

STORAGE NAME: h2117.rs

DATE: March 29, 2000

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
REGULATED SERVICES
ANALYSIS**

BILL #: HB 2117

RELATING TO: Interstate Compact/Horseracing

SPONSOR(S): Representative Dennis Jones

TIED BILL(S):

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) REGULATED SERVICES (CAC)
 - (2) FINANCE AND TAXATION (FRC)
 - (3) GENERAL GOVERNMENT APPROPRIATIONS (FRC)
 - (4)
 - (5)
-

I. SUMMARY:

The bill creates the "Interstate Compact on Licensure of Participants in Live Horseracing with Pari-Mutuel Wagering" and authorizes the Department of Business and Professional Regulation to participate in the compact.

During a race season, race track employees at horse tracks often travel to several states and are required to obtain occupational licenses in each state. Upon passage of this legislation, any person applying for an occupational license at a Florida horse track will also be eligible to apply for a compact license. Receipt of a compact license will enable such person to obtain a comparable license in other participating states, upon payment of the applicable license fee.

The compact does not come into force until enacted by four states. Similar enabling legislation has passed the legislatures in both Virginia and West Virginia and is awaiting the Governor's approval. In Louisiana a bill creating the compact has passed the House and is pending in the Senate.

The bill establishes the compact committee as a governmental agency duly authorized to request and receive criminal history record information from the Federal Bureau of Investigation, other state and local law enforcement agencies, and from other countries. The bill creates a public records exemption concerning dissemination of that information which, at this time, has not been addressed in a separate bill.

According to the Department of Business and Professional Regulation, implementation of this legislation will have no impact on state license fee revenue and any expense associated with participation in the compact will come from existing appropriations.

The act takes effect upon becoming a law.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Chapter 550, Florida Statutes, contains Florida's laws governing the regulation and taxation of pari-mutuel wagering activities in the state. The Division of Pari-mutuel Wagering [division] of the Department of Business and Professional Regulation, is the state agency with general regulatory authority over these activities. The pari-mutuel industry has historically been a highly regulated industry and the state has traditionally enforced a wide range of regulatory controls over the daily operations of pari-mutuel permitholders. This complicated set of laws and regulations has been primarily designed to protect the integrity and health of the pari-mutuel industry and, subsequently, the state revenues generated by wagering activities.

Section 550.105, F.S., requires each person connected with a racetrack or fronton to purchase an annual occupational license from the division. Occupational licenses are issued in seven categories according to their access needs with annual fees ranging from \$10 to \$50.

Unrestricted licenses are issued to persons with access to the backside, racing animals, jai alai players' room, jockeys' room, drivers' room, totalisator room, the mutuels or money room and to persons who, by virtue of the position they hold, might be granted access to these areas. Persons issued an unrestricted license require the most state scrutiny, including the submission of fingerprints for a FBI criminal records check. Applicants for an unrestricted occupational license in Florida are required to be fingerprinted every five years. There is a \$39 fee to cover the cost of a fingerprint investigation. Many such licensees also work at pari-mutuel facilities in other states and must apply for a license in each of the states in which they are employed.

Restricted licenses are issued to persons which, due to their lack of access to those areas, require less state scrutiny and do not require routine criminal records check. The division is, however, authorized to require the persons applying for restricted licenses to submit fingerprints if it is deemed necessary.

Subsection (4) of s. 550.105, F.S., authorizes the division to enter into reciprocal agreements with other states. The division may deny a license to or revoke, suspend or place conditions or restrictions upon any person who has been refused a license by another state or who has been disciplined by or failed to pay a fine in another state when

there is a reciprocity agreement between the states. The division is a member of the North American Pari-Mutuel Regulators Association which maintains a database from all participating states of pari-mutuel licensees and disciplinary information involving each. The division has recently rejoined the Association of Racing Commissioners International, Inc. which also maintains a database of this information from states which are members of that organization. When disciplinary actions are taken against a Florida licensee the information is entered daily into these databases. Upon an applicant's submission of a request for licensure in Florida, division employees check these databases for disqualifying violations or disciplinary actions in other states prior to the issuance of a license. Some states which are members of these organizations presently utilize fingerprint cards which require the investigative findings to be disseminated to other participating states. In Florida, when this type information is received on an applicant from another state, it is entered into the division's licensing database and is available for review when that person applies for licensure.

According to the divisions' annual report, pari-mutuel wagering occupational licenses at all pari-mutuel facilities in the state generated \$706,871 during FY 1998-99. Of the 22,741 licenses, 16,357 were restricted licenses and of that number, 6,393 were fingerprinted.

C. EFFECT OF PROPOSED CHANGES:

HB 2117 creates the "Interstate Compact on Licensure of Participants in Live Horseracing with Pari-Mutuel Wagering" and establishes the rights and responsibilities of the compact committee and participating states. The compact committee created by this legislation is considered an interstate governmental entity. This bill is model legislation from the Association of Racing Commissioners International, Inc. which appears to be intended to be broad enough to cover all aspects of compact operations and yet flexible enough to accommodate the regulations of individual states. In its present form the bill does not cover greyhound racing or jai alai games. The bill authorizes the Department of Business and Professional Regulation [DBPR], to participate in the compact.

Any persons applying for an occupational license at a pari-mutuel facility with live horseracing will also be eligible to apply for a compact license. It appears that receipt of a compact license will enable such persons to obtain a comparable license in other participating states, upon payment of the applicable state license fee in that state. In Florida, applicants for unrestricted occupational licenses at pari-mutuel facilities are required to be fingerprinted once every five years. Other states may have more or less restrictive fingerprinting regulations. Issuance of a compact license may eliminate the necessity for an individual to pay an additional charge for fingerprinting in those states which have a more restrictive requirement than Florida.

To accomplish the specified purposes, the bill grants the compact committee authority to determine which categories of participants should be licensed and authority to establish the requirements and term of license for each category. In so doing, the compact committee is required to adopt the most restrictive licensure requirements among the compact states for each category.

The compact committee may investigate applicants for a license from the compact committee and gather information on the applicants, including criminal history information, from appropriate law enforcement agencies, including the FBI, and from other countries if necessary. A public records exemption is created concerning dissemination of criminal history record information.

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The bill states that the compact committee does not have the authority to deny a license. If the compact committee determines that an applicant does not meet licensure requirements, the applicant is notified that the application will not be processed further and is given an opportunity to provide additional information or to appear before the committee. If any additional information provided is not persuasive, it appears that the application is processed no further. The bill provides that such a notification is not to be treated as a denial and participating party states agree not to penalize an applicant based solely on a decision by the compact committee not to process the application. Each party state shall be able to apply its own standards in determining licensure eligibility, under the laws of that party state, for categories for participants in live racing that the compact committee determines not to license and for individual participants in live racing who do not meet the licensure requirements of the compact committee.

In addition, the bill provides that each party state reserves the right to charge a fee for the use of a compact committee license in that state. Party states may apply their own standards in determining whether a compact committee license should be suspended or revoked and retains the right to establish their own licensure standards for the licensure of non-racing employees at horse racetracks and employees at separate satellite wagering facilities.

The compact committee is required to elect a chair, vice chair and a secretary/treasurer annually and to adopt by-laws for the conduct of its business which must be filed with the Secretary of State. The compact committee is granted authority to enter into contracts, acquire, hold and dispose of real and personal property, create, appoint and abolish offices, employments and positions and receive other funds through gifts, grants and appropriations. Day-to-day management and administration of its duties and responsibilities may be delegated to an executive director. All employees of the compact committee are considered governmental employees, but the bill does not specify what governmental jurisdiction applies. The bill grants immunity from liability for members and employees of the compact committee for any good faith act or omission during the performance of their duties.

The bill provides that each member of the compact committee is entitled to one vote. No action may be taken unless a quorum is present and a simple majority constitutes a quorum. Any action with regard to the addition of party states, the licensure of participants in live racing, and the receipt and disbursement of funds requires a majority vote of the entire membership. All other action requires a majority vote of those members present.

The compact does not come into force until enacted by four states. As of the date of publication of this analysis, legislation establishing this compact has passed the Legislature in two states, Virginia and West Virginia, and is awaiting the Governor's approval. Enabling legislation has been introduced in California, Nebraska and Delaware and has passed the House and is pending review by the Senate in Louisiana. Any state which has authorized pari-mutuel wagering on horseracing is eligible to become a party to the compact.

The bill specifies that any party state may withdraw from the compact by enacting a statute which repeals the compact. The withdrawal will not become effective, however, until the Governor gives notice, in writing, to the Governor of the other participating states.

The bill contains a severability clause.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Establishes the Short Title of the bill as the “Interstate Compact on Licensure of Participants in Live Horseracing with Pari-Mutuel Wagering.”

Section 2. Purposes of the compact.

- (1) Establish uniform requirements among the party states for the licensing of participants in live horseracing and ensure that those who are licensed under this compact meet a uniform minimum standard of honesty and integrity.
- (2) Facilitate the growth of the horseracing industry by simplifying the process of licensing and reduce the duplicative and costly process of separate licensing by each state that conducts live horseracing.
- (3) Authorizes the Department of Business and Professional Regulation to participate in this compact.
- (4) Provides for the participation in this compact by officials of the party states, permits those officials, through the compact committee established by the compact, to enter into contracts with government agencies and non-governmental persons in order to carry out the purposes of the compact.
- (5) Establishes the compact committee as the governmental agency duly authorized to request and receive criminal history record information from the Federal Bureau of Investigation and other state and local law enforcement agencies.

Section 3. Definitions.

- (1) “Compact committee” means the organization of officials from the party states that is authorized to carry out the purposes of this compact.
- (2) “Official” means the appointed, elected, designated, or otherwise duly selected members of a racing commission or its equivalent in a party state who represents that party state as a member of the compact committee.
- (3) “Participants in live racing” means participants in live horseracing with pari-mutuel wagering in the party states.
- (4) “Party state” means each state that has enacted this compact.
- (5) “State” means each of the several states of the United States, the District of Columbia, the Commonwealth or Puerto Rico, and each territory or possession of the United States.

Section 4. Entry into force.

The compact comes into force when enacted by any four states. Thereafter, the compact becomes effective upon any other state’s enactment of this compact and the affirmative vote of the majority of the officials on the compact committee as provided in Section 9.

Section 5. States eligible to join the compact.

Any state that has adopted or authorized horseracing with pari-mutuel wagering is eligible to become a party to this compact.

Section 6. Withdrawal from the compact and impact on the effect of the compact.

- (1) Any party state may withdraw from the compact by enacting a statute repealing this compact, but the withdrawal does not become effective until the Governor of the withdrawing state has given written notice of same to the Governors of all the other party states.
- (2) If, as a result of withdrawals, participation in the compact decreases to less than three party states, the compact is no longer in force until three or more party states are again participating in this compact.

Section 7. Compact committee established.

- (1) Creates an interstate governmental entity known as the "compact committee," which shall be comprised of one official from the racing commission or its equivalent [in Florida the DBPR] from each party state, who shall be appointed, serve, and be subject to removal in accordance with the laws of the party state she or he represents. Under said laws, each official shall have the assistance of the state's racing commission or its equivalent in considering issues related to licensing of participants in live racing and in fulfilling her or his responsibilities.
- (2) If an official is unable to perform any duty in connection with the compact committee, the racing commission or its equivalent shall designate another person as an alternate. Once the racing commission or its equivalent determines that the original representative is once again able to serve on the compact committee, the original representative can resume her or his duties. The designation of an alternate shall be communicated by the affected racing commission or its equivalent to the compact committee as the committee's bylaws may provide.

Section 8. Powers and duties of the compact committee.

1. Determine what categories should be licensed by the committee and establish the requirements for the initial licensure in each category. The committee shall determine for each category which party state has the most restrictive requirements and shall adopt licensure requirements that are compatible to those with the most restrictive requirements.
2. Investigate applicants for a license from the compact committee, and gather information on the applicants, including criminal history information, when appropriate from law enforcement agencies of other countries. Only compact committee officials or their employees may receive and review this criminal history information and only use it for purposes of this compact. Said officials and employees may not disclose or disseminate this information. Designates the method of obtaining fingerprint information and the method for forwarding same. Provides that fingerprints may be submitted on a fingerprint card or electronically, or by some other means authorized by the Federal Bureau of Investigation or other receiving law enforcement agency. These provisions appear to constitute a public records exemption.
3. Issue or renew licenses to those that the committee finds have met the licensure and renewal requirements established by the committee. The committee does not have the

authority to deny a license. In cases when it is determined that the applicant is not eligible to be issued a compact license or renewal, the applicant shall be notified that their application will not be able to be processed any further. Said notification shall not constitute a denial. Any such applicant has the right to present additional evidence to the compact committee, but the final decision shall be made by the compact committee.

4. Enter into contracts or agreements with governmental agencies and with non-governmental persons to provide personal services for its activities and such other services as may be necessary to effectuate the purposes of this compact.
5. Create, appoint, and abolish those offices, employments, and positions, including an executive director, as it considers necessary for the purposes of this compact; provide powers for same; hire persons to fill those offices; provide for the removal, term, tenure, compensation, fringe benefits, and other considerations of employment of its officers, employees, and other positions.
6. Borrow, accept, or contract for the services of personnel from any state, the United States, or any other governmental agency, or from any person, firm, association, corporation, or other entity.
7. Acquire, hold, and dispose of real and personal property by gift, purchase, lease, license, or in other similar manner, in furtherance of the purposes of this compact.
8. Charge an unspecified fee to each applicant for an initial license or renewal.
9. Receive other funds through gifts, grants, and appropriations.

Section 9. Voting requirements.

- (1) Each official is entitled to one vote on the compact committee.
- (2) All action taken with regard to the addition of party states as provided in Section 4, the licensure of participants, and the receipt and disbursement of funds requires a majority vote of the total number of officials or their alternates on the committee. All other action by the compact committee requires a majority vote of those officials or their alternates present and voting.
- (3) An action of the compact committee may not be taken unless a quorum is present. A majority of the officials or their alternates on the compact committee constitutes a quorum.

Section 10. Administration and management.

- (1) The compact committee shall elect annually from among its members a chair, a vice-chair, and a secretary-treasurer.
- (2) The compact committee shall adopt bylaws for the conduct of its business by a two-thirds vote of the total number of officials or their alternates on the committee at that time, and has the power by the same vote to amend or rescind these bylaws. The compact committee shall publish its bylaws in a convenient form and file a copy thereof (as well as any amendments thereto) with the secretary of state or equivalent agency of each of the party states.

- (3) The compact committee may delegate the day-to-day management and administration of its duties and responsibilities to an executive director and support staff.
- (4) Employees of the compact committee shall be considered governmental employees; however, the bill does not specify what governmental jurisdiction applies.

Section 11. Immunity from liability.

An official of a party state or an employee of the compact committee may not be held personally liable for any good faith act or omission that occurs during the performance or within the scope of her or his responsibilities under this compact.

Section 12. Rights and responsibilities of each party state.

- (1) By enacting this compact, each party state agrees to accept the decisions of the compact committee regarding the issuance of compact committee licenses and to reimburse or otherwise pay the expenses of its official representative or alternative on the compact committee; and agrees to not treat the inability to process a license application, under Section 8(3), as a denial of a license, or penalize the applicant in any other way based solely on a decision by the compact committee.

Furthermore, each party state reserves the right to charge an unspecified fee for the use of a compact committee license in that state; apply its own standards in determining whether a compact committee license should be suspended or revoked; apply its own standards in determining licensure eligibility, under the laws of that party state, for categories for participants in live racing that the compact committee determines not to license and for individual participants in live racing who do not meet the licensure requirements of the compact committee; and establish its own licensure standards for the licensure of non-racing employees at horse racetracks and employees at separate satellite wagering facilities.

Any party state that suspends or revokes a compact committee license shall, through its racing commission or its equivalent, promptly notify the compact committee of that suspension or revocation.

- (2) A party state may not be held liable for the debts or other financial obligations incurred by the compact committee.

Section 13. Construction and severability.

- (1) This bill specifies that the compact shall be liberally construed so as to effectuate its purposes. The provisions of the compact are severable should any portion be declared contrary to the constitution of the United States or any party state.
- (2) If all or some of this compact is held to be contrary to any party state or the United States Constitution, the compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the state affected as to all severable matters.

Section 14. The effective date of the bill is upon becoming law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

According to the Department of Business and Professional Regulation, applicants will still be required to purchase a Florida occupational license so implementation of this legislation will not have a negative impact on license fee collections.

The bill allows participating party states to charge a fee for the use of a compact committee license in that state. If the department elects to charge an additional fee, an indeterminate amount of new revenue will be generated.

2. Expenditures:

Participation in the compact will, at this point, require the participation of one or more persons from the Department of Business and Professional Regulation. The department reports that any fees or costs associated with participation in the compact will come from existing appropriations. [Also, please see FISCAL COMMENTS]

The department anticipates that some licensing functions may eventually be reduced due to the state's participation in this compact. According to the department, the reduction in workload or FTE's is indeterminate at this time.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

N/A

2. Expenditures:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Many employees at horse tracks in Florida, particularly owners and trainers, also travel to and are licensed by pari-mutuel regulators in other states in the course of a race season. Currently, these licensees are required to be licensed in each state. In Florida, applicants for unrestricted occupational licenses at pari-mutuel facilities are required to be fingerprinted once every five years. Other states may have more or less restrictive fingerprinting regulations. Issuance of a compact license may eliminate the necessity for an individual to pay an additional charge for fingerprinting in those states which have a more restrictive requirement than Florida.

Each party state is also authorized to charge an additional unspecified fee for use of the compact license in their state.

Applicants for occupational licenses are not required to obtain a compact license and any increased cost or savings to participating licensees is indeterminate.

D. FISCAL COMMENTS:

Since creation of the compact as provided in this legislation is the initial step in what is anticipated to become a nationwide licensing database, it is unclear what expenses may later be associated with participation in the compact.

Section 12 of the bill provides that no compact state shall be held liable for the debts or other financial obligations incurred by the compact committee. However, some provisions of the bill regarding the state's obligations for expenditures remain unclear. For example, Section 7 of the bill requires the assistance of the Department of Business and Professional Regulation in considering issues related to licensing of participants in live racing and in fulfilling the officials responsibilities to the compact committee. Section 8 of the bill authorizes the compact committee to hire employees and provide for their compensation, fringe benefits, retirement benefits, etc. Section 10 of the bill provides that employees of the compact committee shall be considered governmental employees.

CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

E. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take any action requiring the expenditure of funds.

F. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

G. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of state tax shared with counties or municipalities.

IV. COMMENTS:

A. CONSTITUTIONAL ISSUES:

Public Records Exemption

Section 7 of the bill creates an interstate governmental entity to be known as the "compact committee," whose membership is comprised of one official from the racing commission, or the equivalent thereof, from each state that is a party to the compact. Section 2 of the bill authorizes the Department of Business and Professional Regulation to participate in the compact.

Section 8 of the bill empowers the "compact committee" to investigate and gather criminal history information on applicants for licensure and limits the receipt and review of criminal history information to officials on and employees of the "compact committee." Furthermore, those persons are prohibited from disclosing or disseminating such information to any person or entity other than another official or employee of the compact committee [see page 5, lines 14-31 and page 6, lines 1-9]. This provision of the bill constitutes a public records exemption, which pursuant to Section 24 of Article I of the Florida Constitution and

Chapter 119, F.S., requires enactment in a separate general bill. Taken together, the Constitution and statutes require that the general bill creating the exemption be no broader than necessary to accomplish the stated purpose, include a statement of the public necessity justifying the exemption, and provide for future repeal of the exemption with review prior to the scheduled repeal.

Undue Delegation of Legislative Authority

This bill authorizes the imposition of a fee both for the compact license and for the use of a compact license in the state. There is no specific fee nor maximum amount which may be charged specified in the bill. This lack of specificity may be cause for some concern that the Legislature has unduly delegated its authority to the executive branch of government or to a quasi-governmental entity.

B. RULE-MAKING AUTHORITY:

The Department of Business and Professional Regulation reports that no additional rule-making authority is necessary.

C. OTHER COMMENTS:

The bill requires that an official from each party state's racing commission or its equivalent to serve on the compact committee. The bill does not, however, specify who selects the official or their alternate.

The bill is unclear regarding licensing requirements for those persons who may opt to purchase a compact license. The bill, in Section 8, allows the compact committee to charge a fee for an initial license or renewal of a license and each party state, in Section 12 of the bill, is authorized to impose a fee for the "use" of a compact committee license in that state. In the Department of Business and Professional Regulation's impact statement dated March 27, 2000, the department writes that passage of the bill will not result in a reduction in the number of licensees or fees paid by the licensees and that the party states may "...still collect their normal license fees" and that the "...fee for the compact license is in addition to the fee for the Florida license." These provisions in the bill appear to allow multiple fees and seem to conflict with the second stated purpose of the compact as found in Section 2 of the bill which is to, "...reduce the duplicative and costly process of separate licensing by the regulatory agency in each state..."

Further, some provisions of the bill regarding the state's obligations for assistance and expenditures of funds remain unclear:

Section 7 of the bill requires the assistance of the state's racing commission or its equivalent [the Department of Business and Professional Regulation] in considering issues related to licensing of participants in live racing and in fulfilling the officials responsibilities to the compact committee.

Section 8 of the bill authorizes the compact committee to hire employees and provide for their compensation, fringe benefits, retirement benefits, etc.

Section 10 of the bill provides that employees of the compact committee shall be considered governmental employees .

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Section 12 of the bill provides that no compact state shall be held liable for the debts or other financial obligations incurred by the compact committee.

For example, is the State of Florida responsible for the salaries and benefits associated with the "governmental employees" referred to in this legislation? Is the Department of Business and Professional Regulation responsible for various forms of assistance, e.g., expert staffing, computerized databases, etc. Committee members may wish to address these ambiguities.

V. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The sponsor of this legislation plans to offer an amendment which will extend the applicability of the compact to all segments of the pari-mutuel industry.

VI. SIGNATURES:

COMMITTEE ON REGULATED SERVICES:

Prepared by:

Staff Director:

Janet Clark Morris

Paul Liepshutz