

# SENATE . . . . . No. 2491

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Senate, May 24, 2016 – Text of amendment (844) (offered by Senator Pacheco) to the Ways and Means amendment (Senate, No. 4) to the House Bill making appropriations for the fiscal year 2017 for the maintenance of the departments, boards, commissions, institutions and certain activities of the Commonwealth, for interest, sinking fund and serial bond requirements and for certain permanent improvements.

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## The Commonwealth of Massachusetts

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In the One Hundred and Eighty-Ninth General Court  
(2015-2016)  
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1 by inserting, after section \_\_\_\_, the following new section:-

2 “SECTION \_\_\_\_\_. SECTION 1. Chapter 128A of the General Laws is hereby  
3 repealed.

4 SECTION 2. Said chapter 128C is hereby repealed.

5 SECTION 3. Section 60 of chapter 23K of the General laws is hereby repealed. All  
6 monies presently in the fund shall be transferred to the Race Horse Development Fund  
7 established pursuant to this Act.

8 SECTION 4. Notwithstanding any general or special law or rule or regulation to the  
9 contrary, all existing general and special laws, licenses, authorizations, or approvals relative to  
10 horse racing or wagering thereon other than those contained in chapter 23K or St. 2011, c. 194  
11 are sunset on July 31, 2016.

12 SECTION 5. The General Laws are hereby amended by inserting after chapter 128C the  
13 following chapter:-

14 CHAPTER 128D.

15 HORSE RACING AND WAGERING.

16 Section 1. Preamble. It is the intent of this chapter to grant the Massachusetts Gaming  
17 Commission all necessary authority to oversee and regulate all aspects of horse racing in the  
18 Commonwealth with the object of promoting its efficient operation, and the honesty and integrity  
19 of the wagering process related to it. It is the further intent of this chapter that the Commission  
20 utilize best efforts to ensure that the horse racing industry be preserved and sustained for,  
21 amongst other reasons, the preservation of open space, the agricultural benefits associated with  
22 horse racing, and the creation and preservation of jobs and businesses associated with horse  
23 racing.

24 Section 2. Terms used in this chapter shall, unless the context otherwise requires, be  
25 construed as follows:

26 “Advance Deposit Wagering”, a form of pari-mutuel wagering in which an individual  
27 may deposit money to an account established through an agreement with a holder of a racing  
28 license or simulcasting license and use the account balance to make and pay for wagers by the  
29 holder of the account which wagers may be made in person, by direct telephone call or by  
30 communication through other electronic media by the holder of the account to the licensee.

31 “Breaks”, in the case of live horse racing conducted in the commonwealth by a racing  
32 licensee, the odd cents over any multiple of 10 cents of winnings per \$1 wagered. In the case of  
33 live horse racing conducted at a race track outside the commonwealth, the amount of the breaks  
34 shall be determined in accordance with the laws of the state in which the race track is located.

35 "Commission", the Massachusetts gaming commission established in chapter 23K.

36 "Exotic wager", is a bet on the speed or ability of a combination of more than 1 horse in a  
37 single race.

38 "Premium", is the amount paid to a racing licensee in addition to the host track fee for  
39 purposes of providing a simulcast signal.

40 "Racing license", is an authorization awarded to a person by the commission, under  
41 specified conditions, to accept wagers on live horse racing conducted on licensed premises in the  
42 Commonwealth.

43 "Racing licensee", is a person who holds a racing license.

44 "Race track" shall, as determined by the commission, include the track, grounds,  
45 auditorium, amphitheater and/or bleachers, if any, and adjacent places used in connection  
46 therewith, where live horse racing may be held.

47 "Rebate", mean a portion of pari-mutuel wagers, otherwise payable to a racing licensee,  
48 that is paid to a holder of a pari-mutuel wagering ticket and that reduces the amount otherwise  
49 payable to such licensee, including, but not limited to, refunds to holders of pari-mutuel  
50 wagering tickets of any portion or percentage of the full face value of a pari-mutuel wager,  
51 paying a bonus on a winning pari-mutuel ticket, awards of merchandise, services such as meals,  
52 parking, admission, seating and programs, free or reduced cost pari-mutuel wagers, monetary  
53 awards, or any other benefit that the commission deems appropriate to reward horse racing  
54 patrons for their patronage.

55 "Simulcast", the broadcast, transmission, receipt or exhibition, by any medium or manner,  
56 of a live race conducted live at a race track other than the one at which it is being exhibited at,  
57 whether inside or outside the Commonwealth, including but not limited to, a system, network, or  
58 programmer which transmits, or receives, television or radio signals by wire, satellite, or  
59 otherwise.

60 "Simulcasting license", is an authorization awarded to a person by the commission  
61 pursuant to section 7 of chapter 23K, under specified conditions, to accept simulcast wagers.

62 "Simulcast licensee", is a person who holds a simulcasting license.

63 "Simulcast wager", a wager taken by a simulcast licensee on a race that is simulcast.

64 "Takeout", monies deducted from a pari-mutuel pool at the direction or approval of the  
65 commission prior to payment of winnings.

66 Section 2. The commission shall have all powers necessary or convenient to effectively  
67 regulate horse racing and related wagering including, but not limited to, the power to adopt,  
68 amend or repeal regulations for the implementation, administration and enforcement of this  
69 chapter including all requisite powers afforded in accordance with section 4 of chapter 23K of  
70 the General Laws. The power and authority granted to the commission shall be construed as  
71 broadly as necessary for the implementation, administration and enforcement of this chapter.

72 Section 3. (a) The commission shall promulgate regulations for the implementation,  
73 administration and enforcement of this chapter including, without limitation, regulations that:

74 (1) prescribe the application process and criteria for evaluation of the application and  
75 renewal for a racing license; in determining whether to award a racing license the commission

76 shall take into consideration the physical locations of the licensed race tracks as they relate to  
77 each other and how they maximize benefits to the commonwealth, the support or opposition to  
78 each applicant from the public, and any other considerations deemed relevant by the  
79 commission;

80 (2) prescribe the process and criteria for evaluation of the application and renewal of  
81 a simulcasting license to a racing licensee licensed under this chapter, a gaming licensee licensed  
82 pursuant to chapter 23K at a gaming establishment, or an entity previously licensed pursuant to  
83 chapter 128A or chapter 128C; in granting a simulcasting license to a gaming licensee, the  
84 commission shall take into consideration the impact on preexisting facilities previously licensed  
85 pursuant to said chapters 128A and 128C;

86 (3) prescribe the minimum number of live racing days required to be held by a racing  
87 licensee other than a gaming licensee who holds live racing on the premises of the gaming  
88 establishment;

89 (4) prescribe rules governing simulcasting and simulcast wagering;

90 (5) prescribe the manner that premiums, if any, will be assessed upon the racing  
91 and/or simulcasting licensees;

92 (6) prescribe any allowable or required takeouts;

93 (7) prescribe procedures and requirements for the use of breaks and unclaimed  
94 wagers;

95 (8) establish uniform standards and requirements for horse racing including, but not  
96 limited to, safety standards for horses, jockeys, drivers, and other participants, use and operation  
97 of a Totalizator, and drug testing;

98 (9) prescribe the types of allowable wagers;

99 (10) prescribe procedures for the use of credit, advance deposit wagering accounts, and  
100 rebates;

101 (11) prescribe the manner in which judges, stewards and race officials will be qualified  
102 and appointed;

103 (12) develop procedures for the voluntary and involuntary exclusion of patrons from a  
104 race track in a manner consistent with section 45 of chapter 23K;

105 (13) require racing licensees and simulcasting licensees to develop protocols to prevent  
106 underage wagering and establish security procedures for ensuring the safety of minors at race  
107 tracks;

108 (14) prescribe the minimum internal control procedures for racing licensees and  
109 simulcasting licensees including those for effective control over the internal fiscal affairs of a  
110 licensee, including provisions for implementation of a uniform standard of accounting, the  
111 safeguarding of assets and revenues, the recording of cash and evidence of indebtedness and the  
112 maintenance of reliable records, accounts and reports of transactions, operations and events,  
113 including reports by the commission;

114 (15) prescribe requirements for the governance of internet or electronic based  
115 wagering on horse racing;

116 (16) establish licensure and registration procedures for employees of racing licensees  
117 and simulcasting licensees not working at a gaming establishment pursuant to chapter 23K;

118 (17) establish licensure and registration provisions for veterinarians, blacksmiths,  
119 owners, trainers, jockeys and stable employees;

120 (18) require that all employees of a racing licensee and simulcasting licensee who have  
121 racing responsibilities, including financial, be properly trained in their respective professions;

122 (19) establish procedures governing the operation of the Racehorse Development Fund  
123 established pursuant to section 8 of this chapter;

124 (20) prescribe grounds and procedures for the revocation, suspension, and discipline  
125 of all licenses and registrations;

126 (21) prescribe the allocation of funds from racing licensees and simulcast licensees for  
127 the purpose of funding the activities of the commission relative to racing, which funding, with  
128 associated expenditures, shall be reported to the Legislature's House and Senate Committees on  
129 Ways and Means and the Joint Committee on Economic Development and Emerging  
130 Technologies and made public annually within 60 days of the end of each fiscal year;

131 (22) prescribe any other issues related to the honest conduct of horse racing and  
132 wagering related to it.

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134 (b) The commission may, pursuant to section 2 of chapter 30A, promulgate, amend or  
135 repeal any regulation promulgated under this chapter as an emergency regulation if such  
136 regulation is necessary to protect the interests of the commonwealth in regulating horse racing.

137           Section 4. The commission may inspect and shall have access to the entire race track and  
138 premises associated therewith upon which activity is conducted pursuant to a racing license or a  
139 simulcasting license issued in accordance with this chapter or chapter 23K including all records,  
140 documents, systems, equipment, and supplies on the premises.

141           Section 5. The commission may audit as often as the commission determines necessary  
142 the accounts, programs, activities, and functions of all racing licensees and simulcasting  
143 licensees. To conduct the audit, authorized officers and employees of the commission shall have  
144 access to such accounts at reasonable times, and the commission may require the production of  
145 books, documents, vouchers and other records relating to any matter within the scope of the  
146 audit. Further, the commission shall make an annual report of horse racing activity in the  
147 Commonwealth to the Legislature's House and Senate Committees on Ways and Means and the  
148 Joint Committee on Economic Development and Emerging Technologies which shall include a  
149 full and complete statement of racing revenues.

150           Section 6. Each racing licensee and simulcasting licensee shall make readily available to  
151 the commission all documents, materials, equipment, personnel and any other items requested  
152 during an investigation; provided, however, that material that a racing licensee or simulcasting  
153 licensee considers a trade secret or detrimental to the licensee if it were made public may, with  
154 the commission's approval, be protected from public disclosure and the licensee may require  
155 nondisclosure agreements with the commission before disclosing such material.

156           Section 7. The commission shall establish application fees for all licenses, approvals, and  
157 renewals awarded under this chapter which shall include costs incurred for conducting a



158 background investigation into an applicant. The commission may seek reimbursement from an  
159 applicant for any costs of investigation in excess of the initial application or renewal fee.

160           Section 8. (a) There shall be established and set up on the books of the Commonwealth a  
161 separate fund known as the Race Horse Development Fund to be administered by the  
162 commission at its sole discretion. The fund shall consist of monies deposited under subsection  
163 (c) of section 55 of chapter 23K and any monies credited to or transferred to the fund from any  
164 other fund or source. The commission may make any distribution from the Fund it determines to  
165 be in the best interest of horse racing in the Commonwealth including, but not limited to, the  
166 health, safety, and welfare of its participants, and may include provision for capital  
167 improvements of race tracks. Not less than 50 per cent of the funds deposited in the Fund shall  
168 be used to fund purses for live horse races in the Commonwealth.

169           (b) The commission shall establish a program, including eligibility requirements, to be  
170 funded out of the Fund in which the commission may provide to owners, trainers, breeders,  
171 jockeys, drivers, and others associated with horse racing, health, pension, life insurance, and  
172 other benefits deemed appropriate.

173           (c) In the sole discretion of the commission if the purpose of the Fund is no longer being  
174 substantially served, the Commission shall transfer all remaining monies in the Fund to a fund to  
175 be determined by the Commission.

176           Section 9. (a) Every racing licensee conducting pari-mutuel betting on horse races run on  
177 a licensed race track, shall distribute all sums deposited in any pari-mutuel pool to the holders of  
178 winning tickets therein, provided such tickets be presented for payment before April first of the  
179 year following the year of their purchase, less any takeouts as determined by the commission.

180 The commission shall require the following takeouts: (i) to Tufts University School of  
181 Veterinary Medicine a sum not less than 0.5 per cent of the total amount deposited by the  
182 patrons, less the breaks, from the amount withheld from exotic wagers, to be used for equine  
183 research scholarships and loans; (ii) a sum to be determined by the commission, but not less than  
184 \$35,000 annually per racing licensee to the department of public health for assistance with  
185 problem gambling research, prevention, and treatment programs; and (iii) a sum to provide and  
186 pay local aid to the racing licensees' and simulcasting licensees' respective host communities of  
187 not less than 0.35 per cent of the total amount deposited by patrons, less the breaks, from all  
188 amounts wagered on live horse races conducted at the race track in the host community.

189 (b) Every simulcasting licensee acting as a guest track shall return to the winning patrons  
190 wagering on such simulcast races all sums so deposited as an award or dividend, less any  
191 takeouts as determined by the commission. The commission shall require the following  
192 takeouts: (1) not less than 10 per cent of the wagering received on simulcasting of in-state and  
193 out-of-state horse races shall be allocated to the Race Horse Development Fund established in  
194 section 8 of this chapter; and (ii) a sum not less than .25 per cent of the total amount deposited on  
195 the exotic wagering pool shall be payable to the department of agricultural resources.

196 Section 10. Notwithstanding the provisions of this chapter or any general or special law  
197 to the contrary, no live dog racing or live racing meeting where any form of betting or wagering  
198 on the speed or ability of dogs occurs shall be conducted or permitted in this commonwealth and  
199 the commission is hereby prohibited from accepting or approving any application or request for  
200 racing dates for dog racing.

201 Any person violating any provision of this section relative to dog racing shall be subject  
202 to a civil penalty of not less than twenty thousand dollars which shall be payable to the  
203 commission and used for administrative purposes of the commission.

204 Section 11. Any person who accepts or pays out a wager or bet on the results of any  
205 horse race or dog race, or aids or abets any of the foregoing types of wagering or betting, except  
206 as permitted by this chapter, shall for a first offence be punished by a fine of not more than two  
207 thousand dollars and imprisonment for not more than one year, and for a subsequent offence by a  
208 fine of not more than ten thousand dollars and imprisonment for not more than two years.

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210 SECTION 6. Section 7 of chapter 4 of the General Laws, as appearing in the 2010  
211 Official Edition, is hereby amended by striking out clause Tenth and inserting in place thereof  
212 the following clause:-

213 Tenth, "Illegal gaming," a banking or percentage game played with cards, dice, tiles or  
214 dominoes, or an electronic, electrical or mechanical device or machine for money, property,  
215 checks, credit or any representative of value, but excluding: (i) a lottery game conducted by the  
216 state lottery commission, under sections 24, 24A and 27 of chapter 10; (ii) a game conducted  
217 under chapter 23K; (iii) pari-mutuel wagering on horse races and greyhound races under chapter  
218 128D; (iv) a game of bingo conducted under chapter 271; and (v) charitable gaming conducted  
219 under said chapter 271."