension hearing"[250] when there was no "formal hearing prior to the suspension of his license".[251] This is because the opportunity to be heard must be meaningful in manner and time.[252]

Pennsylvania's thoroughbred racing rules require the prompt scheduling of a post-ejection hearing but not the prompt holding of a post-ejection hearing.[253] Aside from requirements for notice and an opportunity to be heard (that are in both the law and rules), a judicial review of the commission's determination of whether a licensee properly ejected a jockey or other licensee would consider if that determination was reasoned and based on substantial evidence[254] rather than unreasoned, arbitrary or capricious.[255] State action supported a civil action under 42 U.S.C. § 1983 because two, state inspectors discovered alleged violations, state officials at a state lab investigated those allegations, state investigators and a state veterinarian obtained the evidence and a racing secretary exercising state-delegated authority to oversee racing was at two meetings where the sanctions were decided.[256] Neither the statute nor the rules require a pre-ejectment hearing and the rules (and custom) required only the prompt scheduling rather than holding of a hearing after ejectment. The lack of assurance of a prompt post-ejectment hearing (with no pre-ejectment hearing) is "constitutionally infirm on its facer under the Due Process Clause of" U.S. Const. amend. XIV.[257]

There is little that the Commonwealth can do other than comply with applicable judicial rulings. If state action is present, the Commonwealth must assure the availability of a prompt post

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[247] *Ibid.* at 600. If a state is closely involved with a challenged activity, "that conduct becomes attributable to the State for purposes of a section 1983 action alleging a violation of the Due Process Clause of the fourteenth amendment." *Id.* at 595.
[248] *Ibid.* at 598.
[249] *Ibid.* at 600. Aside from a close nexus, a private enterprise in a symbiotic relationship with a state can transform a private act into state action. *Id.* at 594. A symbiotic relationship would be characterized by joint participation making the state and the private enterprise interdependent. *Id.* Another way that a private act can be transformed into state action is if a private group performs a function traditionally exclusively performed by a state (*e.g.*, enforcing crim. laws). *Guerrero*, 25 F.Supp.3d at 595-97.
[250] *Barry v. Barchi*, 443 U.S. 55, 65 (1979).
[251] *Ibid.* at 68.
[252] *Ibid.* at 66.
[253] 58 Pa. Code §§ 165.231(c).
[254] 2 Pa.C.S. § 704.
[255] *Bocachica v. Pa. State Horse Racing Comm'n*, 843 A.2d 450, 454-55 (Pa. Commw. Ct. 2004).
[256] *Moreno*, 904 F.Supp.2d at 417 n.1.
[257] *Ibid.* at 425.

ejectment hearing or the implementation of the sanction of ejectment will be delayed. "Although little is straightforward in determining whether a private actor has acted 'under color of state law,' one directive emerges clearly from the Supreme Court's jurisprudence: the facts are crucial."[258] Whether state action is present and how much process is due are interdependent. Licensees rather than patrons will have more due process afforded them. Whether the ejectment is mandatory or discretionary can impact the determination of whether state action is involved. The reason for the ejectment as well as who decided that and detected the reason are also factors to determine whether state action occurred. It seems likely that racing officials enforcing delegated authority to enforce racing rules against licensees and deciding to exercise that authority with ejectment subject to the commission's review will be considered state action. If this analysis is correct, it would require different judicial rulings to be able to strengthen property owners' rights to eject bad actors when those rights are subject to racing rules and the commission's regulatory review.

The property owner rights are stronger if the ejectment is not due to a racing rule but some other employment rule or state law. Typically, wrongful private conduct "is not a basis for relief under" a "Section 1983 claim."[259] A racing association was able eject a licensed race horse trainer for sexual harassment with no pre-ejectment hearing.[260] As is common in this federal, judicial circuit, there was no symbiotic relationship between the Commonwealth and the racing association.[261] The Commonwealth authorized but did not require the ejectment under a racing rule.[262] The director of security did not act to enforce a criminal law with the ejectment.[263] In this case, the ejected horse trainer received a post-ejectment hearing, but this ejectment was not a state action, regardless.[264]

If the *status quo* of the legal strength of property owners to eject is unacceptable, the statute could be amended to bypass the commission's review and allow them to bring an "action of ejectment . . . in accordance with the rules relating to a civil action"[265] whether they are doing so under a rule of racing or otherwise. This is unlikely to be preferable to the *status quo* because that action is brought in the judicial district where the land is located,[266] which could lead to inconsistent rulings. This alternative is also unlikely to be quicker or cheaper.

The statute no longer says that security personnel possess the powers and duties of a peace officer to enforce criminal laws.[267] This change could eliminate some ejectments as being considered state action under a public function test but is unlikely to matter in the instances when state racing officials eject licensees for violations of racing rules.

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[258] *Crissman v. Dover Downs Entertainment*, 289 F.3d 231, 233-34 (3d Cir. 2002). Earlier, this circuit characterized "the state action doctrine underlying a civil rights action brought under 42 U.S.C. § 1983" as "murky waters". *Fitzgerald*, 607 F.2d at 591. "The courts have never succeeded in formulating and applying a precise test" to recognize "state action under the Equal Protection Clause." *Crissman*, 289 F.3d at 248 (Rosenn, J., dissenting).
[259] *Guerrero*, 25 F.Supp.3d at 591.
[260] *Ibid.* at 579, 590.
[261] *Ibid.* at 592-93.
[262] *Ibid.* at 593.
[263] *Ibid.* at 596-97.
[264] *Ibid.* at 580.
[265] Pa.R.Civ.P. 1051.
[266] Pa.R.Civ.P. 1052.
[267] 3 Pa.C.S. § 9327.

ECONOMIC RETURN ON INVESTMENT OF GAMING ASSESSMENTS UNDER THE PENNSYLVANIA RACE HORSE DEVELOPMENT AND GAMING ACT

Act No. 7 of 2016 directs the Joint State Government Commission (JSGC) to make "a determination of the economic return to the Commonwealth, racetrack operators, horsemen, breeders and other stakeholders on the investment of gaming assessments collected under the act of July 5, 2004 (P.L.572, No.71)." The act also directs the Independent Fiscal Office (IFO) to provide technical assistance. Based on discussions with the JSGC, the IFO has agreed to provide the analysis for this section of the report.

The act of July 5, 2004 (Act 71), the Race Horse Development and Gaming Act of 2004, legalized slot machine gaming in Pennsylvania. The act levied a 55 percent tax rate on the gross terminal revenue from slot machines. Gross terminal revenue is equal to total wagers less payouts less any promotional play.[268] The Pennsylvania Race Horse Development Fund (PRHDF) receives a maximum of 12 percent of gross terminal revenues from slot machines. For calendar year 2016, the transfer of slots monies to the PRHDF was $235.7 million.

Act No. 7 requires a determination of the *economic return* to the Commonwealth and other parties from *the investment of gaming assessments*. For the purpose of this analysis, the IFO assumes that the investment of gaming assessments refers only to the annual transfer to the PRHDF, since that interpretation is consistent with the broader scope of this report (i.e., horse racing). The IFO also assumes that the term "economic return" implies that the analysis should quantify the net amount of economic activity that is attributable to gaming assessments that are deposited into the PRHDF, and then ultimately disbursed to racetracks and horsemen.[269] The combination of these two elements implies that the analysis should isolate the economic impact attributable solely to the flow of tax revenues into and out of the PRHDF.

The analysis of tax revenue flows is different from typical industry studies (horse racing and others) that are static.[270] Most industry studies are broad and attempt to provide an economic "snapshot" of an industry. These snapshots attempt to quantify the size of the industry, or the

[268] Pennsylvania Gaming Control Board (PGCB), 2015 Racetrack Casino Benchmark Report, page 3, http://gamingcontrolboard.pa.gov/files/reports/2015_Pari-Mutuel_Benchmark_Report.pdf.

[269] Horsemen is a general term that includes owners, trainers, jockeys, drivers and other individuals who directly participate in the racing industry.

[270] For example, see The Innovation Group, "Economic Impact Study: Pennsylvania Equine Racing Industry," March 2011; Hall, Arthur P., "The Economics of Restoring Live Horse Racing and Greyhound Racing in Kansas," February 2016; and Bowen, Eric *et.al.*, "The Economic Impact of the Thoroughbred and Greyhound Racing Industries on West Virginia's Economy 2012," January 2014.

economic footprint, through the tabulation of various metrics such as total sales, total output (gross domestic product or value added), jobs, and compensation paid.

By contrast, Act 7 of 2016 requires a determination of the economic return attributable to the PRHDF transfer. This analysis must therefore determine (1) the entities who ultimately receive the PRHDF transfer and (2) the manner in which the funds are used. As discussed later, a key element that determines the economic return is the amount of the transfer that remains in Pennsylvania.

The analysis must also attempt to quantify monies that flow into Pennsylvania due to the PRHDF transfer. For that purpose, it is necessary to make an explicit assumption regarding the status of the horse racing industry in the absence of the PRHDF transfer. Due to the size of the transfer and the fact that it currently supplies nearly 90 percent of total prize money, it is likely that the industry would be greatly diminished without those funds. For the purpose of this chapter, the analysis assumes that the industry would not be viable without the transfer. It is noted that that outcome need not occur; it is also possible that the industry would contract significantly. This simplifying assumption is made to make the analysis tractable and straightforward. Policymakers can determine whether it is reasonable or requires modification.

The remainder of this chapter proceeds as follows. The first section addresses the PRHDF and presents historical data on the transfer and a discussion of the entities who receive those monies. The second section presents data on all types of horse race wagers and discusses how those wagers flow to patrons, racetracks, and horsemen. The third section discusses expenditures on concessions, lodging, and other gaming by resident and non-resident patrons of the six Pennsylvania racetracks. The fourth section discusses wagers made by Pennsylvania residents on races hosted in other states. The final section combines and summarizes the four sections and discusses the overall economic impact of the PRHDF transfer.

The Pennsylvania Race Horse Development Fund

Act No. 71 of 2004 enacted a 55 percent tax on the gross terminal revenue (GTR) from slot machine gaming in Pennsylvania. That 55 percent GTR tax revenue is apportioned to various purposes:

- property tax relief (34 percent),
- distributions to counties and municipalities in the area where the casino is located (four percent),
- an Economic Development Fund used for economic development projects in the Commonwealth (five percent), and
- the Pennsylvania Race Horse Development Fund (PRHDF) (roughly 11 to 12 percent).

This chapter focuses on the final item. GTR tax revenues are deposited into the PRHDF to augment horse racing purses (or winnings), provide health and retirement benefits to horsemen, and support the horse breeding industry in the Commonwealth. The recipients are equine owners, racetracks, breeders, and other horsemen (jockeys, drivers, trainers, and other support personnel).

Table 4 displays GTR tax revenue from each casino that was deposited into the PRHDF for calendar years 2010 through 2016. Deposits peaked in 2011 ($277.0 million), but have declined nearly every year since then to the current level of $235.7 million. Much of the downward trend in revenue is likely attributable to competition from new casinos located in Ohio, Maryland, and New York.

Table 4
Slots Tax Collections Transferred to the
Pennsylvania Race Horse Development Fund
2010 – 2016
($ Millions)

Casino	2010	2011	2012	2013	2014	2015	2016[1]
Parx	$47.5	$43.4	$42.6	$39.4	$37.7	$39.5	$39.7
Presque Isle	20.3	19.3	16.8	14.0	12.5	12.2	11.6
Mohegan Sun Pocono	26.8	26.9	25.8	23.5	22.7	22.5	22.1
The Meadows	29.7	28.6	27.6	24.6	22.8	23.0	22.1
Harrah's Philadelphia	35.4	30.9	28.8	25.0	22.8	22.7	20.9
Mount Airy	17.1	16.8	16.6	15.2	14.7	14.5	14.1
Hollywood	30.2	28.7	27.0	24.6	22.4	22.5	21.7
Sands Bethlehem	30.8	31.1	32.2	30.6	29.2	31.0	31.0
Rivers	28.8	31.7	31.2	30.3	28.9	28.7	25.0
SugarHouse	4.3	19.7	21.1	19.3	18.2	18.1	17.0
Valley Forge	0.0	0.0	4.0	6.7	7.7	8.1	7.5
Lady Luck Nemacolin	0.0	0.0	0.0	1.2	2.8	3.1	3.0
Total	**271.0**	**277.0**	**273.7**	**254.4**	**242.3**	**246.1**	**235.7**

[1] Collections are net of refunds for certain promotional items purchased by the casino.

Source: 2010-2015 data from Pennsylvania Gaming Control Board (PGCB), 2015 Pari-Mutuel Statistical Summary, http://gamingcontrolboard.pa.gov/?p=51. 2016 data from the PGCB website, Slots Revenue FY 2016/2017, http://gamingcontrolboard.pa.gov/?p=259.

Disbursements from the PRHDF

Table 5 displays the types of disbursements from the PRHDF to the horse racing industry from 2010 to 2016. For 2016, certain line items were unusually large (restricted receipts account) or reflect only six months of data due to timing issues (State Racing Fund). The final column, which adjusts the actual data for 2016 to more accurately reflect the future expected disbursements, which is used for the purpose of this analysis. Purses, breeding funds, and health and pension benefits receive the majority (87 percent) of disbursements from the PRHDF. The subsections that follow provide a brief description of the disbursement and utilization of those funds.

Table 5
Disbursements from PRHDF
2010 -2016
($ Millions)

	2010	2011	2012	2013	2014	2015	2016	2016 Adj[1]
Purses	$157.1	$181.3	$177.3	$165.6	$178.8	$193.9	$141.4	$158.2
PA Breeding Fund	16.2	18.6	18.2	17.1	18.4	20.2	14.8	16.6
PA Sire Stakes Fund	7.6	8.8	8.6	8.0	8.7	9.3	6.7	7.5
PA SBDF[2]	7.6	8.8	8.6	8.0	8.7	9.3	6.7	7.5
Health & Pension Benefits	12.2	11.4	11.4	11.2	11.1	11.2	11.0	12.3
State Racing Fund	0.0	0.0	0.0	0.0	4.2	0.0	6.7	10.9
General Fund	68.8	46.9	45.9	22.8	0.0	0.0	0.0	0.0
Farm Products Show Fund	0.0	0.0	2.5	2.5	0.0	0.0	0.0	0.0
Restricted Receipts Account	0.0	0.0	0.0	17.7	17.7	0.0	45.4	19.7
Total	**269.5**	**275.8**	**272.5**	**252.9**	**247.6**	**243.8**	**232.8**	**232.8**

[1] Assumes that $25.759 million in agricultural-related programs from Act 25 of 2016[271] applies to the previous (2015) calendar year and reduces the 2016 figure for the restricted receipts account by that amount. Increases the State Racing Fund line item to reflect a full year of deposits for drug testing and promotional costs. The remainder is redistributed proportionally among the other line items so that the total amount remains the same.

[2] Pennsylvania Standardbred Breeders Development Fund.

Source: 2010 - 2014 data from the Pennsylvania Gaming Control Board (PGCB), 2015 Pari-Mutuel Statistical Summary, http://gamingcontrolboard.pa.gov/?p=51. 2015 and 2016 data are from the Pennsylvania Department of Revenue. All data are net of promotional expense refunds.

Purses

Purses are the prize monies awarded to owners of horses that participate in race events. Purses vary in size based on the type of race, placement of the horse (the top five finishers typically receive a share of the total purse), and policy of the racetrack. Purses are funded by PRHDF disbursements (87 percent of purses earned in 2016) and a portion of total wagers.

[271] Act 25 of 2016 was amendments to the Fiscal Code to, among other things, temporarily finance distributions from the Race Horse Development Fund.

To determine the economic return from the PRHDF transfer, the analysis must identify the individuals or entities who receive those funds and how they are used. For 2016 (adjusted amount from Table 5), the analysis makes the following assumptions for PRHDF purse disbursements ($158.2 million):

- Fifty percent of purses is received by owners who are Pennsylvania residents, and 50 percent is received by owners who are non-residents.[272]

- owners retain 90 percent of purses, while 10 percent goes to jockeys, drivers, and trainers.[273]

- Eighty-five percent of all purses paid to jockeys, drivers, and trainers is received by Pennsylvania residents, and 15 percent is received by out-of-state residents.[274]

Based on these parameters, the analysis assumes that the $158.2 million of purse monies from the PRHDF are distributed as follows: $84.6 million flows to Pennsylvania residents ($71.2 million to owners, $13.4 million to jockeys, drivers, or trainers), and $73.6 million flows to non-residents ($71.2 million to owners, $2.4 million to jockeys, drivers, or trainers).

Breeding Funds

Revenues from the PRHDF are disbursed to three breeding funds: The Pennsylvania Breeding Fund, the Standardbred Breeders Development Fund (SBDF), and the Pennsylvania Sire Stakes Fund. For 2016 (adjusted amount), these breeding funds received $31.6 million of disbursements from the PRHDF. The Pennsylvania Breeding Fund enhances the thoroughbred breeding industry by offering monetary awards to breeders, stallion owners, and owners of winning Pennsylvania-bred horses. The SBDF and Pennsylvania Sire Stakes Fund are targeted to the Standardbred breeding industry. The SBDF provides monetary incentives to owners of winning stallions and broodmares registered and residing in Pennsylvania, while the Sire Stakes Fund provides monetary awards to breeders for a series of races that feature horses sired by registered Pennsylvania stallions. It is assumed that through these monetary awards and incentives, Pennsylvania breeders are the ultimate beneficiaries of these disbursements from the PRHDF.

The analysis assumes that 90 percent of PRHDF disbursements made to one of the three breeding funds flows to a Pennsylvania resident.[275] For 2016, $28.5 million of disbursements would flow to Pennsylvania residents, and $3.2 million would flow to non-residents.[276]

[272] Data from the annual racetrack reports submitted to the Racing Commission for 2015 suggest that 44 percent of purses paid flowed to an owner who was a Pennsylvania resident. However, the owner on record with the Racing Commission may not be representative of the residency of all owners, such as a partnership with multiple owners. The analysis uses a somewhat higher share of Pennsylvania owners than suggested by the report data.
[273] Based on IFO discussions with various industry representatives.
[274] Based on IFO discussions with various industry representatives.
[275] A membership list of the Standardbred breeding funds suggests that 90 percent of its members have a Pennsylvania address.
[276] For a more indepth analysis of the breeding funds, see "Thoroughbred and Standardbred Breeding," *infra*.

Health and Pension Benefits

The PRHDF also makes disbursements to provide health and pension benefits for members of horsemen's organizations that represent owners and trainers at racetracks at which the licensed racing entity operates. The horsemen's organizations include:

- The Pennsylvania Harness Horsemen's Association offers comprehensive insurance and retirement savings to its members, and includes owners, trainers, and other horsemen.[277] Member tracks for this association include Mohegan Sun at Pocono Downs and Harrah's Philadelphia.

- The Meadows Standardbred Owners Association offers benefits to owners, drivers, trainers, grooms, and other horsemen who race at The Meadows.[278]

- The Pennsylvania Thoroughbred Horsemen's Association (PTHA) offers health benefits and pension plans to members that exceed a specified level of racing activity at Parx.[279]

- The Pennsylvania Horsemen's Benevolent Protective Association (HBPA) is a non-profit organization that offers several forms of medical coverage, along with health insurance and pension benefits to trainers at Penn National and Presque Isle.[280]

For 2016 (adjusted amount), disbursements from the PRHDF to members of these organizations for the purpose of health and pension benefits was $12.3 million. The analysis assumes that 85 percent ($10.5 million) of these funds flows to Pennsylvania residents, and 15 percent ($1.8 million) flows to non-residents.[281]

All Other Funds

For 2016 (adjusted amount), disbursements to all other funds were $30.6 million. These amounts provide funds for the Farm Show, Pennsylvania fairs, the Racing Commission, the Animal Health and Diagnostic Commission, and the Pennsylvania Veterinary Laboratory. Somewhat more than half of these funds provide direct support to the racing industry. The analysis for 2016 assumes that 95 percent ($29.1 million) of these funds went to Pennsylvania residents, and five percent ($1.5 million) went to non-residents.

[277] Pennsylvania Harness Horsemen's Association. "About." http://www.phha.org/about.html.
[278] Meadows Standardbred Owners Association. "Membership Benefits." http://www.themsoa.com/membership-benefits/.
[279] Pennsylvania Thoroughbred Horsemen's Association. "Health and Pension." http://patha.org/about-the-ptha/health-and-pension/.
[280] Pennsylvania Horsemen's Benevolent Protective Association. "Member Benefits." http://www.pahbpa.com/member-benefits/.
[281] This assumption is based upon available data pertaining to membership requirements of these organizations. These funds may leak from the state as profits of multi-state insurance companies and retirees who move out of state.

Summary

Table 6 provides a summary of the $232.8 million in PRHDF disbursements to Pennsylvania residents and non-residents. The total split is as follows:

- $152.7 million to residents: $84.6 million from purses, $28.5 million from breeding funds, $10.5 million from health and pension benefits, and $29.1 million from all other funds; and

- $80.1 million to non-residents: $73.6 million from purses, $3.2 from breeding funds, $1.8 million from health and pension benefits, and $1.5 million from all other funds.

Table 6
PRHDF Disbursements – Residents and Non-Residents
2016 ($ Millions)

	Purses	Breeding Funds	Health & Pensions	Other	Total
PA Residents	$84.6	$28.5	$10.5	$29.1	$152.7
Non-PA Residents	73.6	3.2	1.8	1.5	80.1
Total	**158.2**	**31.6**	**12.3**	**30.6**	**232.8**

Source: Totals based on data from the PGCB website, Slots Revenue FY 2016/2017, http://gamingcontrolboard.pa.gov/?p=259. PA and non-PA resident splits based on estimates from the Independent Fiscal Office (IFO).

The final step in the analysis of PRHDF disbursements determines the amounts that are spent in Pennsylvania by the residents and non-residents who receive the funds. For that purpose, the analysis assumes that:

- Ninety-five percent of funds that flow to Pennsylvania horsemen (owners, jockeys, drivers, and trainers) is spent in-state, and five percent is spent out-of-state; and

- Sixty percent of funds that flow to non-resident horse owners is spent in Pennsylvania, and 40 percent is spent out-of-state. [282]

Table 7 provides a summary of the flow of PRHDF distributions to residents and non-residents, and the amounts that are spent in Pennsylvania. In the final section, the analysis will use these "direct spending" figures to determine the economic return on gaming assessments. Based on the parameters discussed above, the analysis assumes that $189.7 million (81.5 percent) of PRHDF disbursements is spent in Pennsylvania, and $43.0 million (18.5 percent) flows outside of the state.

[282] Industry sources noted that horses typically race and stable near the same track for much or most of the racing season.

Table 7
Spending of PRHDF Disbursements
2016 ($ Millions)

	In Pennsylvania		Out-of-State	
	PA Residents	**Non-Residents**	**PA Residents**	**Non-Residents**
Purses	$80.4	$42.7	$4.2	$30.8
Breeding Funds	27.1	0.0	1.4	3.2
Health & Pension Benefits	10.5	0.0	0.0	1.8
Other	29.1	0.0	1.5	0.0
Total	**147.0**	**42.7**	**7.2**	**35.9**

Source: Estimates by the IFO.

Wagers in the Pennsylvania Race Horse Industry

Pennsylvania residents and non-residents place wagers on horse races hosted by one of the six Pennsylvania racetracks. These wagers are referred to as live handle. Residents may also place wagers on horse races in other states, and some of those monies flow out of state. The analysis considers both types of wagers to determine the economic return from the transfer of GTR tax revenue to the PRHDF.

Live Handle on Pennsylvania Horse Races

Live handle can be divided into five types of wagers: on-track, off-track, phone/internet, in-state export, and out-of-state export. On-track handle is wagers placed on Pennsylvania races at the racetrack where the race takes place. Off-track handle is wagers placed at off-track wagering (OTW) facilities located in the Commonwealth. Phone/internet handle is wagers placed over the phone or through the internet with an entity that is located within the state (although the wager may originate from out of state). In-state export handle is wagers placed on Pennsylvania races that are simulcast to other racetracks located inside the Commonwealth.[283] Out-of-state export handle is wagers on Pennsylvania races that are simulcast to racetracks or OTW facilities located outside of Pennsylvania.

Prior to Act 71 of 2004, purses were paid using proceeds from the live racing handle. It is widely recognized that larger purses attract superior competition, which typically increases the total wager pool. Purses increased significantly following the passage of Act 71 and implementation of GTR taxes. The influx of slots revenue from the PRHDF transfer appears to

[283] Simulcast wagering occurs when a racetrack exports their live racing signal to other racetracks.

have had a direct impact on the live racing handle. Table 8 displays the live racing handle for Pennsylvania horse races since the start of the PRHDF transfer. In 2006, a very modest amount ($3.0 million) of GTR tax revenue was added to the $52.9 million available from the live handle purse to yield a total purse amount of $56.0 million. Over the next three years, purses earned increased to $151.7 million ($99.7 million from GTR taxes) in 2007, $201.1 million ($155.1 million from GTR taxes) in 2008, and $230.5 million ($188.6 million from GTR taxes) in 2009.[284] The rapid growth in purses coincided with an increase in total live racing handle from $580.3 million (2006) to $765.0 million (2009). Nearly all of the increase was attributable to out-of-state export, or wagers made by non-residents at facilities located in other states through simulcast wagering. Purses earned peaked in 2009, but live racing handle continued to expand through 2013 ($807.6 million). Since then, live racing handle has contracted every year to $681.4 million in 2016.

Table 8
Live Handle and Purses Earned on Pennsylvania Horse Races
($ Millions)

	Live Racing Handle						Purses Earned		
Year	**On-Track**	**Off-Track**	**Phone/ Internet**	**In-State Export**	**Out-of-State Export**	**Total**	**From Slots**	**From Handle**	**Total**
2006	$41.3	$27.5	$13.8	$42.1	$455.5	**$580.3**	$3.0	$52.9	**$56.0**
2007	40.9	24.2	14.7	42.4	503.1	**625.3**	99.7	51.9	**151.7**
2008	43.6	22.0	13.9	44.2	605.5	**729.3**	155.1	46.0	**201.1**
2009	44.7	20.1	12.7	43.3	644.1	**765.0**	188.6	41.9	**230.5**
2010	40.5	17.6	11.3	39.5	660.7	**769.6**	159.1	37.3	**196.4**
2011	38.3	15.0	8.5	34.3	594.2	**690.3**	178.7	34.1	**212.7**
2012	40.7	14.5	8.1	33.9	679.7	**777.0**	175.5	33.6	**209.0**
2013	37.0	11.6	7.7	31.9	719.5	**807.6**	166.9	30.8	**197.8**
2014	32.9	9.8	9.3	29.1	683.9	**765.0**	177.1	27.6	**204.8**
2015	30.6	8.5	7.8	25.0	650.3	**722.1**	194.2	24.2	**218.3**
2016	27.4	6.2	6.4	21.3	620.1	**681.4**	145.4	22.6	**168.1**

Source: 2006 - 2015 from the PGCB, 2015 Pari-Mutuel Statistical Summary, http://gamingcontrolboard.pa.gov/?p=51. Figures for 2016 based on preliminary data from the PGCB.

[284] Purses earned is the total amount of prize money available to pay to winning horses before a race takes place. These amounts are slightly different than the purses paid which represents the subsequent distribution of prize monies actually paid to winning horses. Source: PGCB 2013 Pari-Mutuel Benchmark Report, pg. 9. http://gamingcontrolboard.pa.gov/files/reports/2013_Pari-Mutuel_Benchmark_Report.pdf

To estimate the economic return from the PRHDF transfer, the analysis separates the amount of live handle attributable to Pennsylvania residents and non-residents. To facilitate that split, the analysis uses the following assumptions for wagers made in 2016:

- Pennsylvania residents comprise 90 percent of wagers at all racetracks and off-track wagering facilities in Pennsylvania. This assumption includes on-track, off-track and in-state export handle in Table 8.

- Pennsylvania residents comprise three-quarters of wagers placed by phone or internet on Pennsylvania races. Phone/internet wagers are a small portion of total live handle and this assumption has a minor impact on the overall results.

- All out-of-state export handle is attributable to non-residents.[285]

Based on these parameters, the analysis assumes that $54.2 million (8.0 percent) of the $681.4 million in total live handle is from Pennsylvania residents and $627.2 million (92.0 percent) is from non-residents. It is necessary to identify the origin of all wagers because roughly 80 percent of wagers is returned to bettors in the form of winnings. Hence, most wagers that originate from out-of-state remain in that location.

Live Racing Handle

Table 9 tracks the flow of the total live racing handle to resident and non-resident bettors, owners, and other horsemen. The table allocates wagers to winnings, state tax (both Pennsylvania and other states), tote expense (defined below), non-Pennsylvania and Pennsylvania racetracks, and horsemen. The text that follows provides a brief discussion of the categories from Table 9 and the assumptions used to determine the amounts that are ultimately spent in Pennsylvania or out of state.

[285] It is likely that some small amount of out-of-state export is attributable to Pennsylvania residents who place bets on Pennsylvania races while out of state. To the extent this occurs, the analysis will overstate the non-resident inflows and the net economic return from the PRHDF transfer.

Table 9
Flow of Wagers Placed on Pennsylvania Horse Races
2016 ($ Millions)

	On-Track	Off-Track	Phone/ Internet	In-State Export	Out-of-State Export	Total Live Handle
Returned to Bettors	$21.9	$5.0	$5.1	$17.0	$496.1	$545.1
State Pari-Mutuel Tax[1]	0.6	0.1	0.1	0.5	14.0	15.3
Tote Expense	0.1	0.0	0.0	0.1	1.6	1.7
PA Horsemen (Purses)[2]	1.6	0.4	0.4	1.2	8.2	11.7
PA Racetracks[3]	3.2	0.7	0.7	2.5	16.6	23.8
Out-of-state Tracks / Horsemen[4]	0.0	0.0	0.0	0.0	83.7	83.7
Total Wagers	**27.4**	**6.2**	**6.4**	**21.3**	**620.1**	**681.4**

[1] Out-of-state export is not taxed in Pennsylvania. However, the analysis assumes that it is taxed in the state in which the bet was placed at the Pennsylvania estimated blended tax rate (2.25 percent).
[2] Horsemen include owners, trainers, jockeys, drivers, etc.
[3] Pennsylvania racetracks include off-track wagering facilities in Pennsylvania since racetracks own those facilities.
[4] Includes all out-of-state betting facilities and out-of-state horsemen (which refers to horsemen at racetracks in other states).

Source: Estimates from the IFO based on conversations with various industry representatives.

Amounts Returned to Bettors

Most wagers return to bettors in the form of winnings, and the analysis assumes that 80 percent of the live handle is returned to bettors.286 These amounts have no impact on the computation of the economic return from the PRHDF transfer.

State Pari-Mutuel Tax

Wagers made at a facility located in Pennsylvania or facilitated by such an entity (i.e., phone or internet wagers) are subject to the state pari-mutuel tax.[287] Hence, Pennsylvania taxes all live racing handle except out-of-state export. The analysis uses the following effective tax rates:

[286] This parameter is based on conversations with staff of the Pennsylvania State Horse Racing Commission and published take-out rates for certain Pennsylvania racetracks. The take-out rate is the share of wagers not returned to bettors.
[287] The pari-mutuel tax rate in Pennsylvania is "1.5% of the amount wagered each racing day on win, place or show wagers and 2.5% of the total amount on an exotic wager, including an exacta, daily double, quinella and trifecta wager." 3 Pa.C.S. § 9334 (b).

- Pennsylvania levies different rates of tax based on the type of bet placed, and the analysis assumes an effective state tax rate of 2.25 percent on all taxable handle. This effective tax rate is confirmed by the ratio of total pari-mutuel tax to total taxable handle (discussed below).

- Although Pennsylvania does not tax out-of-state export, it is likely that the state of origin does. It is not possible to determine the state from which a bet originates. Therefore, the analysis assumes that out-of-state export is also taxed at an effective rate of 2.25 percent, and those monies are remitted to other states.

Based on these tax rates, approximately $1.4 million in tax revenues are received by the Commonwealth and $14.0 million flows to other states.[288]

Tote Expense

Several firms calculate and provide odds for horse races that are updated as new wagers are made. Those firms receive a share of gross wagers as remuneration. Based on conversations with the Pennsylvania Racing Commission and racetracks, the analysis assumes that the tote expense is roughly 0.25 percent of live racing handle (roughly $1.7 million).289 One-half is assumed to remain in Pennsylvania because certain racetracks employ local workers to make these computations.

Income to Pennsylvania Racetracks and Horsemen

For on-track, off-track, phone/internet and in-state export wagers, the amount of wagers retained by racetracks or distributed to horsemen is the residual (17.5 percent, $10.7 million) after the deduction of amounts returned to bettors (80 percent), state tax (2.25 percent) and tote expense (0.25 percent). For out-of-state export, (out-of-state bets made on Pennsylvania races), out-of-state racetracks or OTW facilities where the bet is placed typically retain a material portion of the wager, while the Pennsylvania racetrack that hosts the race receives a host fee. Based on discussions with industry officials, the analysis assumes that the host fee is four percent of the handle. For these types of wagers, the amount retained by the out-of-state entity is the residual (13.5 percent, $83.7 million) after all other deductions, and only the four percent host fee ($24.8 million) flows into the state.

The total amount retained by racetracks or distributed to horsemen from all live handle is $35.5 million ($10.7 million plus $24.8 million). The split of those monies between racetracks and horsemen varies across racetracks. Based on discussions with industry representatives, the analysis assumes that two-thirds of those monies is retained by Pennsylvania racetracks ($23.8 million) and one-third is distributed to horsemen ($11.7 million).

[288] Approximately $7 million in Pennsylvania pari-mutuel taxes is also collected from wagers made in Pennsylvania on out-of-state races. Those amounts are discussed in a later section.
[289] Discussions with industry officials suggest that tote expenses range from 0.15% to 0.50% of total wagers.

Amounts Spent in Pennsylvania

Having determined the income flows, the analysis tracks the amount of funds spent in Pennsylvania. For this purpose, only the monies that flow into the state from non-residents is tracked. The analysis assumes that the 20 percent of resident wagers that is not returned to bettors does not represent a net economic gain or loss, but would simply be redirected towards some other form of in-state entertainment, perhaps even other gaming options if horse racing was not available.[290] Based on the assumptions discussed previously, Table 10 shows that resident wagers retained by racetracks or distributed to horsemen is $9.5 million. If combined with pari-mutuel tax from Table 9, then the total is $10.9 million. If redirected towards some other form of in-state entertainment, those monies would likely have a similar net impact on the Pennsylvania economy.

The inflow from non-residents is $26.0 million, largely due to the four percent host fee from out-of-state export. The analysis assumes two-thirds of that amount is retained by racetracks ($17.5 million) and 90 percent ($15.7 million) is spent in Pennsylvania. The residual amount flows out of state as profits (e.g., dividend payments to shareholders of a multi-state corporation) or possibly as payments to service providers that are located in other states (e.g., advertising firms). The residual one-third ($8.6 million) flows to horsemen and most of that amount ($6.7 million) is assumed to be spent in Pennsylvania based on the resident and non-resident horsemen assumptions discussed in the previous section.

Table 10
Live Handle to Pennsylvania Racetracks and Horsemen In 2016
($ Millions)

	On-Track	Off-Track	Phone/ Internet	In-State Export	Out-of-State Export	Total Live Handle
To PA Racetracks and Horsemen						
From PA Residents	$4.3	$1.0	$0.8	$3.3	$0.0	$9.5
From non-PA Residents	0.5	0.1	0.3	0.4	24.8	26.0
Total	**4.8**	**1.1**	**1.1**	**3.7**	**24.8**	**35.5**

	Spent in		
Non-Resident Flows Only	**Pennsylvania**	**Out-of-State**	**Total**
To Racetracks	$15.7	$1.7	$17.5
To Horsemen	6.7	1.9	8.6
Total	**22.4**	**3.7**	**26.0**

Source: Estimates from the IFO based on conversations with various industry representatives.

[290] If the analysis simply attempted to quantify the size of the industry, then these monies would be included.

Wagers Made in Pennsylvania on Out-of-State Races

The final category of wagers is wagers made in Pennsylvania on races hosted by a racetrack located in another state. Those wagers are subject to the state pari-mutuel tax and when combined with live racing handle (except out-of-state export) equals total taxable handle. As shown by Table 11, taxable handle has declined in every year since 2006, largely due to the contraction in wagers made in Pennsylvania on out-of-state races.

It is unclear what would happen to these wagers if horse racing was not available in Pennsylvania. It is possible those wagers could increase as residents redirect bets on Pennsylvania races to out-of-state races. Alternatively, general interest in horse racing could decline and reduce bets placed on out-of-state races. This analysis implicitly assumes those effects offset and does not attempt to model those outcomes.

Table 11
Pennsylvania Taxable Hand[1]
($ Millions)

Year	Wagers on PA Races[1]	Wagers on Non-PA Races	Taxable Handle	Pari-Mutuel Tax Revenues
2006	$124.7	$851.1	$975.9	$10.8
2007	122.2	812.0	934.2	11.6
2008	123.8	700.3	824.1	10.9
2009	120.9	613.0	733.8	15.0
2010	108.9	512.8	621.7	12.1
2011	96.1	459.1	555.3	10.1
2012	97.3	425.7	522.9	12.5
2013	88.0	392.5	480.6	11.0
2014	81.1	346.4	427.5	9.8
2015	71.8	309.6	381.4	8.5
2016	61.3	n.a.	n.a.	9.1

[1] Includes all on-track, off-track, phone/internet wagering, and in-state export live handle wagers.

Sources: Pennsylvania Gaming Control Board (PGCB). 2015 Pari-Mutuel Statistical Summary. Pennsylvania State Accounting System. Estimate for 2016 based on data from the PGCB.

Other Spending by Racetrack Patrons: Concessions, Lodging and Gaming

In addition to wagers, racetrack patrons also spend on food and beverages, lodging, and casino games when they visit racetracks. These expenditures have an economic impact on the state economy and the analysis must determine whether those expenditures are attributable to residents or non-residents. If attributable to residents, the analysis assumes that those residents would spend on other forms of entertainment in the state (e.g., movies, sporting events, lottery tickets) if horse racing was not available. Under either scenario, the net impact on the state economy would likely be similar. In contrast, the analysis treats spending by non-residents as a true economic gain that would not otherwise occur without the PRHDF transfer and a robust horse racing industry.

Concessions (Food and Beverages)

Based on data supplied by racetracks and annual reports submitted to the Racing Commission, the analysis uses the following estimates for food and beverage purchases made by racetrack patrons for CY 2016:

- Food and beverages purchased at concession stands and restaurants connected directly to the six racetracks in Pennsylvania: $5.2 million.[291]

- Food and beverages purchased at OTW facilities in Pennsylvania: $2.8 million.[292]

- Food and beverages purchased at restaurants located near racetracks from patrons choosing to dine outside of the racetrack: $1.3 million.[293]

Data are not available to inform the split of food and beverage purchases between residents and non-residents. The analysis uses an estimate that is likely on the upper end of a range that could be assumed to be attributable to non-residents (20 percent). Therefore, the analysis assumes that residents account for $7.4 million and non-residents account for $1.9 million of total food and beverage purchases ($9.3 million) made by racetrack patrons.

[291] The estimate is based on data provided by four racetracks. Food and beverage sales at other racetracks were estimated based on (1) per capita sales from racetracks that supplied data and (2) reported annual attendance at those racetracks.

[292] This estimate is based on data provided by two (out of four) racetracks with OTW facilities. Food and beverage sales at other facilities were assumed to have the same ratio of sales to wagers that take place at the facility.

[293] Data are not available for this estimate. The analysis assumes that other restaurants receive one-quarter of the total amount spent at Pennsylvania racetracks.

Lodging and Accommodations

In 2015, 721,000 patron visits were reported by the six Pennsylvania racetracks.[294] The analysis assumes that 10 percent of patrons are out-of-state residents and one-third require overnight lodging. If, on average, there are two patrons to a room and the average cost of a room is $150 per night, then $1.8 million is spent on lodging by non-residents annually.

Slots and Table Games

Many racetrack patrons will also spend on slots and table games during their visits to racetracks. However, it is difficult to isolate the net impact that horse racing may have on slots and table games activity. For example, although racetrack patrons may visit a casino after their races conclude, casino patrons (i.e., those in attendance whose primary purpose is to play slots or table games) may also venture to the racetrack and make wagers. For certain racinos, the data reveal that average gross terminal revenue from slots is higher on racing days, but much of that outcome could be due to the fact that nearly all racetracks host races on the high-volume day of Saturday, which may skew a simple comparison of daily averages. Similar to the seasonal impact on tourism, any analysis would need to control for this "day-of-the-week" effect.

Like food and beverage purchases, the analysis identifies slots and table games activity that could be due to racetrack patrons. For non-residents, that spending would be included as part of the economic return from the PRHDF transfer since the analysis assumes those monies would not flow into the state without a robust horse racing industry. For residents, the analysis assumes that incremental racetrack patron spending on slots and table games would occur regardless, and would be spent on some form of in-state entertainment. It is possible that those individuals simply redirect all of their spending at a racino to slots and table games exclusively if horse racing was not available.

A regression analysis was used to identify the net impact that horse racing may have on slots activity. Separate analyses were performed for several racinos and casinos (no racetrack). The analyses controlled for the day of the week and produced mixed results. More detailed data would be necessary to provide further clarity regarding the interaction between these different forms of entertainment.

Due to this uncertainty and ambiguity of statistical results, the analysis does not attempt to quantify an exact magnitude of any "spillover effects" from horse racing to slots (and table games) through the use of statistical analysis. However, for non-residents who visit a Pennsylvania racino for the purpose of horse racing (i.e., they would not otherwise make the trip), and also play slots or table games, the monies retained by the casino would represent a net inflow to the state that could be attributed to horse racing. The analysis assumes that Pennsylvania casinos retain $3 million of those bets for CY 2016 (a portion is remitted as tax to the Commonwealth), which

[294] Data from annual reports submitted by each racetrack to the Pennsylvania Horse Racing Commission. The figure represents total daily visits, and most patrons likely visit racetracks more than once per year. The analysis assumes the same attendance for 2015 and 2016.

implies total non-resident bets that are much higher because the slots and table games payout rates are relatively high.[295]

Economic Impact Summary

This final section combines the findings from the previous sections contained in this chapter and discusses the economic return from PRHDF disbursements, as required by Act 7 of 2016. The first part derives a "direct spending" figure that can be attributed to PRHDF disbursements. That amount consists of two general parts: (1) PRHDF disbursements spent in the state and (2) the net inflows from non-residents due to horse racing. As noted, the analysis assumes that resident wagers not returned to bettors (20 percent of wagers) and spending on concessions, lodging, or gaming would be redirected to a different form of in-state entertainment that may have a slightly higher or lower economic impact.[296] In either case, those monies would be spent in Pennsylvania and have a positive impact on the state economy. Therefore, the net economic impact or return will be determined by the magnitude of leakages from PRHDF disbursements to out-of-state owners and other horsemen relative to non-resident monies that flow into the state in the form of retained wagers, host fees, concessions, lodging, and higher slots play.

Direct Spending Attributable to PRHDF Disbursements

Table 12 summarizes the direct spending in Pennsylvania discussed in prior sections based on the source of income. Only the portion of PRHDF disbursements that are spent in state and non-resident inflows that would not otherwise occur without horse racing are shown. Direct in-state spending ($219.6 million) is as follows:

- PRHDF monies to horsemen ($133.6 million, from Table 7, sum of purses and health-pension benefits received by residents and non-residents and spent in Pennsylvania);

- PRHDF monies to incentivize horse breeding in Pennsylvania ($27.1 million, from Table 7);
- PRHDF monies to a state agency or fund that generally flow to the horse racing or agricultural industries ($29.1 million, from Table 7);

- Distributions to racetracks and horsemen from (1) non-resident live handle and (2) host fees ($22.4 million from Table 10) plus a small amount ($0.8 million) from tote expense for a total of $23.2 million;

[295] For example, if the slots payout rate is 90 percent and a casino retains $3 million, then the total bets were $3 / (1 - 0.9) = $30 million. That amount represents roughly one-fifth of one percent of total bets for the six racinos for CY 2016.

[296] Technically, this would be determined by the "multipliers" applied to the redirected spending. This net impact is likely minor and cannot be determined without specifying the alternative use of those funds.

- Non-resident purchases of concessions ($1.9 million), lodging ($1.8 million) and incremental slots play ($3.0 million) for a total of $6.7 million (from prior section).

- Net purses from other states brought back to Pennsylvania by Pennsylvania owners racing in those states ($5.0 million).

The final item was not discussed previously and is difficult to quantify. Similar to non-resident owners who win Pennsylvania purses, some Pennsylvania owners will also race in other states and bring a portion of their net purse (after expenses) home. If the disbursements from the PRHDF did not occur, it is possible that some of those owners would no longer compete in out-of-state races, and those net winnings would not flow into the state economy. Other Pennsylvania owners may continue to race in other states, regardless of disbursements from the PRHDF. The amount represents net purses that currently flow into the state, but would no longer occur without PRHDF disbursements to Pennsylvania owners. This amount is itemized separately to allow a re-computation of results under a higher or lower amount.

Table 12
Direct Spending Attributable to PRHDF
Disbursements and Non-Residents for 2016 ($ Millions)

	PRHDF Disbursements			Non-Resident Flows		
	Total	**Horsemen**	**Breeding Funds**	**Other/ State**[1]	**Live Handle**	**Concessions and Other**[2]
Racetracks[3]	$23.1	$0.0	$0.0	$0.0	$16.5	$6.7
Horsemen	140.3	133.6	0.0	0.0	6.7	0.0
Breeders	27.1	0.0	27.1	0.0	0.0	0.0
Other[1]	29.1	0.0	0.0	29.1	0.0	0.0
Non-PA Net Purse[4]	5.0	5.0	0.0	0.0	0.0	0.0
Total	**219.6**	**133.6**	**27.1**	**29.1**	**23.2**	**6.7**

[1] Includes transfers to the State Racing Fund and transfers to restricted receipts accounts to pay for various agricultural programs.
[2] Includes non-resident food, beverage, lodging, and incremental slots play as a result of horse racing in Pennsylvania.
[3] Includes the racetrack portion of the host fee, inflows from non-resident patrons and a portion of tote expenses.
[4] Net purses from out-of-state races that no longer flow into Pennsylvania.

Table 13
Output Multiplier Effect of PRHDF Disbursements
PA Specific Multipliers
by Sector
2016

Sector	Disbursement Recipient	Disbursement Amount ($ millions)	Multiplier	Economic Impact
Gambling Industries	Racetracks	$23.10	1.87	$43.2
Animal Production[1]	Horsemen /Breeders	160.7	1.65	265.2
Government Enterprises	State Racing Fund/Agriculture programs	29.1	2.28	66.3
Hospitality Services	Racetracks	6.7	2.17	14.5
Total				389.2

[1] Excludes cattle and poultry.

Economic Return from PRHDF Disbursements

The amounts from the top of Table 12 represent the direct spending, or the first round economic impact. That spending becomes income for the recipients, and some portion is re-spent, while other amounts are saved or paid in federal, state or local tax. In this manner, an initial $1 of direct spending will translate into total spending that exceeds $1. This phenomenon is referred to as the multiplier effect. A spending or output multiplier of 2.0 implies that $1 in direct spending is projected to increase total spending or output by $2 in the state economy as the funds are re-spent by those who receive them. The additional $1 of spending activity reflects indirect and induced spending.[297] For example, the firms and individuals that spend these monies allocate their spending to various purposes:

- Owners purchase horses from breeders, veterinary care, pay for jockey/driver and trainer services, stable costs, and various licensing and race entry fees.

[297] Indirect effects result from businesses purchasing inputs from other businesses in the supply chain. Induced effects result from workers and business owners re-spending monies they receive as income.

- Racetracks (including dining facilities) spend for personnel, facility maintenance, new construction, and distributions of profits.

Previous analyses of the horse racing industry have used a wide range of values for the output multiplier. Recent studies for Pennsylvania and other states include (state and output multiplier in parentheses): The Innovation Group (Pennsylvania, 2.13), The Pennsylvania State University (Pennsylvania, 1.86), West Virginia University (West Virginia, 2.1), The Innovation Group (New York, 2.2), New Mexico State University (New Mexico, 1.79) and Public Sector Consultants (Michigan, 1.58).[298]

The analysis in Table 13 uses multipliers computed by the U.S. Bureau of Economic Analysis based on input-output data for 2007 and local industry data from 2015 (known as RIMS II, Type 2 multipliers).[299] The values for relevant Pennsylvania-specific output or spending multipliers are as follows:

- gambling industries, 1.87 (used for inflows from non-resident wagers)
- animal production, 1.65 (used for breeding funds and amounts to horsemen)
- government enterprises 2.28 (used for regulation of the industry and other disbursements to agricultural industries)
- food service-drinking establishments, 2.17 (used for non-resident concessions) [300]

The dollar amount of spending is determined when the disbursement provided to each recipient is multiplied by its multiplier. Thus, $23.1 million in disbursements to racetracks is multiplied by 1.87 to yield an estimated $43.3 million of spending in Pennsylvania's gambling sector. Likewise, multiplying disbursements to horsemen/breeders ($160.7 million) by the multiplier 1.65 yields an estimated $265.1 million in spending in Pennsylvania's animal production sector. The remaining amounts are $29.1 million disbursed to agriculture programs and the State Racing Fund multiplied by 2.28 for $66.3 million spending in government enterprises; and $6.7 million disbursed to racinos' food-drinking services multiplied by 2.17 for $14.5 million in spending on hospitality services, including food, beverage, lodging, and

[298] The Innovation Group. "Economic Impact Study: Pennsylvania Equine Racing Industry." March 2011; The Pennsylvania State University. College of Agricultural Sciences. "Pennsylvania Horse Power: Pennsylvania Equine Economic Impact Study." May 2003; Bowen, Eric et.al. "The Economic Impact of the Thoroughbred and Greyhound Racing Industries on West Virginia's Economy 2012." West Virginia University. College of Business and Economics. January 2014; The Innovation Group. "New York State Equine Industry Economic Impact Study." 2012; Lillywhite, Jay M and Mark Wise. "Economic Impacts of Racehorse Ownership, Breeding, and Training on New Mexico's Economy." New Mexico State University. College of Agricultural, Consumer and Environmental Sciences. April 2009; Public Sector Consultants Inc. "Horse Racing in Michigan: An Economic Impact Study." December 2002.

[299] U.S. Bureau of Economic Analysis, Regional Input-Output Modeling System (RIMS II). December 2016. https://bea.gov/regional/rims/rimsii/.

[300] As noted in the New Mexico study, agricultural animal production covers various types of activities. For that study, the authors used "animal production, except cattle and poultry" to estimate the impacts of racehorse ownership, breeding and training on the state economy. This analysis follows that convention. A gambling industry multiplier is not used because the monies have flowed through to the owners or other horsemen, and their purchases will be different than a casino.

incremental slots play. In total, the application of these multipliers to 2016 PRHDF disbursements led to an estimated $389.2 million in spending in Pennsylvania.

It is noted that this figure double counts certain sales transactions because it includes "intermediate" purchases that are also aggregated in final sales. In order to derive the net impact on the state economy, or gross domestic product, a value-added multiplier should be use as in Table 14. Those multipliers are as follows: gambling industries (1.06), animal production (1.03), other government enterprises (1.13) and food service-drinking (1.16). When the value-added multiplier is applied to the estimated spending generated by PRHDF disbursements, the total estimated net impact on the state economy is $230.7 million, which is 60 percent of the impact estimated by the output multiplier. The output multiplier is more commonly used in industry studies such as those cited previously in this report.

Table 14
Value-added Multiplier Effect of PRHDF Disbursements
PA Specific Multipliers
by Sector
2016

Sector	Disbursement Recipient	Disbursement Amount ($ Millions)	Multiplier	Economic Impact
Gambling industries	Racetracks	$23.1	1.06	$24.49
Animal Production[1]	Horsemen/ Breeders	160.7	1.03	165.52
Government Enterprises	State Racing Fund/Agriculture-Programs	29.1	1.13	32.88
Hospitality Services	Racetracks	6.7	1.16	7.77
Total				$230.66

Other Considerations

For the horse racing industry, the economic return from the PRHDF monies noted above fails to include other relevant factors that are difficult to quantify but warrant consideration by policymakers. They are as follows:

- The value of maintaining land in agricultural status.

- The value of maintaining an industry that supports small business owners such as breeders, trainers and veterinarians.

- The value of the industry as an outlet for hobbies and recreation. For many participants, horse racing does not provide their primary source of income. Some residents likely participate in the industry as a hobby, and may even incur losses on a regular basis.

Caveats

The IFO concludes this section of the report with several cautionary notes. This analysis is best used to provide a general framework to conceptualize the PRHDF transfer made to the Pennsylvania horse racing industry. As demonstrated by the discussion in this chapter, quantifying the economic return from the PRHDF transfer is complicated and requires the use of many assumptions, and some assumptions are supported by data that are ambiguous. For example, ownership structures can be complex, and the residency of the individual on file with the Racing Commission may not be truly representative of the residency of actual owners. Finally, the share of the PRHDF transfer spent in state by non-resident owners could be higher or lower than the share assumed by this analysis. Given sufficient time and resources, an analysis might conduct a broad survey of owners to determine their characteristics and spending patterns. However, other horse racing studies that have relied on survey data have received very low response rates, and those responses are likely not representative of the overall industry

THOROUGHBRED AND STANDARDBRED BREEDING

House Resolution No. 616 and Act No. 7 of 2016 both ask for a determination of the nature of Thoroughbred and Standardbred breeding in this Commonwealth since the enactment of the act of July 5, 2004 (P.L.572, No.71), and comparing it to the nature of breeding before enactment of the act of July 5, 2004 (P.L.572, No.71).

Development of Breeding Funds

The Pennsylvania Breeding Fund was established in 1974, providing for an award of 15 percent of the purse to the breeder of a Pennsylvania-bred Thoroughbred finishing first, second, or third in any race, and five percent to the owner of a Pennsylvania sire of any Pennsylvania bred horse which wins a race.[301] This was amended in 1978 to increase the breeder award to 20 percent, and the owner award to 10 percent and expanded the owner award to any qualified horse that comes in first, second or third. Purse money was also allocated for Thoroughbred horses under the 1978 amendment.[302] In 1981, when the Horse Racing Reform Act was enacted, these awards were more specifically defined, and the percentages (with one revision in 1986) established for the next 35 years. The 1981 act provided for a bonus of 20 percent of the purse to the breeder of a Pennsylvania-bred Thoroughbred finishing first, second, or third in any race (Breeders Award), 10 percent to the owner of a registered Pennsylvania sire that regularly stood in Pennsylvania at the time of conception of said Pennsylvania-bred Thoroughbred (Stallion Award), plus 10 percent to the owner of a Pennsylvania-bred Thoroughbred if it comes in first in a race that is not restricted to Pennsylvania-bred Thoroughbreds (Owner Award). Purse money is also allocated for Thoroughbred races. The Sire Stakes Fund, originally created in 1969, was reestablished in 1981 as well, and provides purse money for harness horses that are Pennsylvania bred and Pennsylvania–sired racing at licensed racetracks. Purse money is also allocated to fund purses at agricultural fair harness races for Pennsylvania-sired-only horses.

An amendment in 1986 divided the Thoroughbred Breeders Award into two awards, one of a bonus of 30 percent of the purse of a Pennsylvania-bred Thoroughbred who was sired by a registered Pennsylvania sire and came in first, second or third. A Pennsylvania-bred Thoroughbred sired by a non-registered sire received a 20% bonus.[303]

[301] Act of December 30, 1974 (P.L.1115, No.358).
[302] Act of November 26, 1978 (P.L.1181, No.277).
[303] Act of May 16, 1986 (P.L.205, No.63).

Act No. 114 of 2016 created two levels of awards in the Breeding Fund, based on the total amount of income received into the account annually. If the minimum funding requirement is not met, the award percentages remain at 30 percent and 20 percent for the breeders' awards, 10 percent for stallion awards, and 10 percent for owner awards. It the minimum threshold for the larger level of awards is met, 40% is allocated to breeders of horses that are both PA-bred and PA-sired, 20% for a PA-bred Thoroughbred sired by a non-registered sire. The stallion award remains at 10% of the purse. Under this second scheme, owner awards and additional purses are paid out of the remaining breeding fund, one-half to PA-bred and PA–sired Thoroughbred owners, and one-half to PA-bred-only owners.

Act No. 71 of 2004, which authorized slot machines, and its 2010 amendment that authorized table gaming, both were intended to increase the amount of funds available to support the horse racing industry. It also created the Pennsylvania Standardbred Breeders Development Fund which is required to establish three award programs: Pennsylvania Stallion Award, Pennsylvania Bred Award and a Pennsylvania Sired and Bred Award.[304]

Since its inception in 2004, the Race Horse Development Fund has been a relatively stable source of funding for its statutorily-mandated purposes. As Table 15 indicates, it distributed the highest amounts for purses and the breeding fund to date in 2015. The highest amounts for the Sire Stakes Fund, the Standardbred breeding fund occurred in 2009.

Table 15
Distributions from the Pennsylvania Race Horse Development Fund
(Established in 2004)
2006-2015, By Statutory Category

Year	Purses	Pa Breeding Fund	Pa Sire Stakes Fund	Pa Standardbred Breeders Development Fund	Health and Pension Benefits
Nov/Dec 2006	$3,030,521	$190,328	$207,888	$207,888	$151,526
2007	99,746,964	8,399,133	5,775,130	5,775,130	4,987,348
2008	155,094,313	14,681,313	8,168,775	8,168,775	7,754,716
2009	188,565,798	18,235,972	9,738,594	9,738,594	9,428,290
2010	157,089,030	16,213,108	7,602,349	7,602,349	12,173,561
2011	181,321,256	18,634,739	8,814,756	8,814,756	11,368,571
2012	177,269,965	18,184,986	8,634,503	8,634,503	11,400,000
2013	165,608,544	17,125,771	7,997,969	7,997,969	11,249,787
2014	178,846,753	18,413,707	8,677,822	8,667,822	11,119,549
2015	193,685,318	20,222,210	9,257,427	9,257,427	11,160,447
2016	141,400,000	14,800,000	6,700,000	6,700,000	11,000,000

Source: Pennsylvania Gaming Control Board, Benchmark Reports, 2006-2015. 2016 preliminary data received by the Independent Fiscal Office from the Pennsylvania Gaming Control Board.

[304] Distributions under the Standardbred Breeders Development Fund and the Sire Stakes Fund are included in Appendix B.

In 2002, there were 26,365 horses involved in the racehorse industry in Pennsylvania, worth an estimated $352 million.[305] There was also 105,458 acres of open space devoted to the racehorse industry. There were 14,815 racing Standardbreds and 11,550 racing Thoroughbreds, valued at $4,703 and $13,294 per head, respectively. It can be estimated that 31,262 horses were involved in the racehorse industry in 2005, with 17,567 Standardbreds and 13,695 Thoroughbreds.[306] By 2016, equine farming included 49 farms that breed Standardbred horses,[307] and another 30 Thoroughbred stallion farms.[308]

Thoroughbred Breeding

Breeding is an integral part of the success of horse racing. Pennsylvania's breeders' fund provides awards to breeders, stallions and owners of Pennsylvania bred and sired horses. It provides enhanced purses at Pennsylvania racetracks. These financial incentives induce owners and breeders to bring their horses to Pennsylvania to in order to be eligible to win awards. The Race Horse Development Fund also uses slots revenue to fund lucrative purses that entice further investment in Pennsylvania's horses and horse farms. The Pennsylvania Breeders' Fund, one of the beneficiaries of the Race Horse Development Fund, is administered by the Pennsylvania Horse Breeders Association, which maintains the official registry of Pa-bred race horses and stallions.[309]

In 1974, the Pennsylvania Horse Breeders' Association was given the responsibility to register and keep records of Pennsylvania-bred Thoroughbreds, and advise the commission and determine the qualifications for Pennsylvania-bred horses and Pennsylvania sires.[310] In 1978, these provisions were amended to change the Breeders' Association's duties from "advisory services" to "the administration and development of the Breeding Fund Program."[311] The 1981 Race Horse Industry Reform Act, the governing law of horse racing until 2016, formally stated that the Horse Racing Commission "may contract with the Pennsylvania Horse Breeders' Association as the sole responsible body for the registration and records of Pennsylvania-breds."[312] Under Acts No. 7 and No. 114 of 2016, this contractual arrangement was changed from "may" to "shall."[313] Current law directs that the Breeders' Association annually submit to the Commission for approval itemized budget of projected expenses for administration and development of the breeding program. As a non-competitive, sole source contract, caution must be used in contract

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[305] The Pennsylvania State University. College of Agricultural Sciences. "Pennsylvania Horse Power: Pennsylvania Equine Economic Impact Study." May 2003.
[306] Debra J. Salem and Andrew N. Rowan, eds. *The State of the Animals IV: 2007*, Emily R. Kilby, "The Demographics of the U.S. Equine Population," pp. 175-205, 182. The Human Society Press, 2017.
[307] "PA Standardbred Stallion Farms," Standardbred Breeders Association of Pennsylvania. http://Standardbredbreederspa.org/?page_id=203.
[308] "Farm Directory," 2016 Pennsylvania Stallion Directory, Pennsylvania Horse Breeders Association. www.pabred.com.
[309] Pennsylvania Department of Agriculture website: http://www.agriculture.pa.gov/Protect/RacingCommission/Pages/Pennsylvania-Breeders-Fund.aspx.
[310] Act of December 30, 1974 (P.L.1115, No.358) § 17.1.
[311] Act of November 26, 1978 (P.L.1181, No.277).
[312] Act of December 17, 1981 (P.L.435, No.135) § 223(g).
[313] 3 Pa.C.S. § 9336(f).

negotiations. The arrangement should be spelled out in detail in a written contract, with adequate provision made to address any potential conflicts of interest.

When the Breeders' Fund was established in 1974, it made awards to breeders and owners, and supplemented purses, but at a relatively modest rate, as shown on Table 16 below. In 1981, the rates were increased and essentially remained the same over the next 35 years. Table 17 shows the breakout of breeding funds among breeder, owner and stallion awards for the period 1982-2015. The addition of slot machine revenue under the 2004 act basically doubled the amount of funds distributed under the 1981 act in years 2000-2006. Those same levels were tripled in years 2012-2015 with the addition of table gaming at casinos under the 2010 amendments.

Table 16
Pennsylvania Breeding Fund Distributions
(1975 – 1981)
Thoroughbred Horses

Year	Breeder/Owner Awards	Purses[314]
1975	$67,409	$1,110,000
1976	110,438	1,056,600
1977	196,381	1,393,000
1978	258,620	--
1979	423,854	--
1980	634,262	--
1981	804,653	--

Source: Pennsylvania Horse Racing Commission Annual Reports, 1977-1981.

[314] From 1978 to 1981, the Horse Racing Commission Annual Reports did not show total purse money paid from the Thoroughbred Breeding Fund.

Table 17
Pennsylvania Breeding Fund Distributions
Under the 1981 Horse Race Industry Reform Act
Thoroughbred Horses
(1982-2015)

Year[315]	Breeder Awards	Stallion Awards	Owner Awards	Purses	Total
1982	$834,989	$206,962	$104,784	$1,325,565	--
1983	902,686	234,463	239,649	869,776	--
1984	917,821	208,716	200,290	869,776	--
1985	757,917	165,886	157,982	1,031,763	--
1986	828,248	159,080	149,156	699,060	--
1987	1,071,684	174,319	114,872	1,040,801	--
1988	996,832	168,983	130,042	781,188	--
1990	1,149,655	221,056	104,452	688,663	--
1991	1,570,891	268,996	998,933	942,845	--
1992	1,599,479	273,594	88,536	1,150,733	--
1994	1,914,131	350,517	73,755	1,471,598	--
1995	2,235,202	366,232	74,863	--	--
1997	2,926,021	474,556	5,430	2,672,398	--
2000	3,579,234	645,259	22,839	3,421,609	--
2001	3,535,172	644,248	1,800	4,803,040	--
2002	--	--	--	--	9,032,749
2003	3,342,969	593,237	20,490	4,568,799	--
2004	--	--	--	--	--
2005	3,177,218	532,358	54,908	3,426,025	--
2006	2,931,006	525,765	--	3,363,147	--
2007	5,285,556	812,122	15,000	9,090,458	--
2008	6,632,330	897,546	21,600	14,151,412	--
2009	6,261,314	767,947	136,038	9,239,238	--
2010	6,130,732	670,952	30,780	9,223,655	--
2011	7,017,304	661,885	91,160	11,924,346	--
2012	9,497,340	1,078,029	62,650	9,942,361	--
2013	9,495,800	1,239,564	70,660	4,749,499	--
2014	9,647,143	1,434,186	62,200	4,892,193	--
2015	9,285,987	1,650,357	39,870	6,761,273	--
2016 (thru. Oct. 31)	7,416,032	1,416,498	6,000	--	

Source: Pennsylvania Horse Racing Commission Reports; and the Pennsylvania Horse Breeders Association online archives at PaBred.com.

[315] Information from 1989, 1993, 1996, 1998 and 1999 unavailable. The 2002 and 2004 Horse Racing Commission reports did not include any additional information regarding breeders' fund distributions.

Demographics of the Thoroughbred breeding industry over the past 20 years clearly show the impact of the addition of slots money. Throughout the 1990s, 800-900 mares were bred each year and about as many foals were born. By 2009, the population of mares bred to Pennsylvania stallions had doubled, and the number of foals born had increased another 500-600 per year. Overall purses and average purses per race nearly tripled. The number of Pennsylvania-bred starters went from 1,500 in the mid-1990s to 2,700 by 2013. In 2011, the population of mares and foals began to decline to 1990s levels. While 2013 marked the beginning of a mild decline in overall purses and number of starters, average purses per race remained steady.

Table 18
Pennsylvania Thoroughbred Horse Breeding Statistics
1995-2016

Year	Mares Bred to Pa. Stallions	Registered Foals Born	Total Purses	Avg. Purse Per Race	No. of Pa. Bred Starters	Avg. Earnings per Pa.-Bred Starters
1995	831	763	--	--	--	--
1996	805	846	$38,829,008	$9,749	1,494	$13,619
1997	851	898	41,547,849	9,973	1,556	12,836
1998	895	918	43,440,043	10,450	1,541	14,075
1999	992	978	41,437,720	11,745	1,594	14,654
2000	1,016	923	49,336,506	12,696	1,730	15,465
2001	976	914	50,872,129	12,744	1,803	15,944
2002	1,026	873	47,429,957	12,339	1,823	15,855
2003	1,027	1,039	45,725,528	11,876	1,774	13,806
2004	1,027	984	47,629,851	12,452	1,784	17,684
2005	1,210	1,257	49,313,407	13,397	1,821	13,512
2006	1,159	1,266	42,905,234	12,716	1,761	15,058
2007	1,173	1,281	76,277,854	20,352	1,915	20,794
2008	1,414	1,432	110,225,084	24,898	2,069	19,510
2009	1,753	1,540	115,231,435	25,132	2,241	17,445
2010	1,650	1,534	116,402,057	25,758	2,327	17,446
2011	1,313	1,197	123,470,108	27,659	2,427	20,845
2012	1,118	946	127,991,065	28,704	2,614	22,428
2013	971	897	115,572,131	26,568	2,738	23,291
2014	880	833	107,333,140	25,489	2,679	23,229
2015	682	657	108,865,233	27,561	2,506	23,045
2016	--	--	102,997,462	27,762	2,297	23,491

Source: The Jockey Club, New York, "2017 Pennsylvania Fact Book: a statistical guide to the Thoroughbred industry in Pennsylvania."

Standardbred Breeding

Standardbred *racing* has received support from the state in the form of purses since 1969 through the Sire Stakes Fund. However, it was not until the 2004 act that Standardbred *breeding* began receiving awards and grants for race horse development and breeding. Purse money for Standardbred racing averaged in the $4 million to $4.5 million range in the early 2000s, but by 2010, had more than doubled. While 2010 saw the peak amount of awards to breeders and owners from the Standardbred Breeders Development Fund, it has primarily stayed around $8.5 million a year. The Standardbred breeders fund is administered by the Bureau of Standardbred Horse Racing.

Table 19
Standardbred Breeders Development Fund
(Established 2004)[316]
Distributions for Standardbred Horses
2007-2015

Year	Standardbred Breeders Development Fund Total Awards
2007	--
2008	--
2009	$8,295,053
2010	9,582,380
2011	7,741,361
2012	8,901,115
2013	8,607,024
2014	8,434,232
2015	8,561,592
2016	6,700,000

Source: Pennsylvania Horse and Harness Racing Commission Reports, 2008-2015.

This sustainability of the industry is partly attributable to the fact that there are significant financial incentives to own a Pennsylvania-bred or -sired Standardbred. Sire Stakes races are restricted to Pennsylvania-only horses, and the Sire Stakes Fund has provided purses averaging approximately $9 million per year from 2008 through 2015.

[316] The first racinos began operations in November 2006.

Table 20
Sire Stakes Fund
(Established 1969)
Distributions for Standardbred Horses
1969-2015

Year	Purses	Year	Purses	Year	Purses
1969	$972,013	*1985*	3,374,123	*2001*	4,892,956
1970	1,197,606	*1986*	2,218,052	*2002*	4,536,166
1971	1,224,858	*1987*	2,043,065	*2003*	4,475,708
1972	1,179,457	*1988*	1,983,391	*2004*	4,293,979
1973	1,160,831	*1989*	1,452,481	*2005*	4,018,638
1974	1,297,116	*1990*	1,472,229	*2006*	4,519,871
1975	1,200,632	*1991*	1,570,813	*2007*	4,444,508
1976	1,338,085	*1992*	1,760,745	*2008*	9,807,463
1977	1,338,729	*1993*	1,894,723	*2009*	11,118,784
1978	1,085,982	*1994*	2,941,814	*2010*	10,998,283
1979	1,128,199	*1995*	3,958,286	*2011*	8,904,196
1980	1,711,235	*1996*	3,371,422	*2012*	8,655,308
1981	2,084,178	*1997*	3,823,009	*2013*	9,978,188
1982	2,275,927	*1998*	--	*2014*	8,434,232
1983	2,574,687	*1999*	--	*2015*	8,561,592
1984	3,494,337	*2000*	5,091,572	*2016*	

Source: Pennsylvania Harness Racing Commission Reports. Years 1969 through 1988 found in 1989 report.

While there has been a decline in the Standardbred foal crop nationally, Pennsylvania has seemingly avoided the worst of the decline. Various explanations have been offered for the decline, and all involve the financial risks of breeding. It has been suggested that breeding and raising a young horse to racing age requires an investment that is not being matched by the selling price of these horses. Additionally, the lack of opportunities to race young and inexperienced horses, and the small purses associated with the opportunities that do exist make breeding a losing proposition for some.[317]

[317] *See* Bob Marks, "Trot Lines: Breeding at a Loss," *Hoof Beats Magazine*, United States Trotting Association, May 15, 2015.

Table 21
Pennsylvania Standardbred Horse Breeding Statistics
2011-2015

Year	No. of Breeders Receiving Awards	No. of Registered Yearlings	Total Horses Competing
2011	600	1,800	9,359
2012	560	1,730	9,062
2013	589	1,500	9,257
2014	598	1,477	7,996
2015	253	1,551	8,829

Source: Pennsylvania Gaming Control Board, Benchmark Report, 2015

PROMOTING PENNSYLVANIA'S RACE HORSE INDUSTRY

Act No. 7 and HR No. 616 direct the study to determine how Pennsylvania's race horse industry and regulatory entities can best be positioned for future success or at a minimum financial stability in an environment of declining race track patrons and handle, competition from live racing from neighboring states and the increasing availability of alternative gaming platforms, such as Internet and mobile gaming and fantasy sports. Specifically, the study shall consider options for reforming and promoting horse race meetings that will increase handle, reduce racing costs, promote the health of the horse and advance the best interests of racing fans and bettors."

As was recognized by the Resolution, horse racing as a sport has reached a nadir, not just in the Commonwealth but across the United States. Other forms of legalized gambling and simply reduce interest in the sport has led to a marked decrease in attendance at the tracks and in handle. This section presents several issues related to the viability of horse racing in the Commonwealth, as well as several proposed solutions.

Declining Handle and Attendance

In general, 2010 was the pinnacle of wagering on horse races since the addition of gaming at Pennsylvania's racetracks. With the exception of Presque Isle, all of the racinos have seen declining handle over the past five years. At the same time, as evidenced by Table 22, wagering has increasingly come from outside of Pennsylvania. Total interstate handle has remained relatively consistent, in terms of raw dollars, but the percentage of overall handle coming from out-of-state betting has increased from almost 50 percent in 2010 to approximately 87 percent in 2016. Attendance at the tracks has been steady, at around 800,000 per year from 2011 to 2015, but down significantly from its averages in the 1960s to mid-1980s, when attendance consistently hovered at around 1.5 million per year.

Table 22
Total Attendance at
All Pennsylvania Horse Racing Venues
2011-2015

Year	Total
2011	788,913
2012	793,860
2013	800,687
2014	827,048
2015	766,575

Source: Pennsylvania Gaming Control Board, 2015 Benchmark Reports.

Table 23
Total Racing Handle,[318] by Breed of Horse, by Track
2007-2015

Year	Thoroughbred Handle			Standardbred Handle		
Track	PARX	Penn National	Presque Isle (opened 2007)	Meadows	Pocono Downs	Harrah's Philadelphia (opened 2006)
2007	310,702,477	159,470,842	14,641,639	76,678,295	34,443,409	29,419,454
2008	353,489,540	166,307,645	31,748,302	70,742,695	32,722,793	72,835,367
2009	318,874,068	356,875,833	55,730,751	80,147,384	36,431,523	71,534,945
2010	538,686,969	316,455,922	56,947,121	184,580,327	122,895,563	105,721,407
2011	475,669,660	268,139,039	54,559,718	181,099,075	109,206,524	103,884,277
2012	297,230,321	199,638,975	50,214,347	106,507,405	46,058,762	77,296,825
2013	274,758,047	212,464,439	69,699,379	106,567,864	64,672,937	78,620,942
2014	258,912,368	175,327,382	69,258,554	126,698,721	59,456,571	75,325,968
2015	254,913,375	175,232,222	66,208,064	100,749,974	53,345,522	70,088,642

Source: Annual Horse and Harness Racing Commission Reports.

[318] Total handle includes on-track betting, phone/computer betting, betting at off-track sites, at other state tracks and outside the state.

Table 24
Total Racing Handle, All Tracks, by Breed
2007-2015

Year	Thoroughbred Total, All Tracks	Standardbred Total, All Tracks	Total	Total Interstate	Percent from Interstate
2007	484,814,958	140,541,158	625,356,116	397,231,103	63.52
2008	555,545,487	176,300,854	731,846,341	605,842,738	82.78
2009	731,480,652	188,103,852	919,584,504	383,233,990	41.67
2010	912,090,012	413,197,297	1,325,287,309	661,656,859	49.93
2011	798,368,417	394,189,876	1,192,558,293	594,844,132	49.88
2012	547,083,643	229,862,732	776,946,375	675,682,191	86.97
2013	556,921,865	249,861,743	806,783,608	719,537,732	89.19
2014	503,498,304	261,481,260	764,979,564	683,852,968	89.39
2015	496,353,661	224,184,138	720,537,799	650,276,992	90.25

Source: Annual Horse and Harness Racing Commission Reports.

Each individual track has experienced these declines in varying degrees. *See* Appendix B.

A concern with any expansion of gaming opportunities is the impact of new competition on pre-existing venues. Will alternative platforms complement existing gaming or will they become a substitute for it? A study in 2009 suggested that racetracks and casinos are a good match, as they provide additional forms of entertainment and increase revenue overall.[319] Substitution can occur in three ways: (1) betting can shift from one form of gambling to another (*e.g.*, money that would have been bet on horse racing is instead being used in slots); (2) spending can shift from other discretionary activities to gaming (*e.g.*, money that might have been spent on theatre, other sporting events or leisure travel is shifted to gaming); (3) spending on one gaming activity shifts from one geographical area to another (*e.g.* racinos in Pennsylvania can shift horse racing money away from tracks in Delaware). Overlaying the consideration of the effect shifting horse racing wagering money from the track to slots and table games, is a worry that the gambling market may be saturated in particular areas.[320]

A 2015 study noted that Pennsylvania's racinos and the casinos, racetracks and racinos its neighboring states, particularly New Jersey, Delaware, New York, West Virginia, Maryland and Virginia can each effect the others negatively. New games and new gaming facilities prompt an initial uptick in income and activity, but as the novelty wears off and the markets stabilize, those initial surges are not maintainable.[321] A 2016 report out of SUNY-Albany found that the Southeast

[319] Denis Rudd, Richard Mills, Frank Flanegin and Patrick J. Litzinger, Robert Morris University, "Racinos: The Marriage of Horse Racetracks and Casino/Slots-Style Gambling – Friends or Foes?", *Journal of Case Research in Business and Economics*, Vol. 1, August 2009, pp. 28-35.
[320] Lucy Dadayan, The Nelson A. Rockefeller Institute of Government, The State University of New York – Albany, "State Revenues from Gambling: Short-Term Relief, Long-Term Disappointment," *The Blinken Report*, April 2016.
[321] Pennsylvania Independent Fiscal Office, "Pennsylvania Gaming Trends," *Research Brief 2017-2.*

Pennsylvania-Atlantic City-Delaware Park region may well have reached its gaming saturation point and that casinos in that region "cannibalize" each other's gaming revenues.[322]

While substitution in the form of cannibalization may be occurring in some regions of the Commonwealth, and saturation is a risk when attempting to attract gaming dollars from one form of wagering to another, there is room to encourage more discretionary spending on horse racing, as opposed to other forms of entertainment.

There are four key inter-related areas that are essential to position horse racing for future success. They are: making race horse wagering a better product for consumers, promoting the health and welfare of horses, expanding horse racing's fan base, and considering alterative gaming platforms.

Becoming a Better Product for Consumers

"More horses yield more races, which yield more handle, which yield bigger purses" is the standard refrain when it comes to the question of how to make horse racing more successful. While the adage seems logical in the abstract, it is too simplistic in today's fickle, consumer-oriented society, where gaming options are continually expanding. A more coordinated, cooperative relationship among the horsemen, breeders and track operators is essential to increase handle and decrease racing costs overall.

Fewer Racing Days

For an idea of what the Commonwealth's race horsing industry could look like, examine Japan. There, horse racing is more popular than in the United States, although its popularity still trails far behind baseball, soccer, motorsports, and golf. The Japan Racing Association (JRA), a publicly-owned company which oversees all horse racing, runs races only on Saturdays and Sundays. They run one-third of the races that are run in the United States, but have three times the handle.[323] The average daily on-course attendance for all Japanese tracks was 21,494 in 2012.[324] Japan has a total of 25 tracks.[325] Hong Kong is similar, with two race tracks that only offer races on Wednesday, Saturday, and Sunday.[326]

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[322] *Supra* note 320.
[323] Ryan Goldberg, "How Japan Built the World's Best Horseracing," December 11, 2014, http://archive.is/vzkbW.
[324] Naohiro Goda, "Japanese Racing: An Inspiration and a Warning (Pt. 1)," *Thoroughbred Racing Commentary*, February 13, 2014, https://www.Thoroughbredracing.com/articles/japanese-racing-inspiration-and-warning-pt-1/.
[325] "Racing by Local Governments," *Horse Racing in Japan*, http://japanracing.jp/en/about/local_racing.html.
[326] "Racing Calendar," *Hong Kong Jockey Club*, http://member.hkjc.com/member/english/go-racing/racing-calendar.aspx.

Japanese racing is also more organized. Japan has one national organization, the JRA that oversees professional horse racing.[327] Another organization, the National Association of Racing (NAR), is the authority for horse racing run by the local governments.[328] The JRA is part of Japan's national government. Think of the JRA as like the Major League Baseball and the NAR as like the minor league baseball. While technically independent, the NAR operates under the auspices of the JRA, and typically races on weekdays when there are no JRA races being run.[329]

The JRA exerts more control over the industry than does its various American counterparts, being in charge of "the country's biggest tracks, betting parlors, and training centers, and the licensing of jockeys, trainers, owners, even veterinarians."[330] The rules of racing are also very strict—and enforced. Trainers, jockeys, and other staff are not permitted to wager on any horse races, and their behavior is monitored by the JRA to ensure that they are not gambling in violation of the ban. All drugs are banned, and the veterinarians are employed by the JRA, rather than being employed by the individual trainers. Jockeys must attend a three-year riding school and then pass an exam. Trainers are also required to have a formal education and pass an exam before becoming licensed.[331]

A reduction in the total number of race days is already being implemented in the Commonwealth by some tracks. While each racetrack is required by statute to schedule a minimum number of races per year, in 2015 several tracks took advantage of an exception in the statute and reduced the number of both race days and live races that they host.[332] This allowed the tracks to increase the purse sizes for larger racing events, and resulted in increased field sizes and more exciting events.[333]

Along with fewer racing days, a coordinated circuit among tracks could benefit all of the parties. Tracks that are relatively close to each other geographically directly compete with each other for both attendance and field size, with racing days scheduled simultaneously. One commentator suggested, "A circuit needs to be formed that includes a rotation amongst the tracks with the focus on providing the best betting product, while maximizing field size for the wagering public."[334]

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[327] "Beginner's Guide (JRA)," *Horse Racing in Japan*, http://japanracing.jp/en/racing/go_racing/guide/.
[328] "Racing by Local Governments."
[329] "How Japan Built the World's Best Horseracing." *Supra* note 323.
[330] Ray S. Paulick, "'Upright' System Makes Japan's Horse Racing 'World's Best'," *Paulick Report*, December 12, 2014, http://www.paulickreport.com/news/the-biz/commentary-upright-system-makes-japan-horse-racing-worlds-best/.
[331] "How Japan Built the World's Best Horseracing." *Supra* note 323.
[332] Pursuant to 71 P.S. §720.37.
[333] Pennsylvania Gaming Control Board, *2015 Racetrack Casino Benchmark Report*, http://gamingcontrolboard.pa.gov/files/reports/2015_Pari-Mutuel_Benchmark_Report.pdf.
[334] Darin Zoccali, "The standardbred horse shortage is a reality," *Daily Racing Form,* April 11, 2016.

Lower Takeout Rates

Another criticism from horse racing fans is the way in which takeout has disadvantaged the gambler. Takeout is a percentage taken from each dollar wagered to pay purses and finance the track's operations.[335] It is the same thing as a commission or vigorish. In Pennsylvania, the takeout varies depending on the track and the type of bet made, and ranges from a low of 17 percent to a high of 35 percent.[336]

Takeout is such a detriment to the horseplayer that wagering on horse racing is seen as a "sucker's bet" among those who enjoy gambling, with one fan quipping "[s]harp gamblers stay away from racing."[337] As an example, imagine $1,000 total is wagered on "win" bets, with $200 wagered on the winning horse. In this example, takeout is 17 percent, leaving $830. Because winning bettors receive their bets back, the $200 wagered on the winning horse is deducted next. This leaves $630 to be paid to the winning bettors. The ratio of winnings to winning bets is $630/200, or 3.15. The ratio is then multiplied by the amount wagered. On a $2.00 bet, this is $6.30. Because of breakage, the $6.30 is rounded down to $6.20.[338] All winning bets are paid at this ratio, so for example a $100 bet would be $100*($6.20/$2.00) = $310. All winning bettors also get their original bet back, so a $2.00 wager in this example would receive a total of $8.20 ($6.20 plus the original $2.00). Recall from the section describing pari-mutuel betting that, unlike with sports booking, the odds on a horse race will fluctuate to reflect betting activity on the horse. There is no way to determine the "true odds" on a horse.

To understand why this is a bad value for gamblers, it is necessary to appreciate that the takeout is the "price" of gambling. To put it into perspective, the takeout at a race track has the same effect as house edge for a casino. The house edge is the ratio of the average loss to the initial bet.[339] For example, if a gambler plays craps at a casino, the house edge on the pass line bet is 1.41%.[340] This means that in the long run, the gambler can expect to lose $0.14 for every $10.00 wager made. By comparison, the 17 percent takeout means the average horseplayer can expect to lose $1.71 for every $10.00 wager made. Gambling on horse racing is much more expensive than casino table games, and it is not a coincidence that the games with the lowest house edge – blackjack, craps, and baccarat – also happen to be the most popular. Horse racing cannot outrun the basic law of demand – as the price of something increases, the quantity demanded decreases.

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[335] Andrew Beyer, "Beyer: Pick Five Shows How Lower Takeout Works," August 16, 2014, *Daily Racing Forum*, http://www.drf.com/news/beyer-pick-five-shows-how-lower-takeout-works.

[336] "Take-outs: Major Pari-Mutuel Race Tracks," *Horse World Data*, http://horseworlddata.com/pmtrcks.html.

[337] MikeC, *comment on* "Gagliano: Industry's Lack of Acceptance of Out-of-Competition Testing Troubling," October 17, 2016, *Paulick Report*, http://www.paulickreport.com/news/the-biz/gagliano-industrys-lack-acceptance-competition-testing-troubling/.

[338] Breakage always rounds down to the nearest ten-cent figure, including when the amount is already an even ten-cent figure.

[339] Michael Shakleford, "House Edge of Casino Games Compared," December 9, 2013, *Wizard of Odds*, https://wizardofodds.com/gambling/house-edge/.

[340] For a more in-depth discussion of the mathematics behind calculating house edge, see the University of Nevada at Las Vegas's Center for Gaming Research webpage at www.gaming.unlv.edu/casinomath.html.

Gamblers, and especially advantage gamblers, are extremely cost-conscious. Advantage gamblers play for profit (or at least try to) and thus look for gaming options that are winnable. Such options include poker and daily fantasy sports (DFS). These games all require some modicum of skill and competent decision-making. Younger gamblers tend to be advantage gamblers, contributing to the explosion in popularity of Texas hold'em poker and DFS. They tend to have more knowledge about gambling and gaming strategy, and are more aware of which bets think that they are worse deals. With high takeout, advantage gambling on horse racing is more difficult.

Horse racing can capitalize by knowing what attracts and retains a smart gambler, and to deliver value accordingly. Pennsylvania tracks can afford to lower takeout to attract more on-track and off-track wagering. The historic justification for high takeout was the cost of providing a purse. However, as noted above, roughly 87 percent of the purse is now funded by slots revenue. As for track overhead, all tracks are now attached to profitable casinos and it would seem dubious that they would be unable to run the basic functions of the track or make capital expenditures. Further, "every single long-term experiment with takeout reduction has shown that it increases handle, participation, and customer satisfaction."[341]

Other tracks that are not as heavily dependent upon casino revenue are already lowering takeout. Meadowlands in New Jersey has lowered its takeout to 15 percent across the board.[342] Other race tracks are also experimenting with lower takeout rates, more recently Canterbury in Minnesota[343] and Suffolk Downs in Massachusetts.[344] Keeneland, in Kentucky, has a takeout rate of 16 percent for straight wagers and 19 percent for exotic wagers.[345]

Promoting the Health and Welfare of Horses

It cannot be determined "how Pennsylvania's race horse industry and regulatory entities can best be positioned for future success" without understanding how the role of horses in society has changed from the 19th century, when modern horse racing took shape, to the present day. Horses have been used for millennia to better the human condition, by ploughing fields, transporting people and goods, providing power to drive water pumps and grist mills, and raced as a form of entertainment.

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[341] Steven Crist, "Steven Crist: Pick Five Good Example of How Reduced Take Out Sparks Handle," October 10, 2013, *Daily Racing Form*, http://www.drf.com/news/steven-crist-pick-five-good-example-how-reduced-takeout-sparks-handle.

[342] "Meadowlands Thoroughbred Meet Cuts Take Out," September 14, 2016, *Blood Horse*, http://www.bloodhorse.com/horse-racing/articles/215015/meadowlands-thoroughbred-meet-cuts-takeout.

[343] Tom LaMarra, "Canterbury to Cut Takeout Across the Board," April 19, 2016, *Bloodhorse*, http://www.bloodhorse.com/horse-racing/articles/210913/canterbury-to-cut-takeout-across-the-board.

[344] "Suffolk Downs Adds Stakes, Lowers Takeout," September 11, 2015, *Bloodhorse*, http://www.bloodhorse.com/horse-racing/articles/105020/suffolk-downs-adds-stakes-lowers-takeout.

[345] Wagering Menu and Takeout, Kenneland Racetrack, https://www.keeneland.com/racing/wagering-menu-takeout.

As these roles have been filled by machines over the past century, the view of horses in the minds of many has shifted from beast of burden to pet. Because of this shift in view from tool to companion, public distaste for the use of horses for any of their historic uses is increasing.[346] One does not have to look far to see the traditional use of horses clashing with modern values.

These criticisms are motivated by the mere use of the horse as a draft animal. In an article from *Modern Farmer* about an Amish purchaser of old racehorses, one commenter lamented "[a]s a rule the Amish view animals as machinery. I wish they'd just adopt cars."[347] Displeasure with the use of working horses extends beyond the Amish. New York City's City Council narrowly defeated a measure to ban the city's iconic horse-drawn carriages in all but one location in Central Park.[348] New York Mayor Bill de Blasio had stated that it was inhumane to have horses pull carriages through the streets of Manhattan.[349]

Additionally, using other animals as entertainment has also come under intense scrutiny in recent years. In 2013, the documentary film *Blackfish* presented a critical look at orca whales in captivity at SeaWorld, and received wide media attention. Despite denying the allegations in the film, SeaWorld has begun to phase out its captive orca program.[350] A similar trend is emerging surrounding circuses, with many municipalities across the country severely restricting or altogether banning wild or exotic animal shows.[351] Ringling Bros. and Barnum & Baily Circus recently announced they are doing away with elephants, citing "a mood shift among our consumers."[352] This was followed by an announcement in January 2017 that the circus would be closing permanently.[353]

Horse racing may encounter a similar backlash from society's growing distaste for using animals for work or entertainment. Beyond the idea that racing horses is *per se* abuse of the animal, there is a perception that doping, poor working conditions, and the discarding of unprofitable race horses is widespread, and this perception weighs negatively on the industry.

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[346] The Jockey Club, *Driving Sustainable Growth for Thoroughbred Racing and Breeding*, August 2011, http://www.jockeyclub.com/pdfs/selected_exhibits_rt2011.pdf (noting that growing concern for horse welfare may be impacting the industry).

[347] Azeri1, *comment on* Andrew Jenner, "From the Racetrack to the Buggy," *Modern Farmer*, June 21, 2013, http://modernfarmer.com/2013/06/racehorses-amish-buggy/.

[348] J. David Goodman and Michael M. Grynbaum, "Mayor de Blasio's Carriage-Horse Plan Falters in City Council," *New York Times*, February 4, 2016, http://www.nytimes.com/2016/02/05/nyregion/horse-carriage-deal-new-york.html.

[349] *Ibid*.

[350] Jennifer Kay and Mike Schneider, "SeaWorld to Stop Breeding Orcas, Making Them Perform," March 17, 2016, *Bloomberg*, http://www.bloomberg.com/news/articles/2016-03-17/urgent-seaworld-says-it-will-end-killer-whale-breeding-program.

[351] Local Restrictions Governing Traveling Shows and Circuses in the U.S. and Canada, *Born Free USA*, http://www.bornfreeusa.org/b4a3_circuses_and_shows.php.

[352] "Ringling Bros.' Circus to End Use of Elephants," March 6, 2015, *Wall Street Journal*, http://www.wsj.com/articles/ringling-bros-circus-to-end-use-of-elephants-1425570518.

[353] www.ringling.com

"Doping" of Horses

According to one source, horse racing gamblers have a negative view of their own sport. Seventy-seven percent of horse racing gambler indicated they take into account doping when determining which horses or races to bet on.[354] "Drugs" and "Integrity Issues/Corruption" are the second and third leading concerns among horse bettors, according to a study commissioned by the Coalition for Horse Racing Integrity.[355]

Doping has a fairly long history in horse racing. The first drug tests on race horses were conducted in the 1930s, but those tests were for drugs such as heroin, morphine, and strychnine, intended to determine if a horse had been sabotaged by these malaise-inducing chemicals.[356] Testosterone became available in 1947. Amphetamines were used in the 1950s. Then, in the 1960s, furosemide, marketed under the trade name Lasix, hit the market. Lasix is a diuretic that takes pressure off the horse's lungs, preventing exercise-induced pulmonary hemorrhaging (simply known as "bleeding" to the industry). A horse given Lasix could be pushed harder and faster for longer. In 1974, Maryland legalized the use of Lasix on race day if the horse had documented bleeding problems. Other states quickly followed Maryland, and today most horses run using Lasix regardless of whether they have had problems with bleeding.[357]

Lasix was not the only therapeutic drug developed for horses in the 1960s. Phenylbutazone, referred to as "bute," is an NSAID, similar to aspirin, and used to reduce inflammation in joints and tendons. Its use quickly became acceptable, and if bute could not remedy inflammation, stronger drugs and treatments were then used. However, the use of anti-inflammatory medication results in the horse putting more pressure on the injured joint, which in turn can lead to more serious injuries, such as fractures. Bute allows the horse to "play through the pain," in some cases to its own detriment. Nearly all race horses in the United States now run using bute. In contrast, foreign racing jurisdictions require their horses to run without medication, and they have a better safety record as a result. As one commentator noted, "[h]orses running clean are less likely to break down than those running on medication."[358]

In addition to these questionable uses of therapeutic medications, muscle relaxants, growth hormones, bronchodilators, and stimulants have all been used to gain an edge.[359] While these substances are *de jure* banned by the various state-level governing bodies, the infrequent drug testing of race horses has engendered a suspicion that they are used by more than a few trainers. Pennsylvania does not specify when drug testing is required to be conducted, except for after a

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[354] Fig. 7, *Perceptions of Horse Racing Medication Reform: Survey Finding Among Horse Bettors and the General Public*, Coalition for Horse Racing Integrity, accessed October 19, 2016, https://media.gractions.com/130D0DEC14413A987751556AFC00A53D2C17D6F9/03dd907f-fce3-48b7-8669-ac0a83562ffb.pdf.

[355] *Ibid*. Fig. 4. Take out is the leading concern among bettors and is discussed *infra*.

[356] "The Long History of Horse Racing's Addiction to Doping," May 3, 2014, *Pacific Standard Magazine*, https://psmag.com/the-long-history-of-horse-racing-s-addiction-to-doping-99ea064d497d#.3uxfh6700.

[357] *Ibid*.

[358] Sid Gustafson, "Drugs and Racehorses," June 4, 2008, *The Rail* (blog), *New York Times*, http://therail.blogs.nytimes.com/2008/06/04/drugs-and-racehorses/.

[359] *See* "England: Hannon-Trained Stakes Winner DQ'd After Drug Positive," July 15, 2014, *Paulick Report*, http://www.paulickreport.com/news/the-biz/england-hannon-trained-stakes-winner-dqd-after-drug-positive/ (detailing the use of beta blockers, a class of medication prescribed to people who have had heart attacks).

first place finish in a race.[360] The rules also permit drug testing at the discretion of the track veterinarian.[361] There is no provision pertaining to out-of-competition testing. Other jurisdictions, such as West Virginia[362] and New Mexico[363] are beginning to implement out-of-competition drug testing.

On top of these issues, new and exotic substances are coming into use, making it hard to catch an enterprising cheater, even with more frequent drug tests. In 2012, a scandal broke out when dermorphin, an opioid painkiller 40 times more potent than morphine, was detected in horses in New Mexico, Oklahoma, and Louisiana. Dermorphin is excreted by the waxy monkey tree frog, a native of the Amazon, but the bulk of the drug is most likely synthesized in a laboratory. It deadens pain and makes the horse hyper, allowing it to run faster and harder. Cobra venom has also been used, with similar effects.[364]

The Career of a Race Horse

Horse racing operates very differently from the much more popular league sports. There are many more parties, each with their own interests; to an outsider the world of breeding, training, selling, and racing horses can seem very bewildering. Begin by looking at the end of the racing career of the more successful horses.

When the horse reaches the end of its racing career, owners of successful stallions, offer their stallion's stud services to owners of mares who are wishing to breed a new and hopefully successful race horse. The breeder is the party who owns the mare. The cost – or stud fee – is paid by the breeder and varies based on the success of the stallion and demand for his services. The stallion owner either keeps the stallion at his trainer's property or a third party's property, known as a stud farm. The mare is typically transported to the stallion, but artificial insemination, eliminates the need to transport the stallion.

The gestation period for a horse is 11 to 12 months. For racing purposes, all horses have the same birthday – January 1. For example, a horse born in April 2016 becomes a yearling – a one-year old horse – on January 1, 2017. For this reason, breeders try to breed their mares in January or February, so she foals the following January or February, giving the foal more time to mature before it is declared a yearling. Because the majority of births occur within the same short timeframe, this phenomena is known as a "foal crop." Further, a horse is "bred" where it is foaled. If a Pennsylvania breeder takes his mare from Pennsylvania to Kentucky to receive stud services, the resulting offspring is a "Pennsylvania-bred" horse as long as the mare returned in time to give

[360] 58 Pa Code § 163.313.
[361] 58 Pa Code § 163.307(a).
[362] "West Virginia Moving Forward With Out-of-Competition Testing," July 20, 2016, *Paulick Report*, http://www.paulickreport.com/news/the-biz/west-virginia-moving-forward-competition-testing/.
[363] "New Mexico Racing Commission to Begin Aggressive Out-of-Competition Testing," April 26, 2016, *Paulick Report*, http://www.paulickreport.com/news/the-biz/new-mexico-racing-commission-cracks-competition-testing/
[364] Walt Bogdanich and Rebecca Ruiz, "Turning to Frogs for Illegal Aid in Horse Races," June 19, 2012, *New York Times*, http://www.nytimes.com/2012/06/20/sports/horse-racing-discovers-new-drug-problem-one-linked-to-frogs.html.

birth within the Commonwealth. Mares are typically past their breeding prime when they are 15 years old.

Once a foal reaches the yearling stage, the breeder will take the horse to auction and hope to sell the horse for a tidy profit. Because race horses are very expensive to purchase and maintain, some horses are bought by numerous people through what is known as a "syndicate," with each person owing a percentage of the horse, much like one would own a fractional share of a company through stock.

After the horse is purchased, the owners then select a trainer for the horse. The owners pay the trainer a per-day fee to provide housing, feed, and veterinary care to the animal. This is in addition to whatever training fee is charged. Oftentimes, a trainer will leave the horse at the track where it is running rather than transport it every day back and forth. Horses can begin racing when they are two years old. Two year old horses are called juveniles.

A horse's most important racing year is when it is three years old. This is typically the age at which a horse will be eligible for the most competitive and lucrative races. The Triple Crown races, for instance, are for 3 year olds. The top horses stop competing after their third year, as they will no longer be qualified to participate in the most prestigious races, and because they will be able to earn more money by breeding.

Not all horses are equal, however. For this reason, tracks try to create races with horses of similar ability so as to even the playing field and make the races more attractive to bettors. Horses that have never raced before are first entered into maiden claiming races, described in more detail below, or maiden special weight races, which have various conditions attached to the entry of a horse such as age, sex, surface of the track, and distance. Special weight races are a step above the maiden claiming races, as the horses running in the special weight maidens cannot be claimed by other horsemen and the purses tend to be higher.

Most horses will eventually run in what is known as a claiming race. In a claiming race, the winning horse will be sold if there is a willing buyer. The sale price or claiming price of the winning horse is set beforehand as a condition of the race, usually between $5,000 and $30,000, depending on the quality of the horses being run. There are also other conditions usually attached to the race, such as "for four-year-olds and upwards who have never won three races." This system prevents an owner of a talented horse valued at $30,000, for example, from entering that horse in a race with less talented competition in a $10,000 claiming race, because the winning horse will likely be claimed for a price much lower than one at which the owner values the horse. A maiden claiming race is a claiming race but limited to horses that have not yet won a race.[365]

Aside from claiming races, there are several types of non-selling races. These races are considered a step above claiming races and are for horses that show real promise. Allowance races are just like claiming races in that there are specific conditions set on the eligibility for entry of a horse. The only difference is that the horses are not for sale and the winner cannot be claimed. Starter allowance races are for horses that have previously been entered in a claiming race and

[365] Class Levels in Horse Racing, *Bet-Won*, http://www.bet-won.com/free-horse-racing-tips/class-levels-in-horse-racing/.

have run at a certain claiming level, depending on how the race conditions were written. The next highest level of racing are handicap races, where the horses are "handicapped" by wearing a weighted vest. The least competitive horses wear the least amount of weight and the most competitive horses bear the heaviest weights. Just like with a golf handicap, the goal is to even the playing field for all entrants. The assigned weight is calculated by the track's official handicapper.[366]

The highest level of competition for horses are graded stakes, which are graded 1, 2, or 3. The graded stakes are commissioned by the American Graded Stakes Committee of the Thoroughbred Owners and Breeders Association. The grades are awarded based on the quality of the horses that ran the race the previous year. Grade 1 is the highest level and races can be upgraded from lower levels to higher levels, and vice versa. Many grade 1 stakes use a weight system similar to handicap races, except weight is distributed based only on the age and gender of the horse.

Unlike the other forms of races, stakes races require that the owner of the horse put up an entry fee or a "stake." The stakes races that are not graded by the American Graded Stakes Committee are simply called "ungraded stakes." Aside from the graded stakes races, which have large minimum purse requirements to meet their grade, ungraded stakes tend to have the largest purses and the highest spectator turnout.

There is one other type of race that is not uncommon in the United States and Canada, and that is the restricted entry race. Restricted entry races are ungraded stakes races limited to horses foaled in a particular jurisdiction or sired by a stallion from a particular jurisdiction. For example, the Blue Mountain Stakes at Penn National Race Course, is open only to Pennsylvania bred horses.[367] These races are ungraded because by the rules of the American Graded Stakes Committee no graded stakes race may be restricted by the geographic location of where a competitor was foaled or where the sire was stabled.

All of this is generally true for harness racing as well, except that the grading system for stakes races applies only to Thoroughbred racing. Also, unlike Thoroughbred racing, harness races are assigned a speed rating and a class rating. In every race, each horse is given a speed rating. A speed rating gives the bettors and competing horse owners an idea of how fast the horses are, using the horses' previous times and factoring in variables such as post position and track condition. It changes after every race depending on how the horse has performed. It can be thought of as a "batting average" for the horse. A class rating is a rate given to the whole field to measure the strength of the field. It is determined by "a weighted average of the last 6 months of previous speed ratings from the horses entered in that race."[368]

[366] *Ibid.*
[367] Hollywood Casino at Penn National Race Course, "2017 Stakes Schedule," http://www.hollywoodpnrc.com/Racing/Stakes%20Races.
[368] Trackmaster, "Speed and Class Rating," https://www.trackmaster.com/articles/har/ratings.

Life After Racing

After a horses racing career concludes, there are several different potential fates. As discussed above, a successful horse may be bred or put up for stud service. Although mares are past their breeding prime after age 15, there is essentially no limit to how long a stallion may provide stud services. The lifespan of a horse is around 30 years.

Other than breeding, some horses are auctioned off to be slaughtered for their meat, which is off-putting to many people.[369] Because slaughtering horses for meat is *de facto* prohibited in the United States, the horses are shipped to Canada or Mexico where they are butchered, and from there most of the meat is exported to Europe and China. In 2010, roughly 138,000 horses were sent to Mexico or Canada to be slaughtered for meat, mostly for consumption in Europe.[370] This is off from the 1990 peak of 410,000 horses slaughtered in the United States.[371] Due to the American taboo on eating horse meat, many owners attempt to re-home their unwanted race horses.

The Thoroughbred Aftercare Alliance "accredits, inspects and awards grants to approved aftercare organizations to retire, retrain and rehome Thoroughbreds using industry-wide funding."[372] The Jockey Club and Kenneland auctions having both pledged to financially support the Thoroughbred Aftercare Alliance, and many Kentucky breeders have joined in their efforts.[373] The Retired Racehorse Project is a nonprofit organization dedicated to facilitating the placement of Thoroughbred ex-racehorses in second careers. The RRP lists over 35 organizations in Pennsylvania that work to retrain retired Thoroughbreds for non-racing careers.[374] These include the Pennsylvania Thoroughbred Horsemen's Association "Turning for Home" program.

The United States Trotting Association, the national organization for Standardbred horses, established the Standardbred Equine Program in 1996 to promote the use of Standardbreds in disciplines other than racing. Standardbred pleasure horse organizations promote the transitioning of ex-harness horses to pleasure and competitive riding and driving. Standardbred horses have found careers in dressage, endurance riding, speed racing, and as police or military mounts and trail-riding companions.[375] The Amish also purchase former race horses.[376]

Horses that are not suitable for a second career, or are of retirement condition, often go to horse rescue operations who receive charitable donations to pay for land, feed, and other overhead expenses of caring for retired race horses. The Pennsylvania Thoroughbred Horsemen's

[369] *See* The Humane Society, "Stop Horse Slaughter: Our Country's Dark Secret," http://www.humanesociety.org/issues/horse_slaughter/facts/horse_slaughter.html.
[370] *Ibid*.
[371] Emily Feldman, "Life After Racing: From Stud to Slaughter," May 14, 2013, *NBC 6 Miami*, http://www.nbcmiami.com/news/sports/NATL-Where-Horses-Go-When-the-Racing-is-Over-206630691.html.
[372] Thoroughbred Aftercare Alliance, "About," http://www.thoroughbredaftercare.org/about/.
[373] "Thoroughbred Aftercare Alliance Announces Funding Support From Industry Participants," October 11, 2012, //www.ntra.com/thoroughbred-aftercare-alliance-announces-funding-support-from-industry-participants/.
[374] www.retiredracehorseproject.org
[375] http:/fanguide.ustrotting.com/what-is-harness-racing.cfm.
[376] Andrew Jenner, "From the Racetrack to the Buggy," June 21, 2013, *Modern Farmer*, http://modernfarmer.com/2013/06/racehorses-amish-buggy/.

Association runs a charity helping to re-home retired racehorses, and there are numerous others which operate across the Commonwealth.[377]

Expanding the Fan Base

Marketing to a new fan base is something that the horse racing industry should be doing, but that is primarily the domain of market research firms. However, trying to differentiate the industry from "just another game" to the spectator sport it began life as would be a good start. Promotion of the horses, the jockeys, and drivers and the excitement of a live race beyond media directly related to the industry may be what is needed to attract persons who are not your usual casino gamblers to the tracks. Gamblers are the base that horse racing stands on, but to position the industry for future success and promote the best interests of all parties involved, horse racing needs to become part of the broader sports and entertainment industry.

One suggestion received was to permit pari-mutuel wagering on races held at county fairs. While combining casinos and racetracks into one entity provided slots revenue to benefit the racing industry, it can create the impression that the business is all about gambling, and not entertainment as a whole. County fairs draw parents who would never consider taking their children to a casino or "the track", but enjoy competitions like tractor pulls and pony pulls at the fair as a form of entertainment. Permitting betting on the races currently held at Pennsylvania county fairs could be a way to introduce an entirely new audience to horse racing in an extremely family-friendly atmosphere. Similar opportunities exist at county fairs in Ohio and Texas, for example.

A 2005 survey of harness racetracks nationwide revealed the most popular advertising and sponsorship opportunities being pursued by tracks. Local television advertising was most popular. Sponsorships were most prevalent by alcoholic and non-alcoholic beverage companies. Promotion of human talent included autograph sessions, appearances, television features, radio interviews, bobblehead giveaways, and driver/trainer of the week awards. About 2/3s of the responding tracks indicated that this type of promotion had a positive impact.[378]

One commentator pointed out that the resurgence in racing experienced in the 1970s was triggered by the huge popularity of Triple Crown winners Secretariat, Seattle Slew and Affirmed, and attributed the current decline to the fact that there was a long lapse of time without a Triple Crown winner (broken by American Pharoah in 2015).[379] Willie Shoemaker, a jockey who won the Kentucky Derby four times, the Preakness twice and the Belmont Stakes five times, and is in the Racing Hall of Fame, was a popular fixture on the television talk show circuit during the 1970s, the industry's last round of popularity.[380]

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[377] Turning for Home, "About," http://patha.org/turningforhome/.
[378] Joseph J. Pulli, "A Study of Harness Racing's Demographics and Sponsorship Potential," Independent Study, Race Track Industry Program, University of Arizona, Spring 2005.
[379] "Horse Racing History," winningponies.com.
[380] Joseph Durso, "Bill Shoemaker, 72, Hall of Fame Jockey Who Dominated for Four Decades, Dies," *The New York Times*, October 13, 2003, www.nytimes.com/2003/10/13/sports/bill-shoemaker-72-hall-of-fame-jockey-who-dominated-for-four-decades-dies.html. "Willie Shoemaker," www.imbd.com/name/nm1828486/

While promoting winning horses and jockeys is one way to raise the popularity of the sport, it can only be an ancillary solution. With no Triple Crown winners from 1979 to 2015 (although Pennsylvania's own Smarty Jones came close in 2004), the likelihood of a 1970s-like cult of personality centered on the horses and riders is a rather nebulous foundation to base the hopes of an industry on. However, Pennsylvania owners and breeders could do more to publicize their winningest horses, jockeys and drivers to the general public. Creative marketing consultants are needed: in 1974, who would have thought that a yellow rag could come to symbolize a professional football team for over 40 years?

Public relations are an important aspect of expanding the fan base and community involvement is one way to showcase the philanthropic side of the equine industry. For example, the Pennsylvania Harness Horsemen's Association provides scholarships for college students pursuing a career in harness racing, and supports several equine therapy groups.[381] The Thoroughbred Horsemen's Association has a scholarship fund for stable employees and their dependents to assist in college and night classes.[382] Activities like these should not only be noted in the industry trade journals and websites, but released to the general media and local newspapers as well.

As the saying goes, everything old is new again. *The Art of Manliness*, the Internet's largest men's-interest blog, featured an article on betting on horse races. Explaining why the author, as a novice and causal fan of horse racing, enjoyed the sport, he stated "it feels like entertainment, an experience, an outing. I like that I'm outside. I like that there's a lot of history and tradition behind it."[383] There are signs that some people are casually re-engaging with the sport — with more attention being paid to the Triple Crown, the Preakness Stakes witnessed a record crowd of 135,256 and a record handle of $94.127 million in 2016. It's not unthinkable that more people will rediscover and enjoy these aspects of the sport of horse racing.[384]

Rebranding

One suggested fix to horse racing's sagging popularity is to attempt to change the general public's perception of horse racing through a rebranding effort. To examine how effective rebranding strategies are, this section sets out to examine the rebranding efforts of Las Vegas, a city heavily dependent upon tourism. Although the rebranding efforts of other industries is not directly analogous to the horse racing industry, such efforts give insight into the difficulty of changing an established image.

In the late 1980s and early 1990s, Las Vegas was experiencing a downturn in revenue. Competition from Atlantic City and Native Americans casinos, as well as a major fire at the MGM Grand, were taking a toll on the city's appeal to tourists. In response, several properties and the Las Vegas Convention and Visitors Authority began advertising to families with young children.

[381] www.phha.org/philanthropy.html.
[382] www.patha.org/about-the-ptha/education/.
[383] Brett McKay, "How to Bet on the Ponies," May 3, 2012, *Art of Manliness*, http://www.artofmanliness.com/2012/05/03/how-to-bet-on-horses/.
[384] "Preakness Tickets On Sale Oct. 17," October 14, 2016, *Blood Horse*, http://www.bloodhorse.com/horse-racing/articles/215842/preakness-tickets-on-sale-oct-17.

In order to appeal to families, new attractions were built, such as the Grand Adventures theme park, the Mirage's volcano, and the Adventuredome at Circus Circus.[385] The city's iconic themed resorts were constructed during this period of "family Vegas," including Excalibur in 1990, Luxor in 1993, Treasure Island in 1993, New York New York in 1997, the Bellagio in 1998, and Paris in 1999. It was during this time that some of the city's original, smaller, and gambling-focused hotel-casinos were torn down, such as Hacienda and The Sands, both demolished in 1996, and The Dunes, demolished in 1993.[386]

However, this "family Vegas" era ended in 2003 when the Las Vegas Convention and Visitors Authority launched the "what happens in Vegas, stays in Vegas" marketing campaign. According to one account, the end of "family Vegas" could be traced to the 2001 opening of The Palms and the subsequent filming of MTV's *The Real World* at the resort in 2002. Attracting a newer, younger crowd, at one point The Palms's *Ghostbar* was so popular they were able to require a cover charge on a Tuesday afternoon during the off season.[387]

Whichever date one believes marks the end of "family Vegas," it was in the early 2000s that the child-friendly amenities began to disappear, including the Grand Adventures theme park, Speed at the Sahara roller coaster, Treasure Island's Pirate Battle, Wet n' Wild waterpark and the lion exhibit at the MGM Grand.[388] Themes changed from pirates or castles to "luxury," with Michelin-rated chefs, modern glass high-rises, world class shows, high-end shopping, upscale nightclubs, and fashionable bars appearing all over the city. It is these things might that have become the main attraction, rather than gambling.

The reason for the sudden change was the realization that attempting to attract families was not working, both in the sense that not enough families saw Las Vegas as a vacation destination and that families with children were not lucrative for the casino resorts. First, it was not lucrative because of the economics of casinos. Casinos use loss-leaders – a product or service that loses money for the business – in order to draw in customers who will gamble heavily.

In other words, if a man bring his wife and children to a casino resort, he will probably be paying attention to them and not a blackjack table. Further, families were not profitable for the Las Vegas resorts because, in addition to perhaps gambling less, they were not spending money on upscale restaurants and extortionately expensive bars. Although the family-friendly rebranding may have brought more people to Las Vegas who may not have visited otherwise, these visitors were not spending money where the casino resorts wanted it to be spent. A paper by marketing professors from the University of Nevada at Las Vegas also noted that the attraction of more non-

[385] Diana Tracey Cohen, "Family-Friendly Las Vegas: An Analysis of Time and Space," Occasional Paper Series 25, UNLV Center for Gaming Research, May 2014, http://gaming.unlv.edu/papers/cgr_op25_cohen.pdf.
[386] Las Vegas Casino Timeline, VegasClick.com, http://vegasclick.com/vegas/casinos-timeline.
[387] Joseph Akinsete, "Las Vegas Visitor Demographics: Be Careful What You Wish For," Spring 2010, University of Nevada Las Vegas Theses, Dissertations, and Professional Papers Series No. 594, http://digitalscholarship.unlv.edu/cgi/viewcontent.cgi?article=1595&context=thesesdissertations.
[388] Rebecca Clifford-Cruz, "Sun's List of Shuttered Family-Friendly Vegas Attractions," February 23, 2012, *Las Vegas Sun*, http://lasvegassun.com/news/2012/feb/23/shuttered-child-friendly-atractionsmultiplier/.

gambling patrons and more "low-roller" patrons presented negative business implications for the hotel-casinos.[389]

In addition to being less lucrative, the attempt to lure more families to the city was not as successful as the city had hoped. The percentage of Las Vegas visitors who have someone under the legal gambling age in their group has consistently hovered around 10 percent. In 1999 and 2001, for example, 12 percent of visitors had someone under 21 in their party, compared with 10 percent in 1998 and 2000[390] and 8 percent in 2015.[391] Ironically, it is the youngest set of visitors – millennials – who are most likely to travel with a person under 21 in their group as of 2015.[392] Perhaps the failure of the "family Vegas" campaign was inevitable. As has been noted by sociologists and casual observers alike, parents generally prefer to spend their money on their children and gambling losses could interrupt the family's enjoyable vacation and invite family discord. European casinos see a drop-off in traffic during the summer vacation season.[393]

In a way, the city was successful in rebranding itself – not from an adult-orientation to a family-orientation, but from a gambling destination to party destination. The re-invention of Las Vegas from a western town where one could gamble legally to a modern center of nightlife is evident in the data. Las Vegas saw 42.3 million visitors in 2015, its highest figure ever. However, Clark County gambling revenue peaked in 2007 at approximately $10 billion.[394]

This simultaneous embrace of an adult escape and a shift away from gambling has not hurt Las Vegas's appeal or pocketbook. Some of the most profitable restaurants in the country are located in Las Vegas,[395] with alcohol sales being a major profit driver. Tao Asian Bistro, the most profitable independently-owned and operated restaurant in the United States, made 75 percent of its revenue from alcohol sales.[396] If there is a lesson that can be derived from this abbreviated case study, it is that if an organization or business is looking to rebrand, it is best to play to its roots.

Alternative Gaming Platforms

There are a variety of different forms of wagering that remain illegal in Pennsylvania that could possibly augment casino income and thereby increase financial support to the horse racing

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[389] William N. Thompson et al., "The Family That Gambles Together: Business and Social Concerns," *Journal of Travel Research* (Winter 1996): 70-74.
[390] Las Vegas Convention and Visitors Authority, "Las Vegas Visitor Profile, Fiscal Year 2002," December 2002, http://s3.amazonaws.com/zanran_storage/www.lvcva.com/ContentPages/840764328.pdf.
[391] Las Vegas Convention and Visitors Authority, "Frequently Asked Questions," March 2016, http://www.lvcva.com/includes/content/images/media/docs/2015-Vegas-FAQs.pdf.
[392] Las Vegas Convention and Visitors Authority, "Las Vegas Visitor Profile, Generational Version, Calendar Year 2015," December 31, 2015, http://www.lvcva.com/includes/content/images/media/docs/2015-LV-VPS-By-Generations.pdf.
[393] "The Family That Gambles Together," *Supra* note 389.
[394] Las Vegas Convention and Visitors Authority, "Historical Las Vegas Visitor Statistics 1970-2015," March 2016, http://www.lvcva.com/includes/content/images/media/docs/Historical-1970-to-2015.pdf.
[395] Restaurant Business Online, "Top 100 Independents (2016)," http://www.restaurantbusinessonline.com/special-reports/top-100-independents.
[396] Miranda Morley, "Revenue That Comes with Selling Alcohol," *Small Business* (blog), *Houston Chronicle*, accessed January 12, 2017, http://smallbusiness.chron.com/revenue-comes-selling-alcohol-34021.html.

industry. However, any expansion of gaming must consider if the new games will create competition for, and draw players away from, live racing or if they can augment the income of the casinos and help support the race horse development fund.

The horse racing industry is financially dependent upon the Pennsylvania Race Horse Development Fund (PRHDF). In 2014, one member of the General Assembly suggested diverting all money from the PRHDF to public education.[397] In response, Salvatore DeBunda, the President of the Pennsylvania Thoroughbred Horsemen's Association, told the *Philadelphia Inquirer* that such a move "would basically [sic] wipe out the entire horse industry in Pennsylvania."[398] As of 2015, slots provide almost 90 percent of the purse money paid at tracks in the Commonwealth.[399] The pari-mutuel handle only provided slightly more than 10 percent.[400] In addition to the purse money being paid primarily by slots, $20 million of slots-funded PRHDF monies went to Thoroughbred breeders (through the Pennsylvania Breeding Fund), $17 million went to Standardbred breeders, and $11 million went to pensions for retired horsemen health benefits for all horsemen.[401]

It is not healthy for an industry to be so dependent upon one revenue stream. This is especially true when that revenue stream looks like it may begin to run dry in the coming decades. Within the gaming business, "there are pervasive fears that millennials will cut slot machines just as they've dropped live television."[402] In other words, people born between the early 1980s and the late 1990s have far less interest in slots – the primary source of PRHDF monies – than past generations. This "pervasive fear" is not the unfounded anxiety of a few casino operators. According to James Murren, chairman and CEO of MGM Resorts International, "the slot floors that you see today are not going to be in existence 10 years from now."[403] In fact, MGM Resorts International's newest casino, the 125,000 square foot MGM National Harbor in Prince George's County, Maryland, has announced a last-minute reduction in its slots floor by 10 percent.[404] Other Maryland casinos are also looking to free up space at the expense of slots for more popular table games and restaurants.[405]

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[397] Sam Wood and Brian X. McCrone, "Pa. Lawmaker Proposes Using Horse Racing Funds for Schools," January 29, 2014, *Philadelphia Inquirer,* http://www.philly.com/philly/news/breaking/Montgomery_County_lawmaker_proposes_ending_state_subsidy_for_Pennsylvania_horse_racing.html.

[398] *Ibid.*

[399] Tom LaMarra, "PA Report: Slots Provide Almost 90% of Purse," April 19, 2016, *Bloodhorse.com,* http://www.bloodhorse.com/horse-racing/articles/210920/pa-report-slots-provide-almost-90-of-purses.

[400] *Ibid.* It should also be noted that the total pari-mutuel handle declined to $30 million, from $38 million in 2011.

[401] *Ibid.*

[402] David G. Schwartz, "Casino Industry Makes a Bid for Millennial Attention," October 5, 2016, *Vegas Seven,* http://vegasseven.com/2016/10/05/casino-industry-makes-bid-millennial-attention/.

[403] Jeff Barker, "Newfangled Machines Will Aim to Hook Younger Casino Players," July 24, 2015, *The Baltimore Sun,* http://www.baltimoresun.com/business/bs-bz-slots-millennials-20150724-story.html.

[404] Drew Hansen, "MGM National Harbor Scales Back on Slots," August 22, 2016, *Washington Business Journal,* http://www.bizjournals.com/washington/breaking_ground/2016/08/mgm-national-harbor-scales-back-on-slot-machines.html.

[405] *Ibid.*

iGaming

Internet casino and poker games have flourished in the past 15 years. The federal Unlawful Internet Gambling Enforcement Act of 2006 greatly restricted the United States market for internet gaming. Illegal offshore gaming continues to flourish, however, to the benefit of offshore betting companies. "Outside of NJ, DE, and NV, 100% of the iGaming Industry revenues for poker and casino games go [to] illegal offshore sites."[406] Nevada, Delaware and New Jersey have enacted laws allowing iGaming. All three states require the player to be physically present in the state in order to participate and will use GPS services to determine the player's location. Delaware and New Jersey have authorized all types of casino games, while Nevada allows online poker only.[407] Nevada and New Jersey have established their online gambling sites through their existing brick and mortal casinos. This prevents online gaming from pulling money out of the casinos as a competitor.[408] Demographically, iGamers are different from offline gamers. "They are younger, more likely to be male, have a higher income, more education and are more likely to be employed." Because visitors to land-based casinos and racetracks tend to be older, this could be a nice complement to regular casino gambling.[409] The 2014 Econsult Report estimated that iGaming could produce $68 million in direct tax revenue in the first year and $110+ million annually thereafter.[410]

Sports Betting

Under federal law, sports betting is illegal in almost all states.[411] When the act became effective, only states that had previously allowed sports betting during the period 1976-1990 were permitted continue. Pari-mutuel horse racing and jai alai were exempt from the act. The American Gaming Association, the trade group for casino operators and others in the gaming industry, claims that $149 billion was illegally wagered on U.S. sports in 2015, and that 97% of the $4.2 billion wagered on the Super Bowl 50 was bet illegally.[412] The 2014 Econsult Report found that sports betting could be a strong complement to the racinos and could generate $20 million to $110 million in annual direct tax revenue.

Pennsylvania's ability to authorize sports betting, however, is legally questionable. New Jersey passed a law in 2012 to authorize sports betting there. The NCAA and other major professional sports leagues sued to stop the law and the legal battle has been continuing ever since, with New Jersey losing at every level. The case is now on petition for certiorari for the second time the U.S. Supreme Court. Currently, the court is attempting to decide if it should take the case

[406] Pennsylvania General Assembly, Legislative Budget and Finance Committee, "The Current Condition and Future Viability of Casino Gaming in Pennsylvania," May 2014, p 138. Due to the detailed nature of the study, it was conducted and completed by a consultant, Econsult Solutions, Inc. (2014 Econsult Report)

[407] Steve Ruddick, "A comparison of online gambling in New Jersey, Nevada and Delaware," NJ.com, October 1, 2013.

[408] Nevada Online Gambling Guide, New Jersey Online Gambling Guide, legalbettingonline.com.

[409] 2014 Econsult Report at p. 145. *Supra* note 406, p. 145.

[410] These estimates are based on a 20% tax rate for online poker and a 60% tax rate for online slots-style games.

[411] Professional and Amateur Sports Protection Act of 1992 (Pub.L. 102–559).

[412] American Gaming Association, "Sports Betting FAQs," https://static1.squarespace.com/static/5696d0f14bf118aff8f1d23e/t/56b2463e59827eab2c0c6c31/1454523967158/AGA-SportsBettingInAmerica-FAQ.pdf.

or not and on January 17, 2017, invited the acting U.S. Solicitor General to file a brief in the case. Additionally, the states of West Virginia, Arizona, Louisiana, Mississippi and Wisconsin have filed *amicus curiae* (friend of the court) briefs in support of the New Jersey law. A decision on whether to grant *certiorari* and proceed with the case is expected in early 2017.[413] The outcome of this case will in many ways be determinative of whether or not it is feasible for Pennsylvania to authorize sports betting. Legislation legalizing sports betting has been introduced in Michigan and South Carolina in 2017 and is expected to be in New York as well.[414]

Fantasy Sports

Pursuant to Act No. 7 of 2016, the Pennsylvania Gaming Control Board prepared a report to address the potential of fantasy sports as a gambling product in Pennsylvania. The report, issued in May 2016, is comprehensive and provides a means of regulating fantasy sports in a manner that complements other gaming in Pennsylvania. The same rules that apply to iGaming regarding licensure through existing land-based casinos and the physical location of the players should apply. The 2014 Econsult Report did not see any direct tax revenue from fantasy sports in the short-run, with an uncertain potential in the long-run.

Currently, Colorado, Indiana, Kansas, Massachusetts, Mississippi, Missouri, New York, Virginia, and Tennessee statutorily permit daily fantasy sports betting. Additionally, the Attorneys General of Kansas and Rhode Island have opined that they are not illegal gambling in those states. Connecticut, Florida, Hawaii, Nebraska, New Hampshire, and Oregon have had legislation legalizing fantasy sports introduced in their 2017 legislative sessions.[415]

Airport Slots

Airports in Las Vegas and Reno, Nevada currently have slot machines in their terminals. This has been suggested for Pennsylvania, with machines to be installed at Philadelphia and Pittsburgh. The 2014 Econsult Report calculated that these could produce direct tax revenue of $3 to $4 million per year per 100 machines. The report also found that these machines would neither substitute nor complement casinos, as they would be restricted to airline passenger waiting areas and not draw players other than air travelers.[416]

Video Gaming Terminals

Proposals have been made to permit video gaming in bars, restaurants, taverns and truck stops. Generally supported by the tavern lobby, they have been vehemently opposed by the casinos.[417]

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[413] *Christopher J. Christie, Governor of New Jersey et al., v National Collegiate Athletic Association, et al.,* Docket No. 16-476 (U.S. Supreme, October 12, 2016). *See also,* David Purdum, "5 states, gaming association back New Jersey sports betting efforts," ESPN.com, November 15, 2016.
[414] Legal Sports Report, http://www.legalsportsreport.com/dfs-bill-tracker/.
[415] *Ibid.*
[416] *Supra*, note 406, 2014 Econsult Report at p. 158.
[417] *See*, "Video Gaming," http://www.pataverns.com/tag/video-gaming/ and the Philadelphia Business Journal, June 7, 2016, www.bizjournals.com/philadelphia/news

With the goals of "providing additional funds for education" as well as "provid[ing] much needed financial assistance to the racetracks," New York permitted video lottery terminals ("VLTs") – a term that designates slot or video poker machines that are controlled from one central computer – to be installed at the state's racetracks.[418] The measure was legislatively approved in 2001, the first VLTs were installed in 2004, and nine of New York's racetracks now have slots.[419]

A cousin to video gaming terminals, historical race wagering machines are under consideration again in New Jersey.[420] The New Jersey bill called them "electronic pari-mutuel wagering terminals. Previously recorded live horse races determine the outcome. The bettor does not know the horse or jockey's name or where the race was won. Because the outcome is based on a pre-determined result, it is not considered a random game of chance. They are currently legal in Alabama, Arkansas, Idaho, Kentucky, Oregon, and Wyoming. They have run into challenges in several states, based on their similarity to slot machines and other aspects that make them look more like games of chance. Most states that authorize historical horse racing machines limit them to companies that are licensed for live horse racing.[421] The machines have proved very profitable in Wyoming and Kentucky.[422]

[418] New York Office of the State Comptroller, "Administration of Video Lottery Terminals," Report No. 2010-S-56, July 2012, http://osc.state.ny.us/audits/allaudits/093012/10s56.pdf.
[419] University of Nevada at Las Vegas Center for Gaming Research, "New York Gaming Summary," http://gaming.unlv.edu/abstract/ny_main.html.
[420] Senate Bill 2886, New Jersey, introduced January 9, 2017.
[421] Miles Bryan, "Is That A Horse Race or A Slot Machine? Depends on Who You Ask," Wyoming Public Radio, October 16, 2015; and "U.S. Historical Racing: an instant win?", Global Betting and Gaming Consultancy, March 17, 2015.
[422] Tom LaMarra, "KY Historical Racing Benefits Continue Growth," *Bloodhorse.com,* April 8, 2016.

LIVE RACING MARKETING PROGRAMS

House Resolution No. 616 directs that the study included an assessment of live racing marketing programs at each track and the impact on pari-mutuel wagering and public attendance on race days. This assessment includes marketing or advertising expenditures and the return on investment of those expenditures specific to racing.

The 2010 amendments to the Race Horse Development and Gaming Act that authorized table games added an annual reporting requirement for Category 1 slots licensees (racinos). The facility must submit a report to the Pennsylvania Gaming Control Board and their respective Racing Commission on how the introduction and expansion of gaming has fulfilled the intent of the act to enhance live racing at the racetrack. The report, known in the industry as the "1211 Report" (after the section of the law that mandates it) must also detail plans to promote live racing and increase live handle and daily attendance at the racetrack in the upcoming year.[423] The State Racing Commission provides a standard form for this report. Part I, Live Attendance, Item 1.A. requests "Total attendance statistics – daily, monthly, and annually" and Part II, Handle, Item 1.A. "Total amount of live handle wagered on races conducted by licensee" and B. "Total amount wagered on simulcast races received by the licensee."

This reporting differentiates the two types of "live handle," i.e. amount wagered on-track on races conducted by the track operator and amount wagered on simulcast races received by the track operator (amounts received from persons not at the track but wagering at other locations, including other states) on the live broadcast of the race being conducted by the track operator. However, the way "live attendance" is counted by the tracks does not distinguish between patrons using the track's simulcasting facility to wager on other tracks' races and patrons wagering on the race occurring at the track that is counting them as a being a live attendant. This makes it nearly impossible to determine the actual live attendance at the track of those persons who are there to bet on live racing occurring on the operator's track. Average daily attendance may fluctuate from year to year, but it cannot not be determined if the subcategories are changing consistently, or if there is an increase or decrease in the number of patrons at the track to watch horse race with the animals running on the track physically in front of them or if the fluctuation is attributable to an increase or decrease in simulcast viewers. This is significant, because those non-race days that are simulcast only can skew the average daily attendance on live race days to appear lower than it actually is. Additionally, attendance at a Pennsylvania track on a day that does not have live racing has a minimal financial benefit to the horsemen and breeders who normally are associated with that track. If the number of patrons wagering on races being run on a particular track is significant, then the 1211 Reports must provide a more specific breakdown of attendance by type of race day.

[423] 4 Pa.C.S. § 1211(a.2)

Marketing among casinos and racetracks takes many forms. Advertising in the form of year-round television spots, ads in national and state racing publications, local print, radio and television media spots, and print, radio and television spots in neighboring jurisdictions. Some of the tracks are focusing on social media as well. All tracks have special promotions and special events, as well as public relations opportunities. Fan Appreciation Days are common to all the tracks. Monthly direct mail is also used by the tracks. Promotional giveaways can include t-shirts, hats, keychains, water bottles and posters. Many also offer "comps," which are free goods and services provided to patrons, with the value increasing commensurate with the level of betting and amount of time playing. Frequently, these are associated with reward programs that encourage people to return to the facility in the future.[424] The next section details specific attendance and handle information and marketing and promotional activities unique to each track. Specifics about each track's live attendance and handle from live racing only can be found in Appendix B.

Thoroughbred Race Tracks

Presque Isle

Presque Isle opened its doors for business in the fall of 2007. Average attendance and handle peaked in 2009, and declined for the next five years. Average daily attendance increased from 2014-2015, while handle in 2014 and 2015 was virtually the same. Presque Isle races Sunday through Thursday, when there is less competition from other gaming venues. The 2017 live racing schedule anticipates 100 days of live races. Sunday and Wednesday nights are Family Nights with food specials. In 2015, live entertainment was also added to the Sunday night event. Attendance at Family Night is usually double the attendance on other nights of the week. Presque Isle has live racing from May through September only, although simulcast is available year-round.

Table 26
Marketing Expenditures
Presque Isle Downs and Casino
2012-2016

Year	Marketing Promotions	Comp Totals
2012	$9,942.37	$11,822.48
2013	26,875.11	13,332.20
2014	42,151.10	35,286.31
2015	24,639.79	30,359.16
2016	22,863.22	42,736.88

Source: Email from Presque Isle Staff to Joint State Government Commission, January 26, 2017.

[424] Henry Tamburin, "The Experts Guide to Comps," www.smartgaming.com/html/articles/THEEXPERTsGUIDETOCOMPS.htm.

Public relations efforts include 2 ½ hours of live television coverage on opening night, which features, owners, trainers, racing officials, jockeys, track maintenance and simulcast hosts who provide education to the public on how a race meet comes together. The track works with the local visitors' bureau and convention authority to offer visitors "a night at the races" and local groups hold "company" nights as well, to bring in novices.

Penn National

Penn National is one of the oldest tracks in Pennsylvania, opening in 1972. Penn National has seen a steady decline in live handle at its Grantville home from 2009-2015, while attendance peaked in 2014 and declined slightly in 2015. Penn National holds live racing year-round, with 194 live race days on its 2017 schedule. The track has several Marquee Event Days, with the Penn Mile and its $500,000 purse, the largest. The 2015 Penn Mile set new records for single race and single day handle ($1.25 million and $3.86 million, respectively), and attracted over 5,000 attendees. The Holiday Racing Festival generated over $2.1 million in total handle.

In 2015 and 2016, Penn National sponsored exhibition camel and ostrich racing, which attracted families and non-racing fans, and visits by the Budweiser Clydesdales are popular with the public. The track has also sponsored amateur rider events, and special promotions and restaurant offerings on the dates of the Triple Crown races.

In the area of public relations, Penn National began a program in 2015, a "Grass Roots" community awareness and promotional program with charitable organizations, including Susquehanna Service Dogs, the Retirement Assistance and Care for Equines Fund (R.A.C.E. Fund) and Manada Creek Pony Club. Organizations are invited to attend and promote their programs on major racing days in exchange for messaging their social media followers about their attendance at the event. In 2016, the ostrich and camel racing programs included women's and children's charitable organizations from Dauphin, Lebanon and Schuylkill counties. Penn National's Saturday Sunrise Program is scheduled for one Saturday morning each summer month and invites fans to watch morning training and meet the owners, trainers and jockeys.

PARX

PARX Racing, under various names, has operated a racetrack in Philadelphia since 1974. "Big" race days such as the Triple Crown races, Smarty Jones' Day, Pennsylvania Derby/Cotillion and the Breeder's Cup and all holidays are heavily marketed. Face painting, pony riders, moon bounces, *etc*. are available for families on these days. Parx had live racing on 156 days in 2016. Attendance has declined in the past six years, with average daily attendance ranging between five and six hundred in 2014 and 2015. However, special event days bring huge crowds. Kentucky Derby Day in 2014 saw attendance of 10,124 and 10,142 in 2015. The Pennsylvania Derby/Cotillion brought in 15,565 people in 2014 and 10,676 in 2015. 2015's Pa. Derby total attendance for the day was more than the attendance for the entire month of February that year (9,239). The track also sponsors an annual Octoberfest 5K run and fun walk which benefits the Foundation for Breast and Prostate Health.

In an agreement with the PARX horsemen, the number of lives days in 2016 was reduced to 153. The reduction in days allowed for a Fall Festival of 32 live days with double purses. Preference was given to local horsemen for these races and the events were well received by the fans.

Standardbred Race Tracks

Mohegan Sun at Pocono Downs

The Pocono Downs track opened to harness racing in 1965. It is open 134 racing days, from March to November. The usual weekly schedule is Saturday through Tuesday. In additional to special event days on the Triple Crown race days, they also have a Sun Stakes Saturday event in July. The Sun Stakes Saturday offered nearly $2.3 million in combined purses in 2014. Attendance remained in the low 500s from 2011 through 2014, but dropped to 450 in 2015.

The Meadows

The Meadows opened in 1963 and is the oldest licensed harness racing track in operation in Pennsylvania. The Meadows has year-round racing on Saturdays, Mondays, Tuesdays and Wednesdays, with an occasional meet on a Thursday or Friday. There are 195 live race days listed in the track's 2017 live racing schedule. The track saw its worse year since 2010 from a live handle and attendance perspective in 2015. Special events include the Meadows Maturity Trot and Mare Trot, the Currier & Ives Trot, the Pennsylvania Sire Stakes finals, the Pennsylvania Fair Stakes Championship Night, and the Delvin Miller Adios Pace for the Orchids. The Adios Race celebrated its 50th anniversary in 2016 with a week-long festival, with over $1.6 million in total purses distributed that week, including the $500,000 purse for the Adios race itself. Triple Crown and Breeders' Cup events are also held. The following table looks at three special event days held in 2014, 2015 and 2016 and identified funds dedicated to marketing those events, the attendance and handle for those three days only each year.

Table 27
Special Event Marketing
Three Lives Events at The Meadows
2014-2016

Year	Amount Spent to Market Events	Total Attendance	Total Handle
2014	$3,000	3,200	$133,835
2015	2,000	3,936	143,814
2016	1,200	5,619	143,338

Source: Email from The Meadows staff to Joint State Government Commission, February 6, 2017.

The Meadows works with the Meadows Standardbred Owners Association to provide marketing opportunities to the horsemen during summer festivals. Jog cart rides and paddock tours are also conducted by horsemen on afternoons during live racing. The track offers numerous contests, including a Racing Fantasy League, Harness Racing Bingo and Winner of the Night. The Meadows has a players reward system, but does not offer comps.

In 2016, the Meadows lowered their takeout rate on trifecta's to 20%, making them the lowest blended takeout rate in harness racing. They reported that a reassessment of retention rates would occur in 2016-2017.

Harrah's

Harrah's Philadelphia opened in 2006. From around 2009 through 2015, Harrah's has experienced a steady decline in live attendance and handle. The track has Family Day on select Sunday's during the summer months. Triple Crown Days are also part of the schedule and "comeback" offers for future race dates are made. Races are normally held on Wednesdays, Thursdays, Fridays and Sundays. A special racing program was held in 2016 to celebrate the track's 10th anniversary. The track offers 150 live race days per year.

EXPANSION OF SECONDARY PARI-MUTUEL ORGANIZATIONS

Part of the General Assembly's inquiry into horse racing includes advance deposit wagering ("ADW"), a process whereby a bettor who is not present at a horse track makes wagers on a race via the Internet. Specifically, the General Assembly requested "an evaluation of the benefits and harms of Pennsylvania's race horse industry and regulated entities of the expansion of pari-mutuel wagering, advance deposit account wagering and electronic wagering to secondary pari-mutuel organizations."

Advance Deposit Wagering in Pennsylvania

This section is an evaluation of the effects of ADW wagering in Pennsylvania on off-track wagering facilities and horse racing generally in Pennsylvania. Prior to Acts No. 7 and 114 of 2016, the applicable statutes and regulations laid out the procedure for placing a wager by telephone,[425] but not by Internet-based ADW. However, under 3 Pa.C.S. §9312(6)(iii), the State Horse Racing Commission is empowered to establish "a system to monitor advanced deposit wagering and online pari-mutuel wagering company activities."[426]

In 1986, Pennsylvania permitted its licensed racetracks to develop off-track wagering locations and advance deposit wagering. Prior to 2016, third parties (non-licensed non-racing entities) were not allowed to take bets from Pennsylvania residents. In 2016, Pennsylvania authorized secondary pari-mutuel organizations to practice in Pennsylvania, requiring them to be licensed and monitored by the State Horse Racing Commission.[427] Each employee of such an organization who is directly involved in processing the wager must also be licensed. They must file annual reports and they must permit the State Horse Racing Commission to inspect their facilities.[428] Additionally, secondary pari-mutuel organizations pay a tax allocated to the State Racing Fund of 1.5 percent wagered each racing day on win, place or show wagers, and 2.5 percent on exotic wagers, including exacta, daily double, quinella and trifecta wagers. Amounts remaining after certain allocations and deductions are divided among the costs of equine testing, The Breeding Fund and the Sire Stakes Fund.[429]

All six of Pennsylvania's tracks offer some form of off-track wagering, either on their own or in partnership with another company. As examples, Hollywood Casino offers ADW wagering on 150 tracks through its own platform, plus has a partnership with eBets, a British company, for

[425] 58 Pa. Code § 169.1-169.5; 187.1-187.9.
[426] 3 Pa.C.S. § 9312(6)(iii).
[427] 3 Pa.C.S. § 9301.
[428] 3 Pa.C.S. § 9322.
[429] 3 Pa.C.S. § 9334.

wagering on UK and Ireland races.[430] Mohegan Sun at Pocono Downs has an ADW platform called iBet, including an application for mobile devices, but wagering appears to be limited to roughly two dozen tracks.[431] Harrah's Philadelphia, a offers simulcast wagering, but does not appear to have an ADW platform.[432] This means you must be present at their track to place a wager on races televised at the facility.

ADW allows anyone anywhere to bet on almost any horse racing event. Certain states with horse racing do not permit advance deposit wagering by their citizens or prohibit their residents from wagering on races within that state. For example, West Virginia permits is residents to open ADW accounts and wager on races in any other state or country, but if a West Virginia resident wishes to bet on a race at Mountaineer, he must go to the track or to one of the state's off-track wagering ("OTW") facilities.[433]

In general, the development of ADW wagering should be seen as a net positive for horse racing in Pennsylvania and elsewhere – absent the ADW provider, a bettor in Walla Walla, Washington, could not bet on a horse race at Mohegan Downs. However, the benefits of permitting people from all across the globe to wager on a jurisdiction's horse races are not always recognized in light of concerns that a particular jurisdiction's in-state residents may be using ADW services to wager on in-state races instead of at the track or a state-supported OTW facility. In other words, the ADW websites are taking what the tracks and OTWs view as "their" customers. Companies that are unaffiliated with a Pennsylvania licensed track and accept off-track betting are known as "secondary pari-mutuel organizations." The growth of secondary pari-mutuel organizations in the ADW arena concern for the tracks and OTWs because the secondary organization is a middle man and takes a cut of the money that could otherwise make its way to the track.

There is also a concern that some ADW providers in the secondary market create their own pools with more favorable odds, lower take-out, and rebates on gambling losses. In 2014, California declared illegal any wagering on its horseraces that did not merge the bets made on the ADW platform with the larger racing pool at the tracks. XpressBet, one of the larger ADW platforms, advises its customers that "[m]oney wagered through Xpressbet is commingled with track wagering pools."[434]

In Pennsylvania, out-of-state patrons wagering on Pennsylvania races make up the bulk of money wagered on Pennsylvania horses. According to the Pennsylvania Gaming Control Board,

[430] Hollywood Casino at Penn National Race Course, "Account Wagering & OTW," http://www.hollywoodpnrc.com/Racing/Account%20Wagering%20-%20OTW.
[431] Mohegan Sun at Pocono Downs, "iBet – January 2017 Racing Schedule," https://www.ibetmohegan.com/racing/uploads/MSPD-Simulcast-Calendar-January-2017-21.pdf.
[432] Harrah's Philadelphia, "Simulcasting," https://www.caesars.com/harrahs-philly/racing/simulcasting#.WID8Vn1bj-k.
[433] Xpressbet.com, "State Restrictions".
[434] Xpressbet.com, "Frequently Asked Questions," http://www.xpressbet.com/faq.

out-of-state patrons wagered $620.1 million on Pennsylvania horse races in 2016.[435] However, this money is not counted by the PGCB as taxable handle[436] because it is not taxed by the state.

The amount gambled by Pennsylvania residents on out-of-state races is hard to discern, because of the number of companies offering ADW services. However, one estimate can be derived by looking at the Department of Agriculture's and PGCB's most recent annual reports. According to the PGCB's 2015 annual report, Pennsylvanians wagered approximately $25 million on Pennsylvania horse races. Pennsylvanians also wagered approximately $381 million in "taxable handle," which the PGCB defines as "dollars wagered within Pennsylvania on any race held throughout the country." This means that Pennsylvanians gambled approximately $356 million on horse races in other states.[437]

The Pennsylvania Department of Agriculture (PDA) lists "account wagering" as a separate by-line in its most recent annual report, breaking down betting by how the bet was placed. "Account wagering" is only listed as an option for Meadows and Harrah's Philadelphia, both Standardbred tracks. It is not clear if these figures provided in the PDA's annual report is money wagered by Pennsylvania residents on those tracks' races through ADWs, money wagered by out-of-state residents on those particular tracks' races, or if that is money wagered by people at that track on out-of-state races with those tracks themselves acting as an ADW.

Effect of Expansion of ADW on Live Racing and Off-Track Wagering

The decline in money being wagered on horse races in the Commonwealth has put significant pressure on the business entities who accept those wagers, including off-track betting parlors. All of the Commonwealth's off-track betting parlors are owned by the same corporations that own the casinos. However, over the past decade, many of them have closed. In 2015, Penn National shut its OTW facility in Exeter Township, near Reading. The profit margin of that particular location was so thin that a $100,000 increase in rent made the business unprofitable.[438] Absent the low volume of wagering at the Reading facility, the increase in overhead expenses would not have closed the business.

The Reading facility's closure in 2015 was not the only recent closure, however. Penn National closed an OTW parlor in Chambersburg in 2013.[439] The Meadows closed its OTW facility in New Castle in 2014 and an OTW facility in Moon Township in 2012.[440] Center City

[435] Preliminary 2016 data provided to the Independent Fiscal Office by the Pennsylvania Gaming Control Board.
[436] Although not explicitly stated in the data cited, when used elsewhere in this report referring to other jurisdictions, "total handle" means all money wagered on that state's horse races, whether it is wagered within that state or from outside of that state.
[437] "2015 Benchmark Report."
[438] Lisa Sheid, "Penn National to Close Exeter Off-Track Wagering Facility," July 25, 2015, *Reading Eagle*, http://www.readingeagle.com/money/article/penn-national-to-close-exeter-off-track-wagering-facility.
[439] Robbie Byrd, "Penn National to Close Pa. Off-Track Betting Site," June 4, 2013, *WKBN First News*, http://wkbn.com/2013/06/04/penn-national-to-close-pa-off-track-betting-site/.
[440] "New Castle Off-Track Betting Site Set to Close November 30," October 29, 2014, *Vindy.com*, http://www.vindy.com/news/2014/oct/29/meadows-in-new-castle-closing-off-track-/?print.

Philadelphia Turf Club, owned by Parx, closed in 2016.[441] Parx has four remaining Turf Club OTW facilities as of January 2017, all in the Philadelphia area.[442] The Downs at Hazleton, owned by Mohegan Sun, closed at the end of 2011.[443] Pennsylvania is not the only state with disappearing OTW facilities – New York City OTW shut 50 OTW locations in 2010.[444] One thousand New York City OTW employees lost their jobs, meaning that each facility employed roughly 20 people. The shuttered Pennsylvania OTW parlors employed similar numbers, according to news reports.

Just as the Internet has taken retail trade away from brick-and-mortar stores, ADW has and will continue to take wagering dollars away from off-track betting. The Kentucky Derby, the most well-known race in the country, has seen more of the money being wagered on it shift from on-track and off-track betting parlors to ADW Internet and mobile platforms. In 2014, Churchill Downs saw a slight decrease in on-track wagering on Derby Day races, while betting through TwinSpires, its ADW platform, increased 17 percent.[445] While this is not a positive development for off-track betting, it is poised to be a net positive for horse racing. TVG Betfair launched an ADW app for mobile devices in 2014, and shortly thereafter had 200,000 players betting over $20 million in handle. Roughly 75 percent of the app's users had never gambled on a horse race before.[446]

As ADW takes more market share of the remaining horse wagering dollars from on-track and off-track betting facilities, the State Horse Racing Commission should use its broad rule-making authority[447] to ensure that ADW companies meet the conditions for licensing and annual license renewal.

Concerns have been raised about the provisions of the statute, specifically § 9330,[448] that currently precludes secondary pari-mutuel organizations from accepting a wager from anyone living outside the track's own primary market area (within 35 miles of a track). This provision protects the track from out-of-state, internet competition, but it can be a barrier to anyone wishing to place a wager. This may result in some people simply not wagering, rather than making the effort to drive to the track to place their bet. Some bettors may not even be aware that they cannot place a bet online with an ADW provider if they live within the primary market area of a track. The ADW will tell the bettor that the company cannot accept their wager, and the bettor will simply do something else with his or her time and money.

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[441] Dan McQuade, "The Center City Turf Club Has Closed," March 29, 2016, *Philadelphia Inquirer*, http://www.phillymag.com/news/2016/03/29/center-city-parx-turf-club-otb-closed/#gallery-2-2.
[442] Parx, "Turf Clubs," https://www.parxracing.com/turf_clubs.php.
[443] Jim Dino, "The Downs at Hazleton Will Close Dec. 31," December 23, 2011, *Citizens Voice*, http://citizensvoice.com/news/business/the-downs-at-hazleton-will-close-dec-31-1.1248468.
[444] Russ Buettner, "New York Betting Parlors Close Doors," December 8, 2010, *New York Times*, http://www.nytimes.com/2010/12/09/nyregion/09otb.html.
[445] Sue Schneider, "Don't Count Horseracing Out Yet," *Gaming Law Review and Economics* 19 no. 5 (2015), http://online.liebertpub.com/doi/pdfplus/10.1089/glre.2015.1953.
[446] *Ibid*.
[447] 3 Pa.C.S. § 9322(a)(2); 3 PA.C.S. § 9330(c.1).
[448] 3 Pa.C.S. § 9330(f).

Further, the 35-mile radius does not take into account the different demographic and geographic profiles of the areas surrounding Pennsylvania's six different tracks. If an urban area with many potential bettors falls within the 35-mile exclusion zone, some bettors will simply decide not to gamble, even if others attend the track as intended by the law. If the primary market area contains a rural area with few potential bettors, even if the statutory scheme works as designed and draws them to the track, the number of patrons at the track will not be substantially increased. It seems advisable to impose as few barriers as possible to a patron placing a bet on a race.

Assessing the Prevalence of Unlawful Wagering on Horse Racing

The prevalence of illegal gambling is difficult to determine because it occurs in the black market economy, with many Internet-based transactions occurring outside the United States. However, it must be clear what constitutes "illegal gambling." In Pennsylvania, bookmaking is a first degree misdemeanor, and is defined as accepting or purporting to accept a wager "upon any contest of any kind."[449] Making the wager is not a crime. This is the same way the Commonwealth's law prohibiting gambling devices is worded – the liability is on the owner or operator of the device, not the gambler.[450] The federal Unlawful Internet Gambling Enforcement Act of 2006, which makes it illegal for an online bookmaker or casino to accept money from a gambler and also makes it illegal for financial institutions to facilitate such transactions, has the same statutory framework, with liability on the illegal casino operator and the financial institutions. Contrary to popular belief, it is not illegal for the gambler to gamble online.[451]

Most illegal gambling involves betting on sports such as college and professional fooTwall and basketball. It was estimated that during the 2015-2016 NFL and college football seasons, nearly $93 billion was illegally wagered on the sport. ESPN's *College Gameday* includes a segment where its commentators discuss whether college football teams will cover the spread (the difference between two scores being wagered on) – information that is only useful for gambling.[452]

Fifty years ago, if you wanted to wager on a horse race, you had to be physically present at the track. If an individual were in Mars, Pennsylvania, he could not legally place a wager on Santa Anita Park in California, and would have had to consult a bookie. However, the advent of off-track betting facilities changed that dynamic. According to the National Gambling Impact Study Commission, New York's off-track betting system took "a substantial bite out of the illegal betting world," with one detective testifying "even the sports gambling bookies place their horse bets legally or would bet legally when given the opportunity to do so."[453] In other words, people will not gamble illegally if there are opportunities to do so legally. Gamblers will take the path of least resistance.

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[449] 18 Pa.C.S. § 5514 (3).
[450] 18 Pa.C.S. § 5513. This is also true of illegal lotteries: 18 Pa.C.S. § 5512(c).
[451] 31 USC §§ 5363, 5367.
[452] Darren Heitner, "$93 Billion Will Be Wagered on NFL and College Football," September 9, 2015, *Forbes*, http://www.forbes.com/sites/darrenheitner/2015/09/09/93-billion-will-be-illegally-wagered-on-nfl-and-college-football/#2fe37ba81ca8.
[453] Testimony of Edward Galanek, Detective, Brooklyn District Attorney's Office, before the National Gambling Impact Study Commission, September 11, 1998, New Orleans, Louisiana, http://govinfo.library.unt.edu/ngisc/meetings/11sept98/p200911.pdf.

GLOSSARY

There are a number of terms of art and specialized definitions that relate to the horse racing and breeding industry. This glossary provides definitions of those terms that may not be readily understood by the layperson.

Across the board: A bet on a horse to win, place, or show. It is three separate bets and if a horse shows, for example, the bettor loses the win and place bets

Advance deposit wagering: A gambling process whereby the bettor funds an account before being permitted to wager on horses. Usually used in the context of placing bets online or over the phone.

Breakage: (1) With respect to determining odds, breakage is the downward rounding of odds before making winning payoffs. All tracks in the United States currently use dime breakage which means that the odds on a horse are always rounded down to the nearest tenth. (2) With respect to payoffs, winning payoffs are also rounded down. A payoff of $3.43 would be rounded down to $3.40 and the remaining three cents is considered the "breakage."[454]

Exacta: A wager on the first and second horses to finish a race, in exact order. E.g., an exacta wager on horses 6 and 9 means horse 6 must finish first and 9 must finish second for the bet to pay off.

Exotic bet: Any bet involving two or more horses or two or more races.

Handle: The total amount of money wagered.

Horsemen: General term that includes owners, trainers, jockeys, drivers and other individuals who directly participate in the racing industry.

In-state export handle: Wagers placed on Pennsylvania races that are simulcast to other racetracks located inside the Commonwealth.

Live Handle: Wagers placed on horse races in Pennsylvania, regardless of where the wager actually takes place.

Mare: A female horse 5 years of age or older, or any female horse who has been bred.

Off-track handle: Wagers placed at off-track wagering (OTW) facilities located in the Commonwealth.

[454] Commonwealth of Pennsylvania, Department of the Auditor General, Bureau of Special Performance Audits, "State Racing Fund: A Special Performance Audit," Harrisburg, PA, 2014.

On-track handle: Wagers placed on Pennsylvania races at the racetrack where the race takes place.

OTB or **OTW**: OTB is an acronym for off-track betting and OTW is an acronym for off-track wagering. In the context of this report, they are used synonymously. Neither the racing law nor the regulations define either term or note a preference, and the tracks vary in referring to their off-track facilities by using either acronym.

Out-of-state export handle: Wagers on Pennsylvania races that are simulcast to racetracks or OTW facilities located outside of Pennsylvania.

Paddock: A structure or area where the horses are kept before race time.

Pari-mutuel wagering: A form of gambling where the payout is not determined until after the pool has closed. This means that the odds on a horse change until all betting has ceased and the race is run. A pari-mutuel gambler is betting against other bettors, and this form of gambling is used for sporting events in which participants finish in a ranked order.

Pennsylvania Bred: A horse born in Pennsylvania.

Pennsylvania Sired: A horse whose father stood in Pennsylvania at the time of conception.

Phone/internet handle: Wagers placed over the phone or through the internet with an entity that is located within the state (although the wager may originate from out of state).

Place: A horse coming in second in a race. This bet also pays in the horse wins.

Promotional play: "Free play" given to players as an incentive to come to a particular casino. For example - you may receive a card in the mail that may be redeemed for $25 in free play credits for a casino. The credits can be played in a slot machine the same as cash. However, these free play credits are excluded from the slot machine tax base (gross terminal revenue).

Purses earned: Total amount of prize money available to pay to winning horses before a race takes place.

Purses paid: Total amount of prize money actually distributed to winning horses after a race takes place.

Quinella: Like an exacta, but it does not matter which of the chosen horses comes in first or second.

Secondary pari-mutuel organization: An organization that accepts off-track wagers on horseraces. Defined statutorily at 3 Pa. C.S.A. §9301. Regulated by 3 Pa. C.S.A. §9322.

Show: A horse coming in third in a race. This bet also pays if the horse wins or places.

Simulcast: Live video and audio transmission of a race and pari-mutuel information for the purpose of pari-mutuel wagering at locations other than the racetrack where the race is run.[455]

Sire: The father of a horse.

Standardbred horse: An American breed of horse used in harness racing. Its patrilineage can be traced back to one Thoroughbred horse, Messenger (1780-1808). Standardbreds resemble Thoroughbreds in appearance, but are smaller with a longer and lower body.[456]

Takeout: The percentage of the money taken out of the betting pool for purses and track overhead.

Taxable handle: Wagers placed in Pennsylvania regardless of where the race is being run (in- or out-of-state).

Terminal: Refers to a single slot machine. "Gross terminal revenue" is a defined in the Gaming Act and serves as the slot machine tax base.

Thoroughbred horse: A breed of horse bred specifically for racing. Origins are 17th century England.[457]

Tote expense: The money paid to several national firms to calculate and provide odds for horse races that are updated as new wagers are made.

Trifecta: A bet whereby the bettor selects three horses to finish first, second, and third. The horses must finish in the exact order for the bet to win.

Win: A horse coming in first in a race.

[455] 3 Pa.C.S. § 9301.
[456] Encyclopaedia Brittanica, "Standardbred Horse," https://www.britannica.com/animal/Standardbred.
[457] Encyclopaedia Brittanica, "Thoroughbred Horse," https://www.britannica.com/animal/Thoroughbred.

APPENDIX A
DETAIL OF FINANCIAL ALLOCATIONS OF PRE-2016 RACING LAWS

Race Horse Industry Reform Act
Act of December 17, 1981 (P.L. 534, No. 135)

A maximum of six horse racing corporations and five harness racing corporations were authorized. Horse racing and harness racing were limited to 125 racing days per year, with a minimum of 25 horse racing days allowed. Both types of racetracks could apply for and receive permission to hold an additional 25 racing days. Interstate simulcasting of horse races was also approved. Advance deposit wagering, in the form of telephone account wagering was also authorized.

Each track owner was authorized to retain an appropriate percent of the wagering pool as described below:

- 17 percent of the money plus the breakage from regular wagering pools
- 19 percent of the money plus the breakage from regular wagering pools of tracks whose total deposits in all pari-mutuel pools averaged less than $300,000 per racing day for their previous meeting at the same facility
- 19 percent of the money plus the breakage from the exacta, daily double, quinella and other wagering pools involving two horses each racing day
- At least 25 percent but no more than 35 percent of the money plus the breakage from the trifecta or other wagering pools involving more than two horses in one or more races each racing day

Less than the established percentage could be retained upon approval from the appropriate commission. Monies remaining in the wagering pool after the retainage were to be distributed to the winning ticket holders.

The track owner's retainage was then distributed as follows:

- 7/10s of one percent of the amount wagered each racing day at Thoroughbred horse races was paid to the Department of Revenue to the credit of the Pennsylvania Breeding Fund.

- 7/10s of one percent of the amount wagered each racing day at harness races to the Pennsylvania Sire Stakes Fund.

Track owners were also subject to a tax on the amount wagered each racing day, to be paid out the owners' retainage into the horse racing or harness racing fund, according to the type of track owned. The tax was graduated, as follows:

No. of Racing Days	Tax Rate
First 35 days	4.5%
36th to 55th day	4.0%
56th to 75th day	3.5%
76th to 95th day	3.0%
96th to 115th day	2.5%
116th to 150th day	2.0%

These taxes, once deposited in the Harness Racing and Horse Racing Funds respectively, were then further distributed. Both funds were required to pay $1,750,000 to school districts of the first class, if a cumulative 150 days of harness racing meets were conducted with the jurisdiction. If the 150 day requirement was not met, no payment was to be made.

The Harness Racing Fund was required to make a further distribution of 4/10ths of one percent of the amount wagered each racing day at harness races to the Sire Stakes Fund. This amount increased to 7/10s of one percent on January 1, 1983 and then to one percent on January 1, 1984 and each year thereafter.

An amount equal to the greater of $750,000 or 1/4th of one percent of the amount wagered each racing day from each commission was paid to the Department of Commerce for distribution to small municipalities for projects involving water facilities, sewage disposal facilities and access roads.

After payment of the foregoing amounts, the commissions' payroll was to be paid, the compensation of employees of the Department of Revenue used in collecting taxes and penalties under the act, the expenses of the Secretary and Department of Agriculture in administering their duties under the act and all other expenses of the commissions incurred in administering the act. Any remaining funds after those payments were divided, with 18 percent paid into the Pennsylvania Fair Fund and 82 percent into the General Fund.

Breakage retained by Thoroughbred entities was to be distributed as follows:

- 50 percent retained by the entity
- 25 percent retained by the entity solely for purses to the horsemen
- 25 percent to the credit of the Horse Racing Fund

Breakage retained by harness racing entities was to be distributed as follows:

- 75% retained by the entity
- 25% retained by the entity to be used solely for claiming and nonclaiming races where entry is restricted to Pennsylvania sired-horses

Pennsylvania Race Horse Development and Gaming Act
Act of July 5, 2004 (P.L.572, No.71)
Codified in 4 Pa.C.S., Part II

Category 1 applicants must operate the slot machines at a licensed racetrack facility that has either:

- been conducting races for not less than two years prior to the effective date of the act,
- been approved or issued a license within 18 months of the effective date,
- or approved by the Harness Racing Commission, after the effective date, to conduct harness race meetings with pari-mutuel wagering.

These Category 1 licensees (commonly referred to as racinos) generally are required to conduct live racing for at least 100 days per calendar year and the aggregate number of live racing days shall not be less than 95% of the total number of horse or harness racing days that were scheduled in 1986 at that racetrack. New licensees conducting races at a new racetrack are required to conduct live racing for a minimum of 150 days per year to begin two years after receipt of the slot machine license. Each racino is required to conduct no fewer than eight live races per race day, except for Thoroughbred tracks on days designated as Breeder's Cup events, in which case there is to be a minimum of five live races.

A 34% state slot machine tax and a 4% local share assessment is imposed on the daily gross terminal revenue[458] of the licensee. The 34% is transferred to the State Gaming Fund. The 4% local share assessment is used to make grants to the local counties in which a horse or harness racetrack is located. For the ten-year period following the initial issuance of a Category 1 license,

[458] Gross terminal revenue is, in essence, the gross net income from slot machine gambling. It is the amount wagered, less cash and prizes paid out to winning patrons.

funds are required to be set aside and used for improvement and maintenance of the backside area and related buildings and structures at the racetrack.

Each active and operating licensed gaming entity is required to pay a race horse improvement assessment to the Pennsylvania Horse Race Development Fund, capped at 12 percent of its daily gross terminal revenue. All active and operating Category 1 licensee conducting live racing (each racino) receive distributions from the Horse Race Development Fund. Each racino receives an amount equal to 18 percent of its daily gross terminal revenue[459] to be allocated as follows:

- 80 percent to a purse account established by and for the benefit of the horsemen
- 16 percent to the Pennsylvania Breeding Fund, for entities licensed to race Thoroughbreds
- 8 percent to the Pennsylvania Sire Stakes Fund and 8 percent to the Pennsylvania Standardbred Breeders Development Fund, for entities licensed to race Standardbreds
- 4 percent to be used to fund health and pension benefits for the members of the horsemen's organizations representing the owners and trainers at the racetrack where the licensee operates for the benefit of the organization's members, their families, employees and others. $250,000 of this amount is to be paid annually by the horsemen's organization to the Thoroughbred jockeys or Standardbred drivers organization at the racetrack for health insurance, life insurance or other benefits for active and disabled Thoroughbred jockeys and Standardbred drivers.

The act also established the Pennsylvania Gaming Economic Development and Tourism Fund, Compulsive Problem Gambling Treatment Fund, Property Tax Relief Fund and local law enforcement grants.

Table Games Legislation
Act of January 7, 2010 (P.L.1, No.1)
Amendments to 4 Pa.C.S. (Amusements)

Licensees holding a table games certificate are required to pay 12 percent of its daily gross table game revenue to the Department of Revenue (this rate is 14 percent for a period of two years following commencement of table game operations at a facility). Additionally, each licensee must pay at 34 percent tax on its daily gross table game revenue from each table game played on a fully automated electronic gaming table. A local share assessment is also imposed, which is distributed to various municipalities for local projects such a nonprofit hospitals, violent crime task forces, community colleges, public libraries, tourist promotion agencies, economic development and community improvement projects and medical schools.

[459] A special allocation is made if the 12% cap is in play at any of the racinos. 4 Pa.C.S. § 1406(a)(1).

Act of February 23, 2016 (P.L.15, No.7)
Addition of Article XXVIII-D to the Administrative Code of 1929
Race Horse Industry Reform

The tax on amounts wagered (1.5 percent or 2.5 percent, as the case may be) are to be used to pay for the expenses of the Horse Racing Commission and the Department of Revenue for administration and enforcement of the act. Any remaining funds in the State Racing Fund are to be distributed as follows:

- 50 percent retained as a carry forward balance to the next fiscal year, to first be applied to the cost of equine testing and then other commission expenses
- 25 percent to the Pennsylvania Breeding Fund
- 25 percent to the Pennsylvania Sire Stakes Fund

Any retained breakage is to be distributed as follows:

- 37 ½ percent for the State Racing Fund
- 62 ½ percent retained by the racing entity

After payment of winning tickets, funds remaining in the pari-mutuel pool are to be retained by the racing entity as follows:

- 17 percent of the money plus the breakage from regular wagering pools
- 19 percent of the money plus the breakage from regular wagering pools of tracks whose total deposits in all pari-mutuel pools averaged less than $300,000 per racing day
- 20 percent of the money plus the breakage from the exacta, daily double, quinella and other wagering pools as determined by the commission
- At least 26 percent but no more than 35 percent of the money plus the breakage from the trifecta or other wagering pools as determined by the commission

This breakout of retainage percentages is very similar to that found in the 1981, with the exception that the minimum retention from exotic bets was increased by one percent.

APPENDIX B
INDIVIDUAL RACETRACK
LIVE ATTENDANCE AND HANDLE

Live handle in these tables represents on-track wagering only. Daily attendance is not broken down by the tracks between live race days and simulcast-only days and thus those figures do not reflect individuals attending to wage on the track's own races only.

Table 28
Presque Isle Downs and Casino
Live Attendance and Handle
2007-2015

Year	Avg. Daily Live Attendance	Annual Live Attendance	Annual Live Handle
2007	1,498	37,443	$1,456,691
2008	1,010	101,027	4,001,392
2009	1,218	121,774	4,426,725
2010	970	97,023	3,564,571
2011	916	89,736	3,425,082
2012	937	93,738	3,469,365
2013	851	85,144	2,921,201
2014	841	84,143	2,782,760
2015	972	88,123	2,771,069

Source: Presque Isle Downs and Casino, 1211 Report to State Racing Commission, 2015.

Table 29
Hollywood Casino at Penn National Race Course
Live Attendance and Handle
2009-2015

Year	Avg. Daily Live Attendance	Annual Live Attendance	Annual Live Handle
2009	555	199,943	$7,736,356
2010	492	177,049	7,145,869
2011	415	149,504	6,375,879
2012	448	161,223	6,780,629
2013	577	207,735	6,539,407
2014	759	273,296	5,503,717
2015	688	247,791	5,112,978

Source: Hollywood Casino at Penn National Race Course, 1211 Report to State Racing Commission, 2009-2015.

Table 30
PARX Racing
Live Attendance and Handle
2009-2015

Year	Avg. Daily Live Attendance	Annual Live Attendance	Annual Live Handle
2009	871	316,301	$18,529,851
2010	685	248,809	16,947,242
2011	673	244,466	14,886,188
2012	693	251,433	16,433,741
2013	630	228,822	14,435,418
2014	585	212,399	13,004,086
2015	514	186,661	12,241,607

Source: PARX Racing, 1211 Report to State Racing Commission, 2009 and 2015.

Table 31
The Downs at Mohegan Pocono
Live Attendance and Handle
2009-2015

Year	Avg. Daily Live Attendance	Annual Live Attendance	Annual Live Handle
2009	608	81,533	$4,187,565
2010	633	84,812	4,390,904
2011	535	71,716	4,116,331
2012	509	68,142	3,970,864
2013	527	70,562	4,253,150
2014	531	71,139	3,610,018
2015	453	60,737	3,129,748

Source: The Downs at Mohegan Sun Pocono, 1211 Report to State Racing Commission, 2009-2015.

Table 32
The Meadows Racetrack and Casino
Live Attendance and Handle
2009-2015

Year	Annual Live Attendance	Avg. Daily Live Handle	Annual Live Handle
2009	40,615	18,916	$2,934,546
2010	38,484	19,448	4,045,182
2011	43,255	23,536	4,895,435
2012	39,621	28,726	5,974,975
2013	29,257	24,669	5,131,181
2014	42,127	23,489	4,885,747
2015	26,495	22,183	4,325,701

Source: The Meadows Racetrack and Casino, 1211 Report to State Racing Commission, 2014 and 2015.

Table 33
Harrah's Philadelphia Casino
Live Attendance and Handle
2006-2015

Year	Avg. Daily Live Attendance	Annual Live Attendance	Live Race Days	Avg. Daily Live Handle	Annual Live Handle
2006	593	26,671	45	$40,953	$1,842,896
2007	827	78,545	90	39,419	3,744,794
2008	809	113,305	140	39,295	5,501,314
2009	755	113,185	150	38,946	5,841,890
2010	708	99,060	140	32,682	4,435,450
2011	686	103,042	150	30,628	4,594,189
2012	653	97,950	150	27,134	4,070,110
2013	605	90,750	150	23,916	3,587,472
2014	521	78,150	150	20,888	3,133,242
2015	515	77,282	150	20,173	3,025,998

Source: Harrah's Philadelphia Casino and Racetrack, 1211 Report to State Racing Commission, 2014 and 2015.

PRIOR PRINTER'S NO. 2637 PRINTER'S NO. 2848

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE RESOLUTION

No. 616 Session of 2015

INTRODUCED BY CAUSER AND CARROLL, DECEMBER 9, 2015

AS REPORTED FROM COMMITTEE ON AGRICULTURE AND RURAL AFFAIRS, HOUSE OF REPRESENTATIVES, AS AMENDED, FEBRUARY 10, 2016

A RESOLUTION

Directing the Joint State Government Commission, with assistance from the Independent Fiscal Office, to conduct a study on the impact of regulations and policies concerning Pennsylvania's horse racing industry.

WHEREAS, It is in the best interests of this Commonwealth to to consider reforming the regulations and policies of Pennsylvania's horse racing industry; therefore be it

RESOLVED, That the House of Representatives direct the Joint State Government Commission, with assistance from the Independent Fiscal Office, to conduct a study and provide a report to the chairperson and minority chairperson of the Agriculture and Rural Affairs Committee of the Senate and the chairperson and minority chairperson of the Agriculture and Rural Affairs Committee of the House of Representatives no later than February 1, 2017. The report shall include an assessment of the financial, regulatory and market factors listed under paragraphs (1), (2), (3), (4), (5), (6), (7), (8) ~~and (9)~~, (9), <-- (10) AND 11 and shall offer recommendations on best practices in <-- each area for the Commonwealth to consider. The study shall

provide an assessment of and recommendation on the following:

(1) Potential cost savings and regulatory streamlining in the oversight of racing, including those associated with combining Pennsylvania's gaming oversight functions, such as horse racing, casino gaming and lottery, into a single, coordinated entity.

(2) The necessity, efficiency and benefits of having separate racing commissions or divisions within a single commission for thoroughbred and harness tracks.

(3) A determination of best regulatory practices in other jurisdictions, such as New York, Ohio and Maryland and other states or provinces and comparing Pennsylvania's approach against the best regulatory practices in other jurisdictions.

(4) In addition to the Auditor General's June 17, 2014, Special Performance Audit of the State Racing Fund, a determination of what safeguards and policies can be implemented to avoid future inappropriate cost allocations by the Department of Agriculture of the Commonwealth to the racing commissions.

(5) An evaluation of the cost effectiveness of the Pennsylvania Equine Toxicology Research Laboratory and comparing the laboratory's functions to other jurisdictions.

(6) Consideration of the imposition of increased fines and the assessment of Pennsylvania Equine Toxicology Research Laboratory costs against those found to have engaged in the impermissible doping of race horses and examination of how to strengthen property owner rights in the ejectment of bad actors in racing.

(7) A determination of the economic return to the

Commonwealth on the investment of gaming tax revenues collected under the act of July 5, 2004 (P.L.572, No.71), entitled, "An act amending Title 4 (Amusements) of the Pennsylvania Consolidated Statutes, authorizing certain racetrack and other gaming; providing for regulation of gaming licensees; establishing and providing for the powers and duties of the Pennsylvania Gaming Control Board; conferring powers and imposing duties on the Department of Revenue, the Department of Health, the Office of Attorney General, the Pennsylvania State Police and the Pennsylvania Liquor Control Board; establishing the State Gaming Fund, the Pennsylvania Race Horse Development Fund, the Pennsylvania Gaming Economic Development and Tourism Fund, the Compulsive and Problem Gambling Treatment Fund and the Property Tax Relief Fund; providing for enforcement; imposing penalties; making appropriations; and making related repeals."

(8) A determination of the nature of thoroughbred and standardbred breeding in this Commonwealth since the enactment of the act of July 5, 2004 (P.L.572, No.71), and comparing it to the nature of breeding before enactment of the act of July 5, 2004 (P.L.572, No.71).

(9) A determination of how Pennsylvania's race horse industry and regulatory entities can best be positioned for future success or at a minimum financial stability in an environment of declining race track patrons and handle, competition from live racing from neighboring states and the increasing availability of alternative gaming platforms, such as Internet and mobile gaming and fantasy sports. Specifically, the study shall consider options for reforming and promoting horse racing meetings that will increase

handle, reduce racing costs, promote the health of the horse and advance the best interests of racing fans and bettors.

(10) AN EVALUATION OF THE BENEFITS AND HARMS TO PENNSYLVANIA'S RACE HORSE INDUSTRY AND REGULATED ENTITIES OF THE EXPANSION OF PARI-MUTUEL WAGERING, ADVANCED DEPOSIT ACCOUNT WAGERING AND ELECTRONIC WAGERING TO SECONDARY PARI-MUTUEL ORGANIZATIONS. THE EVALUATION SHALL INCLUDE: <--

(I) ASSESSING THE CURRENT PREVALENCE OF UNLAWFUL ADVANCED DEPOSIT ACCOUNT WAGERING AND ELECTRONIC WAGERING AND WAYS TO PREVENT OR ENFORCE THE LAW AGAINST UNLAWFUL WAGERING.

(II) ASSESSING THE IMPACT OF THE EXPANSION ON LIVE RACING AND CAPITAL INVESTMENT BY AND EMPLOYMENT AT LICENSED RACING ENTITIES.

(III) THE APPROPRIATE TERMS, CONDITIONS AND REQUIREMENTS THAT SHOULD BE IMPOSED TO PROTECT PENNSYLVANIA'S RACE HORSE INDUSTRY AND TO ENSURE THE INTEGRITY OF WAGERING IN THIS COMMONWEALTH IF THE EXPANSION PROCEEDS.

(11) AN ASSESSMENT OF LIVE RACING MARKETING PROGRAMS AT EACH TRACK AND THE IMPACT ON PARI-MUTUEL WAGERING AND PUBLIC ATTENDANCE ON RACE DAYS. THIS ASSESSMENT SHALL INCLUDE MARKETING OR ADVERTISING EXPENDITURES AND THE RETURN ON INVESTMENT OF THOSE EXPENDITURES SPECIFIC TO RACING. <--

APPENDIX D

SECTION 4.1 OF THE ACT OF FEBRUARY 23, 2016, P.L. 15, NO. 7
HOUSE BILL 941 (2015)

Section 4.1. No later than one year after the effective date of this section, the Joint State Government Commission, with assistance from the Independent Fiscal Office, shall conduct a study and provide a report to the chairperson and minority chairperson of the Agriculture and Rural Affairs Committee of the Senate and the chairperson and minority chairperson of the Agriculture and Rural Affairs Committee of the House of Representatives. The report shall include an assessment of the financial, regulatory and market factors listed under paragraphs (1), (2), (3), (4), (5), (6), (7), (8), (9) and (10) and shall offer recommendations on best practices in each area for the Commonwealth to consider. The study shall provide an assessment of and recommendation on the following:

(1) Potential cost savings and regulatory streamlining in the oversight of racing, including those associated with combining Pennsylvania's gaming oversight functions, such as horse racing, casino gaming and lottery, into a single, coordinated entity.

(2) The necessity, efficiency and benefits of having separate racing commissions or divisions within a single commission for Thoroughbred and harness tracks.

(3) A determination of best regulatory practices in other jurisdictions, such as New York, Ohio and Maryland and other states or provinces, and comparing Pennsylvania's approach against the best regulatory practices in other jurisdictions.

(4) In addition to the Auditor General's June 17, 2014 Special Performance Audit of the State Racing Fund, a determination of what safeguards and policies can be implemented to avoid future inappropriate Department of Agriculture cost allocations to the racing commissions.

(5) An evaluation of the cost effectiveness of the Pennsylvania Equine Toxicology Research Laboratory and comparing the laboratory's functions to other jurisdictions.

(6) Consideration of the imposition of increased fines and the assessment of Pennsylvania Equine Toxicology Research Laboratory costs against those found to have engaged in the impermissible doping of race horses and examination of how to strengthen property owner rights in the ejectment of bad actors in racing.

(7) A determination of the economic return to the Commonwealth, racetrack operators, horsemen, breeders and other stakeholders on the investment of gaming assessments collected under the act of July 5, 2004 (P.L.572, No.71), entitled, "An act amending Title 4 (Amusements) of the Pennsylvania Consolidated Statutes, authorizing certain racetrack and other gaming; providing for regulation of gaming licensees; establishing and providing for the powers and duties of the Pennsylvania Gaming Control Board; conferring powers and imposing duties on the Department

of Revenue, the Department of Health, the Office of Attorney General, the Pennsylvania State Police and the Pennsylvania Liquor Control Board; establishing the State Gaming Fund, the Pennsylvania Race Horse Development Fund, the Pennsylvania Gaming Economic Development and Tourism Fund, the Compulsive and Problem Gambling Treatment Fund and the Property Tax Relief Fund; providing for enforcement; imposing penalties; making appropriations; and making related repeals."

(8) A determination of the nature of Thoroughbred and Standardbred breeding in this Commonwealth since the enactment of the act of July 5, 2004 (P.L.572, No.71), and comparing it to the nature of breeding before enactment of the act of July 5, 2004 (P.L.572, No.71).

(9) A determination of how Pennsylvania's race horse industry and regulatory entities can best be positioned for future success or at a minimum financial stability in an environment of declining race track patrons and handle, competition from live racing from neighboring states and the increasing availability of alternative gaming platforms, such as Internet and mobile gaming and fantasy sports. Specifically, the study shall consider options for reforming and promoting horse race meetings that will increase handle, reduce racing costs, promote the health of the horse and advance the best interests of racing fans and bettors.

(10) An assessment of live racing marketing programs at each track and the impact on pari-mutuel wagering and public attendance on race days. This assessment shall include marketing or advertising expenditures and the return on investment of those expenditures specific to racing.