

CHAPTER 77

(SB 24)

AN ACT relating to the enactment of an interstate racing and wagering compact.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 230 IS CREATED TO READ AS FOLLOWS:

The Governor of this Commonwealth is authorized and directed to execute a compact on behalf of the Commonwealth with any of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and each territory or possession of the United States, legally joining therein in the form substantially as follows:

ARTICLE I

PURPOSES

The purposes of this compact are:

- (A) *To enable member states to act jointly and cooperatively to create more uniform, effective, and efficient practices, programs, rules, and regulations relating to live pari-mutuel horse or greyhound racing and to pari-mutuel wagering activities, both on-track and off-track, that occur in or affect a member state;*
- (B) *To facilitate the health and growth of the industry by simplifying the process of participating in live horse and greyhound racing and pari-mutuel wagering, improving the quality and integrity of racing and wagering, more effectively regulating simulcast and wagering systems and activities, and through cooperative action reducing the costs incurred by each member state or participant;*
- (C) *To authorize the Kentucky Horse Racing Commission to participate in this compact;*
- (D) *To permit officials from the member states to participate in this compact and, through the compact commission established by this compact, to enter into contracts with governmental agencies and other persons to carry out the purposes of this compact; and*
- (E) *To establish the compact commission created by this compact as an interstate governmental entity duly authorized to request and to receive criminal history record information from the Federal Bureau of Investigation and from state, local, and foreign law enforcement agencies.*

ARTICLE II

DEFINITIONS

For the purposes of this compact, the following terms shall have the following meaning:

- (A) *"Commissioner" means the chairperson of the member state racing commission, or such person's designee, who represents the member state as a voting member of the compact commission and anyone who is serving as such person's alternate;*
- (B) *"Compact commission" means the organization of officials from the member states that is authorized and empowered by this compact to carry out the purposes of this compact;*
- (C) *"Compact rule" means a rule or regulation adopted by a member state through the compact to govern, for two (2) or more member states, any part of live pari-mutuel horse and greyhound racing or pari-mutuel wagering activities, whether on-track or off-track, that occur in or affect such states;*
- (D) *"Live racing" means live horse or greyhound racing with pari-mutuel wagering;*
- (E) *"Member state" means each state that has enacted this compact;*
- (F) *"National industry stakeholder" means a non-governmental organization that the compact commission determines from a national perspective significantly represents one (1) or more categories of participants in live racing and pari-mutuel wagering;*
- (G) *"Participants in live racing and pari-mutuel wagering" means all persons who participate in, operate, provide industry services for, or are involved with live racing and pari-mutuel wagering;*
- (H) *"State" means each of the several states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and each territory or possession of the United States; and*

- (I) *"State racing commission" means the state racing commission, or its equivalent, in each member state. Where a member state has more than one (1), it shall mean all such racing commissions, or their equivalents.*

ARTICLE III

COMPOSITION AND MEETINGS OF COMPACT COMMISSION

The member states shall create and participate in a compact commission as follows:

- (A) *This compact shall come into force when enacted by any six (6) eligible states, and shall thereafter become effective as to any other member state that enacts this compact. Any state that has adopted or authorized pari-mutuel wagering or live horse or greyhound racing shall be eligible to become a party to this compact. A compact rule, fee, practice, or program shall not become effective in a new member state based merely upon it entering the compact.*
- (B) *The member states hereby create the racing and wagering commission, a body corporate and an interstate governmental entity of the member states, to coordinate the decision-making and actions of each member state racing commission through a compact commission.*
- (C) *The compact commission shall consist of one (1) commissioner, the chairperson of the state racing commission or such person's designee, from each member state. When a commissioner is not present to perform any duty in the compact commission, a designated alternate may serve instead. The person who represents a member state in the compact commission shall serve and perform such duties without compensation or remuneration; provided that, subject to the availability of budgeted funds, each may be reimbursed for ordinary and necessary costs and expenses. The designation of a commissioner, including the alternate, shall be effective when written notice has been provided to the compact commission. The commissioner, including the alternate, must be a member or employee of the state racing commission.*
- (D) *The compact commissioner from each state shall participate as an agent of the state racing commission. Each commissioner shall have the assistance of the state racing commission in regard to all decision making and actions of the state in and through the compact commission.*
- (E) *Each member state, by its commissioner, shall be entitled to one (1) vote in the compact commission. A majority vote of the total number of commissioners shall be required to issue or renew a license, to receive and distribute any funds, and to adopt, amend, or rescind the by-laws. A compact rule, fee, practice, or program shall take effect in and for each member state whose commissioner votes affirmatively to adopt it. Other compact actions shall require a majority vote of the commissioners who are meeting.*
- (F) *Meetings and votes of the compact commission may be conducted in person or by telephone or other electronic communication. Meetings may be called by the chairperson of the compact commission or by any two (2) commissioners. Reasonable notice of each meeting shall be provided to all commissioners serving in the compact commission.*
- (G) *No action may be taken at a compact commission meeting unless there is a quorum, which is either a majority of the commissioners in the compact commission or, where applicable, all the commissioners from any member states who propose or are voting affirmatively to adopt a compact rule, fee, practice, or program.*
- (H) *Once effective, the compact shall continue in force and remain binding according to its terms upon each member state; provided that, a member state may withdraw from the compact by repealing the statute that enacted the compact into law. The racing commission of a withdrawing state shall give written notice of such withdrawal to the compact chairperson, who shall notify the member state racing commissions. A withdrawing state shall remain responsible for any unfulfilled obligations and liabilities. The effective date of withdrawal from the compact shall be the effective date of the repeal.*

ARTICLE IV

OPERATION OF COMPACT COMMISSION

The compact commission is hereby granted, so that it may be an effective means to pursue and achieve the purposes of each member state in this compact, the power and duty:

- (A) *To adopt, amend, and rescind by-laws to govern its conduct, as may be necessary or appropriate to carry out the purposes of the compact; to publish them in a convenient form; and to file a copy of them with the state racing commission of each member state;*

- (B) *To elect annually from among the commissioners (including alternates) a chairperson, vice-chairperson, and treasurer with such authority and duties as may be specified in the by-laws;*
- (C) *To establish and appoint committees which it deems necessary for the carrying out of its functions, including advisory committees which shall be comprised of national industry stakeholders and organizations, and such other persons as may be designated in accordance with the by-laws, to obtain their timely and meaningful input into the compact rule, fee, practice, and program making processes;*
- (D) *To establish an executive committee, with membership established in the by-laws, which shall oversee the day-to-day activities of compact administration and management by the executive director and staff; hire and fire as may be necessary after consultation with the compact commission; administer and enforce compliance with the provisions, by-laws, rules, fees, practices, and programs of the compact; and perform such other duties as the by-laws may establish;*
- (E) *To create, appoint, and abolish all those offices, employments, and positions, including an executive director, useful to fulfill its purposes; to hire persons for them; to prescribe their powers, duties, and qualifications; and to provide for their term, tenure, removal, compensation, fringe and retirement benefits, and other conditions of employment;*
- (F) *To delegate day-to-day management and administration of its duties, as needed, to an executive director and support staff, such as the Association of Racing Commissioners International, Inc., or its successor;*
- (G) *To adopt an annual budget sufficient to provide for the payment of the reasonable expenses of its establishment, organization, and ongoing activities. The budget shall be fully funded by means established by the compact commission. A member state may choose to participate in funding by means other than a compact fee or fees, in which case the compact commission shall make a finding of how much the member state, including its racing and wagering, may benefit from budget items (less program costs funded by user fees); and the member state may provide such funding by its own means. Indivisible benefits to live racing shall be allocated by proportion of annual purses. Nothing in this provision shall prevent the compact commission from paying obligations accrued in a prior year or from revising its finding of the benefit to a member state from the preceding year; and*
- (H) *To provide a mediation and a binding dispute resolution service for member states who decide to use them to resolve a compact dispute among each other; provided, that the design and implementation of each program shall be established by compact rule making.*

ARTICLE V

GENERAL POWERS AND DUTIES

To allow each member state, as and when it chooses, to achieve the purpose of this compact through joint and cooperative action, the member states are hereby granted the power and duty, by and through the compact commission:

- (A) *To act jointly and cooperatively to create a more equitable and uniform pari-mutuel racing and wagering interstate regulatory framework, including but not limited to the adoption of standardized rules of racing and equine drug regulations, closing inequalities in how regulatory standards and statutory requirements apply to industry participants; improving wagering monitoring and integrity; and making industry and participant information more available to government officials;*
- (B) *To collaborate with national industry stakeholders and industry organizations, such as the Racing Medication and Testing Consortium, in the design and implementation of compact rules, fees, practices, and programs in a manner that serves the best interests of racing;*
- (C) *To create more uniform, effective, or efficient practices and programs, with the consent of each member state that shall participate in them, relating to any part of live pari-mutuel horse or greyhound racing or pari-mutuel wagering activities, whether on-track or off-track, that occur in or affect a member state;*
- (D) *To adopt compact rules, which shall have the force and effect of state rules or regulations in the member states who vote to adopt them, to govern all or any part of live pari-mutuel horse and greyhound racing or pari-mutuel wagering activities;*
- (E) *To charge and collect a fee for services provided by the compact, including licensure and renewal of each license applicant, and for defraying the actual cost of compact commission administration, procedures, activities and programs; and*

- (F) *To issue and renew licenses for participants in live racing and pari-mutuel wagering who are found by the compact commission to have met its licensure or renewal requirements in categories it chooses to license. It shall establish the term for each category, and the license criteria and weight given to character and integrity information that in its judgment meet the most restrictive requirements of the member states. The compact commission shall not have the power or authority to deny a license. If it determines that an applicant will not be eligible, it shall notify the applicant that it will not be able to process the application any further, which shall not constitute and shall not be considered to be the denial of a license. Although an applicant shall have the right to present further evidence and to be heard, the final decision on issuance or renewal of a license shall be made by the compact commission pursuant to its established requirements. The compact commission shall have the power and duty to investigate license applicants and, as permitted by federal and state law, to gather information, including criminal history records from the Federal Bureau of Investigation and from state, local, and foreign country law enforcement agencies (including the Royal Canadian Mounted Police), necessary to decide whether an applicant meets its license requirements. Such criminal history record information may be received and reviewed only by the officials on, and employees of, the compact commission, and that information may be used only for the purposes of this compact. No such official or employee may disclose or disseminate such criminal history record information to any person or entity other than another official on, or employee of, the compact commission. The compact commission, its employees, or its designee shall take the fingerprints of each license applicant and, pursuant to Public Law 92-544 or Public Law 100-413, forward the fingerprints to a state identification bureau, the Association of Racing Commissioners International (an association of state officials regulating pari-mutuel wagering, designated by the Attorney General of the United States), or another entity with an equivalent designation, for submission to the Federal Bureau of Investigation or other receiving law enforcement agency. The compact commission shall cooperate with the Interstate Compact on Licensure of Participants in Live Racing with Pari-Mutuel Wagering and, if requested by that entity, assume all of its licensing and employer duties and responsibilities with the authority of and pursuant to all of the licensing standards, laws, rules and regulations applicable to that entity.*

ARTICLE VI

OTHER POWERS AND DUTIES

The compact commission may exercise such incidental powers and duties as may be necessary and proper for it to function in a useful manner, including but not limited to the power and duty:

- (A) *To enter into contracts and agreements with governmental agencies and other persons, including officers and employees of a member state, to provide personal services for its activities and such other services as may be necessary;*
- (B) *To borrow, accept, and contract for the services of personnel from any state, federal, or other governmental agency, or from any other person or entity;*
- (C) *To receive information from and to provide information to each member state racing commission, including its officers and staff, on such terms and conditions as may be established in the by-laws;*
- (D) *To acquire, hold, and dispose of any real or personal property by gift, grant, purchase, lease, license, and similar means and to receive additional funds through gifts, grants, and appropriations;*
- (E) *To purchase and maintain insurance and bonds, and to require others to do so;*
- (F) *When authorized by a compact rule, to conduct hearings, issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence, and render decisions and orders;*
- (G) *To establish in the by-laws the requirements that shall describe and govern its duties to conduct open or public meetings and to provide public access to compact records and information, which shall include the exceptions established by law in one (1) or more member states and shield any confidential submissions made in connection with license applications; and*
- (H) *To enforce compliance with the provisions, by-laws, rules, fees, practices, and programs of the compact using such means as may be consistent with this compact.*

ARTICLE VII

COMPACT RULE MAKING

In the exercise of its rule making authority, the compact commission shall:

- (A) *Engage in formal rule making pursuant to a process that substantially conforms to the Model State Administrative Procedure Act of 1981 as amended, as may be appropriate to the actions and operations of the compact commission;*
- (B) *Gather information and engage in discussions with advisory committees, national industry stakeholders, and others to foster and conduct a collaborative approach in the design and advancement of compact rules in a manner that serves the best interests of racing and as established in the by-laws;*
- (C) *Not publish a proposed compact rule in a member state over its objection. The affirmative vote of a member state for a proposed compact rule shall be necessary and sufficient to adopt, amend, or rescind a compact rule as applicable to that member state; and*
- (D) *Have a standing committee that reviews at least quarterly the participation in and value of compact rules and, when it determines that a revision is appropriate or when requested to by any member state, submits a revising proposed compact rule. To the extent a revision would only add or remove a member state or states from where a compact rule has been adopted, the vote required by this article shall be required of only such state or states.*

ARTICLE VIII

COMPACT FEES

- (A) *The compact commission may charge and collect a fee for services provided by the compact, including licensure and renewal of each license applicant, and for defraying the actual cost of compact commission administration, procedures, activities, and programs; provided that such latter fee or fees shall not create a disproportionate cost for any member state.*
- (B) *Compact fees must relate to participation in live horse or greyhound racing and pari-mutuel wagering activities, whether on-track or off-track, that occur in or affect a member state. No fee shall be adopted except after consultation with relevant advisory committees and interested national industry stakeholders.*
- (C) *The establishment of a compact fee may include a requirement that a participant in live horse or greyhound racing with pari-mutuel wagering, as a condition of continued participation, collect, hold, and remit to the compact commission funds that belong to a third party, with which it conducts related transactions, that is obliged to pay the compact fee.*
- (D) *The compact commission may require fee payments to occur on a periodic basis, accompanied by a sworn report attesting to accuracy and completeness, and may provide that it shall have the power to examine the books and records of any persons required to pay or remit it, for the purpose of ascertaining whether the proper amounts are being paid. Such books and records shall not thereby be made available for public inspection.*
- (E) *No fee shall be adopted before the completion of a period of public notice and participation substantially conforming, as may be appropriate to the actions and operations of the compact commission, for making rules under the Model State Administrative Procedure Act of 1981 as amended.*

ARTICLE IX

STATUS AND RELATIONSHIP TO MEMBER STATES

- (A) *The compact commission, as an interstate governmental entity, shall be exempt from all taxation in and by the member states.*
- (B) *The compact commission shall not pledge the credit of any member state except by and with the appropriate legal authority of that state.*
- (C) *The compact commission shall adopt an annual budget that is sufficient to provide for the payment of the reasonable expenses of its establishment, organization, and ongoing activities, and by which member states shall fully fund the compact commission by the means set forth in this compact.*
- (D) *Each member state shall reimburse or otherwise pay the expenses of its commissioner, including any alternate, in the compact commission.*
- (E) *No member state, except as provided in Article XII of this compact, shall be held liable for the debts or other financial obligations incurred by the compact commission.*
- (F) *No member state shall have, while it participates in the compact commission, any claim to or ownership of any property held by or vested in the compact commission or to any compact commission funds held*

pursuant to this compact except for state license or other fees or moneys collected by the compact commission as its agent.

- (G) *The compact dissolves upon the date of the withdrawal of the member state that reduces membership in the compact to one (1) state. Upon dissolution, the compact becomes null and void and shall be of no further force or effect, although rules and programs adopted through this compact shall remain rules and programs in each member state that had adopted or consented to them, and the business and affairs of the racing and wagering compact shall be concluded and any surplus funds shall be distributed to the former member states in accordance with the by-laws.*

ARTICLE X

RIGHTS AND RESPONSIBILITIES OF MEMBER STATES

- (A) *Each member state in the compact shall accept the decisions, duly applicable to it, of the compact commission in regard to compact rules, fees, practices, and programs, and the issuance or renewal of licenses.*
- (B) *When the compact commission determines that an application shall not be processed further, the member states shall not treat this as the denial of a license or otherwise penalize the applicant because of such action by the compact commission.*
- (C) *Each member state in the compact shall have and exercise the right:*
- (1) *To charge a fee for the use of a compact license within that member state equal to the fee charged for a comparable state license;*
 - (2) *To apply its own standards and procedures to determine whether the use of a compact commission license should be suspended or revoked in its jurisdiction;*
 - (3) *To apply its own standards for licensure or renewal of state applicants who do not meet the licensure requirements of the compact commission, who are within a category of participants in racing and wagering that the compact commission does not license, or who apply to the member state for a state license; and*
 - (4) *To apply its own standards and procedures, except as may be provided by rule, to determine whether a participant in live racing or pari-mutuel wagering has violated any rule or regulation in its jurisdiction and to impose an appropriate penalty.*
- (D) *Each member state racing commission shall promptly notify the compact commission, or its designee, whenever the member state has adjudged a violation of any state or compact rule and imposed a suspension or revocation upon a compact commission licensee.*
- (E) *All departments, agencies, bodies, officers, and employees of each member state and its political subdivisions are authorized to cooperate with the compact commission and shall take all necessary and appropriate action, such as to publish proposed and adopted rules in state registries and administrative codes, to effectuate and in furtherance of compact duties or actions that may affect the state.*
- (F) *This compact shall not be construed to diminish or limit the powers and responsibilities of the member state racing commission, or to invalidate any action it has previously taken, except to the extent it has, by its compact commissioner, expressed its consent to a specific rule or other action of the compact commission. The compact commissioner from each state shall serve as the agent of the state racing commission and shall possess substantial racing and wagering knowledge and experience as a regulator or participant in the racing and wagering industry in order to participate effectively in compact rule making.*

ARTICLE XI

ENFORCEMENT OF COMPACT

- (A) *Any member state in the compact and the compact commission may initiate legal action in the United States District Court, in any federal district where the compact commission has an office, to enforce compliance by any member state or the compact commission with the compact provisions, by-laws, fees, findings, practices, and programs.*
- (B) *Any member state in the compact and the compact commission may initiate legal action, in any state or federal court, to enforce the compact provisions, fees, practices, and programs against any person, including a non-member state or political subdivision. Member states that benefit from the compact*

commission, its employees, or one of its provisions, by-laws, fees, findings, practices, or programs shall provide or share in the cost of legal services to defend or uphold them.

- (C) *The compact commission shall have standing to intervene in any legal action that pertains to the subject matter of the compact and might affect its powers, duties, or actions.*
- (D) *The courts and executive in each member state shall enforce the compact and take all actions necessary and appropriate to effectuate its purposes and intent. Compact provisions, by-laws, and rules shall be received by all judges, departments, agencies, bodies, and officers of each member state and its political subdivisions as evidence of them.*
- (E) *The compact commission may require, from the date a compact fee was required to be paid, interest not to exceed the rate of one percent (1%) per month and a penalty not to exceed five percent (5%). The compact commission may, if it determines that any fees received by it were paid in error, and provided that an application for it is filed with the compact commission within one (1) year from the time the erroneous payment is made, correct the error by a refund, without interest, including from other collected fees.*
- (F) *The compact commission, if it determines that a payment or report is in error, may make a finding that fixes the correct amount of the fee. It must issue the finding within three (3) years from when a fee or report was due or filed. The finding shall be final and conclusive unless an application for a hearing is filed by the subject within thirty (30) days. The action of the compact commission in making a final finding, after a hearing, shall be reviewable in state court as provided in this compact.*

ARTICLE XII

LEGAL ACTIONS AGAINST COMPACT

- (A) *Any person may commence a claim, action, or proceeding against the compact commission in state court for damages or to challenge a compact rule, fee, practice, or program that is duly applicable to that state. The compact commission shall have the benefit of the same limits of liability, defenses, rights to indemnity and defense by the state, and other legal rights and defenses for non-compact matters of the state racing commission in the state. All legal rights and defenses that arise from this compact shall also be available to the compact commission.*
- (B) *A compact commissioner, alternate, or other member or employee of a state racing commission who undertakes compact activities or duties does so in the course of business of their state racing commission, and shall have the benefit of the same limits of liability, defenses, rights to indemnity and defense by the state, and other legal rights and defenses for non-compact matters of state employees in their state. The executive director and other employees of the compact commission shall have the benefit of these same legal rights and defenses of state employees in the member state in which they are primarily employed. All legal rights and defenses that arise from this compact shall also be available to them.*
- (C) *Each member state shall be liable for and pay judgments filed against the compact commission to the extent related to its participation in the compact. Where liability arises from action undertaken jointly with other member states, the liability shall be divided equally among the states for whom the applicable rule, fee, practice, program, or action or omission of the executive director or other employees of the compact commission was undertaken; and no member state shall contribute to or pay, or be jointly or severally or otherwise liable for, any part of any judgment beyond its share as determined in accordance with this article.*

ARTICLE XIII

RESTRICTIONS ON AUTHORITY

- (A) *Notwithstanding anything to the contrary herein, the compact commission shall not adopt any practice, program, or rule that may change Kentucky requirements governing the amount and distribution of the takeout, retention, or breakages on intrastate wagers or that imposes licensure requirements for non-racing or non-wagering employees of any racetrack or off-site wagering facility operating wholly within the state.*
- (B) *Kentucky state laws applicable to pari-mutuel racing and wagering shall remain in full force and effect.*
- (C) *Notwithstanding anything to the contrary herein, no fee except for services provided by the compact commission shall be adopted by the compact commission in Kentucky without the prior consent of any horsemen (as expressed by their recognized horsemen's organization) licensed by the state racing commission who, or any franchised or state racing commission licensed racing corporation that, would be obliged to pay the fee.*

ARTICLE XIV

CONSTRUCTION, SAVING AND SEVERABILITY

- (A) *This compact shall be liberally construed so as to effectuate its purposes. The provisions of this compact shall be severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the Constitution of the United States or of any member state, or the applicability of this compact to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and its applicability to any government, agency, person, or circumstance shall not be affected. If all or some portion of this compact is held to be contrary to the constitution of any member state, the compact shall remain in full force and effect as to the remaining member states and in full force and effect as to the state affected as to all severable matters.*
- (B) *In the event of any allegation, finding, or ruling against the compact or its procedures or actions, provided that a member state has followed the compact's stated procedures, any rule it purported to adopt using the procedures of this statute shall constitute a duly adopted and valid state rule, and any program that it purported to create or agree to using the procedures of this statute shall constitute a duly made and valid state program and multilateral agreement with the other consenting member states.*

➔SECTION 2. A NEW SECTION OF KRS CHAPTER 230 IS CREATED TO READ AS FOLLOWS:

This Act shall only take effect with respect to any compacting state which has enacted an interstate compact entitled "Interstate Racing and Wagering Compact" and having an identical effect to that added by Section 1 of this Act upon the enactment into law by at least six (6) eligible states, but if such states have already enacted such legislation, this Act shall take effect immediately; provided, however, that the provisions of Section 1 of this Act shall expire upon reduction of the membership in such compact to one (1) state.

➔SECTION 3. A NEW SECTION OF KRS CHAPTER 230 IS CREATED TO READ AS FOLLOWS:

- (1) *Each proposed compact rule under consideration for adoption in Kentucky shall be forwarded to the Administrative Regulation Review Subcommittee ("ARRS") and the subcommittee or standing committee of appropriate jurisdiction over the subject matter of the proposed compact rule ("subject matter committee") by the Kentucky compact commissioner for review when a rule is initially proposed and, if a rule is substantially modified during the compact commission rule-making process, when the rule is modified.*
- (2) *Each proposed compact rule adopted by the compact commission and upon which the Kentucky compact commissioner has voted in favor shall be forwarded to the ARRS and the subject matter committee simultaneously by the Kentucky compact commissioner for review within sixty (60) days after adoption.*
- (3) *Upon receipt of a proposed, modified, or adopted compact rule, the ARRS and subject matter committee shall review the rule and may forward their respective findings to the Kentucky compact commissioner in writing within ten (10) calendar days.*

Signed by Governor March 17, 2011.