



COMMONWEALTH OF KENTUCKY
OFFICE OF THE GOVERNOR

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GOVERNOR

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VETO MESSAGE FROM THE
GOVERNOR OF THE COMMONWEALTH OF KENTUCKY
REGARDING SENATE BILL 299 OF THE 2024 REGULAR SESSION

I, Andy Beshear, Governor of the Commonwealth of Kentucky, pursuant to the authority granted under section 88 of the Kentucky Constitution, do hereby veto the following:

Senate Bill 299 of the 2024 Regular Session of the General Assembly in its entirety.

Senate Bill 299 is an unnecessary and unworkable bill, and its unintended consequences would tremendously affect horse racing, sports wagering and charitable gaming industries and the ability of people to serve on the newly-created corporation.

First revealed on the 56th day of the legislative session, Senate Bill 299 attempts to completely separate the Kentucky Horse Racing Commission and the Department of Charitable Gaming from the Public Protection Cabinet with no reasonable explanation, and create the Kentucky Horse Racing and Gaming Commission, which would be an independent, de jure municipal corporation and political subdivision of the Commonwealth. Although Senate Bill 299 states that the corporation will be a public agency, it will be a corporation with obligations different from those of a state agency, such as generating profits for the corporation. The new corporation would begin operating on July 1, 2024, with the Department of Charitable Gaming coming under its umbrella on July 1, 2025. This means the Kentucky Horse Racing Commission must move all of its functions and employees in fewer than three months to a corporation that must also get established with the appointment of its directors, promulgation of administrative regulations, creating policies and procedures, and all aspects of operations.

The Public Protection Cabinet’s work has been instrumental to the implementation, launch, and continued success of sports wagering in the Commonwealth. Without the Cabinet’s efforts, sports wagering would likely not have gotten off the ground running on September 7, 2023, in time for the start of the college football and professional football seasons – more than three months before the date the General Assembly set for its launch. Kentuckians wagered nearly \$900 million during that early launch period, bringing in about \$15 million in revenue for Kentucky. The success of sports wagering has not wavered, with more than \$34 million wagered the first weekend of the men’s NCAA basketball tournament and more than \$17 million bet on Super Bowl LVIII. So far, \$24.4 million in revenue has gone into the Permanent Pension Fund from sports wagering.

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The Kentucky Horse Racing Commission is a nationwide leader in the welfare of horse and rider and the safety and integrity of horse racing, pari-mutuel wagering. And Kentucky has become a national model in sports wagering, in large part because of the Public Protection Cabinet's work.

In helping administer sports wagering in Kentucky, the Public Protection Cabinet and other central government agencies provide significant support services to the Kentucky Horse Racing Commission that would cease under Senate Bill 299. The Cabinet developed and maintains a proprietary licensing database for sports wagering, and handles data reporting for sports wagering. The Cabinet also maintains and regularly updates the Commission's web site and serves as the central point of contact for media inquiries. The Cabinet also helps the Commission with payroll and tax reporting for Commission employees, helps onboard new Commission employees, fulfills human resource and guidance functions for the Commission, oversees all of the Commission's financial management procedures, assists with the Commission's procurement, and provides the Commission with legal support and budget analysis services.

The bill mandates that beginning with fiscal year 2027, the corporation will no longer receive the \$3.7 million from the General Fund and must be self-funded and self-sustaining. This will likely mean increases in assessments on race tracks and fee increases on racing industry licensees.

Although Senate Bill 299 would move current Horse Racing Commission and Department of Charitable Gaming employees to the new corporation, the current Horse Racing Commission employees would no longer be KRS Chapter 18A employees. Senate Bill 299 appears to broadly exempt all staff of the new corporation from KRS Chapter 18A, which would include employees of the Department of Charitable Gaming, but later keeps the charitable gaming employees under KRS Chapter 18A. Regardless, removing current classified employees from KRS Chapter 18A also removes the protections the classified system currently gives those employees.

The structure of the governing board of the new corporation under Senate Bill 299 may also prevent many in the horse racing industry from serving. Board members would continue to serve with no compensation, but would be prohibited for one year from working for any person or business that contracts or does business with the corporation in matters that the member was directly involved in while on the board. There is also a question of whether a board member may keep employment in the industry while on the board. The draft statute suggests a former board member could continue previous employment after serving, but for one year could not work on any matter he or she was directly involved with while on the board.

Unlike any other corporation akin to it – such as the Kentucky Lottery Corporation, the Kentucky Housing Corporation, or the Kentucky Higher Education Student Loan Corporation – the new Horse Racing and Gaming Corporation would perform regulatory and quasi-judicial functions. The authority to do so will be challenged, possibly successfully.

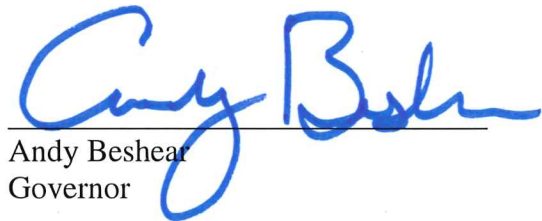
Further, Senate Bill 299 would allow the new corporation to shield itself from the Open Records Act by exempting any record that involves a trade secret or other legally protected intellectual property or confidential proprietary information of the corporation, an applicant, licensee, or

entity that submitted such information to the corporation. In addition, the bill would permit the new corporation to in its procurement not apply any provision of KRS Chapter 45A, the Model Procurement Code, if any provision of the new statute is expressly inconsistent with KRS Chapter 45A, taking away procurement assistance and oversight by the Finance and Administration Cabinet.

Any effort to create an independent corporation should be drafted, vetted, and approved over months. This version had just days. In its current form, it endangers horse racing, sports wagering and charitable gaming.

For these reasons, I am vetoing Senate Bill 299.

This, the 9th day of April, 2024.



Andy Beshear
Governor