NOTICE OF MEETING and AGENDA

March 12, 2013 Meeting

Pursuant to the Massachusetts Open Meeting Law, G.L. c. 30A, §§ 18-25, notice is hereby given of a meeting of the Massachusetts Gaming Commission. The meeting will take place:

Tuesday, March 12, 2013
1:00 p.m.
Division of Insurance
1000 Washington Street
1st Floor, Meeting Room 1-E
Boston, Massachusetts

PUBLIC MEETING - #56

1. Call to order

2. Approval of Minutes
   a. February 28, 2013 Meeting

3. Administration
   a. Master schedule
      i. Category 2 Licensing Schedule

4. IEB Report
   a. Investigations status report

5. Public Education and Information
   a. Report from the Ombudsman
   b. Preparation for Region C discussion

6. Regulation Update
   a. Review of draft regulations
   b. Schedule update

7. Racing Division
   a. Administrative Update
   b. Proposed changes to 205CMR 3.00 and 4.00 – Update correction
   c. Section 104 Legislative Review - VOTE

8. Research Agenda

9. Evaluation Criteria

10. Other business – reserved for matters the Chair did not reasonably anticipate at the time of posting

I certify that on this date, this Notice was posted as "Gaming Commission Meeting" at www.massgaming.com and emailed to: regs@sec.state.ma.us, melissa.andrade@state.ma.us, brian.gosselin@state.ma.us.

3/7/13
(date)

Stephen P. Crosby, Chairman

Date Posted to Website: March 7, 2013 at 1:00 p.m.

The Commonwealth of Massachusetts

Massachusetts Gaming Commission

84 State Street, Suite 720
Boston, Massachusetts 02109
(617)979-8400

To: Commissioners

From: Jennifer Durenberger, Director of Racing

Date: March 12, 2013

Re: Correction to rulemaking process timeline for Racing Division

Commissioners:

At last week's open public meeting of February 28th, I presented to you a timeline for the rulemaking process currently under consideration by the Racing Division. Following that meeting, Counselor Grossman reminded me that M.G.L. c. 128A section 9B adds an additional requirement to the rule-making process as it relates to pari-mutuel law in the Commonwealth.

The text of the law provides the following:

"M.G.L. c. 128A Section 9B. Notwithstanding the provisions of section five of chapter thirty A, no rule, regulation or condition of the commission promulgated pursuant to the provisions of this chapter shall take effect except as hereinafter provided.

A copy of every such rule, regulation or condition shall be filed with the clerk of the senate and shall be forthwith referred by him to the joint committee on government regulations.

Said committee shall file a written report with the clerk of the senate within thirty days after the filing of the copy thereof with said clerk, stating whether said rules, regulations and conditions are consistent with the statutory provisions under which they were promulgated.

Said rules, regulations and conditions shall take effect unless disapproved by a majority vote of both branches of the general court within sixty days after the filing of the copy thereof with the clerk of the senate unless the general court has prorogued within said sixty days.

If the general court prorogues within sixty days of the filing, with the clerk of the senate of such rules, regulations and conditions, the clerk of the senate shall refer the same to the committee on government regulations the next session of the general court.

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Said committee shall report as hereinbefore provided within thirty days of the first day of such session and such rules, regulations and conditions shall take effect unless disapproved by a majority vote of both branches of the general court within sixty days of the first day of such session. The clerk of the senate shall notify the commission of the action taken thereon by the general court.

Notwithstanding the provisions of this section, the commission may adopt emergency rules or regulations to protect the health or safety of the public, participants, or animals; provided, however, that no emergency rule or regulation shall attempt to regulate the dates, manner of wagering, or economic terms or conditions of horse and dog racing within the commonwealth; and provided, further, that such emergency rules and regulations shall expire within ninety days."

With this added requirement, our proposed regulations would not take effect under the usual administrative procedure and timeline prior to the advent of live racing at Plainridge Racecourse.

While adopting emergency rules or regulations is never an ideal course of action, it is my recommendation that the Commission do so next week when we put these rules before you. The reason for this is two-fold:

1) Because this additional requirement *follows* the usual administrative rule-making procedure, adopting these regulations by emergency does not in way subrogate or act as an end-run around the rule-making process. Stakeholders have been kept apprised of our proposals throughout the process, public comments have been invited, and a public hearing has been held.
2) It can be disruptive to adopt rules affecting day-to-day practices during the middle of a racemeet.

Again, a final draft of our proposed "phase I" rules primarily pertaining to veterinary practices and medication with incorporated comments will be set to come before you for approval next week.

7.C

REPORT OF THE MASSACHUSETTS GAMING COMMISSION TO THE SENATE AND HOUSE OF REPRESENTATIVES PURSUANT TO CHAPTER 194, SECTION 104, OF THE ACTS OF 2011, ANALYZING THE COMMONWEALTH'S PARI-MUTUEL AND SIMULCASTING LAWS, WITH RECOMMENDATIONS AS TO THEIR EFFICACY AND NEED TO BE REPLACED

March, 2013.

INTRODUCTION

Section 104 of Chapter 194 of the Acts of 2011 directs the Massachusetts Gaming Commission ("Commission") to analyze the pari-mutuel and simulcasting laws in effect on the date of its passage, and to include in that analysis a review of the efficacy of those laws and the need to replace them "pursuant to the continuation of chapters 128A and 128C of the General Laws in this act." The Commission is further directed to report its findings and recommendations, together with drafts of legislation necessary to carry those recommendations into effect, by filing the same with the clerks of the Senate and House of Representatives and with the House and Senate chairs of the Joint Committee on Economic Development and Emerging Technologies.

In accordance with those directions the Commission has reviewed and analyzed the efficacy of those pari-mutuel and simulcasting laws (collectively, the "Racing Laws"), and considered the need to replace them. The Commission's review and analysis included a consideration of how to harmonize the Racing Laws with G.L. c. 23K (Expanded Gaming Act"), in particular as respects simulcasting. The Commission also looked at generally updating the Racing Laws, including some aspects of the current simulcast framework and formulas, in order to assess whether they were in line with best practices, current trends and with generally accepted standards in the racing industry nationwide. From its review and analysis, the Commission's conclusion is that very substantial revisions to the current racing laws are necessary.

Because of the breadth of the recommended revisions to the current racing and simulcasting regulatory framework, the Commission has submitted its recommended statutory changes in the form of a single "omnibus" proposed new chapter that integrates the content of current chapters 128A and 128C, amended to reflect those recommended statutory changes (hereinafter the "Proposed New Chapter").

The Legislature's repeal of chapters 128A and 128C of the General Laws as of July 31, 2014 (pursuant to St. 2011 c. 194, §§39 and 41) will abolish the current racing regulatory infrastructure. That repeal will necessitate legislative action prior to that date in order to continue the authorization of live racing, pari-mutuel wagering and simulcasting in the Commonwealth by racing licensees. Should reauthorization through such legislative action not occur, racing in Massachusetts and wagering thereon would end, and the provisions of the Extended Gaming Act linking continued live racing and simulcasting to retention of a racing licensee's gaming license (§§19 and 20), and the increasing of the minimum number of racing days to 125 (§24), as well as the establishment and operation of the Race Horse Development Fund (§60), would become moribund. The Proposed New Chapter constitutes the Commission's recommendation as to the appropriate legislative action that would allow continued racing and simulcasting in a modernized, uniform and fair statutory and regulatory framework as between gaming establishments and racetracks.

THE REVIEW AND ANALYSIS PROCESS

In establishing how gaming funds earmarked for the racing industry in the Race Horse Development Fund should be allocated, §60 of the Expanded Gaming Act adopts a collaborative, committee approach, rather than a particularized, fixed statutory allocation, for determining the size and apportionment of distributions as between thoroughbred and standardbred beneficiaries. While §60 provides a broad funding distribution outline (80% to horsemen and purse accounts; 16% to breeding programs; and 4% for health, pension, life insurance and other benefits for horsemen beneficiaries, including jockeys and drivers), it leaves to the horse racing committee,[1] which includes thoroughbred and standardbred horsemen's organizations, "to make recommendations on how the funds received . . . shall be distributed between thoroughbred and standardbred racing facilities to support the thoroughbred and standardbred horse racing industries under this section."

In its review and analysis the Commission has tried to broaden the use of this collaborative approach. Participation by the horsemen in the decision-making process for revenue allocations to thoroughbred and standardbred purses has been at or near the top of the list of issues most often raised by them when reform of the Racing Laws is discussed. Taking the lead from the Legislature in its incorporation of the voice of racing industry beneficiaries in decision-making affecting them, the Commission has sought, as

[1] This horse racing committee is comprised of "the governor's designee, . . . the treasurer's designee, . . . the chair of the commission or his designee, . . . [an appointee of] the New England Horsemen's Benevolent & Protective Association and the Massachusetts Thoroughbred Breeding Program, . . . [and an appointee of] the Harness Horseman's Association of New England and the Massachusetts Standardbred Breeding Program."

far as is reasonably practicable, to make recommendations that are consistent with that collaborative approach. One illustration is the Commission recommendation herein that Suffolk Downs and Plainridge be permitted the freedom to negotiate their own intrastate simulcasting signal fees (albeit with a cap), as is done in most other jurisdictions.

In the process of the Commission's review and analysis of the Racing Laws for this report, Commission staff have consulted with and invited written comments from a broad range of the racing industry stakeholders in Massachusetts. Copies of written comments received by the Commission have been attached hereto as Attachment I. Commission staff also met with the thoroughbred horsemen and their representatives for a round-table discussion, to which the standardbred horsemen and their representative were also invited. Many of the ideas received as a result of such consultation significantly informed the Commission's recommendations to the Legislature.

OVERVIEW OF THE RACING LAWS

The provisions of G.L. c. 128A relate broadly to the live racing licensing process and to the benefits and obligations of licensure, including license revocation and suspension (§§2-4, 11); the rules and restrictions related to pari-mutuel wagering (including account wagering) and to the keeping of financial records related thereto (§§5-6, 10B); the employment of stewards, police officers, veterinarians and the like, and to periodic inspections of licensed premises (§§7-8A); the Commission's broad regulatory powers (§§9 and 9B); the licensing and registration of licensee employees (§§9A and 10);

exclusion of persons detrimental to the proper and orderly conduct of racing (§10A); the necessity of Commission approval for change of control in a licensee (§11C); punishment for non-compliance with the chapter (§§12, 13, 13A); prohibition of drug use or conspiracies to affect a horse's performance (§§13B and 13C); county approval of licenses (§§14, 14B, 14C and 14D); and the prohibition of dog racing (§14E).

The provisions of G.L. c. 128C (individually, the "Simulcast Law") relate broadly to establishing the authority of live racing licensees to simulcast, and conditions and restrictions thereon (§§2 and 2A); pari-mutuel pools (§3); treatment of unclaimed wagers, known as "outs" (§3A); regulation of the takeout from simulcast wagers at guest tracks simulcasting races from both within and from outside the Commonwealth (§§4, 5, 6); limitation on actions to recover winnings (§5A); injuries to and disposition of greyhounds, their transportation, and reporting thereon (§§7, 7A and 7B); and the Commission's power to promulgate regulations (§8).

SUMMARY OF RECOMMENDATIONS

Other than the statutory changes recommended herein, and to the extent evident from the draft Proposed New Chapter, the Commission is satisfied that the Racing Laws themselves together with the broad powers granted to the Commission under the Expanded Gaming Act regarding pari-mutuel wagering and simulcasting cooperate to effectively authorize all regulatory action necessary for comprehensive regulation of a

modernized racing industry in Massachusetts through fair, effective and timely regulation of live horse racing and pari-mutuel wagering, including wagering on simulcast races.

The statutory changes to the Simulcast Law recommended by the Commission foster a uniform regulatory system for all entities authorized or licensed by the Commission to simulcast live races for pari-mutuel wagering purposes. They establish, as far as is practicable, equilibrium through fair and equitable treatment of racing and non-racing entities authorized to simulcast in Massachusetts. These changes would liberate licensees from the complex rules of §2 of chapter 128C (dealing with who can simulcast what kind of signal, at what times, for what premiums and prescribed fees) that a decade ago seemed appropriate to manage signal allocation so as to counteract the perceived threat to a diverse industry from unrestricted simulcasting. In the Commission's view, and consistent with the approach taken by other racing states, that kind of framework is no longer necessary or desirable; the business model for the racing industry across America has changed. Moreover, in light of the authority under the Expanded Gaming Act to grant simulcasting licenses to gaming licensees and entities *previously* licensed under the Racing Laws, continued operation of the current simulcast system is impracticable and contains inherent imbalance as between racing and non-racing licensees.

The Commission also recommends discontinuance of the current prohibition of rebating and wagering on credit under the Racing Laws. As explained below, repeal is needed in order to place pari-mutuel wagering on the same footing as gaming. Finally,

the Commission recommends abolishing the current costly and cumbersome trust fund system used to regulate licensee capital improvements and promotional activities; the Commission recommends replacing it with funding specifically earmarked for "backstretch" infrastructure improvements that will improve the safety and security of workers and horses. The "backstretch" is where barns, stalls, tack-rooms, wash stalls and dormitories that house employees who care for the horses are located.

STAKEHOLDERS' VIEWS

In the course of the Commission's review and analysis on this project, Commission staff invited racing stakeholders and their organizations to submit written comments in connection therewith. Invitees included all racing meeting licensees (including the former greyhound tracks), and the thoroughbred and standardbred horsemen and breeders. From the comments received (and as is well-known in the industry), it is clear that pari-mutuel wagering on simulcast races is and has been for many years the primary economic engine for the survival of the racing industry in Massachusetts and across the country. Without simulcasting revenues, the racing industry, as a stand-alone industry, would be imperiled. Such peril would affect not only the racetracks but also dependent state agricultural and farming interests in breeding, stabling, training, feeding, and maintaining open space within the Commonwealth.

Suffolk Downs, in its written submission to the Commission, declared that "simulcasting has become the economic lifeblood of the racing industry, and any loss of

simulcasting rights would devastate any racing licensee." The standardbred breeders, in their comments, wrote that "an end to simulcast extensions would have a devastating impact on the breeders program and the farming sector in the Commonwealth." Plainridge commented that current law "maintains a carefully considered and developed balance of racing and simulcasting interests that have been forged since 1992," but urged that simulcasting should be limited to locations at which live racing occurs. Clearly, the success of the simulcast model is critical to the profitability of the racetracks and as a source of funding for purses and breeding programs. The thoroughbred horsemen, however, criticize the current simulcasting schedules, and fee and premium formulas, as "carve-outs" for tracks at the expense of purses and breeding programs.

In Commission staff's meetings and discussions with thoroughbred horsemen and their representatives (and in their written submissions) there were calls for a "universal percentage" takeout from all simulcast wagering to be allocated to purses and breeding programs. The sentiment expressed by the thoroughbred horsemen was that, rather than "tweaking" the simulcast rules, those rules should be rewritten in their entirety. They contend that the thoroughbred industry over the years has subsidized the greyhound and standardbred industries through below-market premiums, and sometimes (in view of the statutory exemptions) no premiums at all. These horsemen contrast the flat, uniform 10% takeout from simulcast revenues under §7(b) of the Extended Expanded Gaming Act with the premium formulas and exemptions in the existing Simulcast Law. They suggest that the simulcasting provisions of the Expanded Gaming Act reveal a legislative intent to

replace the current complexities of §2 of the Simulcast Law with the kind of flat 10% takeout provided for in §7(b).

Before turning to the review and analysis of the issues that are the subject matter of its recommendations for legislative changes, the Commission explains its decision to refrain from offering any recommendation with respect to the issue of whether G.L. c. 128A, §14E should be amended to prohibit the simulcasting within Massachusetts of greyhound races occurring outside Massachusetts.

THE SIMULCASTING OF GREYHOUND RACING

Because G.L. c. 128A, §14E prohibits live greyhound racing within Massachusetts, the Proposed New Chapter contains no references to live dog racing. Notwithstanding the urging of Grey2K (a sponsor of the initiative petition that resulted in enactment of chapter 388 of the acts of 2008), however, the Commission has declined to consider the issue whether the scope of §14E should be enlarged to prohibit simulcasting of dog races occurring outside Massachusetts. The Commission has concluded that that issue, involving as it does whether currently legal activity ought to be rendered illegal, especially when such a change would alter the scope of a successful initiative petition, is beyond the scope of the St. 2011 c. 194, §104 mandate for this Report.

That mandate directs the Commission to analyze the efficacy of the Racing Laws and, in furtherance of such efficacy, to make recommendations regarding whether those

laws need to be changed or replaced. The Commission has concluded that the *regulatory efficacy* of the pari-mutuel and simulcast laws is not dependent upon the nature (horses or dogs) of the races being simulcast from outside Massachusetts, and not within the scope of that assignment.

Perhaps with that live racing requirement in mind, St. 2011 c. 194, §92 granted the former Wonderland and Raynham greyhound tracks statutory licenses "as greyhound racing meeting licensees until July 31, 2014," with the caveat that "the licensees shall continue to be precluded from conducting live races during that period . . . ." The Commission cannot presume to anticipate whether and what kind of action might or might not be taken by the Legislature regarding these former greyhound tracks as that date approaches. It has therefore refrained from comment or recommendation.

REVIEW, ANALYSIS AND RECOMMENDATIONS

(i) Current Simulcasting Authorizations

While gaming regulation and pari-mutuel wagering regulation have been merged in a single commission, the authority to regulate each continues to be derived from separate statutory authority; gaming is governed by the Expanded Gaming Act, and pari-mutuel wagering and simulcasting (with few exceptions) by the Racing Laws. This

retention of a dual-source regulatory authority is evident from provisions of the Expanded Gaming Act (e.g., §§19, 20, 24 and 60)[2].

The Commission considers the Legislature's repeal of chapters 128A and 128C, in the context of the continued references to those chapters in the Expanded Gaming Act, as a signal that the Commission's assignment in St. 2011 c. 194, §104 includes the presentment of a new chapter that would incorporate Commission recommendations regarding a modern framework for live racing in Massachusetts, including the integrating of racing and non-racing licensees into a single, uniform simulcasting formula. Consequently, the Commission has incorporated in the Proposed New Chapter provisions that , to the extent reasonably possible given the differences between them, harmonizes the regulatory framework of a non-racing simulcast license issued pursuant to the Expanded Gaming Act with that applicable to the racing licensee who is qualified to simulcast as a non-gaming, racing licensee[3].

Under current G.L. c. 128C, §2, regulation of the right of a racing meeting licensee to simulcast affects, among other things, (1) the kind of racing permitted to be

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[2] For racing licensees that also hold a gaming license, §§19 and 20 make their continued gaming licensure conditional upon performance of their live racing and simulcasting obligations under M.G.L. c. 128A and c. 128C; §24 increases the live racing minimums for entitlement to simulcast; and §60 provides that "the commission shall make distributions from the Race Horse Development Fund to each licensee under chapter 128A."

[3] Under the Racing Laws (and in the Proposed New Chapter) a racing meeting licensee has, by virtue of its racing license the right to simulcast, conditional upon compliance with various conditions affecting the exercise of that right However, with passage of §7(b) of the Expanded Gaming Act a racing license is no longer a necessary predicate for simulcasting: "[t]he commission may grant a simulcasting license to a gaming establishment or an entity previously licensed pursuant to chapter 128A and chapter 128C."

simulcast and the timing of such simulcasting, (2) the premiums payable to Massachusetts tracks according to the type of signal exhibited (thoroughbred or standardbred), and (3) the prescribed fees to be paid to local licensees, again dependent on the type of signal simulcast.

Under §2, Suffolk Downs, as the Commonwealth's only thoroughbred racing meeting licensee, may simulcast unlimited thoroughbred races; it may also simulcast unlimited harness races, except during live racing performances[4] at Plainridge (the only harness racing meeting licensee). Suffolk Downs must carry Plainridge race cards and pay 11% of gross handle to Plainridge for these compulsory *intrastate* race cards. Suffolk Downs must also pay Plainridge a premium of 2% of the gross handle with respect to any *interstate* harness signals received (except during a 12-week period chosen by Suffolk). Similarly, Plainridge may carry unlimited harness races; it may also carry unlimited thoroughbred races except during live racing performances at Suffolk Downs. Plainridge must also carry Suffolk's race cards (and must pay Suffolk 11% of gross handle for these compulsory *intrastate* race cards). Plainridge may also carry the thoroughbred racing cards from 2 California racetracks, and 2 companion cards of thoroughbred races from outside Massachusetts (on a day specified by the Commission) run at the same time as Suffolk Downs. Finally, Plainridge must also pay Suffolk a 2% premium (except during a 12-week period chosen by Plainridge, and for so-called "special events").

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[4] A "racing performance" is defined in chapter 128C as "the conduct of at least seven live races during one day."

Turning to non-racing meeting licensee entities, §7(b) of the Expanded Gaming Act authorizes the Commission to grant simulcasting licenses to gaming licensees and to entities formerly licensed under the Racing Laws. However, §7(b) contains no statutory provisions like those, e.g., in §2 of the Simulcast Law, specifically regulating the exercise of simulcast license rights granted thereunder. In these circumstances, the Commission construes the absence in §7(b) of provisions specifying operational criteria for its simulcasting license as indicating the Legislature's desire to have the Commission offer recommendations regarding the appropriate framework for simulcasting by these §7(b) licensees. The Commission's recommendation, as the provisions of the Proposed New Chapter make clear, is that such licensees be subject to the same regulatory authority of the Commission with respect to all aspects of licensure and enforcement, including suspension or revocation of the license to simulcast, upon terms consistent with the statutory and regulatory framework applicable to simulcasting by a racing licensee.

(ii) Creating A Uniform Simulcasting Regulatory Framework

The simulcasting regulatory framework currently applicable to racing meeting licensees cannot simply be applied "as is" to simulcasting by a licensee under §7(b) of the Expanded Gaming Act. The business imperatives of gaming and those of racing are plainly not the same; and the racing industry factors behind many elements of the framework set forth in G.L. c. 128C, §2 have no obvious equivalents in gaming.

The challenge in creating a uniform simulcasting regulatory framework is in formulating regulatory criteria that, when applied in both gaming and racing contexts,

achieve results that are consistent with the interests of both, while fair as between the participants. In the Proposed New Chapter, the Commission has substantially revised the current G.L. c. 128C, §2 formulas. The current §2 formulas affect (1) what races may be simulcast, (both what may not be simulcast and what must be simulcast); (2) the statutorily fixed fee to be paid for intrastate signals that a licensee is obligated to carry; (3) and premiums that must be paid by the thoroughbred licensee to the harness licensee when it carries an interstate harness signal, and vice versa. There are premium exemptions for both the thoroughbred and harness licensees related to a 12-week period designated by the licensee when no premium need be paid. In the case of the harness licensee, there are premium exemptions for so-called "special events." Under current law, the premiums fund purse accounts of the horsemen at the racetrack of the licensee that receives the premium. G.L. c. 128C, §2.

While these §2 arrangements might have worked once when only race tracks were simulcasting, they are no longer feasible as regulatory criteria for simulcasting by both racing and non-racing simulcast licensees. The Commission recommends abolishing this current system and replacing it with a simulcasting regulatory regime (similar to that generally adopted by other states that permit simulcasting) that allows those authorized to simulcast to negotiate the fees for interstate and intrastate signals (with a cap on the fees for intrastate simulcasting), subject to an obligation to simulcast Massachusetts thoroughbred and harness races.

The provisions of the Proposed New Chapter abolish the premium system, permit unlimited interstate simulcasting of horse racing by racing and c. 23K, §7(b) licensees, and compel the carriage of intrastate thoroughbred and harness signals at a negotiated fee, capped at 12%. The Commission reiterates here its earlier conclusion (*See* pages 10-11) that whether simulcasting within Massachusetts of dog racing occurring outside Massachusetts should continue to be permitted is a matter for the Legislature, and is beyond the scope of the mandate for this Report, as set forth in St. 2011 c. 194, §104.

With respect to both intrastate and interstate simulcasting, the Proposed New Chapter leaves the current takeout structure under G.L. c. 128C, §§4 and 5unchanged. With respect to unclaimed winning simulcast wagers placed with racing meeting licensees, the Proposed New Chapter also retains their current treatment pursuant to G.L. c. 128C, §3A[5]. With respect to unclaimed winning simulcast wagers placed with licensees under §7(b) of the Expanded Gaming Act, the Proposed New Chapter provides that wagers on simulcast races occurring at racetracks within Massachusetts be treated in the manner set forth in G.L. c. 128C, §3A; but that unclaimed wagers placed on simulcast races occurring outside Massachusetts be paid into the Race Horse Development Fund ("Fund"), established by G.L. c. 23K, §60.

[5] Section 3A provides: "The unclaimed simulcast wagers collected by the running horse racing meeting licensee, the harness horse racing meeting licensee and the greyhound racing meeting licensees shall be deposited in a separate account under the control and supervision of the commission for payment to the purse accounts of the licensees that generated the unclaimed wagers."

The Commission's recommended treatment of the §7(b) unclaimed simulcast wagers is grounded on the traditional view that the proper use to which they should be put is for purse accounts. The Massachusetts simulcast licensee is not currently authorized to retain them as its own. Guided by that principle, the Proposed New Chapter provides that the §7(b) simulcast licensee return to the Massachusetts track (to be used for purses) unclaimed winnings from wagers placed on races simulcast from that track. For unclaimed wagers on races simulcast from outside Massachusetts, the Proposed New Chapter provides for payment into the Fund.

While some horsemen may oppose the recommended abolition of premiums, as taking money away from purses, the earmarking of the vast majority of Fund's revenue's for purses should more than make up for any loss occasioned by the loss of premium revenue. As indicated below, the Commission considers that the establishment of gaming as a funding source for purses has superseded the need for continuation of the premium mechanism as a funding source for purses.

The Fund is the principal statutory funding source for the racing industry from gaming. It is administered by the horse racing committee (Committee), the members of which include representatives of the thoroughbred and harness horsemen, and of the thoroughbred and standardbred breeding programs. Revenues for the Fund consist of *a minimum* of 10% of the total simulcast wagers placed with each licensee under §7(b) of the Expanded Gaming Act (the actual percentage to be set by the Commission); 9% of the gross gaming revenues of the Category 2 gaming licensee; 2.5% of the tax on gross

gaming revenue from each Category 1 gaming licensee; and 5% of the Gaming Licensing Fund[6].

Section 60 provides that 80% of the funds approved by the Committee must be deposited "into a separate interest-bearing purse account, to be established by and for the benefit of the horsemen;" thoroughbred and standardbred breeding programs receive 16%; and the remaining 4% goes to fund health and pension, life insurance and other benefits for members of horsemen's organizations, including jockeys and drivers. The principal beneficiaries, the thoroughbred and harness horsemen, sit on the Committee. As discussed above (*See, ante,* page 2), these horsemen will be directly involved in decision-making affecting the disposition, including for purses, of what are likely to be quite considerable deposits from gaming licensees into the Fund[7]. In view of the 10% minimum takeout, pursuant to §7(b) of the Expanded Gaming Act, the horsemen's and breeders' seats on the Committee, and bearing in mind the likely very substantial deposits into the Fund, the Commission considers the current system of funding through *premiums* under G.L. c. 128C, §2 to have been superseded[8].

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[6] This fund receives all gaming licensing fees; it expires on 12/31/2015.

[7] Other beneficiaries of the Fund are generally the same as those benefitting from funding under the Racing Statutes except: the various promotional and capital improvement trust funds; the Division of Fairs (not to exceed $50,000); Tufts School of Veterinary Medicine (½% of the 26% take-out from exotic wagers – total for 2011 was $22,017.09); and an amount set aside for economic assistance to stable, backstretch, etc., employees facing hardship due to illness or unforeseen tragedy ($20,000).

[8] Other than through premiums and the §7(b) 10% minimum takeout, funding for purses under c. 128A currently include (for thoroughbreds) 8.5% of the 19% takeout from straight wagers and 9.5% of the 26% takeout from exotic wagers; and (for harness) 8% of the 19% takeout and 10% of the 26% takeout. Under c. 128C, §4, if simulcasting thoroughbreds as a guest track, when the host track is in Massachusetts, 5%

Abolition of the premium, in the context of the Commission's ability to adjust the §7(b) takeout, will level the simulcasting cost burden for racing and non-racing simulcast licensees, while maintaining a realistic funding level for purses. If simulcasting is to be expanded to non-racing gaming licensees, the need for reducing any competitive imbalance should be separated from the funding of purses if that funding can be handled separately, which §60 of the Expanded Gaming Act (together with the other funding listed in footnote 11) achieves. Moreover, the Commission's recommended overall approach is consistent with that taken by most states, as shown in the attached chart. This would bring Massachusetts in line with the rest of the country and modernize its approach to simulcasting, the critical element of the future of pari-mutuel wagering.

III. REBATING AND WAGERING ON CREDIT UNDER THE RACING LAWS

Pursuant to G.L. c. 128A, §5C, both rebating and wagering on credit are currently prohibited in Massachusetts. On the other hand, gaming on credit, rebating, and other modern marketing techniques applicable to gaming are permitted under the Expanded Gaming Act. Part of the modernization of pari-mutuel wagering involves bringing it up to a status equivalent with that of gaming in terms of available marketing techniques and

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of the 19% goes to the host track for purses, and 8.75% of the 19% takeout and 11.75% of the 26% takeout is retained by the guest track, of which at least 3.5% of that retained amount is paid to purses; if the host track is outside Massachusetts, between 4% and 7.5% goes to purses/horsemen. Under c. 128C, §5, if simulcasting harness races as a guest track, when the host track is within Massachusetts, 5% of the 19% takeout goes to purses at the host track, 7.33% of the 19% takeout is retained by the guest track, 3.5% of which goes to purses; 6% of the 26% takeout goes to purses at the host track, and of the 11% of the 26% retained by the guest track, at least 3.5% goes to purses; if the host track is outside Massachusetts, between 4% and 7.5% of the remainder of the amount retained by the guest track from the 19% and 26% takeouts are paid to purses/horsemen. Section 60 of the Gaming Act provides that 80% of the funds in the Race Horse Development Fund shall be deposited in an interest-bearing purse account for the benefit of the horsemen.

the like. Moreover, to the extent that a current racing meeting licensee is also awarded a gaming license, it would be difficult, in terms of regulatory necessity, to justify why such a licensee should be statutorily entitled to offer wagering on credit to customers of its gaming operation but not to those of its pari-mutuel operation. Furthermore, pursuant to G.L. c. 128A, §5C, it is already permissible to deposit money into a betting account "through the use of a credit card . . . issued by a federal or state-chartered bank . . . ." Thus, notwithstanding the prohibition of the extension of credit by a licensee, credit may be used by a patron to maintain the requisite minimum balance in that betting account. The apparent distinction drawn there between whether it is a bank or a licensee that is extending the credit, is not present for the gaming licensee, and should be similarly removed for the pari-mutuel licensee.

The modern racing business model has changed. As pointed out by Suffolk Downs in its written comments to the Commission, "racing facilities across the country commonly provide volume discounts, rewards or rebates to customers as an effective marketing tool." The national trend (described by Suffolk Downs as a "well-established business practice"), as shown in the accompanying spread sheet, is not to prohibit these marketing tools. The Commission is aware of no data that suggest that there are adverse consequences resulting from pari-mutuel rebating or wagering on credit that are distinguishable from those that might be attendant to rebating or wagering on credit in a gaming context. Consequently, pari-mutuel wagering and gaming, at least in these respects, ought to be treated alike.

IV. CAPITAL IMPROVEMENTS AND PROMOTIONAL TRUST FUNDS

Under current law, the Commissioners serve as trustees for the Running Horse Capital Improvements Trust Fund, the Running Horse Promotional Trust Fund (both for thoroughbreds), the Harness Horse Capital Improvements Trust Fund, and the Harness Horse Promotional Trust Fund (both for standardbreds). Use of the capital improvement fund is limited to use for "alterations, additions, replacements, changes, improvements or major repairs to or upon the property owned or leased by the licensee and used by it for the conduct of racing, but not for the cost of maintenance or of other ordinary operations." M.G.L. c. 128A, §5(g). Use of promotional funds is limited to use for "promotional marketing, to reduce the costs of admission, programs, parking and concessions and to offer other entertainment and giveaways." *Id.* Under current law, these funds are replenished by licensees' deposits of the "breaks"[9] and other statutorily identified takeouts into these funds. To use them, the licensee is required to submit "detailed business plans describing the specific promotions and capital improvements contemplated" (*Id.*), and the Commissioners, as trustees, review the proposals. The Commissioners are required to "hire the services of architectural and engineering consultants, or the services of such other consultants as they deem appropriate, to advise them generally and to evaluate proposed capital improvement and promotional projects submitted to them for their approval." *Id.* This is a cumbersome and costly process. The

[9] "Breaks" are defined by G.L. c. 128A, §1 as ", the odd cents over any multiple of 10 cents of winnings per $1 wagered."

Commission's broad racing and gaming powers under the Racing Laws and the Expanded Gaming Act in connection with the regulation of plant and equipment standards are much more effective tools with which to police the maintenance of appropriate standards for racing and gaming licensees' premises. For example, the Commission is empowered to require an applicant for licensure to include in its license application a capital expenditure budget, particularizing how the sum budgeted is to be expended.

Abolishing the current system, and allowing the licensee to retain the remainder of the "breaks," after limited takeouts, subject to an accounting to the Commission, affords the licensee more flexibility in allocating maintenance dollars (and speedier access to those dollars) to where they might best be spent to improve the value of the product it offers to its customers. The Proposed New Chapter provides that 20% of the breaks from each racing and §7(b) licensee, is to be placed , under the supervision of the Commission, in a Backstretch Improvement Fund, solely for maintaining infrastructure on the backstretch and for improving the living and working conditions of employees and horses housed on the backstretch. Moreover, the Proposed New Chapter permits racing meeting licensees to retain the remaining 80% of their breaks, subject to an accounting to the Commission; but §7(b) licensees must pay their remaining 80% to the Commission to defer costs of regulating racing, including enhanced equine drug testing, and ensuring the safety and welfare of racing's participants.

This restructuring of the breaks' allocation would reduce the current regulatory burden on the track licensees associated with capital improvements and promotional investment. At the same time, the restructuring ensures that, for the first time, backstretch infrastructure needs, and the health and welfare of those who live and work there, will be elevated to the status of direct statutory funding from racing-sourced revenues. This will put Massachusetts in the vanguard of a nascent national effort to focus on backstretch conditions, regulatory sign-on to which is already in place in New York, Pennsylvania and Kentucky.

CONCLUSION

The Commission thanks the Legislature for the opportunity to make recommendations regarding the restructuring of the Commonwealth's racing laws to modernize them, to bring them into line with best practices in the industry, and to provide a uniform and fair framework for simulcasting by both racing and non-racing licensees. To promote stability in simulcasting for both gaming and racing licensees, the Commission also urges the Legislature to end the former practice of including sunset provisions in simulcasting statutes.

CHART

STATE	SIMULCASTING FRAMEWORK	WAGERING ON CREDIT AND REBATING	GAMING SIMULCASTING	BACKSTRETCH IMPROVEMENTS
MASSACHUSETTS	Licensees are permitted to simulcast out-of-state racing so long as they also carry in-state signals at a statutorily set price. The licensee also is required to pay a fee to the in-state host track for their signal. The guest track is also required to pay a premium to the in-state licensee conducting the same type of racing (running or harness) as that which is being simulcast for each signal the guest track receives. (MGL 128A and 128C)	No wagering on credit permitted. (MGL c 128A section 5C) Gambling on credit for gaming is permitted. (MGL c 23K) Rebates on wagering are statutorily prohibited (MGL c 128A section 5C)	Section 7(b) of Ch. 23K allows for casinos to obtain a simulcasting license. The 10% takeout and distributions are different from the simulcasting provisions that are tied to live racing.	No earmark for backstretch improvements
MICHIGAN	If conducting interstate simulcasting, a track must receive all available "city track" signals. Also, if conducting interstate simulcasting, the track must waive any rights it has to restrict simulcasting of other tracks per the Interstate Horse Racing Act of 1978. All tracks in a city area are required to make their signal available to all in-state tracks outside a 12 mile radius, with a cap of 3% charge for the signal. Additionally, city tracks are required to receive signals from tracks outside the 12 mile radius. If a racing meeting wants to simulcast a different breed than it is licensed to race it must obtain permission of all race meeting licensees in a certain area that are licensed to race that breed at their live racing meeting. (M.C.L.A. 431.318)	No prohibition on wagering on credit in the statute or regulations. Wagering on credit is allowed for casino gaming. (M.C.L.A. 432.209 Section 9(8)) No prohibition on rebates in the statute or regulations	Simulcasting at casinos is not allowed. (M.C.L.A. 432.209b.) However, if casino licensee is permitted to simulcast, it shall comply with all applicable provisions of the horse racing statutes. (M.C.L.A. 432.212 (9))	No earmark for backstretch improvements

NEW YORK	A facility conducting interstate simulcasting must carry intrastate signals. If a signal is sent to one guest track it is usually required to be made available to all guest tracks and off-track betting offices. If agreements are unable to be made between the in-state host and guest tracks then binding arbitration takes place. Written agreements are required between the host and guest tracks and other tracks running horses of the same breed (although consent cannot be withheld if the other live racing track is more than 30 miles away). OTBs are required to get letters of consent from tracks conducting the same type of meeting during the period in which simulcasting is proposed. OTBs must also receive written permission of tracks in a 40 mile range. If OTBs receive interstate simulcasting then they must carry in-state simulcasting and accept wagers on the same. (McKinney's Racing, Pari-Mutuel Wagering and Breeding Law § 1007-09, 1014-17)	Prohibition against wagering on credit (NY RAC PARI-M § 104-b) (there is proposed legislation to repeal this section) No prohibition on rebates in the statute or regulations	A portion of gaming revenue from video gaming facilities (located only at racetracks) goes to support racing, breeding, and purses. See, N.Y. Tax Law § 1612 Simulcasting at Tribal Casinos does not seem to be allowed.	At least once annually the board shall, together with the track operator and representatives of the horsemen's organization and representatives of the jockeys organization representing licensed jockeys, inspect the entire facility, including the area commonly referred to as the backstretch, in order to determine whether the capital improvement plan submitted by the corporation for board approval includes adequate provision for expenditures relating to the continued health, safety and well-being of patrons, jockeys, backstretch personnel and the horses in their care. Different percentages are paid into the fund depending on whether it is a Thoroughbred or Harness track NY RAC PARI-M §236, §237(2)(b), and §319(2)(a),(b)
NEW JERSEY	Tracks are permitted to receive interstate simulcasts if the guest track agrees to simulcast any races which an in-state host track wishes to transmit to it. (NJ Simulcast Racing Act, 5.5-111 to 126)	Pari-Mutuel wagering or casino gambling on credit is prohibited. (N.J.S.A. 5:12-101) Telephone account wagering for racing is allowed to be funded via credit card. (N.J.S.A. 5:5-142) No prohibition on rebates in the statute or regulations	Casinos are permitted to simulcast, with different take-outs and distributions from those in live racing. Annual amounts from gaming are allocated to supporting horse racing in New Jersey. Taxes are statutorily authorized upon internet wagering to go funding racing. (N.J.S.A. 5:12-198, N.J.S.A. 5:12-225) Funds from simulcasting at casinos go back to the casinos in part, and to the racetracks in part, based on	No earmark for backstretch improvements

			financial need. N.J.S.A. 5:12-205	
PENNSYLVANIA	The simulcasts shall be limited to horse races conducted at facilities outside of PA and televised to race track enclosures within PA. 4 P.S. § 325.216 However, the State Horse Racing Commission and the State Harness Racing Commission shall permit intrastate simulcasting of live racing between two licensed corporations, subject to requirements for the amount of live racing days and number of races per day. 4 P.S. § 325.234	Allows account wagering funded by credit card. Winnings may also be credited to the account. (4 P.S. § 325.218) Slot machine licensees may not extend credit for use with the slot machines, however, slot machine licensees who also have table games may extend credit for the table games as well as the slots (in the form of checks or cash equivalents) (Proposed legislation prohibits licensees who also have table games from extending credit). (4 Pa.C.S.A. § 1504) No prohibition on rebates in the statute or regulations	No simulcasting without live racing. 4 Pa.C.S.A. § 1303(d)(2),(4) A percentage of each gaming licensee's revenue goes into a Race Horse Development Fund. The fund is only distributed to Category 1 licensees with live racing. Allocation of the fund is very similar to MA's. (4 Pa.C.S.A. §1405).	A slot machine licensee or management company that also conducts racing shall file a report of planned future improvements to the licensed racetrack backside area with the Board no later than the 30 days following the end of each calendar year. The report must include: (1) A list of the improvements to be undertaken over the next 3 years. (2) The projected start date and completion date of each improvement. (3) The estimated cost of each improvement. (4 Pa.C.S.A. § 1404)(PA code 441a.22)

DELAWARE	For inter and intrastate simulcasting- each host association, if requested, may contract with an authorized guest association. No statutorily mandated fees or premiums for simulcasting signals; all done via private contract. (DE Administrative Code: 3 Del. Admin. Code 501-9.0)	No prohibition on wagering on credit in the statute or regulations No prohibition on rebates in the statute or regulations	DE's charitable gaming / bingo do not provide for revenue to racing. Video lottery facilities are only allowed at racetracks, and a percentage goes to the purses and improving the breed of horses. (3 Del.C. § 10048)	No earmark for backstretch improvements
KENTUCKY	Interstate simulcasting is allowed so long as the guest track remits to the host track the amounts provided in the statute. Additionally, an in-state guest track which receives the interstate simulcasts must offer the simulcasts to all receiving tracks and simulcast facilities through KY's intertrack wagering system. A guest track must conduct intertrack simulcasting on all live races of all in-state host tracks on any day on which it receives interstate signals. If more than one track conducts live racing at the same time on the same day then no track / simulcast facility may receive interstate simulcasts unless all tracks running live races agree to the interstate simulcasts. (KRS § 230.377-380)	Agreements to advance credit for gambling or wagering are void. Kentucky Off-Track Betting, Inc. v. McBurney (Ky. 1999) 993 S.W.2d 946 However, the commission may establish regulations for adding money to a telephone account for wagering via credit card. (KRS § 230.379) No prohibition on rebates in the statute	No gaming in KY.	.05% of the pari-mutuel pool of tracks averaging a daily handle of less than $1,200,000 goes into the Backside Improvement Fund. The fund is used to improve the backside of Thoroughbred racing associations averaging $1,200,000 or less pari-mutuel handle per racing day on live racing. The fund shall be used to promote, enhance, and improve the conditions of the backside of eligible racing associations. Conditions considered shall include but not be limited to the living and working quarters of backside employees. KRS § 230.218, KRS § 230.3615

MINNESOTA	Simulcast is permitted if there are agreements with the host and guest tracks and the horsemen's organization. There are restrictions on the "class" (A,B,C,D) of licensee and their ability to simulcast. (M.S.A. § 240.13)	No prohibition on wagering on credit in the racing or gaming statutes No prohibition on rebates in the racing or gaming statutes	Simulcasting is limited to racing licensees (M.S.A. § 240.13)	No earmark for backstretch improvements
LOUISIANA	Simulcasting facilities are permitted subject to geographical and ownership restrictions. No mention in the statute regarding statutory fees or premiums between the tracks and the simulcasting facilities. (LSA-R.S. 4:213, LSA-R.S. 4:149.2, LSA-R.S. 4:214)	Account wagering is legal, but no mention in the statute on how the account may or may not be funded. LSA-R.S. 4:149.5. No prohibition on refunds in the racing statutes	Simulcasting is limited to racing licensees (who may obtain licenses to conduct off-track wagering if they are a certain "class" of licensee) (LSA-R.S. 4:214)	No earmark for backstretch improvements
MARYLAND	No mention in the statute regarding any requirement to carry other instate signals. No set fee / premium structure in the statute, all fees are handled via private contract. MD BUS REG § 11-804, 804.1, 804.2, 808, 809, 818, 826.	A licensee may not extend credit for wagering on pari-mutuel betting (MD BUS REG § 11-802). No prohibition on rebating in the statute.	Simulcasting may be done via "satellite simulcast facilities." The facilities are subject to geographic restrictions. The takeouts are the same as those of the host track. (MD BUS REG §11-818, 819, 826)	For Harness tracks: From the licensee's share of the takeout, the licensee shall allocate 0.50% on the part of an average handle over $150,000 to pay for (in part) maintenance of proper living conditions in the backstretch. MD BUS REG § 11-615

ATTACHMENT I

WRITTEN SUBMISSIONS OF THE NEW ENGLAND HORSEMEN'S BENEVOLENT AND PROTECTIVE ASSOCIATION, INC.

The following modifactions to MGL Chapters 128A and 128C are recommended by the thoroughbred Horsemen of Massachusetts. November 14, 2012

Racing (Operations/Facilities)

Chapter 128A		Comments
Section	Sub-Section	
1	definition	Clarify "adjacent places" as including, but not limited to, an abutting barn area with a minimum of 1200 stalls.
4		Clarify that the licensee must take immediate action to reschedule cancelled race days and cancelled races to the satisfaction of the horsemen.

Chapter 128C		Comments
Section	Sub-Section	
2	(5)	Clarify that the licensee must take immediate action to reschedule cancelled race days and cancelled races to the satisfaction of the horsemen.

Recognition of Horsemen's Standing as an Integral Party

Chapter 128A		Comments
Section	Sub-Section	
3	i	Recognize and consider financial interests of horsemen.
5	g	Require horsemen's input prior to any decisions by regulatory authority to approve projects and award funding from Capital Improvements Fund.
5	g	Require horsemen's input prior to any decisions by regulatory authority to approve projects and award funding from Promotional Fund.

Provide Notice & Opportunity for Input to Horsemen Prior to Regulatory Authority Decisions

Chapter 128A		Comments
Section	Sub-Section	
3	e	Provide notice & opportunity for input to Horsemen.
3	i	Provide notice & opportunity for input to Horsemen.
3	k	Provide notice & opportunity for input to Horsemen.
3	m	Provide notice & opportunity for input to Horsemen.

Provide Copies of Records to Horsemen

Chapter 128A		Comments
Section	Sub-Section	
6		Provide records to Horsemen.

Chapter 128C		Comments
Section	Sub-Section	
2	(5)	Provide records to Horsemen.

Purse Account Income

Chapter 128A		Comments
Section	Sub-Section	
5	j	Clarify language that the 3.5% is paid from licensee's proceeds and not the Horsemen's purse account.

Chapter 128C		Comments
Section	Sub-Section	
2	(1)	Insert requirement that Premiums must be paid on international simulcasting of thoroughbred racing.

2	(1)	Remove language allowing free Premiums for "special events" on thoroughbred simulcasting.
2	(2)	Insert requirement that Premiums must be paid on international simulcasting of thoroughbred racing.
2	(2)(c)(ii)	Remove language allowing free Premiums for "special events" on thoroughbred simulcasting.
2	(3)	Remove language allowing free Premiums for "special events" on thoroughbred simulcasting.
2	(4)(c)(ii)	Change the 2% Premium to 10%, which is the fee that should be allocated to thoroughbred purses for any thoroughbred simulcast wager taken at any venue in Massachusetts.
2	(4)(c)(ii)	Insert requirement that Premiums must be paid on international simulcasting of thoroughbred racing.
2	(4)(c)(ii)	Remove language allowing free Premiums for "special events" on thoroughbred simulcasting.
2	(4)(c)(ii)	Remove language allowing free Premiums for 12 weeks of thoroughbred simulcasting.
2	(5)	Remove language allowing free Premiums on thoroughbred simulcasting during the month of August.
2	(5)	In the fifth paragraph after all phrases of "racing meeting" insert the phrase "or simulcasting licensee". The current language limits approval to "racing meeting" licensees and must be changed to include casinos and possible off-track-betting facilites.
2	(5)	In the fifth paragraph insert after the last word of the last sentence "; provided that each racing meeting licensee or simulcast licensee continues to render full payment of the 10% Premium on thoroughbred simulcast wagering within 30 days from the date of the simulcasting wager."
3A		Since some racing meeting licensees and all casino based simulcasting licensees do not have purse accounts for Horsemen, all unclaimed simulcast wagers should accrue to the purse accounts of the Horsemen according to the breed upon which the unclaimed wager was placed.
4		In line 12 of the sixth paragraph, remove the phrase "4 per cent and not more than 7.5" and replace it with the word "10".

Chapter 23 Sec. 104 - Analysis

November 15, 2012

Racing Facility	Live Race Days	2000 Live Handle	
		Live On-Track	Live Signal Sent
Suffolk Downs (TB)	148	26,318,978	104,861,162
Northampton (TB)	9	2,357,536	0
Wonderland (G)	350	23,213,185	39,618,076
Raynham (G)	570	54,184,720	44,133,043
Plainridge (S)	150	3,434,254	15,788,585
Totals	**1,227**	**109,508,673**	**204,400,866**

Racing Facility	2000 Total (received) Simulcast	Simulcast (Received) By Breed			Percentage by Breed		
		Thoroughbred	Standardbred	Other Breeds	T - Bred	S - Bred	Other
Suffolk Downs (TB)	143,759,661	unavailable	unavailable	unavailable	unavailable	unavailable	unavailable
Northampton (TB)	0	0	0	0	0	0	0
Wonderland (G)	49,746,519	unavailable	unavailable	unavailable	unavailable	unavailable	unavailable
Raynham (G)	62,794,851	unavailable	unavailable	unavailable	unavailable	unavailable	unavailable
Plainridge (S)	52,669,732	unavailable	unavailable	unavailable	unavailable	unavailable	unavailable
Totals	**308,970,763**	unavailable	unavailable	unavailable	unavailable	unavailable	unavailable

Racing Facility	Live Race Days	2010 Live Handle	
		Live On-Track	Live Signal Sent
Suffolk Downs (TB)	101	8,878,836	94,185,289
Wonderland (G)	0	0	0
Raynham (G)	0	0	0
Plainridge (S)	100	1,584,498	9,911,390
Totals	**201**	**10,463,334**	**104,096,679**

Racing Facility	2010 Total (received) Simulcast	Simulcast (Received) By Breed			Percentage by Breed		
		Thoroughbred	Standardbred	Other Breeds	T - Bred	S - Bred	Other
Suffolk Downs (TB)	131,637,340	129,403,757	2,233,583	0	98	2	0
Wonderland (G)	11,194,266	unavailable	unavailable	unavailable	unavailable	unavailable	unavailable
Raynham (G)	42,817,404	18,305,533	unavailable	unavailable	43	unavailable	unavailable
Plainridge (S)	48,064,038	33,006,234	15,057,804	0	69	31	0
Totals	**233,713,048**	**180,715,524**	**17,291,387**	**0**	**77**	**7**	**0**

FACTS EVIDENCING NEED TO COMPLETELY
REVISE CHAPTERS 128A and 128C

- The statute was written in 1992 when simulcasting was in its infancy and revised in 2000 at a time when the simulcast industry was evolving and had very limited history to consider
- The revised 2000 statute has been followed by 12 years of change and expansion of the simulcast industry
- Pursuant to the 2000 statute, the Thoroughbred Industry subsidized the Greyhound and Standardbred Industries by below-market premiums and numerous events and time periods when no premium was due.
- The statute as enacted in 2000 established a fund from which the Massachusetts Racing Commission was to allocate funds to mitigate damages, recognizing that the expansion of rights to the Greyhound and Standardbred facilities to simulcast thoroughbred performances and the below-market (and free) premiums would negatively impact the thoroughbred industry
- Despite the support the Greyhound Industry continued to decline and is no longer operational in Massachusetts.
- Despite the support the Standardbred Industry continued to decline at a much faster rate than the thoroughbred industry.
- While the Standardbred Industry has prospered in other states such as New York and Kentucky, its product has not been well received or supported in Massachusetts
- Since the year 2000 when the statute was written, 1of the 3 Industries the statute addresses (Greyhounds) is no longer operational Massachusetts.
- Since the year 2000 when the statute was written, 2 of the 4 operational facilities the statute affects (Wonderland and Raynham) no longer conduct live racing.
- Wonderland has closed
- When the Legislature enacted Chapter 23 Section 104, it provided an expiration date in recognition that circumstances would change and the statute should be revised. The legislature anticipated a significant redirection of the gambling dollar from horse racing to slot machines and casinos that would negatively impact the agricultural network supported by horse racing.
- The Legislature reviewed the issue of simulcast premiums when it recently enacted legislation providing for expanded gaming. The Legislature determined that a 10% premium should be paid by Race Books for thoroughbred simulcasts
- Pursuant to the 2000 statute, the Plainridge Standardbred Facility pays only a 2% premium and no premium at all on numerous events.
- Pursuant to the 2000 statute, the Raynham off-track betting Facility pays only a 3% premium and no premium at all on numerous events.
- Raynham is presently an off-track betting facility that should not be subsidized by live racing.
- Chapter 23K, Section 60(b) of the recently enacted legislation providing for expanded gaming established a Horse racing Committee to make recommendations on how the funds received from expanded gaming should be distributed between the Thoroughbred and Standardbred racing facilities to support the Thoroughbred and Standardbred Industries.
- The distributions pursuant to Chapter 23K, Section 60(b) evidence a legislative intent to replace by that legislation the subsidies provided by the 2000 legislation to the Standardbred industry.

THE ISSUE IS HOW TO REWRITE RATHER THAN WHETHER TO REWRITE

Massachusetts Simulcasting (received) Handle by Breed (2006 through 2010)

Year	Simulcast Handle (received) Source	Thoroughbred	Harness	Total	Suffolk % of Total	Plainridge % of Total
2006	Simul - On Track (received)	129,511,718	58,489,860	188,001,578	68.9	31.1
	Reduction for other breed	(3,667,503)	(40,609,932)	na	na	na
	Credit for appropriate breed	37,850,000	3,667,503	na	na	na
	Credit from Raynham (by breed)			na	na	na
	Credit from Wonderland (by breed)					
	Total Breed-Specific Simulcasting	**163,694,215**	**21,547,431**	**185,241,646**	**88.4**	**11.6**
2007	Simul - On Track (received)	131,252,935	57,933,998	189,186,933	69.4	30.6
	Reduction for other breed	(3,166,496)	(39,343,544)	na	na	na
	Credit for appropriate breed	39,343,544	3,166,496	na	na	na
	Credit from Raynham (by breed)	25,220,433		na	na	na
	Credit from Wonderland (by breed)	11,198,400				
	Total Breed-Specific Simulcasting	**203,848,816**	**21,756,950**	**225,605,766**	**90.4**	**9.6**
2008	Simul - On Track (received)	117,764,929	50,871,872	168,636,801	69.8	30.2
	Reduction for other breed	(2,637,244)	(33,617,638)	na	na	na
	Credit for appropriate breed	33,617,638	2,637,244	na	na	na
	Credit from Raynham (by breed)			na	na	na
	Credit from Wonderland (by breed)					
	Total Breed-Specific Simulcasting	**148,745,323**	**19,891,478**	**168,636,801**	**88.2**	**11.8**
2009	Simul - On Track (received)	130,672,147	50,228,514	180,900,661	72.2	27.8
	Reduction for other breed	(2,024,519)	(33,367,851)	na	na	na
	Credit for appropriate breed	33,367,851	2,024,519	na	na	na
	Credit from Raynham (by breed)	19,215,700		na	na	na
	Credit from Wonderland (by breed)					
	Total Breed-Specific Simulcasting	**181,231,179**	**18,885,182**	**200,116,361**	**90.6**	**9.4**
2010	Simul - On Track (received)	131,637,340	48,064,038	179,701,378	73.3	26.7
	Reduction for other breed	(2,233,583)	(33,006,234)	na	na	na
	Credit for appropriate breed	33,006,234	2,233,583	na	na	na
	Credit from Raynham (by breed)	18,305,533		na	na	na
	Credit from Wonderland (by breed)					
	Total Breed-Specific Simulcasting	**180,715,524**	**17,291,387**	**198,006,911**	**91.3**	**8.7**
2011	Simul - On Track (received)			0	#DIV/0!	#DIV/0!
	Reduction for other breed	(2,066,913)	(31,741,259)	na	na	na
	Credit for appropriate breed			na	na	na
	Credit from Raynham (by breed)			na	na	na
	Total Breed-Specific Simulcasting	**(2,066,913)**	**(31,741,259)**	**-33,808,172**		

Source: • MA State Racing Commission - Annual Reports
• Premiums reported by Suffolk Downs and estimates by NEHBPA

Note: **The above simulcasting (received) annual harness amounts have not been reduced by either the 12 premium-free weeks of thoroughbred simulcasting nor the 15 premium-free Special Thoroughbred Events.**

Note: **The majority of Plainridge simulcast (received) and Raynham Simulcast (received) is from out-of-state thoroughbred signals.**

Percentage of *SIMULCAST SIGNAL* (*Received On Track*)

Total Simulcast Handle (received) by breed

Year	Thoroughbred	Harness
2006	88.4	11.6
2007	90.4	9.6
2008	88.2	11.8
2009	90.6	9.4
2010	91.3	8.7
2011		
Avg.	89.8	10.2

Revenue Source	Number of Machines	Annual Drop ($309/mach-day)	Percent	Slot Rev Assessment	Thoroughbred- Standardbred Split		Thoroughbreds - Annual Purse Revenue & And Allocations								Avg. Daily Purse	AVG. Purse /Race
					80% Thoroughbreds	20% Standardbreds	80% Slots share	16% MA Breeders	4% Benefits	MGL	Gross Purse	Breeders 3.5%	HBPA 2.5%	Paid Purse	125 days	125 days
Slot Parlor	1,250	140,981,250	9.0000	12,688,313	10,150,650	2,537,663	8,120,520	1,624,104	406,026							
Casinos (Pool)	10,000	1,127,850,000	0.6250	7,049,063	5,639,250	1,409,813	4,511,400	902,280	225,570							
Total Revenue				19,737,375	15,789,900		12,631,920	2,526,384	631,596	7,000,000	19,631,920	648,224	463,017	18,520,679	148,165	16,463
							Purse 3.5%	442,117								
							New S Breeders	2,968,501								

Revenue Source	Number of Machines	Annual Drop ($309/mach-day)	Percent	Slot Rev Assessment	Thoroughbred- Standardbred Split		Thoroughbreds - Annual Purse Revenue & And Allocations								Avg. Daily Purse	AVG. Purse /Race
					80% Thoroughbreds	20% Standardbreds	80% Slots share	16% MA Breeders	4% Benefits	MGL	Gross Purse	Breeders 3.5%	HBPA 2.5%	Paid Purse	125 days	125 days
Slot Parlor	1,250	140,981,250	9.0000	12,688,313	10,150,650	2,537,663	8,120,520	1,624,104	406,026							
Casinos (Pool)	9,000	1,015,065,000	0.6250	6,344,156	5,075,325	1,268,831	4,060,260	812,052	203,013							
Total Revenue				19,032,469	15,225,975		12,180,780	2,436,156	609,039	7,000,000	19,180,780	633,328	452,377	18,095,075	[illegible] 144,761	[illegible] 16,005
							Purse 3.5%	426,327								
							New S Breeders	2,862,483								

Revenue Source	Number of Machines	Annual Drop ($309/mach-day)	Percent	Slot Rev Assessment	Thoroughbred- Standardbred Split		Thoroughbreds - Annual Purse Revenue & And Allocations								Avg. Daily Purse	AVG. Purse /Race
					80% Thoroughbreds	20% Standardbreds	80% Slots share	16% MA Breeders	4% Benefits	MGL	Gross Purse	Breeders 3.5%	HBPA 2.5%	Paid Purse	125 days	125 days
Slot Parlor	1,250	140,981,250	9.0000	12,688,313	10,150,650	2,537,663	8,120,520	1,624,104	406,026							
Casinos (Pool)	6,000	676,710,000	0.6250	4,229,438	3,383,550	845,888	2,706,840	541,368	135,342							
Total Revenue				16,917,750	13,534,200		10,827,360	2,165,472	541,368	7,000,000	17,827,360	588,639	420,457	16,818,264	134,546	14,950
							Purse 3.5%	378,958								
							New S Breeders	2,544,430								

Average Purse Per Race East Coast Thoroughbred Racetracks - compiled by "The Thoroughbred Times"								
State	Thoroughbred Racetrack	2008 Avg. All Purses Purse/Race	State	Thoroughbred Racetrack	2009 Avg. All Purses Purse/Race	State	Thoroughbred Racetrack	2010 Avg. All Purses Purse/Race
New York	Saratoga	77,000	*Kentucky*	Keenland	74,120	*New York*	Saratoga	na
Kentucky	Keenland	68,000	*New York*	Saratoga	71,911	*New Jersey*	Meadowlands	na
New York	Belmont	51,887	*New York*	Belmont	53,799	*New Jersey*	Monmouth	65,112
Kentucky	Churchill Downs	50,404	*New York*	Aquaduct	40,513	*Kentucky*	Keenland	61,681
New York	Aquaduct	40,000	*Kentucky*	Churchill Downs	37,951	*Kentucky*	Churchill Downs	59,936
Florida	Gulfstream Park	34,000	*New Jersey*	Monmouth	36,835	*New York*	Belmont	38,627
New Jersey	Monmouth	33,504	*Florida*	Gulfstream Park	36,439	*Florida*	Gulfstream Park	34,132
New Jersey	Meadowlands	31,000	*Pennsylvania*	Philadelphia Park	30,559	*New York*	Aquaduct	31,719
Maryland	Pimlico	29,393	*New Jersey*	Meadowlands	30,380	*Maryland*	Pimlico	27,761
Pennsylvania	Philadelphia Park	25,643	*Maryland*	Pimlico	29,393	*Pennsylvania*	Philadelphia Park	27,184
Delaware	Delaware Park	24,756	*Delaware*	Delaware Park	27,302	*Delaware*	Delaware Park	23,922
Maryland	Laurel	20,000	*West Virginia*	Charles Town	20,287	*Pennsylvania*	Penn National	19,879
West Virginia	Charles Town	18,910	*Maryland*	Laurel	20,087	*West Virginia*	Charles Town	18,450
Florida	Calder	18,069	*Pennsylvania*	Penn National	19,772	*Maryland*	Laurel	18,237
Pennsylvania	Penn National	16,504	*Florida*	Calder	18,958	*Florida*	Calder	17,395
Florida	Tampa Bay Downs	16,000	*Florida*	Tampa Bay Downs	14,800	*Florida*	Tampa Bay Downs	14,737
New York	Finger Lakes	12,854	*New York*	Finger Lakes	13,581	*Kentucky*	Turfway Park	13,305
West Virginia	Mountaineer	12,606	*West Virginia*	Mountaineer	13,534	*New York*	Finger Lakes	13,096
Kentucky	Turfway Park	12,000	*Kentucky*	Turfway Park	11,511	*West Virginia*	Mountaineer	11,535
Massachusetts	Suffolk Downs	11,685	*Massachusetts*	Suffolk Downs	9,933	*Massachusetts*	Suffolk Downs	7,078
	Average All Purses	**30,211**		**Average All Purses**	**30,583**		**Average All Purses**	**na**

New England Horsemen's Benevolent and Protective Association, Inc.

A National Organization

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February 18, 2013

Stephen P. Crosby, Chairman
Massachusetts Gaming Commission
84 State Street Suite 720
Boston, MA 02109

Re: Comments on issues and recommendations regarding changes to Chapters 128A & 128C

Dear Chairman Crosby:

On behalf of the New England HBPA and the Massachusetts Thoroughbred Breeders Association, we are writing in response to your website solicitation requesting comments on the following issues that will be considered by the Gaming Commission.

The Racing Commission, working with the Gaming Commission, has taken measures and has allocated time to elicit and listen to our concerns throughout this process. The thoroughly transparent and fair treatment we have experienced in this process is greatly appreciated.

Issue I. Harmonizing simulcasting rights under the Racing Statues and the Gaming Act

Comment (a):
The common goal of racetracks, horsemen and state government is to achieve successful racing operations. Greater success will result in greater economic and agricultural benefits for Massachusetts such as retaining and creating permanent jobs, added economic boost to the Massachusetts economy far in excess of the incoming purse revenue, preservation and expansion of agricultural green space, and enhanced economic impact on the agricultural industry. Many states have conducted studies which demonstrate that a viable racing operation achieves and can exceed the results desired by their government.

A racing operation must deliver a competitive product to remain viable in these ever-changing times. As the Massachusetts Gaming Commission, Racing Commission, racetrack owners, horsemen and, ultimately, the state government work together to evaluate the current racing and simulcasting laws for improvements that will help to achieve the successful racing goals, we suggest that the primary target to assure viable live racing in Massachusetts is to reach a purse revenue level that will place our live product in a competitive position with the mid-range of the purse levels offered in the eastern United States.

Comment (b):
The revenue streams for racing purses are generated from contracts, simulcasting, wager profit-sharing formulas established by Massachusetts law and, eventually, from the gaming tax. Each of the many revenue items that comprise the total purse revenue are collectively intended to achieve a successful racing product. We recommend that as each issue is considered for revision of Chapter 128A or 128C, the issue should be evaluated for its specific impact (if any) on each component of the purse revenue stream. Such consideration should include an evaluation of the overall impact on the live racing product's competitiveness.

Comment (c):
Under the contractual agreement between Suffolk Downs and the thoroughbred horsemen, a substantial percentage of the net revenue realized from simulcasting is allocated to fund purses for races at Suffolk Downs. Present allocation of net revenue from simulcasting is consistent with the revenue sharing contracts of the vast majority of other racing jurisdictions. Since the thoroughbred horsemen of Massachusetts and their associated agricultural network have a significant financial interest in the revenue realized from simulcasting and since these entities were recognized by the Legislature as intrinsic entities that rely heavily on the legislative and regulatory framework of simulcasting, any discussion of policy involving fair and equitable treatment of entities directly involved in simulcasting must necessarily recognize that the horsemen and their associate agricultural network are substantial and integral entities whose interests must be protected by simulcast regulation.

Comment (d):
We welcome a clear direction that the Commission has the authority to regulate existing simulcasting licenses and that said authority clearly extends to gaming licensees that are granted simulcasting licenses.

.Comment (e):
We encourage a uniform regulatory framework that treats fairly and equitably all entities authorized to simulcast in Massachusetts and that said framework requires each simulcasting licensee to conform to the exact takeout percentages specified in chapter 128C.

Comment (f):
We support the licensing of additional non-racing venues for simulcasting in Massachusetts; provided that each such licensee contribute reasonable uniform percentages of each dollar wagered on a thoroughbred race (in-state or out-of-state), regardless of the location that the wager is accepted within Massachusetts.

Comment (g):
We agree that the Commission is obligated to enforce a payment of 10% of each wager received by a non-racing simulcasting licensee to the Race Horse Development Fund. We note that said fee recognizes the otherwise lack of obligation to support the economic and agricultural benefits of live racing and breeding in the Commonwealth of Massachusetts.

Issue II. HARMONIZING CURRENT SIMULCASTING FEES AND PREMIUMS

Comment (h):
We recommend exercising much caution when making comparisons to another state's racing practices, formulas and regulations. Each such comparison must be analyzed with great scrutiny as to their success and shortcomings in meeting their goals regarding racing, breeding and associated agricultural impacts. This is particularly true when evaluating those states that have gaming, since

their racing industries receive funding support directly from casino proceeds and at much higher levels than funding support received in Massachusetts via the Commonwealth's share of casino profits. The higher levels of casino funding allow much more flexibility to adjust practices, formulas and regulation such as takeouts, premiums, rebates and extension of wagering credit.

Comment (i):
In the absence of an alternative system of assuring that a portion of each wager made in Massachusetts on an out-of-state thoroughbred race is allocated to support Massachusetts thoroughbred racing, breeding and agriculture through the thoroughbred purse account, we oppose the elimination of premiums. The existing premium requirement compensates the local thoroughbred industry for reduction in on-site wagering that results from the availability of alternative venues for thoroughbred wagering at non-thoroughbred facilities. As the Federal Government has recognized in 15 US Code Chapter 57 (The Interstate Horseracing Act) by requiring the consent of a local horsemen's group for transmission of the signal of its races to other jurisdictions, venues that accept wagers on thoroughbred signals should be required to provide fair compensation to the source of the signal as a condition of receipt and use of the signal. In addition, the local horsemen's group should be compensated for dilution of its on-site customer base.

We recommend that the existing premiums should be changed to uniform percentages for each and every wager on an out-of-state thoroughbred race. All premiums should be substantially raised to reflect a fair and equitable share of all profits generated by simulcasting licensees' on thoroughbred wagering being applied to thoroughbred purses. With the elimination of greyhound dog racing in Massachusetts, the interest of the Commonwealth of Massachusetts in subsidizing the facilities that previously conducted greyhound dog racing has been eliminated. To the extent such facilities continue as simulcasting facilities, they no longer bear the expense of live racing so the prior subsidy intended to compensate for that expense should be eliminated.

Issue III. REBATING AND WAGERING ON CREDIT UNDER THE RACING STATUTES

Comment (j):
We are open and willing to participate in a discussion on the advantages and disadvantages of rebating and use of credit on pari-mutuel wagering. Since these issues will have entirely new impacts on our revenue stream, we would clearly like to understand how the costs and benefits would be applied and we would like to evaluate any projections upon which such changes would be based, prior to formulating our position. Since the licensee extending credit and/or granting rebates will necessarily be required to exercise its discretion and judgment in such matters, it appears that any economic risk must necessarily vest solely in the licensee.

Issue IV. CAPITAL IMPROVEMENTS AND PROMOTIONAL TRUST FUNDS.

Comment (k):
The funding formula for the Running Horse Capital Improvements Trust Fund currently receives 100% of the "breaks" (approximately $350,000 annually) as the Fund's sole revenue source from thoroughbred pari-mutuel wagering at Suffolk Downs. It appears that a portion of the current funding method will be removed from the Running Horse Capital Improvements Trust Fund revenue stream. If that is the intention, then this reduction will be very detrimental to the process of replacing deteriorated backside facilities.

Comment (l):
The revenue generated from pari-mutuel wagering on thoroughbred racing currently provides approximately 90% of the revenue allocated to the Harness Horse Capital Improvement Trust Fund, Running Horse Capital Improvement Trust Fund, Harness Promotional Trust Fund and the Running Horse Promotional Trust Fund. The balance of the revenue allocated to these funds is generated from pari-mutuel wagering on standardbred racing.

The Trust Funds have not been adequate to accomplish their objective. A reduction in the funding allocation will be contrary to legislative policy that was instituted to enhance horse racing and its associated agricultural network.

Comment (m):
While the current Trust Fund system applicable to capital improvements and promotional activities of racing meeting licensees may be outdated, it should be supplemented by a new source of funding that provides resources adequate to accomplish the objectives of the Trust Funds and determines the manner in which all such resources are expended.

Comment (n):
Since the licensees and the horsemen are both significantly and materially affected by the purpose and manner in which such funds are expended, we suggest that both the licensee and the representative organization of the horsemen racing at the licensee's facility should be formally included in the project evaluation and priority process prior to final decisions on expenditures from the Trust Funds.

Comment (o):
We support the recommendation to earmark funds exclusively for backstretch infrastructure improvements.

Comment (p):
We suggest that all "breaks" and "unclaimed winnings" from wagers placed at non-racing simulcasting facilities should be deposited into the Race Horse Development Fund, in the identical manner that the existing non-live racing simulcasting licensee was mandated in the 2011 gaming law.

Thank you for your consideration and for providing us with an opportunity to offer our comments.

Sincerely,

Anthony Spadea, President
New England HBPA

George Brown, Chairman
MA Thoroughbred Breeders Association

Cc:
Gayle Cameron, Commissioner, MA Gaming Commissioner
Dr. Jennifer Durenberger, Executive Director, MA Racing Commission

New England HBPA
Thoroughbred Purse Revenue Data

Premium Revenue for Thoroughbred Purse Account				
Premiums	2009	2010	2011	2012
Plainridge	500,294	483,349	477,407	430,721
Raynham	576,471	549,166	431,787	432,269
Wonderland	123,733	60,549	na	na
Premiums - Total	1,200,498	1,093,064	909,194	862,990

Racehorse Development Fund - Gaming Revenue				Total	RHDF Split		Thoroughbreds - Annual Purse Revenue & And Allocations								Avg. Daily	Avg.
							RHDF Thoroughbred Distribution			Contracts	Gross	Asst.	NEHBPA	Paid	Purse	Purse /Race
Revenue Source	Number of Machines	Annual Taxable Revenue **	MGL Percent	RHDF Income	Thoroughbred 80%	Standardbred 20%	80% Slots share	16% MA Breeders	4% Benefits	& MGL	Purse	Fund	2.5%	Purse	125 days	125 days
Slot Parlor	1,250	123,643,750	9.0000	11,127,938	8,902,350	2,225,588	7,121,880	1,424,376	356,094							
Casino Slots	12,000	1,186,980,000	0.6250	7,418,625	5,934,900	1,483,725	4,747,920	949,584	237,396							
Table Games	300	390,258,000	0.6250	2,439,113	1,951,290	487,823	1,561,032	312,206	78,052							
Poker Tables	100	21,754,000	0.6250	135,963	108,770	27,193	87,016	17,403	4,351							
Total Revenue			Totals	21,121,638	16,897,310	4,224,328	13,517,848	2,703,570	675,892	8,632,968	22,150,816	72,500	538,451	21,538,052	172,304	19,145
							Purse 3.5%	473,125								
							New $ Breeders	3,176,694								

Racehorse Development Fund - Gaming Revenue				Total	RHDF Split		Thoroughbreds - Annual Purse Revenue & And Allocations								Avg. Daily	Avg.
							RHDF Thoroughbred Distribution			Contracts	Gross	Asst.	NEHBPA	Paid	Purse	Purse /Race
Revenue Source	Number of Machines	Annual Taxable Revenue **	MGL Percent	RHDF Income	Thoroughbred 80%	Standardbred 20%	80% Slots share	16% MA Breeders	4% Benefits	& MGL	Purse	Fund	2.5%	Purse	125 days	125 days
Slot Parlor	1,250	123,643,750	9.0000	11,127,938	8,902,350	2,225,588	7,121,880	1,424,376	356,094							
Casino Slots	10,000	989,150,000	0.6250	6,182,188	4,945,750	1,236,438	3,956,600	791,320	197,830							
Table Games	300	390,258,000	0.6250	2,439,113	1,951,290	487,823	1,561,032	312,206	78,052							
Poker Tables	100	21,754,000	0.6250	135,963	108,770	27,193	87,016	17,403	4,351							
Total Revenue			Totals	19,885,200	15,908,160	3,977,040	12,726,528	2,545,306	636,326	8,632,968	21,359,496	72,500	519,151	20,766,033	166,128	18,459
							Purse 3.5%	445,428								
							New $ Breeders	2,990,734								

Racehorse Development Fund - Gaming Revenue				Total	RHDF Split		Thoroughbreds - Annual Purse Revenue & And Allocations								Avg. Daily	Avg.
							RHDF Thoroughbred Distribution			Contracts	Gross	Asst.	NEHBPA	Paid	Purse	Purse /Race
Revenue Source	Number of Machines	Annual Taxable Revenue **	MGL Percent	RHDF Income	Thoroughbred 80%	Standardbred 20%	80% Slots share	16% MA Breeders	4% Benefits	& MGL	Purse	Fund	2.5%	Purse	125 days	125 days
Slot Parlor	1,250	123,643,750	9.0000	11,127,938	8,902,350	2,225,588	7,121,880	1,424,376	356,094							
Casino Slots	8,000	791,320,000	0.6250	4,945,750	3,956,600	989,150	3,165,280	633,056	158,264							
Table Games	250	325,215,000	0.6250	2,032,594	1,626,075	406,519	1,300,860	260,172	65,043							
Poker Tables	80	17,403,200	0.6250	108,770	87,016	21,754	69,613	13,923	3,481							
Total Revenue			Totals	18,215,051	14,572,041	3,643,010	11,657,633	2,331,527	582,882	8,632,968	20,290,601	72,500	493,080	19,723,208	157,786	17,532
							Purse 3.5%	408,017								
							New $ Breeders	2,739,544								

Racehorse Development Fund - Gaming Revenue				Total	RHDF Split		Thoroughbreds - Annual Purse Revenue & And Allocations								Avg. Daily	Avg.
							RHDF Thoroughbred Distribution			Contracts	Gross	Asst.	NEHBPA	Paid	Purse	Purse /Race
Revenue Source	Number of Units	Annual Taxable Revenue **	MGL Percent	RHDF Income	Thoroughbred 80%	Standardbred 20%	80% Slots share	16% MA Breeders	4% Benefits	& MGL	Purse	Fund	2.5%	Purse	125 days	125 days
Slot Parlor	1,250	123,643,750	9.0000	11,127,938	8,902,350	2,225,588	7,121,880	1,424,376	356,094							
Casino Slots	6,000	593,490,000	0.6250	3,709,313	2,967,450	741,863	2,373,960	474,792	118,698							
Table Games	200	260,172,000	0.6250	1,626,075	1,300,860	325,215	1,040,688	208,138	52,034							
Poker Tables	80	17,403,200	0.6250	108,770	87,016	21,754	69,613	13,923	3,481							
Total Revenue			Totals	16,572,095	13,257,676	3,314,419	10,606,141	2,121,228	530,307	8,632,968	19,239,109	72,500	467,434	18,697,362	149,579	16,620
							Purse 3.5%	371,215								
							New $ Breeders	2,492,443								

** *Note:* Spectrum Consultants "Moderate case estmate" blended per unit slot machine drop (Northeast Region & Central/Western Region) is $271 per machine per day.
Spectrum Consultants "Moderate case estmate" blended per unit table games revenue (Northeast Region & Central/Western Region) is $3,564 per table per day.
Spectrum Consultants "Moderate case estmate" blended per unit poker tables revenue (Northeast Region & Central/Western Region) is $596 per table per day.

9/27/2010

New England HBPA

Eastern States Purse Comparision

Average Purse Per Race East Coast Thoroughbred Racetracks - compiled by "The Thoroughbred Times"								
State	**Thoroughbred Racetrack**	**2008 Avg. All Purses Purse/Race**	**State**	**Thoroughbred Racetrack**	**2009 Avg. All Purses Purse/Race**	**State**	**Thoroughbred Racetrack**	**2010 Avg. All Purses Purse/Race**
New York	Saratoga	77,000	*Kentucky*	Keenland	74,120	*New York*	Saratoga	na
Kentucky	Keenland	68,000	*New York*	Saratoga	71,911	*New Jersey*	Meadowlands	na
New York	Belmont	51,887	*New York*	Belmont	53,799	*New Jersey*	Monmouth	65,112
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New York	Aquaduct	40,000	*Kentucky*	Churchill Downs	37,951	*Kentucky*	Churchill Downs	59,936
Florida	Gulfstream Park	34,000	*New Jersey*	Monmouth	36,835	*New York*	Belmont	38,627
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New Jersey	Meadowlands	31,000	*Pennsylvania*	Philadelphia Park	30,559	*New York*	Aquaduct	31,719
Maryland	Pimlico	29,393	*New Jersey*	Meadowlands	30,380	*Maryland*	Pimlico	27,761
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Kentucky	Turfway Park	12,000	*Kentucky*	Turfway Park	11,511	*West Virginia*	Mountaineer	11,535
Massachusetts	**Suffolk Downs**	11,685	*Massachusetts*	**Suffolk Downs**	9,933	*Massachusetts*	**Suffolk Downs**	7,078
	Average All Purses	**30,211**		**Average All Purses**	**30,583**		**Average All Purses**	**na**

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March 5, 2013

Stephen P. Crosby, Chairman
Massachusetts Gaming Commission
84 State Street Suite 720
Boston, MA 02109

Re: Report of the MGC to the Senate and House of Representatives pursuant to Chapter 194, Section 104, of the Acts of 2011, analyzing the Commonwealth's pari-mutuel and simulcasting laws, with recommendations as to their efficacy and need to be replaced.
DRAFT Dated: February 2013 Presented to the MGC on February 21, 2013

Dear Chairman Crosby:

On behalf of the New England HBPA and the Massachusetts Thoroughbred Breeders Association, we are writing in response to your referenced draft report regarding changes to Chapters 128A & 128C.

The draft report proposes a new chapter of the MGL to replace current chapters 128A and 128C. It advises that legislative action needs to be taken by July 31, 2013 in order to continue authorization of live racing, pari-mutuel wagering and simulcasting in the Commonwealth. The New England HBPA and the Massachusetts Thoroughbred Breeders Association agrees with the concept of consolidating the two current racing and wagering chapters into one comprehensive chapter but disagrees with some of the analysis and conclusions of the report.

The Review and Analysis section of the report conveys background information regarding legislative incorporation of horsemen's representatives as the "voice of racing industry beneficiaries in decision-making affecting them, …". We are very appreciative that the Legislature has recognized the importance of horsemen participating in the decision-making process. The report however frames horsemen as "racing industry beneficiaries" when, in fact, the local horsemen are major investors in the racing industry who have continued to invest and race in Massachusetts although it would be financially advantageous to relocate racing activities to other jurisdictions. The horsemen provide the racing product. Their activities support local farms and help preserve open space. The thoroughbred owners, trainers, and breeders are major investors in the Massachusetts economy. We highlight this important distinction because it affects a number of issues addressed in the report as referenced in our comments.

The same paragraph that references the horsemen as the voice of the racing industry notes the Commission's intent to make recommendations consistent with the aforementioned collaborative approach. However, the very next sentence uses an illustration inconsistent with a collaborative approach. A recommendation is made to exclude the horsemen from participation in a very important decision that impacts the revenue stream for the horsemen's purse account.

Under the Summary of Recommendations section of the report, discussion is presented concerning fair and equitable treatment of racing and non-racing entities. We certainly agree with that concept and would very much like to achieve that admirable goal.

As we undertake a sound collaborative approach, we must exercise great care to examine and evaluate the various components of the existing racing model. There is a need to determine which parts work well and which may need to be discarded or altered to achieve the intended legislative goals. The premise that what works in other states is sure to work in Massachusetts is not sound as each state differs in many respects. This declaration is not collaborative. The perfect model has not been defined or discussed by the Massachusetts stakeholders. The Legislature did not adhere to that approach when it melded the gaming, racing, pari-mutuel wagering and simulcasting components under the 2011 Gaming law. The legislature wisely avoided the easier cookie cutter approach by carefully selecting the various components of each gambling business determined as the best fit for Massachusetts. Casino businesses inherently have different goals and different types of stakeholders than the racing, breeding and agricultural business. Each state assigns its own weighted value to these differences. This is a principal reason that there is no ideal model that fits every state.

We agree that there are certain restrictions that are no longer appropriate and should be eliminated. One example is the restriction that prohibits licensees from taking simulcasting signals at specific times of the day (Chapter 128C §2).

The report recommends discontinuance of the current prohibition of rebating and wagering on credit under the racing laws. We find this recommendation inconsistent with the previous paragraph in this section of the report that declares "…the business model for the racing industry across America has changed, and the current Massachusetts simulcast management model has been discarded by most other racing states." The Commission's survey (exhibit attached to the Commission's Brief Memorandum dated January 14, 2013) of
racing laws and regulations in Delaware, Louisiana, Kentucky, Michigan, Minnesota, New Jersey, New York and Pennsylvania clearly shows that rebating and wagering on credit (other than account wagering) are all consistent with current Massachusetts law prohibiting rebating and wagering on credit (other than account wagering). As we mentioned in our previous letter, we are keeping an open mind on rebating and wagering on credit pending a thorough discussion with Commission staff as to the detail accounting for the source funding of rebates and financial impacts on the purse account revenue stream, assignment of risks associated with rebating and wagering on credit and need for placing pari-mutual wagering on the same footing as gaming. As of this writing, the recommendation to authorize rebating and wagering on credit was determined in the absence of the collaborative approach in respect to designation of which party (or parties) will sacrifice a portion of their revenue stream hoping that handle will increase and which party (or parties) will have authority to approve specific rebating schemes. The horsemen will object to any rebate plan or wagering on credit plan that reduces or risks purse money without specific approval by the horsemen.

We support the recommended abolition of the Trust Fund system for capital improvements and promotional activities and commend the Commission for earmarking of a portion of the revenue for backstretch infrastructure improvements.

The Review, Analysis and Recommendations section of the report under subsection (i) Current Simulcasting Authorization discusses §7(b) simulcasting licensing regarding its inapplicability to G.L. c. 128C, §2. We agree with the conclusion that G.L. c. 128C, §2 does not apply to §7(b) simulcasting licensees because the Legislature recognized, via the 2011 gaming act, the merits of instituting new non-racing simulcasting licenses for casinos. In so doing, the Legislature was cognizant that a significant portion of simulcasting wagers would be placed at casinos rather than at racing facilities. In the absence of a levy on such wagers, casinos would realize higher profits on a simulcasting wager than an identical wager placed at a racing facility. The simulcasting wager placed at a casino would not contribute any amount of support to horsemen's purses, although support is currently contributed when a wager is placed at a racing facility. In essence, in the absence of a levy, the casinos would be permitted to profit from the racing industry without a fair contribution to the industry that supports and develops the casino's simulcasting business. This incongruity was the basis of the Legislature's decision to require a 10% levy on gross simulcasting wagers placed at casino facilities. The proceeds of said levy are directed to the Race Horse Development Fund. In effect, the 10% levy is the same concept as the "premium" requirements levied on simulcast wagers placed at racing facilities, as per G.L. c. 128C, §2. It applies a parallel approach requiring support payments for purses, breeding and agriculture regardless of the location that a wager is placed.

The Review, Analysis and Recommendations section of the report under subsection (ii) Creating A Uniform Simulcasting Regulatory Framework cites that "The business imperatives of gaming and those of racing are plainly not the same; and the racing industry factors behind many elements of the framework set forth in G.L. c. 128C, §2 have no obvious equivalents in gaming." We agree with this statement and, as we discussed in our previous comments, the 10% levy applied to §7(b) simulcasting licensees has, in effect, compensated for the lack of application of G.L. c. 128C, §2 to said licensees.

Subsection (ii) Creating A Uniform Simulcasting Regulatory Framework cites "While these §2 arrangements might have worked once when only race tracks were simulcasting, they are no longer feasible as regulatory criteria for simulcasting by both racing and non-racing simulcast licenses. The commission recommends abolishing this current system and replacing it with a simulcasting regulatory regime (similar to that adopted by other states that permit simulcasting) that allows those authorized to simulcast to negotiate the fees for interstate and intrastate signals (with a cap on the fees for intrastate simulcasting), subject to an obligation to simulcast Massachusetts thoroughbred and harness races."

As we previously discussed, while we agree that G.L. c. 128C, §2 should not apply to §7(b) simulcasting licensees, we do not agree with the position that premiums should be eliminated. We suggest a simple solution to the immediate concern (as quoted above) by modifying the recommendation (given the 10% levy on §7(b) simulcasting licensees) to one that exempts said licensees from G.L. c. 128C, §2. Such an exemption would remove the concern that "...arrangements ... are no longer feasible as regulatory criteria for simulcasting by both racing and non-racing simulcast licenses."

We disagree with the Commission's recommendation to abolish G.L. c. 128C, §2 in its entirety and replace it with a system "...that allows those authorized to simulcast to negotiate the fees for interstate and intrastate signals...". We suggest that the definition of fees when allowing "those authorized to simulcast to negotiate the fees " for interstate simulcasting must be limited to host track fees. The recommendation concerning intrastate fees will create an inherent conflict of interest, since it would place negotiation of intrastate simulcasting fees in the hands of licensees without

required approval of the horseman. It positions the licensees to potentially minimize the fees that they would be required to pay to each other thereby minimizing the amounts directed to purse accounts. It is contrary to the policy established by the United States Congress in 15 USC Chapter 57 (Interstate Horseracing Act) that local horseman should control the use of their signal. Since current state law specifically sets an 11% fee on intrastate simulcast wagers, we suggest establishing a floor of 11% along with the recommended cap of 12%.We suggest that the Commission avoid the negative ramifications of a system that places authority for setting fees in the hands of only one category of major racing investors to the possible detriment of the other category of major investors.

If the §7(b) simulcasting licensees are to be exempt from G.L. c. 128C, §2, we propose that the Commission recommend removing all restriction on simulcasting dates and times and altering the current formula for "premiums" in §2 by eliminating dates and events that are premium-free and establishing a uniform percentage on all simulcasting wagering between racing licensees. We suggest that a uniform premium percentage should be imposed to cause an equal sharing of net simulcast wagering proceeds between racing licensees and the purse accounts of the horse breed upon which each simulcast wager was placed. This equal sharing of revenue would be consistent with the current negotiated contract between the local horsemen and Suffolk Downs and the near uniform practice across the United States of allocating one-half of such net revenue to purses.

Subsection (ii) Creating A Uniform Simulcasting Regulatory Framework cites that "While some horsemen may oppose the recommended abolition of premiums, as taking money away from purses, the earmarking of the vast majority of Fund's revenue's for purses should more that make up for any loss occasioned by the loss of premium revenue. As indicated below the Commission considers that the establishment of gaming as a funding source for purses has superseded the need for continuation of the premium mechanism as a funding source."

We emphatically disagree with this position. The assumption that the "…Fund's revenue's for purses should more than make up for any loss occasioned by the loss of premium revenue" and that "…establishment of gaming as a funding source for purses has superseded the need for continuation of the premium mechanism as a funding source." is not correct. That assumption ignores the fact that (even with gaming facilities running at full capacity) the portion of state gaming revenue directed to thoroughbred racing purses along with retention of current premiums and other statutory wagering revenue will not elevate thoroughbred purses into a relevant competitive zone with other similar east coast racing programs. States with casino gaming allocate higher percentages of gaming profits than Massachusetts, which gives an added advantage to purse levels in those states. As can be seen in the exhibit we submitted with our February 18, 2013 comments, the purses in the states with which we compete are substantially higher than thoroughbred purses in Massachusetts.

Our need to have competitive purses is the reason we are requesting elimination of premium-free thoroughbred wagering conducted by non-thoroughbred racing licensees and a uniform increased premium to a more equitable share of profits on thoroughbred wagering conducted at non-thoroughbred racing facilities in Massachusetts. When the report compares the models in other gaming states with the system of premiums in Massachusetts it should be cognizant of the fact that the purses in other states receive a much higher percentage of gaming profits.

The negative impact of eliminating premiums removes an annual three-year average of over $900,000 from thoroughbred purses. Eliminating premiums, ironically, would become a windfall to racing licensees that thoroughbred wagering has been subsidizing for more than ten years while setting thoroughbred purses further away from reaching the appropriate competitive zone. The present premiums are a cost of business of the simulcasting licensees. Eliminating the premiums will enhance the profits of the simulcasting licensees at the expense of the horsemen, permitting

them to siphon business from horseracing facilities without adequate compensation to the local horsemen. Enhancing the profitability of simulcasting licensees does not appear to be an appropriate legislative objective, especially when it is done at the cost of reducing funding for purses. We object to this or any other recommendation that eliminates a purse revenue stream currently provided by law, especially since the effect of the proposed change is to divert present purse revenue to simulcast licensees to materially enhance the profits realized by those licensees.

Additionally, subsection (ii) Creating A Uniform Simulcasting Regulatory Framework cites that "Abolition of the premium in the context of the Commission's ability to adjust the §7(b) takeout will level the simulcasting cost burden for racing and non-racing simulcasting licensees, while maintaining a realistic funding level for purses." As per our previous comments, we disagree that abolition of premiums will be "maintaining realistic funding for purse levels", particularly, when realistic purse levels won't be reached even by retaining current premiums. Furthermore, we question whether it is appropriate to level the simulcasting cost burden for racing and non-racing simulcasting licensees when the racing licensees bear the cost and burden of hosting local racing that develops and cultivates the wagering patrons who are the customers placing the simulcast wagers. While revenue of the racing licensees during a live meet does increase, the increase is not sufficient to fund the costs of live racing. Since live racing inures to the benefit of the non-racing simulcasting licensees by developing and maintaining interest in horseracing. In horseracing, it is appropriate that these non-racing simulcasting licensees bear some of the cost burden of maintaining and developing the customer base.

We suggest that the Commission carefully examine each cost of the components of the lucrative simulcasting profits before it recommends abolishing premiums to "level the simulcasting cost burden for racing and non-racing simulcasting licensees". The Commission needs to further consider whether the cost burden should be leveled where leveling will cause the non-racing simulcasting licensees to generate greater profits than the racing simulcasting licensees.

Thank you for your consideration and for providing us with an opportunity to offer our comments.

Sincerely,

Anthony Spadea, President
New England HBPA

George Brown, Chairman
MA Thoroughbred Breeders Association

Cc:
Gayle Cameron, Commissioner, MA Gaming Commissioner
Dr. Jennifer Durenberger, Executive Director, MA Racing Commission

WRITTEN SUBMISSIONS OF THE MASSACHUSETTS STANDARDBRED BREEDERS

Maryanne Lewis
Attorney at Law

November 16, 2012

Mr. David A. Murray(MGC)
RE:Standardbred Breeders

Dear David,

It was nice to talk with you last week. Thank you for your information and attention to this matter.

We appreciate the opportunity to share our thoughts with you regarding the breeders program. Let me preface our remarks by saying that the one of the original goals in regulating standardbred racing in the Commonwealth was to encourage and support the horse farms in Massachusetts. Massachusetts as you probably know has over 650 farms that support the breeding and fostering of horses. Most of the farms that breed in Massachusetts are Standardbred.

As I am sure you are aware the economic and environmental benefits of a healthy and sustainable breeder's program have long been recognized in the Commonwealth of Massachusetts. Many of these farms contribute not only to the economy, but contain much of the state's open space, hunting areas, and most importantly, water recharge areas. Given the state of our aquifers and the need to develop more areas of water supply, this should be a critical concern. Horse farms also contribute to the well being of the farming sector with local purchases of farm supplies. In fact, it allows for the continuation of services that would not otherwise support a farming infrastructure if the horse farms were unable to continue.

While the original intent of racing legislation was to encourage horse farms and breeding in Massachusetts, the introduction of simulcast and the diminution of live racing has turned the intent on its head. Simulcast legislation has been used to sustain the racing industry and the horse farms have been dependent on the ability of various racing venues to win simulcast dates. That has lead to uncertainty in the industry as the horse breeders have to wait for the passage of a new bill as the last is sunset and have to have faith that the Legislature will not make changes (major

or otherwise) that may impact the breeding program retroactively.

While the political struggles over who should have what simulcast dates at the various venues shift year to year, one constant has been the importance that the Legislature has placed on the continuation of the horse programs in Massachusetts. In order to encourage and facilitate a viable program that the farm industry can rely going forward , we recommend that the breeding requirements be segregated from the simulcast political struggle. We would urge you to separate the guidelines for the breeding program from the simulcast sections of the gaming laws. Admittedly, for all practical purposes, an end to simulcast extensions would have a devastating impact on the breeders program and the farming sector in the Commonwealth, however, we believe a carve out section for breeders separate from the simulcast regulations would alleviate some of the concerns and doubt from breeders who invest time, money and effort to comply with the calendar set forth in the statute.

As it currently stands, the simulcast dates could likely follow a two year cycle while the breeders are committed to a four year cycle (for breeding and growth purposes). This opens up the potential situation that a horse could be rendered ineligible after a breeder acted in good faith under existing statute. This is an untenable situation and will lead to fewer farmers taking that risk. Enacting a statute separate from the ever changing simulcast calendar would eliminate some uncertainty for the breeders and those investing in breeding and investing in Massachusetts. Today's tenuous business climate can always be helped and calmed by clarifying and minimizing potential unknown negative factors.

As with all farming efforts in Massachusetts, breeders face uncertainty far more than almost any other industry sector in the Commonwealth. They are subject to the vagaries of the industry, the Legislature, and competition from other states. A separation that gives them their own statute gives them some certainty that at least the statute will not change due to a stalemate on resolving the simulcast issue over a longer term. It also allows them to plan over the term of their investment. That is , the time period over the growth of the horse being bred.

The other suggestion we would make is that we would like to see a clarification in section 2 of Chapter 128. This section has language that allows for paying purses and awards in the form of bonuses to Massachusetts bred horses that are older than 3 and race in overnight events (at term for regular, not stake races). While we believe that this section gives them the power to do this, we would urge that they should have the power to do so or not to do so at their discretion. It gives them more flexibility and that is important in these fiscal times and in this industry.

Thank you again for the opportunity to weigh in on this issue. This is an issue that goes to the very heart of the breeding program and the viability of the horse industry in Massachusetts. I hope that we can take this action for our farmers.

If there are any questions, please feel free to contact me and I can make industry officials and farm breeders available to clarify any issues.

Sincerely,

Maryanne Lewis

Maryanne Lewis, on behalf of
Standardbred Breeders

Below is the breeder language in effect now, and as it is currently a subsection (j) of the simulcasting statute it is subject to the sunset clause of the entire Chapter and section and as such we respectfully request that this language of subsection (j) stand alone as its own Chapter and section, thereby not subjecting it to the aforementioned sunset clause.

Chapter 139 of the acts of 2001.

SECTION 3. Section 2 of chapter 128 of the General Laws, as appearing in the 2000 Official Edition, is hereby amended by striking out subsection (j) and inserting in place thereof the following subsection:-

(j) Promote, develop and encourage, through the Massachusetts Standardbred Breeding Program, the breeding of standardbred horses in the commonwealth by offering cash prizes to breeders of such horses. The representative organization of standardbred breeders and owners approved by the state racing commission shall, from time to time in consultation with the chairman of the racing commission and the commissioner of the department of

food and agriculture, set the percentages for purses to be awarded to the breeder of a Massachusetts standardbred horse. The representative organization of standardbred breeders and owners approved by the state racing commission may pay cash purses and stallion awards for stakes races limited to Massachusetts bred standardbred race horses and qualified Massachusetts stallions from the Massachusetts standardbred breeding program at licensed pari-mutuel racing meetings authorized by the state racing commission. Such races may be betting or non-betting races and may or may not be scheduled races by the licensee conducting the racing meeting. All races for the standardbred breeding program shall be held at a licensed pari-mutuel facility. Purse monies and stallion awards paid by the representative organization of standardbred breeders and owners approved by the state racing commission may be paid in such amounts as the representative organization shall determine and may be either the sole cash purse for such races or may be supplemental to the cash purses established by the licensee of the pari-mutuel facility.

The standardbred horses eligible to participate in the purses provided herein shall be limited to those of racing ages 2 and 3 and shall have met the following requirements:

(1) the qualifying standardbred horses shall have been sired by a Massachusetts registered stallion on file with the department of food and agriculture; provided, however, that the stallion shall have stood the entire breeding season of February 1 to July 15, inclusive, in the commonwealth in the year any such eligible foal was conceived; or

(2) the foal of a standardbred mare that drops the foal in the commonwealth and is bred back to a Massachusetts registered stallion; or the foal of a standardbred mare that resides in the

commonwealth from December 1 of the year prior to foaling and continues such residence until foaling and foals in the commonwealth;

(3) in either the case of subparagraph (1) or (2), each standardbred foal dropped in the commonwealth shall be registered with the United States Trotting Association and the department of food and agriculture.

Prior to October 1 of each year, each breeder standing a standardbred stallion in the commonwealth at either private or public service shall file with the department of food and agriculture a list of all standardbred mares bred to such stallion in that year and a verified statement representing that the stallion stood the entire breeding season in the commonwealth.

The representative organization may expend up to 8 per cent of the amount received each fiscal year for the program for advertising, marketing, promotion and administration of the standardbred breeding program in the commonwealth.

The state auditor shall annually audit the books of the qualified organization to ensure compliance with this section.

WRITTEN SUBMISSIONS OF SUFFOLK DOWNS

SUFFOLK DOWNS.

November 16, 2012

Commissioner Gayle Cameron
Massachusetts Gaming Commission
Racing Division
1000 Washington Street, Suite 710
Boston, MA 02118

Re: Recommendations for Gaming Commission's Legislative Report on G.L. Chapters 128A and 128C

Dear Commissioner Cameron:

We appreciate the Gaming Commission's invitation to Suffolk Downs to submit comments and recommendations for the Commission's consideration as it prepares its Legislative Report on the racing and simulcasting laws.

Before providing specific comments, we would like to commend the Commission and the work of Dr. Durenberger in promoting the RCI model rules for racing. Over the past two years, Suffolk Downs has also advocated for adopting these rules to enhance the safety and integrity of the racing industry, and we congratulate the Commission for its leadership in this endeavor.

As the Commonwealth's only thoroughbred racing licensee for the past 20 years, Suffolk Downs is intimately familiar with the laws and regulations under which racing and simulcasting are conducted here. We respectfully offer the following recommendations for your consideration.

1. Expiration of the Simulcasting Statues. In what has become more of an anachronism than a sound public policy, the simulcasting statutes in the Commonwealth expire every few years. Invariably, the industry faces shut down as each expiration date approaches until the legislature enacts an extension (the next expiration date is July 31, 2014). The practice of incorporating sunset provisions within the simulcasting laws made some sense when simulcasting was first enacted in 1992, but given its longstanding history and the dependence of the industry on revenue from simulcasting, the expiration provisions serve no productive purpose, while adding an unhealthy level of uncertainty to the industry (and in the years when extensions were not timely enacted, economic hardship). Suffolk Downs recommends that the sunset provisions be eliminated from Chapters 128A and 128C, and that the current laws be allowed to remain in effect without the prospect of expiration on July 31, 2014 (or any extended date thereafter).

2. Gaming Commission Authority Over Racing Schedules. Racing licensees must hold a certain number of live racing performance to be authorized to conduct simulcasting. Simulcasting has become the economic lifeblood of the racing industry, and any loss of simulcasting rights would devastate any racing licensee. Section 2 of Chapter 128C acknowledges that certain major events—weather conditions, track conditions, work stoppages, etc.—may preclude a racing licensee from achieving these racing requirements, and gives the Commission authority to waive these requirements and allow simulcasting to continue. However, given the many amendments to this provision over the decades, it has become convoluted and difficult to interpret. Suffolk Downs recommends that the ninth paragraph of Section 2 not only be revised for clarity, but also revised to broaden the authority and discretion of the Commission to determine the simulcasting requirements of racing licensees. In particular, in the event that any racing licensee obtains a gaming license, it will be required to comply with the racing and simulcasting laws as a condition of its gaming license. Given the dramatic implications of a suspension of a gaming license, the Commission should be granted broad authority to determine whether or not a violation has occurred and whether or not a waiver of racing requirements may be appropriate in any given situation.

3. Volume Discounts, Rewards and Rebates. One competitive disadvantage that Massachusetts racing licensees face is the prohibition of rebating found in Section 5C of Chapter 128A. Racing facilities across the country commonly provide volume discounts, rewards or rebates to customers as an effective marketing tool. However, that now well-established business practice is not allowed in the Commonwealth. Suffolk Downs recommends amending Chapter 128A to allow rebating. We note that these types of marketing activities would be allowed at gaming facilities in the Commonwealth under the Gaming Act passed last year.

4. Tax Withholding Standards. Racing licensees in Massachusetts (in accordance with the national standard in the racing industry) have long followed IRS rules with respect to withholding taxes on certain winning wagers. A provision within the Gaming Act enacted last year (Section 28 of Chapter 194) seeks to address tax withholding issues applicable in a gaming facility, but its language has raised confusion about whether or not it would have any effect on wagers in racing facilities (whether as part of a gaming facility or not). If interpreted to apply to racing wagers, this provision would force Massachusetts tracks to depart from the IRS standard and would impose a terrible hardship on the Massachusetts racing industry. Suffolk Downs would appreciate guidance from the Gaming Commission regarding whether this provision applies to wagers at racing facilities, in addition to those at gaming facilities. If the Commission interprets this provision to apply to racing, we would respectfully request that this provision be amended to reinstate the policies applicable to race tracks in effect before the passage of that act.

5. Modernizing Minus Pool Regulations. We note that the prior Racing Commission had approved changes to the racing regulations (205 CMR 6.29(1)) that would modernize the Massachusetts rule governing so-called "minus pools," and

understand that the Gaming Commission is also considering moving forward with this regulatory update. Changing the minimum payment from $1.10 to $1.05 per dollar wagered in any minus pool would bring Massachusetts into conformity with national standards, increase the integrity of pari-mutuel wagering, and limit unnecessary economic losses from racing licensees. We encourage the Commission to move forward with this change.

6. Support of Breeding Programs. As the annual foal population continues to decrease nationally, the need to support breeding programs becomes greater. Suffolk Downs would encourage measures to support Massachusetts thoroughbred breeding programs.

7. National Trends in Racing. In recent years, especially as the supply of horses has declined, a trend toward shorter racing seasons with larger purses has emerged among the healthiest tracks. As the simulcast market has become more mature, fulfilling the demand for year-round pari-mutuel product, racing fans have gravitated toward racing meets of higher perceived quality. In many instances, tracks that have followed this trend have reinvigorated their racing enterprises. We would encourage the Commission to consider policies that take lessons from the successes of racing facilities in other states in response to changes in the industry.

We appreciate the Commission's invitation to provide these recommendations. We would also be happy to provide draft language for the Commission's consideration on any of these points. Please let us know if you have any questions or would like any further information.

Sincerely,

Chip Tuttle
Chief Operating Officer

WRITTEN SUBMISSIONS OF PLAINRIDGE

Murray, David A (MGC)

From: Robert Kraus <RKraus@kraushummel.com>
Sent: Thursday, November 15, 2012 4:43 PM
To: Murray, David A (MGC)
Cc: Durenberger, Jennifer (MGC); Gary Piontkowski (gtpharness@aol.com); Steve O'Toole (o2lprc@aol.com); Kathi Luoto
Subject: RE: Read: Submissions re Gaming Commission's Legislative Report Pursuant to St. 2011, c. 194, sec. 104

Dear Attorney Murray:

I have had a chance to review your request with my client and have very simple responses pursuant to Section 104 of the Gaming Act.

"**SECTION 104.** Notwithstanding any general or special law to the contrary, the Massachusetts gaming commission established in chapter 23K of the General Laws shall analyze the pari-mutuel and simulcasting laws in effect on the effective date of this act. The analysis shall include a review of the efficacy of those laws and the need to replace those laws pursuant to the continuation of chapters 128A and 128C of the General Laws in this act. The analysis shall not address whether to increase the number of running horse, harness horse or greyhound racing meeting licensees in the commonwealth. The commission shall report its findings and recommendations, together with drafts of legislation necessary to carry those recommendations into effect, by filing the same with the clerks of the senate and house of representatives and with the house and senate chairs of the joint committee on economic development and emerging technologies not later than January 1, 2013."

My client believes that the present legislation maintains a carefully considered and developed balance of racing and simulcasting interests that have been forged since 1992, when the law went into effect; however, having said that, our position is that the law should reflect and be amended to insure that simulcasting is limited to those places where "live" racing occurs and is operational.

Please call if you have any questions.

Thanks, Rob Kraus

Cc: Gary T. Piontkowski, President, Plainridge Racecourse

7.e

PROPOSED NEW CHAPTER

PROPOSED NEW CHAPTER

SECTION #

The General Laws are hereby amended by inserting after chapter 128C the following chapter:-

CHAPTER 128D

HORSE RACING MEETINGS AND SIMULCAST WAGERING

128D:1. Definitions

Section 1. As used in this chapter, the following words shall have the following meanings unless the context clearly requires otherwise:

"Breaks", in the case of racing meetings conducted in the commonwealth by a racing meeting licensee, the odd cents over any multiple of 10 cents of winnings per $1 wagered, except that, in the case of a minus pool, the odd cents over any multiple of 5 cents of winnings per $1 wagered. A minus pool occurs when the payout is in excess of the net pool. In the case of racing meetings conducted at a host track outside the commonwealth, the amount of the breaks shall be determined in accordance with the laws of the state in which the host track is located.

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

"Guest track", a racing meeting licensee or an out-of-state pari-mutuel wagering facility which accepts any simulcast wager on a live race conducted at another track which is presented by simulcast at its facility; provided that an entity licensed to simulcast pursuant to section 7 of chapter 23K shall be deemed to be guest track for purposes of the provisions of this chapter affecting simulcasting, notwithstanding that such licensee is not a racing meeting licensee.

"Host track", a racing meeting licensee or an out-of-state track which conducts a live race which is the subject of simulcasting and simulcast wagering.

"Racing day", a day on which 1 or more racing performances are conducted.

"Racing meeting" shall include every meeting within the commonwealth where horses are raced and where any form of betting or wagering on the speed or ability of horses shall be permitted, but shall not include any meeting where no such betting or wagering is permitted even though horses or their owners, are awarded certificates, ribbons, premiums, purses, prizes or a portion of gate receipts for speed or ability shown.

"Race track" shall include the track, grounds, stands and/or bleachers, if any, and adjacent places used in connection therewith, where a horse racing meeting may be held; provided that race track shall not include a gaming establishment as defined in chapter 23K.

"Racing meeting licensee", a person licensed by the commission to conduct live horse racing meetings.

"Racing performance", the conduct of at least seven live races during one day.

"Simulcast", the contemporaneous transmission of audio or visual signals of live horse races for the purpose of pari-mutuel wagering.

"Simulcast wager", a wager taken at a guest track on a race conducted live at another track, whether inside or outside the commonwealth.

"Takeout", that amount of money wagered which is not returned as prize money to the wagerers and which does not include the breaks as defined herein.

128D:2. Application for license; filing; supplementary application

Section 2. Any person desiring to hold or conduct a horse racing meeting within the commonwealth shall make an application to the commission, for a license so to do. Such application shall:

(1) State the name of the applicant;

(2) State the post office address of the applicant, and if a corporation, the name of the state under the laws of which it is incorporated, the location of its principal place of business and the names and addresses of its directors;

(3) Identify the location of the race track where it is proposed to hold or conduct such horse racing meeting;

(4) Specify the days on which the applicant intends to hold or conduct such horse racing meeting, and specify the hours of each day between which it is intended to hold or conduct racing at such meeting, which hours shall not be before 10:00 a.m. except as provided for in section three, nor later than 7:00 p.m. for running horse racing nor later than midnight for harness horse racing;

(5) Answer such other questions and provide such information as the commission may from time to time prescribe or specify; and

(6) State that the applicant will comply, in case such license be issued, with all applicable laws and with all applicable rules and regulations prescribed by the commission.

(7) Submit a capital improvement plan that shall state separately and with particularity what alterations, additions, replacements, changes, improvements or repairs the applicant intends to effectuate during the term of the license upon the property to be used in the conduct of the racing meeting. At least annually, a representative of the commission together with a representative of the licensee, a representative of the horsemen's organization and a representative of the jockeys' organization representing a majority of the licensed jockeys riding regularly at the licensee's racing meeting, inspect the entire racing meeting facility, including the area commonly known as the backstretch, in order to determine whether such capital improvement plan submitted by the licensee has been implemented in a manner adequate to provide for the continued health, safety and well-being of patrons, jockeys, backstretch personnel and the horses in their care.

Such application shall be filed with the commission on or before the 1st day of October of the calendar year preceding the calendar year for which application requests a license to be issued under this chapter; and the commission shall grant or dismiss such application not later than the 15th day of November next following. Such applications shall be signed and sworn to, if made by an individual, by such individual; if made by two or more individuals or a partnership, by one of such individuals or by a member of such partnership, as the case may be, if made by a trust, by a trustee of such trust, and, if made by an association or corporation, by the president or vice president thereof. The commission may prescribe forms to be used in making such application.

With such application there shall be delivered to the commission a certified check or bank draft, payable to the commission, for the full amount of the license fee required by this chapter.

Any person desiring to hold or conduct a horse racing meeting within the commonwealth in connection with a state or county fair shall make an application to the commission for a license to do so, upon such terms and conditions as the commission may from time to time specify by rule or regulation. Any fee for such license shall not exceed $100 per day for each day of such horse racing meeting.

With such application there shall be delivered to the commission a certified check or bank draft, payable to the commission, for the full amount of such license fee as may from time to time be specified by the commission.

128D:3. Issuance of license; contents; conditions; bond; recording

Section 3. If any application for a license, filed as provided by section 2, shall be in accordance with the provisions of this chapter, the commission, after reasonable notice and a public hearing in the city or town wherein the license is to be exercised, may issue a license to the applicant to conduct a racing meeting, in accordance with the provisions of this chapter, at the race track specified in such application.

Such license shall state--

(1) The name of the person to whom the same is issued;

(2) The location of the race track where the racing meeting thereby authorized is to be held;

(3) The days on which such meeting may be held or conducted;

(4) The hours of each day between which racing may take place at such meeting; and

(5) That the required license fee has been received by the commission.

No license shall be issued which would permit a racing meeting to be held or conducted except under the following conditions:

(a) No license shall be issued for more than an aggregate of 200 days in any 1 year.

(b) Licenses shall permit racing meetings only between the hours of 10:00 a.m. and 12:00 midnight. The commission shall grant authorized dates at such times that are consistent with the best interests of racing and the public. The commission may, in its discretion, on written application from a racing licensee made at least 7 days prior to the date of any proposed change of time stated in the racing license and without necessity for further public hearing, change the hours of conducting such racing meeting between any of the aforesaid hours, notwithstanding the hours set forth on the license. For the purpose of imposing the fee provided for in section 4, computing the sums payable to the commission pursuant to section 5 and counting the number of days authorized herein, any racing meeting held after 7:00 p.m. on the same day on which a racing meeting is held at the same race track prior to 7:00 p.m. shall be considered a separate day of racing.

(c) No license shall be issued to any person who is in any way in default, under the provisions of this chapter, in the performance of any obligation or in the payment of any debt to the commission; provided, however, that no license shall be issued to any person who has, within 10 years of the time of filing the application for the license, been convicted of violating section 5.

(d) In considering whether to grant a license and authorized dates under this section, the commission shall take into consideration, in addition to any other appropriate and pertinent factors, the following: the financial ability of an applicant to operate a race track; the maximization of state revenues; the suitability of racing facilities for operation at the time of the year for which dates are assigned; the circumstance that large groups of spectators require safe and convenient facilities; the interest of members of the public in racing competition honestly managed and of good quality; the necessity of having and maintaining proper physical facilities for racing meetings and the necessity of according fair treatment to the economic interest and investments of those who in good faith have provided and maintain such facilities. Notwithstanding the foregoing provisions of this section, the racing commission shall have the

right to review and reconsider without further notice or public hearing any application made prior to October 1 for which racing dates have been requested for the following year; provided that the application has had a public hearing prior to November 15; and provided, further, that any applicant who has been denied these racing dates makes a written request for review and reconsideration within 90 days of receiving notice of the denial; and provided further, that the commission shall reconsider and review the request within 180 days of the denial.

(e) No license shall be transferable, except with the approval of the commission.

(f) No license shall be issued to permit horse racing meetings to be held on premises owned by the commonwealth or any political subdivision thereof.

(g) No license shall be issued unless the person applying therefor shall have executed and delivered to the commission a bond payable to the commission in the amount of $150,000 with a surety or sureties approved by the commission conditioned upon the payment of all sums which may become payable to the commission under this chapter.

(h) Every license shall be recorded in the office of the clerk of the city or town in which the racing meeting is held or conducted at a time not less than 5 days before the first day of the meeting or forthwith upon the issuance of the license if the same shall be issued after that time. After the license is so recorded, a duly certified copy thereof shall forthwith be conspicuously displayed and shall be kept so displayed continuously during the racing meeting in the principal business office at the race track where the meeting is held and at all reasonable times shall be exhibited to any person requesting to see the same.

(i) Every licensee shall keep conspicuously posted in various places on its premises a notice containing the name and numbers of the council on compulsive gambling and a statement of its availability to offer assistance.

128D:4. Fees; refund

Section 4. The fee for the license provided for in section three shall be three hundred dollars or three-fourths of one-tenth of one per cent of the average daily handle of the previous calendar year for each day of any running horse or harness horse racing meeting, whichever is the greater amount.

No license fee for the privilege of holding or conducting a horse racing meeting, or for any other purpose peculiarly incidental to the holding or conducting of such a meeting, shall be imposed upon or collected from the racing meeting licensee by any city or town.

128D:5. Pari-mutuel system of wagering; licensee's duties

Section 5. (a) Before holding or conducting a racing meeting, every racing meeting licensee shall provide a place or places, equipped as hereinafter provided, on the grounds where such meeting is held or conducted or adjacent thereto, or at such other place as may be authorized by law and approved by the commission, at which such licensee shall conduct and supervise the pari-mutuel wagering on the speed or ability of horses performing in the races held or conducted by such licensee at such meeting, and such pari-mutuel wagering upon such races so conducted shall not under any circumstances be held or construed to be unlawful, notwithstanding any general or special law to the contrary. Such place or places shall be equipped with automatic betting machines capable of accurate and speedy determination of awards or dividends to winning patrons, and all such awards or dividends shall be calculated by a totalisator machine or like machine.

(b) No other place or method of betting, poolmaking, wagering or gambling shall be used or permitted by the licensee, nor shall this chapter be deemed to authorize or legalize the pari-mutuel wagering on any races except horse races at the track where such pari-mutuel wagering is conducted; provided, however, that this prohibition shall not apply to wagering authorized pursuant to chapter 23K, to simulcasting or to account wagering authorized pursuant to this chapter.

(c) Each licensee conducting a running horse racing meeting shall return to the winning patrons wagering on the speed or ability of any 1 running horse in a race or races all sums so deposited as an award or dividend, according to the acknowledged and recognized rules and methods under which such pari-mutuel wagering has been operated, less the breaks and less an amount not to exceed 19 per cent of the total amount so deposited by patrons wagering on the speed or ability of any 1 running horse; and each such licensee shall return to the winning patrons wagering on the speed or ability of a combination of more than 1 horse in a single pool, also known as an exotic wager, all sums so deposited as an award or dividend, according to the acknowledged and recognized rules and methods under which such pari-mutuel wagering has been operated, less the breaks and less an amount not to exceed 26 per cent of the total amount deposited. Each licensee shall:--

(1) pay to the commission on the day following each day of such running horse racing meeting a sum equal to 0.75 per cent of the total amount deposited on the preceding day by patrons so wagering at the meeting, the percentage to be paid from the 19 per cent or 26 per cent withheld, as provided in this section, from the total amount wagered;

(2) pay to the Massachusetts Thoroughbred Breeders Association, Inc. on the day following each day of such running horse racing meeting a sum equal to 1 per cent of the total amount deposited by the patrons, less the breaks, and taken from the 19 per cent withheld and from the

26 per cent withheld from exotic wagers, the monies to be used for the purposes of subsection (g) of section 2 of chapter 128;

(3) allocate from the total amount deposited daily by the patrons wagering at the meeting a sum equal to 8.5 per cent from the 19 per cent withheld and a sum equal to 9.5 per cent from the 26 per cent withheld from the exotic wagers to be used solely for the payment of purses to the horse owners in accordance with the rules established by the commission;

(4) pay to Tufts University School of Veterinary Medicine on the day following each day of such running horse racing meeting a sum equal to 0.5 per cent of the total amount deposited by the patrons, less the breaks, from the 26 per cent withheld from exotic wagers, to be used for equine research scholarships and loans.

Each licensee may retain as its commission on the total of all sums so deposited, a sum not exceeding the balance of the 19 or 26 per cent withheld as provided in this section from the total amounts wagered less the amounts required to be paid pursuant to clauses (1) to (6), inclusive.

(d) There shall be established and set up on the books of the commonwealth a Backstretch Improvement Fund to be administered by the commission. The fund shall consist of monies to be deposited annually representing 20 percent of the breaks from pari-mutuel wagering, including on simulcast races, for use exclusively for expenditures for alterations, additions, replacements, improvements to or upon the property owned or leased by the licensee, used by it for the conduct of racing, and commonly referred to as the backstretch, but not for the cost of regular maintenance or of other ordinary operations. Nothing herein shall be deemed to relieve the licensee of, or affect, its obligation under this chapter to provide and maintain suitable premises and facilities for the time of year for which dates are assigned in its license; safe and convenient facilities; proper physical facilities for the conduct of racing meetings; and proper stabling and associated facilities that are calculated to render horses on the licensee's premises reasonably safe.

(e) Each licensee conducting a harness horse racing meeting shall return to the winning patrons wagering on the speed or ability of any 1 harness horse in a race or races all sums so deposited as an award or dividend, according to the acknowledged and recognized rules and methods under which such pari-mutuel wagering has been operated, less the breaks and less an amount not to exceed 19 per cent of the total amount so deposited by patrons wagering on the speed or ability of any 1 harness horse; and each such licensee shall return to the winning patrons wagering on the speed or ability of a combination of more than 1 horse in a single pool, also known as an exotic wager, all sums so deposited as an award or dividend, according to the acknowledged and recognized rules and methods under which such pari-mutuel wagering has been operated, less the breaks and less an amount not to exceed 26 per cent of the total amount so deposited. Each such licensee, including a licensee holding a harness horse racing meeting in connection with a state or county fair, shall:

(1) pay to the commission on the day following each day of such harness horse racing meeting a sum equal to 0.75 per cent of the total amount deposited on the preceding day by patrons so wagering at the meeting, the percentage to be paid from the 19 per cent withheld from the straight wagers or 26 per cent withheld from the exotic wagers as provided pursuant to this section;

(2) pay to the Massachusetts Standardbred Breeders program established pursuant to subsection (j) of section 2 of chapter 128, on the day following each day of the harness horse racing meeting a sum equal to 0.5 per cent of the total amount deposited by the patrons, less the breaks, and taken from the 19 per cent withheld from the straight wagers and a sum equal to 1.5 per cent of the total amount deposited by the patrons, less the breaks, from the 26 per cent withheld from the exotic wagers; the monies to be used for the purposes of said subsection (j) of said section 2 of said chapter 128;

(3) allocate from the total amount deposited daily by the patrons wagering at such meeting a sum equal to 8 per cent from the 19 per cent withheld and a sum equal to 10 per cent from the 26 per cent withheld from the exotic wagers to be used solely for the payment of purses to the horse owners in accordance with rules and regulations promulgated by the Commission;

Each licensee may retain as its commission on the total of all sums deposited, a sum not exceeding the balance of the 19 per cent withheld from the straight wagers or the 26 per cent withheld from the exotic wagers as provided in this section less the amounts required to be paid pursuant to clauses (1) to (3), inclusive.

(f) Each licensee conducting a running horse racing meeting in connection with a state or county fair shall return to the winning patrons wagering on the speed or ability of any 1 running horse in a race or races all sums so deposited as an award or dividend, according to the acknowledged and recognized rules and methods under which such pari-mutuel wagering has been operated, less the breaks and less an amount not to exceed 19 per cent of the total amount so deposited by patrons wagering on the speed or ability of any 1 running horse. Each such licensee shall return to the winning patrons wagering on the speed or ability of a combination of more than 1 horse in a single pool, also called an exotic wager, all sums so deposited as an award or dividend, according to the acknowledged and recognized rules and methods under which pari-mutuel wagering has been operated, less the breaks and less an amount not to exceed 26 per cent of the total amount so deposited. Each licensee shall:

(1) pay to the commission on the day following each day of such running horse racing meeting a sum equal to 0.75 per cent of the total amount deposited on the preceding day by patrons wagering at the meeting, the percentage to be paid from the 19 per cent and 26 per cent withheld, as provided pursuant to this section, from the total amount wagered on straight wagers and exotic wagers, respectively;

(2) allocate from the total amount deposited daily by the patrons wagering at the meeting a sum equal to 8 per cent from each of the respective 19 per cent withheld and 26 per cent withheld as provided in this subsection to be used solely for the payment of purses to the horse owners in accordance with the rules and established customs for the conduct of running horse racing meetings; and

(3) pay a sum equal to 1 per cent of the total handle at the end of its racing schedule to the Massachusetts Thoroughbred Breeders Association, Inc.; provided, however, that the Association shall utilize the monies to develop a program to support horse racing at agricultural fairs including, but not limited to, owners' and breeders' awards for Massachusetts-bred thoroughbreds and provisions to supplement the purses of races or to provide the entire purse for the Massachusetts-bred thoroughbred races.

Each licensee may retain as its commission on the total of all sums so deposited, a sum not exceeding the balance of the 19 or 26 per cent withheld as provided in this section from the total amounts wagered less the amounts required to be paid pursuant to clauses (1) to (3), inclusive.

(g) All pari-mutuel taxes paid to the commission pursuant to this section, together with all pari-mutuel taxes paid to the commission pursuant to this chapter, and all assessments, association licensing fees, occupational licensing fees, fines, penalties and miscellaneous revenues, other than unclaimed wagers and breaks, paid to the commission shall be deposited in a separate account under the control and supervision of the commission. The amount of pari-mutuel taxes and other revenues, except for the unclaimed wagers, credited during any calendar year to all racing licensees shall be expended in the following order of priority and for the purposes specified:--

(1) To provide and pay local aid to the racing meeting licensees' respective host communities pursuant to section 164 of chapter 139 of the acts of 2012.

(2) To pay, without further appropriation, the commission's expenses for the costs in connection with racing performances held by racing meeting licensees. The commission shall file a report with the house and senate committees on ways and means on January 15 of each year detailing the amount of such costs delineated by type.

(3) To pay any amount specifically funded from racing revenues under any general or special law.

(4) To pay annually: an amount as determined by the commission to an organization identified by the commission, to assist in deferring the cost of providing health, medical, food, substance abuse treatment and other social services for persons who are employed in the stable or the backstretch area of the running horse racing licensee located in Suffolk county; an amount , as determined by the commission, for the purpose of providing economic assistance to any person employed in the racing facility, the stable or the backstretch area of the running horse racing

licensee located in Suffolk county who is facing hardship due to illness or unforeseen tragedy; and an amount as determined by the commission, to an organization, as determined by the commission, that represent the majority of jockeys who are licensed by the commission and regularly ride in the commonwealth for the purpose of assisting with deferring the costs of providing health and other welfare benefits to active, disabled or retired jockeys; and provided further, that any organization receiving an allocation from any of the said amounts shall make an annual report with the joint committee on government regulations and the house and senate committees on ways and means detailing its expenditures from said allocations.

(5) To pay annually: an amount as determined by the commission to a compulsive gambling organization, identified by the department of public health.

(6) To pay the remaining revenues credited during any calendar year to all racing meeting licensees, up to but not exceeding $4,500,000, for purse accounts of such licensees; provided further, that any remaining revenues in excess of $4,500,000 shall be deposited in the General Fund. The amount credited to each licensee shall be based on a formula established by the commission. In no instance, shall the amount paid to the purse account of each licensee be less than $400,000 unless the commission collects insufficient funds to make such minimum payment to all licensees. Only racing meeting licenses that actually present a live racing meeting on its premises, and that are permitted to simulcast under this chapter shall be eligible for purse assistance under this subsection. The commission shall promulgate regulations regarding the distribution of such purse accounts funds; provided, however, that such regulations shall provide for the consideration of all pertinent factors including, but not limited to: (i) the relative needs for increased purses of each licensee; (ii) the number of live racing days conducted by each licensee; (iii) the amount of the live racing handle of each licensee; (iv) the total amount of employment, both direct and indirect, attributable to each licensee; (v) each licensee's total payroll; (vi) capital investments made by each licensee; (vii) the amount of tax revenue and other revenues payable to the commonwealth produced by each licensee; (viii) and total pari-mutuel tax revenue generated and payable to the commonwealth produced by each license. In the event that a portion of the funds is not deposited into purse accounts through the method of the minimum amount or through the formula of pertinent factors and is not otherwise expended or allocated pursuant to the provisions of this clause, that portion of funds shall be deposited into the General Fund unless otherwise specified by a general or special law. The commission may, in any case it deems appropriate, conduct an audit of any purse accounts and shall report the findings of the audit within 30 days of the conclusion thereof to the house and senate chairmen of the joint committee on government regulations.

(h) Three and a half per cent of all purses at all running horse racing meeting licensees' tracks in the commonwealth shall be paid to the Massachusetts Thoroughbred Breeders' Association, Inc.

128D:5A. Unclaimed winnings

Section 5A. Monies from all unclaimed wagers on live races made pursuant to this chapter shall be deposited with the commission. Subject to the rules and regulations established by the commission, the commission shall deposit the unclaimed live wagers into the purse accounts of the racing meeting licensees that generated those unclaimed live wagers.

128D:5B Assessment for operation of commission; refund

Section 5B. (a) One-quarter of one per cent of the total amount deposited at all racing meetings by the patrons wagering at such meetings shall be used to pay the commission's expenses for costs related to the conduct of racing performances held by racing meeting licensees, and for the operation and general administration of the commission in connection with the regulation of racing for the fiscal year next following the calendar year in which said total amount was wagered. Said one-quarter of one per cent shall be retained by the commission from the sums paid daily to the commission pursuant to section five.

(b) The commission is hereby authorized to make an assessment in each fiscal year against each licensee conducting a racing meeting in the commonwealth. Said assessment shall be made at a rate as shall be determined and certified annually by the commission as sufficient to defer the costs in connection with the operation of the commission's racing division; provided, however, that the total assessment for all licensees, not including the revenues received pursuant to paragraph (a), shall not exceed seven hundred and fifty thousand dollars. Said assessment shall be made proportionately against each licensee on the basis of the amount withheld by each licensee less the sum paid to the commission as determined by section five. Each licensee against whom an assessment is made shall pay over daily to the commission a pro rata share of the assessment determined by dividing the total assessment of that license by the number of dates granted to the licensee pursuant to section three. If the commission fails to expend in any fiscal year the total amount assessed under this paragraph, any amount unexpended shall be credited against the assessment to be made in the following year and the assessment in such following year shall be reduced by such unexpended amount; provided, however that, if no racing dates are granted in the following year to any licensee, the portion of unexpended funds due such licensee as a credit shall, at the request of such licensee to the state treasurer, be refunded.

128D:5C Account wagering system; betting accounts; licensee's duties; penalties

Section 5C. Notwithstanding section 17A of chapter 271, each person licensed to conduct a running horse or harness horse racing meeting or licensed to simulcast pursuant to section 7 of chapter 23K, may establish and maintain betting accounts with individuals for use in connection with account wagering on races offered or simulcast . As used in this section, "account wagering" shall mean a form of pari-mutuel wagering in which an individual may deposit money to an account established through an agreement with a person licensed to conduct a running horse or harness horse racing meeting or a person licensed to simulcast pursuant to section 7 of

chapter 23K and use the account balance to make and pay for wagers by the holder of the account which wagers may be made in person, by direct telephone call or by communication through other electronic media by the holder of the account to the licensee. An individual who has established a betting account with a licensee may deposit money into said account through the use of a credit card or debit card issued by a federal or state-chartered bank and a licensee may collect and deposit money received in such a manner at the licensee's racetrack or through the telephone, Internet or other telecommunications media. Only those persons who have established a betting account with a person licensed to conduct a running horse or harness horse racing meeting in accordance with this section shall place bets by telephone or by communication through other electronic media with such licensee.

Such licensees shall accept and maintain betting accounts directly, or through an agreement with an authorized and licensed service provider, in the name of a natural person only. The licensee may refuse to establish or maintain a betting account and may refuse deposits to any such account if the licensee deems such refusal appropriate; provided, however, that such licensee shall not establish or maintain a betting account for any person who has been banned or prohibited from entering the premises of a racing meeting licensee or a gaming licensee in the commonwealth. The licensee may suspend or close any account at any time; provided, however, that the licensee shall return to the account holder any funds that are on deposit in the account at the time it is closed.

The distribution of monies collected from wagers made under this section shall be in compliance with this chapter.

Each betting account maintained by a person licensed to conduct a running horse or harness horse racing meeting shall contain a minimum balance, the amount of which the commission shall prescribe by regulation.

Each licensee shall, with respect to each betting account established hereunder, make tax withholdings and provide tax and revenue reporting, all as otherwise required for wagers placed at a racing meeting licensee.

The balance in any betting account hereunder , which account has been inactive for a period of 3 years, shall be presumed to be abandoned and paid to the state treasurer pursuant to the provisions of chapter 200A.

Betting accounts authorized by this section shall be established, maintained and operated in accordance with rules and regulations promulgated by the commission. The commission shall conduct annual audits of each racing meeting licensee within 90 days of the end of each calendar year with respect to all monies attributable to account wagers. The commission shall report the findings of each such audit within 30 days of the completion of the audit to the house and senate chairs of the joint committee on government regulations.

A licensee failing to comply with this section shall be punished by a fine of not more than $10,000 or by imprisonment in the house of correction for not more than 2 years, or both. A licensee failing to comply with the requirements of the section shall also be subject to civil penalties imposed by the commission of not more than $10,000 if, after notice and a hearing, the commission finds that a violation has occurred.

Notwithstanding any general or special law or rule or regulation to the contrary, a racing meeting licensee and an entity licensed to simulcast under section 7 of chapter 23K shall be permitted, in accordance with rules and regulations established by the commission, to issue credits to individuals for use by such individuals in placing pari-mutuel wagers on live or simulcast races offered by the licensee.

128D:6. Records and books of wagers; access; financial statements; statements of wagers

Section 6. Accurate records and books shall at all times be kept and maintained by each licensee, showing the number, nature and amount of all wagers made in connection with such meeting. The commission, or its duly authorized representatives, shall at all reasonable times have access to the records and books of any licensee for the purpose of examining and checking the same, and ascertaining whether or not the proper amount has been or is being paid to the commission as herein provided.

Within sixty days after the close of a racing meeting, each licensee conducting a horse racing meeting shall submit, on forms prescribed by the commission, financial statements certified to the commission by a certified public accountant; provided, however, that said licensee with the prior written approval of the commission, may submit said statements annually within sixty days after the close of its fiscal year, if any. The commission, or its duly authorized representatives, shall at all reasonable times have access to all records and books of the licensee for the purpose of examining and certifying the same.

The commission may also from time to time require sworn statements of such wagers and may prescribe forms upon which such reporting shall be made. Any licensee failing or refusing to make such report as herein provided, or failing or refusing to pay the amount found to be due as provided in this chapter, shall be deemed guilty of larceny and upon conviction shall be punished by a fine of not less than one thousand nor more than ten thousand dollars.

128D:7. Stewards to conduct racing meetings; representatives; access; authority; reports; violations

Section 7. The commission shall appoint as many stewards as it deems appropriate to each track licensed to conduct racing meetings, who shall not be subject to chapter thirty-one or section nine A of chapter thirty. The commission shall assign, by regulation, duties to be performed by each such steward. The compensation of the commission-appointed steward shall be fixed by the commission.

The commission may also appoint one or more other representatives to attend each racing meeting held or conducted under a license issued under this chapter, and the appointment of said representatives shall not be subject to chapter thirty-one or section nine A of chapter thirty. The compensation and duties of each such representative shall be fixed by the commission.

Each such steward or representative appointed by the commission to attend a racing meeting shall have full and free access to the space or enclosure where the pari-mutuel wagering is conducted or supervised for the purpose only of ascertaining whether or not the provisions of this chapter and the rules and regulations related thereto are being properly observed. Each such steward or representative shall also, for the same purpose only, have full and free access to the books, records and papers pertaining to such pari-mutuel wagering. All employees of the commission assigned to the tracks for security purposes and all police officers assigned to the commission shall be under the control and authority of one of the representatives of the commission at each track. Said steward or representative shall have full and free access to any other areas used in connection with the conduct of racing, and shall investigate, ascertain and report to the commission in writing under oath as to whether or not he has discovered any violation at such meeting of any of the provisions of this chapter, and, if so, the nature and character of such violations. Such report shall be made within ten days after the termination of the duties of such steward or representative at any racing meeting.

If any such report shows any violation of this chapter, the commission shall transmit a copy of such report to the attorney general for such action as the attorney general shall deem proper.

128D:8. Assignment of police officers at racing meetings; employment of veterinarians; testing facilities

Section 8. The commission shall utilize the services of as many veterinarians and drug testing facilities as it deems necessary to insure the legitimate performance of the horses to be raced at any racing meetings authorized by this chapter and to protect the health of such horses.

The commission shall assign from its complement of police officers such police officers as may reasonably be necessary to guard and protect the lives and safety of the public, property and

the animals to be raced at licensed racing meetings, and to perform any such other duties as may be required by the commission in order to maintain fair and honest pari-mutuel racing at any such racing meeting. The police officers so assigned shall, except in the case of an emergency, and while on duty at any such racing meeting, be subject to the operational authority of the commission; provided, however, that such assignment or reassignment shall not in any way impair any rights to which any officer may be entitled.

128D:8A. Periodic inspections of installations and facilities operated by licensees; supervision of stewards, judges and starters

Section 8A. The commission shall make periodic inspections of all of the installations and facilities operated by its licensees under this chapter, including, in the case of racing meeting licensees, stable areas, the office of the racing secretary during the time that entries are being filed, and the jockeys' room to observe the activity of the custodians and valets, and the operation of the clerk of the scales, weighing procedures and security provisions. The activities of stewards, placing judges, patrol judges and starters shall be closely supervised by said commission and the calculating and tote control room of the various tracks shall be regularly spot-checked to insure fair and equitable results for the wagering public.

128D:9. Power of commission to make rules and regulations

Section 9. The commission shall have full power to prescribe rules, regulations and conditions under which simulcasting and all horse races at horse racing meetings shall be conducted in the commonwealth and under which simulcasts and simulcast wagering shall be conducted in the commonwealth, and may by rule or regulation prohibit licensees from admitting minors to horse racing meetings or to places in which pari-mutuel wagering including such wagering on simulcast races takes place. The commission may adopt emergency rules or regulations to protect the health or safety of the public, participants, or animals, or to insure the integrity of racing and pari-mutuel wagering.

The commission shall have power to prescribe special rules, regulations and conditions applicable to simulcasting and horse racing meetings held under licenses granted hereunder in connection with a state or county fair, or any exhibition for the encouragement or extension of agriculture.

The commission shall prescribe rules and regulations under which betting accounts for account wagering shall be established, maintained and operated.

Rules and regulations so prescribed shall be printed by the commission and furnished in reasonable numbers to anyone who may request them.

Any person violating any such rule or regulation shall, upon a complaint brought by the commission, be punished by a fine not exceeding five thousand dollars or by imprisonment not exceeding one year, or by both.

128D:9A Licensing and registering of racing participants and personnel; racing officials; persons employed by the licensee; badges; suspension and revocation; criminal records

Section 9A. For the purpose of enabling the commission to exercise and maintain a proper control over simulcasting and horse racing conducted under the provisions of this chapter, the rules, regulations and conditions prescribed by the commission under section nine shall provide for the licensing and registering at reasonable and uniform fees, of with respect to racing participants and personnel; racing officials; persons employed by the licensee, or employed by a person or concern contracting with or approved by the licensee or commission to provide a service or commodity, which requires their presence in a restricted area, or which requires their presence anywhere on licenses premises while pari-mutuel wagering is being conducted; and any other persons having access to horses and all pari-mutuel clerks and other persons with access to money wagered on races.

Such rules and regulations shall also provide for the fingerprinting of all such licensees. Every person so licensed shall be required to display and wear a badge containing a photograph. Such rules and regulations may also provide for the suspension and revocation of licenses so granted and for the imposition on persons so licensed of reasonable forfeitures and penalties for the violation of any rule or regulation prescribed by the commission and for the use of the proceeds of such penalties and forfeitures.

The commission shall have access to criminal offender record information of applicants for any license granted pursuant to this chapter, including officers, directors and beneficial owners of five per cent or more of the stock of a corporation applying for such a license, and for applicants for employment by the commission. Such access shall be exercised in accordance with sections 167 to 178, inclusive, of chapter 6.

128D:9B Rules and regulations of the commission; emergency rules and regulations

Section 9B. Notwithstanding the provisions of section 5 of chapter 30 A, no rule, regulation or condition of the commission promulgated pursuant to the provisions of this chapter shall take effect except as hereinafter provided.

A copy of every such rule, regulation or condition shall be filed with the clerk of the senate and shall be forthwith referred to the joint committee on government regulations.

Said committee shall file a written report with the clerk of the senate within 30 days after the filing of the copy thereof with said clerk, stating whether said rules, regulations and conditions are consistent with the statutory provisions under which they were promulgated.

Said rules, regulations and conditions shall take effect unless disapproved by a majority vote of both branches of the general court within 60 days after the filing of the copy thereof with the clerk of the senate unless the general court has prorogued within said 60 days.

If the general court prorogues within 60 days of the filing with the clerk of the senate of such rules, regulations and conditions, the clerk of the senate shall refer the same to the committee on government regulations the next session of the general court.

Said committee shall report as hereinbefore provided within 30 days of the 1st day of such session and such rules, regulations and conditions shall take effect unless disapproved by a majority vote of both branches of the general court within 60 days of the 1st day of such session.

The clerk of the senate shall notify the commission of the action taken thereon by the general court.

Notwithstanding the provisions of this section, the commission may adopt emergency rules or regulations to protect the health or safety of the public, participants, or animals; provided, however, that no emergency rule or regulation shall attempt to regulate the dates, manner of wagering, or economic terms or conditions of horse racing within the commonwealth; and provided, further, that such emergency rules and regulations shall expire within 90 days.

128D:10. Wagering at racing meetings by minors; citizenship requirement for employees of licensees

Section 10. Any licensee permitting any minor to participate in the pari-mutuel wagering at a racing meeting held or conducted by such licensee shall be punished by a fine of not more than one hundred dollars. At least eighty-five per cent of the persons employed by a licensee at a racing meeting held or conducted by him shall be citizens of the commonwealth and shall have been such citizens for at least two years immediately prior to such employment.

128D:10A. Exclusion of certain persons

Section 10A. Any commissioner or representative of the commission or any person licensed to simulcast or to conduct a horse racing meeting shall have the right to refuse admission to or

eject from its premises any person whose presence on said premises is detrimental, in the sole judgment of the commissioner or representative of the commission or of said licensee, to the proper and orderly conduct of a racing meeting or the simulcasting premises. Any person who has been notified by any commissioner or representative of the commission or a licensee of simulcasting premises or a racing meeting not to enter or attempt to enter its premises and who thereafter, without the express approval of any commissioner or representative of the commission or the licensee, enters or attempts to enter such premises, shall be punished by a fine of not more than one thousand dollars or by imprisonment for not more than six months, or both. Any person so excluded by any commissioner or representative of the commission or by a licensee shall have a right of appeal to the commission. The commission shall hold a hearing within ten days after any such person requests an appeal and may after such hearing by vote allow such person admission to such meeting.

128D:10B. Falsely making, altering, forging, uttering or publishing pari-mutuel betting tickets

Section 10B. Whoever, with intent to defraud, falsely makes, alters or forges a pari-mutuel betting ticket issued under the provisions of this chapter, or whoever, with intent to defraud, utters and publishes as true a false, forged or altered pari-mutuel betting ticket issued under the provisions of said section five, knowing the same to be false, forged or altered, shall be punished by a fine of not more than one thousand dollars or by imprisonment in the state prison for not more than five years or in a jail for not more than two years.

128D:11. Refusal to grant, suspension or revocation of license

Section 11. The commission shall have full discretion to refuse to grant a license to any applicant for a license or to suspend or revoke the license of any licensee. If any license is suspended or revoked, the commission shall make a record of its reasons for doing so and such record shall be made available to any person requesting to inspect the same.

128D:11A Sale of 10 per cent or more of stock; notice; approval

Section 11A. Except in the case of a publicly held corporation, no person, firm, partnership, trust, association or corporation who has been granted a simulcasting license or license to conduct a horse racing meeting, or an officer, director or the beneficial owner of ten per cent or more of the stock of a corporation holding such a license, shall sell, transfer, convey or cause to be transferred, singly or in concert with others, more than ten per cent of the value or stock of the facility or corporation so licensed without first obtaining the written approval of the commission.

The commission shall approve such sale, transfer or conveyance unless it finds that the consideration therefor is (i) inadequate or (ii) without good cause, (iii) that the sale or transfer results in an undesirable concentration of ownership of racing facilities within the commonwealth, or (iv) that the sale or transfer has an adverse impact upon the integrity of the racing industry or upon simulcasting in the commonwealth. A publicly held corporation, shall, prior to the sale, transfer or conveyance of more than ten per cent of the stock of the corporation, file notice of such action with the commission. A copy of any filing required by state or federal securities law regarding notice of such sale, transfer or conveyance shall be simultaneously filed with the commission. The commission shall have the same rights as to transferees as it would have with respect to original applicants for licensure.

128D:12. Compliance with chapter

Section 12. No person shall hold or conduct, or assist, aid or abet in holding or conducting, any horse racing meeting or engage in simulcasting within the commonwealth unless such person shall comply with the provisions of this chapter related thereto.

Any person holding or conducting or any person aiding or abetting in holding or conducting, any horse racing meeting or engaging in simulcasting within the commonwealth in violation of any of the applicable provisions of this chapter shall, unless some other penalty for such violation is provided in this chapter, be punished for each such offence by a fine of not more than ten thousand dollars or by imprisonment for not more than one year, or both. For the purpose of this section, each day on which any horse racing meeting shall be held or conducted or simulcasting engaged in, in violation of any of the provisions of this chapter, shall be considered a separate and distinct offence.

128D:13. Penalties for wagering or betting at race track except as permitted by chapter

Section 13. Any person making a handbook, at any race track within the commonwealth, or holding or conducting a gambling pool or managing any other type of wagering or betting on the results of any race, or aiding or abetting any of the foregoing types of wagering or betting, except as permitted by this chapter or chapter 23K, shall for a first offence be punished by a fine of not more than two thousand dollars and imprisonment for not more than one year, and for a subsequent offence by a fine of not more than ten thousand dollars and imprisonment for not more than two years. Any jockey, trainer or owner of horses participating in horse racing, if found guilty by the commission of unfair riding or crooked tactics, may be barred or suspended from further participation in racing throughout the commonwealth.

128D:13A Application of laws to race tracks or racing meetings; exception; approval of locations

Section 13A. The provisions of sections 31, 33 and 34 of chapter 271, and of chapter 494 of the acts of 1908, shall not apply to race tracks or racing meetings laid out and conducted by licensees under this chapter or to animals eligible to race at such meetings; except that no license shall be granted by the commission for a racing meeting in any city or town, except in connection with a state or county fair, unless the location of the race track where such meeting is to be held or conducted has been once approved by the mayor and city council or the town council or the selectmen as provided by said section 33 of said chapter 271, after a public hearing, seven days' notice of the time and place of which hearing shall have been given by posting in a conspicuous public place in such city or town and by publication in a newspaper published in such city or town, if there is any published therein, otherwise in a newspaper published in the county wherein such city or town is situated.

The approval of a location by a mayor and city council shall be deemed to be a measure within the provisions of section 42 of chapter 43 and the provisions of said sections shall apply to every city; provided, however, that such approval, if not rescinded as provided in said sections, shall be submitted to the voters of the city at a special election which shall be called by the city council and shall be held within 45 days of the filing of the petition protesting such approval taking effect.

The approval of a location by a town council, in a town having a town council, and by the selectmen in any other town, upon petition of 12 per cent of the voters of the town filed with the town clerk protesting against such approval taking effect shall be suspended from taking effect and the town council or the selectmen, as the case may be, shall immediately reconsider such approval, and if such approval is not rescinded, the question of such approval shall be submitted to the voters of the town at a special election which shall be called by the selectmen or town council, as the case may be, and which shall be held within 45 days of the submission of said petition. Such approval shall become null and void unless a majority of the voters voting on the same at said election vote in the affirmative.

128D:13B. Use of drugs to affect speed of dogs or horses

Section 13B. No person shall administer or cause to be administered, or induce or conspire or connive with, or attempt so to do, any drug, internally or externally by injection, drench or otherwise, to any horse for the purpose of retarding, stimulating or in any other manner affecting the speed of such horse in or in connection with a race conducted under the provisions of this

chapter. Whoever violates this section shall be punished by a fine of five thousand dollars or by imprisonment for one year, or both.

128D:13C Influencing owner, trainer, jockey or agent to affect result of race

Section 13C. No person shall influence, induce or conspire or connive with, or attempt so to do, any owner, trainer, jockey, agent, driver, groom or other person associated with or interested in or having charge of or access to any horse entered or to be entered in a race for the purpose of fraudulently affecting the ultimate result of such race. Whoever violates this section shall be punished by a fine of not less than one hundred nor more than three thousand dollars or by imprisonment for not more than one year, or both.

128D:14 Granting licenses; petitions; ballots; vote of county

Section 14. Licenses shall not be granted under this chapter for the holding or conducting of any horse racing meeting within any county unless a majority of the registered voters of such county voting on the following questions relative to granting such licenses when said questions were last submitted to them have voted in the affirmative.

The state secretary shall, if there has been filed with said secretary, not later than the 60th day before the biennial state election at which such subdivision is to be submitted, petitions, the forms of which may be obtained from said secretary, signed by registered voters of such county, the total of which are equal in number to at least 10 per cent of the total number of registered voters in said county, cause to be placed on the official ballot to be used in the cities and towns at biennial state elections, commencing in the year 1978, the following question:

Shall the pari-mutuel system of betting on licensed live horse races be permitted in this county?

YES. : :

NO. : :

If a majority of the votes cast in a county in answer to the foregoing question is in the affirmative, such county shall be taken to have authorized the licensing of live horse races therein at which the pari-mutuel system of betting shall be permitted.

128D:14A. Granting licenses; election results; copy

Section 14A. A certified copy of the results of a vote on a question submitted to the voters of a political subdivision, in accordance with the provisions of this chapter, relative to granting a license for a horse racing meeting, shall be sent by the state secretary, or by the city or town clerk in the case of a vote by a city or town, to the commission, within ninety days after the election.

128D:14B. Dog racing prohibited; penalty

Section 14E. Notwithstanding the provisions of this chapter or any general or special law to the contrary, no dog racing or racing meeting where any form of betting or wagering on the speed or ability of dogs occurs shall be conducted or permitted in this commonwealth and the commission is hereby prohibited from accepting or approving any application or request for racing dates for dog racing.

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

All other provisions of this Chapter shall be construed as if they contain no references to dogs, dog racing or dog races.

Notwithstanding any general or special law to the contrary, the effective date of this section shall be January 1, 2010.

128D:15. Simulcast wagering; conditions

Section 15. A racing meeting licensee or other entity licensed to simulcast pursuant to section 7 of chapter 23K shall, upon obtaining prior approval from the commission, have the right to simulcast within the commonwealth for pari-mutuel wagering purposes live horse races from pari-mutuel licensees or other licensed wagering or gaming facilities located outside the commonwealth. A racing meeting licensee shall, upon obtaining prior approval from the commission, also have the right to simulcast, for pari-mutuel wagering purposes, its live races to pari-mutuel licensees or other licensed wagering or gaming facilities located within or outside the commonwealth. A violation of this chapter shall constitute cause for the commission, in addition to any other action it may take pursuant to chapter 23K, to suspend or revoke a racing license or the right to simulcast pursuant to this chapter.

Each entity authorized to simulcast pursuant to this chapter or to chapter 23K of the shall simulcast the racing cards of each racing meeting licensee within the commonwealth, at a fee to

be agreed upon between the sending and receiving entities, such fee not to exceed 12per cent of the total sum wagered on such racing card;

An entity authorized to simulcast hereunder, except as may be otherwise expressly provided for herein, shall not be restricted as to the signal it may carry based on the location or the post-time of the horse race to which the simulcast signal relates;

All simulcast licensees shall file with the commission, the clerk of the senate and the clerk of the house of representatives a copy of all contracts, agreements, or conditions pursuant to which simulcast events are broadcast, transmitted or received which shall include provisions for takeout, commissions and charges.

No racing meeting licensee, whether acting as a guest track or host track, shall simulcast live races unless the licensee conducts a full schedule of live racing performances during a racing season except that, if the commission determines that a licensee cannot conduct a full schedule of live racing performances due to circumstances beyond the control of the licensee, the commission may permit the licensee to continue simulcasting.. Nothing herein shall be construed to amend or affect any provision of section 24 of chapter 23K relating to the obligations of racing meeting licensees that hold gaming licenses.

All simulcasts shall comply with the provisions of the Interstate Horse Racing Act of 1978, 15 U.S.C. Sec. 3001 et seq. or other applicable federal law.

Each racing meeting licensee shall pay a fee for those days, whether a dark day, a day during a dark season, or any day between the periods of racing pursuant to an operating license, when no live races are conducted but simulcast races are shown and simulcast wagers are accepted. Such fee shall be determined by the commission in accordance with the license fees charged pursuant to the provisions of this chapter. No other daily fees shall be assessed.

128D:16. Commingling of pari-mutuel pools; rules

Section 16. All wagers on simulcast races accepted by a simulcast licensee within the commonwealth or by a pari-mutuel licensee in another jurisdiction when such licensee is operating as a guest track shall be included in the pari-mutuel pool of the racing meeting licensee which conducts the live race, unless the commission approves a different procedure.

The commission shall promulgate such rules as it considers to be reasonably necessary to facilitate the commingling of pari-mutuel pools, to ensure the proper calculations and distributions of payments and takeouts on such wagers and to regulate the distribution of net proceeds as provided in this chapter.

128D:17. Unclaimed simulcast wagers; separate account

Section 17. All unclaimed simulcast wagers collected by simulcast licensees shall be deposited in a separate account under the control and supervision of the commission. Unclaimed simulcast wagers collected by racing meeting licensees shall be paid by the commission into the purse accounts of the racing meeting licensee that generated the unclaimed wagers. In the case of unclaimed wagers collected by simulcast licensees that are not racing meeting licensees, unclaimed wagers on races simulcast from outside the commonwealth shall be paid by the commission into the Race Horse Development Fund established pursuant to section 60 of chapter 23K, and unclaimed wagers collected on races simulcast from within the commonwealth shall be paid by the commission into the purse accounts of the racing meeting licensees that generated such unclaimed wagers.

128D:18. Simulcast wagering at guest track for horse races from host track; payments to winning patrons, commission, and host track

Section 18.

(1) Each guest track licensee shall pay daily from its simulcast wagers a sum equal to 20per cent of the breaks into the Backstretch Improvement Fund. In the case of a simulcast licensee that is also a racing meeting licensee, the remaining 80per cent of such breaks may be retained by such licensee; provided that such retained percentage shall be accounted for to the commission in accordance with rules and regulations established by the commission. In the case of a simulcast licensee that is not also a racing meeting licensee, the remaining 80per cent of such breaks shall be paid daily to the commission for use by the commission in deferring its operational costs in connection with the regulation of racing and pari-mutuel wagering, including simulcasting.

(2) Each simulcast licensee acting as a guest track and simulcasting a live horse race from a host track within the commonwealth shall return to the winning patrons wagering on such simulcast race all sums so deposited as an award or dividend, according to the acknowledged and recognized rules and methods under which such pari-mutuel system has been operated, less the breaks and less an amount not to exceed 19per cent of the total amount so deposited by patrons wagering on the speed or ability of any one running horse, also known as a straight wager, and, each such licensee shall return to the winning patrons wagering on the speed or ability of a combination of more than one horse in a single pool, also known as an exotic wager, all sums so deposited as an award or dividend, less such breaks, and less an amount not to exceed 26per cent of the total amount so deposited.

Such guest track licensee shall pay to the commission on behalf of the commonwealth on the day following each day of simulcasting, a sum equal to 0.5 per cent; a sum equal to 0.5 per cent

to the breeders association of the most recent live racing performance at the guest track for the purposes of promoting the respective breeding in the commonwealth pursuant to law; a sum equal to 5 per cent to be paid from the 19 per cent withheld and a sum of 6 per cent to be paid from the 26 per cent withheld to the horse owners at the host track for purses; that not less than 3.5 per cent shall be paid to the horse owners, of the most recent live racing performance at the guest track, for purses; , said percentages to be paid from the 19 per cent and the 26 per cent withheld, as provided in this section.

The sum of 4.25 per cent of the straight wagering pool and 7 per cent of the exotic wagering pool shall be paid by such guest track to the host track; and the remainder of the straight wagering pool and the exotic wagering pool shall be retained by such guest track licensee.

(3) Each simulcast licensee within the commonwealth acting as a guest track and simulcasting a live running horse race from a host track from outside the commonwealth shall return to the winning patrons all sums so deposited less the breaks and less either an amount not to exceed 19 per cent of the straight wagering pool and 26 per cent of the exotic wagering pool or the amount which would be paid under the laws of the jurisdiction exercising regulatory authority over the host track; provided, however, that, from the total of the percentages withheld, the sum of 0.5 per cent shall be paid daily to the commission on behalf of the commonwealth; the sum of 0.5 per cent shall be paid daily to the breeders association of the most recent live racing performance at the guest track for the purposes of promoting the respective breeding in the commonwealth pursuant to law; and the remaining percentages shall be retained by the simulcast licensee as its commission; provided further that a simulcast licensee that is a running horse racing meeting licensee and the appropriate horseman's association representing the horse owners racing at that race track shall contract between themselves a percentage of not less than 4 per cent and not more than 7.5 per cent of the remaining percentages to be paid to the horse owners. If a new running horse racing meeting licensee should replace the existing running horse meeting licensee during any point in a calendar year and a new contract is not agreed upon between the new running horse meeting licensee and the horseman's association before the start of the next racing season, then the last signed, executed and completed contract between the previous running horse racing meeting licensee and the horseman's association shall remain in effect for the racing season only or until a new contract is agreed upon.

128D:19. Limitation on actions to recover winnings

Section 19. No action to recover winnings upon a pari-mutuel wager, including wagers on simulcast races, shall be commenced after December 31 of the year following the year in which the wager was made, and no such winnings shall be paid by a licensee except pursuant to a final judgment in an action so commenced or in settlement of such an action. Within 90 days of December 31, money held by a licensee for the payment of any such wager for the recovery of

which no action has commenced within the time herein limited shall be deposited with the commission. A notice of the limitation prescribed by this section in such form as the commission may prescribe shall be posted by each licensee in a conspicuous place at each window or booth where pari-mutuel tickets are sold.

128D:20. General Laws

Section 20. Notwithstanding any rule, regulation or general or special law to the contrary, all references to chapter 128A or chapter 128C in any general or special law shall be deemed to be references to this chapter.

128D:21. Records and books of wagers; financial statements; statement of wagers; licensees under chapter 23K

Section 21. Accurate records and books shall at all times be kept and maintained by each simulcast licensee licensed pursuant to chapter 23K, showing the number, nature and amount of all simulcast wagers placed with such licensee. The commission, or its duly authorized representatives, shall at all reasonable times have access to the records and books of any such licensee for the purpose of examining and checking the same, and ascertaining whether or not the proper amount has been or is being paid to the commission as herein provided.

Within sixty days after the close of its fiscal year each simulcast licensee licensed pursuant to chapter 23K shall submit, on forms prescribed by the commission, financial statements certified to the commission by a certified public accountant; provided, however, that said licensee with the prior written approval of the commission, may submit said statements annually within sixty days after the close of its fiscal year, if any. The commission, or its duly authorized representatives, shall at all reasonable times have access to all records and books of the licensee for the purpose of examining and certifying the same.

The commission may also from time to time require sworn statements of such wagers and may prescribe forms upon which such reporting shall be made. Any such simulcast licensee failing or refusing to make such report as herein provided, or failing or refusing to pay the amount found to be due as provided in this chapter, shall be deemed guilty of larceny and upon conviction shall be punished by a fine of not less than one thousand nor more than ten thousand dollars.

7.c.

New England Horsemen's Benevolent and Protective Association, Inc.

A National Organization

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March 5, 2013

Stephen P. Crosby, Chairman
Massachusetts Gaming Commission
84 State Street Suite 720
Boston, MA 02109

Re: Report of the MGC to the Senate and House of Representatives pursuant to Chapter 194, Section 104, of the Acts of 2011, analyzing the Commonwealth's pari-mutuel and simulcasting laws, with recommendations as to their efficacy and need to be replaced.
DRAFT Dated: February 2013 Presented to the MGC on February 21, 2013

Dear Chairman Crosby:

On behalf of the New England HBPA and the Massachusetts Thoroughbred Breeders Association, we are writing in response to your referenced draft report regarding changes to Chapters 128A & 128C.

The draft report proposes a new chapter of the MGL to replace current chapters 128A and 128C. It advises that legislative action needs to be taken by July 31, 2013 in order to continue authorization of live racing, pari-mutuel wagering and simulcasting in the Commonwealth. The New England HBPA and the Massachusetts Thoroughbred Breeders Association agrees with the concept of consolidating the two current racing and wagering chapters into one comprehensive chapter but disagrees with some of the analysis and conclusions of the report.

The Review and Analysis section of the report conveys background information regarding legislative incorporation of horsemen's representatives as the "voice of racing industry beneficiaries in decision-making affecting them, …". We are very appreciative that the Legislature has recognized the importance of horsemen participating in the decision-making process. The report however frames horsemen as "racing industry beneficiaries" when, in fact, the local horsemen are major investors in the racing industry who have continued to invest and race in Massachusetts although it would be financially advantageous to relocate racing activities to other jurisdictions. The horsemen provide the racing product. Their activities support local farms and help preserve open space. The thoroughbred owners, trainers, and breeders are major investors in the Massachusetts economy. We highlight this important distinction because it affects a number of issues addressed in the report as referenced in our comments.

The same paragraph that references the horsemen as the voice of the racing industry notes the Commission's intent to make recommendations consistent with the aforementioned collaborative approach. However, the very next sentence uses an illustration inconsistent with a collaborative approach. A recommendation is made to exclude the horsemen from participation in a very important decision that impacts the revenue stream for the horsemen's purse account.

Under the Summary of Recommendations section of the report, discussion is presented concerning fair and equitable treatment of racing and non-racing entities. We certainly agree with that concept and would very much like to achieve that admirable goal.

As we undertake a sound collaborative approach, we must exercise great care to examine and evaluate the various components of the existing racing model. There is a need to determine which parts work well and which may need to be discarded or altered to achieve the intended legislative goals. The premise that what works in other states is sure to work in Massachusetts is not sound as each state differs in many respects. This declaration is not collaborative. The perfect model has not been defined or discussed by the Massachusetts stakeholders. The Legislature did not adhere to that approach when it melded the gaming, racing, pari-mutuel wagering and simulcasting components under the 2011 Gaming law. The legislature wisely avoided the easier cookie cutter approach by carefully selecting the various components of each gambling business determined as the best fit for Massachusetts. Casino businesses inherently have different goals and different types of stakeholders than the racing, breeding and agricultural business. Each state assigns its own weighted value to these differences. This is a principal reason that there is no ideal model that fits every state.

We agree that there are certain restrictions that are no longer appropriate and should be eliminated. One example is the restriction that prohibits licensees from taking simulcasting signals at specific times of the day (Chapter 128C §2).

The report recommends discontinuance of the current prohibition of rebating and wagering on credit under the racing laws. We find this recommendation inconsistent with the previous paragraph in this section of the report that declares "...the business model for the racing industry across America has changed, and the current Massachusetts simulcast management model has been discarded by most other racing states." The Commission's survey (exhibit attached to the Commission's Brief Memorandum dated January 14, 2013) of
racing laws and regulations in Delaware, Louisiana, Kentucky, Michigan, Minnesota, New Jersey, New York and Pennsylvania clearly shows that rebating and wagering on credit (other than account wagering) are all consistent with current Massachusetts law prohibiting rebating and wagering on credit (other than account wagering). As we mentioned in our previous letter, we are keeping an open mind on rebating and wagering on credit pending a thorough discussion with Commission staff as to the detail accounting for the source funding of rebates and financial impacts on the purse account revenue stream, assignment of risks associated with rebating and wagering on credit and need for placing pari-mutual wagering on the same footing as gaming. As of this writing, the recommendation to authorize rebating and wagering on credit was determined in the absence of the collaborative approach in respect to designation of which party (or parties) will sacrifice a portion of their revenue stream hoping that handle will increase and which party (or parties) will have authority to approve specific rebating schemes. The horsemen will object to any rebate plan or wagering on credit plan that reduces or risks purse money without specific approval by the horsemen.

We support the recommended abolition of the Trust Fund system for capital improvements and promotional activities and commend the Commission for earmarking of a portion of the revenue for backstretch infrastructure improvements.

The Review, Analysis and Recommendations section of the report under subsection (i) Current Simulcasting Authorization discusses §7(b) simulcasting licensing regarding its inapplicability to G.L. c. 128C, §2. We agree with the conclusion that G.L. c. 128C, §2 does not apply to §7(b) simulcasting licensees because the Legislature recognized, via the 2011 gaming act, the merits of instituting new non-racing simulcasting licenses for casinos. In so doing, the Legislature was cognizant that a significant portion of simulcasting wagers would be placed at casinos rather than at racing facilities. In the absence of a levy on such wagers, casinos would realize higher profits on a simulcasting wager than an identical wager placed at a racing facility. The simulcasting wager placed at a casino would not contribute any amount of support to horsemen's purses, although support is currently contributed when a wager is placed at a racing facility. In essence, in the absence of a levy, the casinos would be permitted to profit from the racing industry without a fair contribution to the industry that supports and develops the casino's simulcasting business. This incongruity was the basis of the Legislature's decision to require a 10% levy on gross simulcasting wagers placed at casino facilities. The proceeds of said levy are directed to the Race Horse Development Fund. In effect, the 10% levy is the same concept as the "premium" requirements levied on simulcast wagers placed at racing facilities, as per G.L. c. 128C, §2. It applies a parallel approach requiring support payments for purses, breeding and agriculture regardless of the location that a wager is placed.

The Review, Analysis and Recommendations section of the report under subsection (ii) Creating A Uniform Simulcasting Regulatory Framework cites that "The business imperatives of gaming and those of racing are plainly not the same; and the racing industry factors behind many elements of the framework set forth in G.L. c. 128C, §2 have no obvious equivalents in gaming." We agree with this statement and, as we discussed in our previous comments, the 10% levy applied to §7(b) simulcasting licensees has, in effect, compensated for the lack of application of G.L. c. 128C, §2 to said licensees.

Subsection (ii) Creating A Uniform Simulcasting Regulatory Framework cites "While these §2 arrangements might have worked once when only race tracks were simulcasting, they are no longer feasible as regulatory criteria for simulcasting by both racing and non-racing simulcast licenses. The commission recommends abolishing this current system and replacing it with a simulcasting regulatory regime (similar to that adopted by other states that permit simulcasting) that allows those authorized to simulcast to negotiate the fees for interstate and intrastate signals (with a cap on the fees for intrastate simulcasting), subject to an obligation to simulcast Massachusetts thoroughbred and harness races."

As we previously discussed, while we agree that G.L. c. 128C, §2 should not apply to §7(b) simulcasting licensees, we do not agree with the position that premiums should be eliminated. We suggest a simple solution to the immediate concern (as quoted above) by modifying the recommendation (given the 10% levy on §7(b) simulcasting licensees) to one that exempts said licensees from G.L. c. 128C, §2. Such an exemption would remove the concern that "...arrangements ... are no longer feasible as regulatory criteria for simulcasting by both racing and non-racing simulcast licenses."

We disagree with the Commission's recommendation to abolish G.L. c. 128C, §2 in its entirety and replace it with a system "...that allows those authorized to simulcast to negotiate the fees for interstate and intrastate signals...". We suggest that the definition of fees when allowing "those authorized to simulcast to negotiate the fees " for interstate simulcasting must be limited to host track fees. The recommendation concerning intrastate fees will create an inherent conflict of interest, since it would place negotiation of intrastate simulcasting fees in the hands of licensees without

required approval of the horseman. It positions the licensees to potentially minimize the fees that they would be required to pay to each other thereby minimizing the amounts directed to purse accounts. It is contrary to the policy established by the United States Congress in 15 USC Chapter 57 (Interstate Horseracing Act) that local horseman should control the use of their signal. Since current state law specifically sets an 11% fee on intrastate simulcast wagers, we suggest establishing a floor of 11% along with the recommended cap of 12%.We suggest that the Commission avoid the negative ramifications of a system that places authority for setting fees in the hands of only one category of major racing investors to the possible detriment of the other category of major investors.

If the §7(b) simulcasting licensees are to be exempt from G.L. c. 128C, §2, we propose that the Commission recommend removing all restriction on simulcasting dates and times and altering the current formula for "premiums" in §2 by eliminating dates and events that are premium-free and establishing a uniform percentage on all simulcasting wagering between racing licensees. We suggest that a uniform premium percentage should be imposed to cause an equal sharing of net simulcast wagering proceeds between racing licensees and the purse accounts of the horse breed upon which each simulcast wager was placed. This equal sharing of revenue would be consistent with the current negotiated contract between the local horsemen and Suffolk Downs and the near uniform practice across the United States of allocating one-half of such net revenue to purses.

Subsection (ii) Creating A Uniform Simulcasting Regulatory Framework cites that "While some horsemen may oppose the recommended abolition of premiums, as taking money away from purses, the earmarking of the vast majority of Fund's revenue's for purses should more that make up for any loss occasioned by the loss of premium revenue. As indicated below the Commission considers that the establishment of gaming as a funding source for purses has superseded the need for continuation of the premium mechanism as a funding source."

We emphatically disagree with this position. The assumption that the "…Fund's revenue's for purses should more than make up for any loss occasioned by the loss of premium revenue" and that "…establishment of gaming as a funding source for purses has superseded the need for continuation of the premium mechanism as a funding source." is not correct. That assumption ignores the fact that (even with gaming facilities running at full capacity) the portion of state gaming revenue directed to thoroughbred racing purses along with retention of current premiums and other statutory wagering revenue will not elevate thoroughbred purses into a relevant competitive zone with other similar east coast racing programs. States with casino gaming allocate higher percentages of gaming profits than Massachusetts, which gives an added advantage to purse levels in those states. As can be seen in the exhibit we submitted with our February 18, 2013 comments, the purses in the states with which we compete are substantially higher than thoroughbred purses in Massachusetts.

Our need to have competitive purses is the reason we are requesting elimination of premium-free thoroughbred wagering conducted by non-thoroughbred racing licensees and a uniform increased premium to a more equitable share of profits on thoroughbred wagering conducted at non-thoroughbred racing facilities in Massachusetts. When the report compares the models in other gaming states with the system of premiums in Massachusetts it should be cognizant of the fact that the purses in other states receive a much higher percentage of gaming profits.

The negative impact of eliminating premiums removes an annual three-year average of over $900,000 from thoroughbred purses. Eliminating premiums, ironically, would become a windfall to racing licensees that thoroughbred wagering has been subsidizing for more than ten years while setting thoroughbred purses further away from reaching the appropriate competitive zone. The present premiums are a cost of business of the simulcasting licensees. Eliminating the premiums will enhance the profits of the simulcasting licensees at the expense of the horsemen, permitting

them to siphon business from horseracing facilities without adequate compensation to the local horsemen. Enhancing the profitability of simulcasting licensees does not appear to be an appropriate legislative objective, especially when it is done at the cost of reducing funding for purses. We object to this or any other recommendation that eliminates a purse revenue stream currently provided by law, especially since the effect of the proposed change is to divert present purse revenue to simulcast licensees to materially enhance the profits realized by those licensees.

Additionally, subsection (ii) Creating A Uniform Simulcasting Regulatory Framework cites that "Abolition of the premium in the context of the Commission's ability to adjust the §7(b) takeout will level the simulcasting cost burden for racing and non-racing simulcasting licensees, while maintaining a realistic funding level for purses." As per our previous comments, we disagree that abolition of premiums will be "maintaining realistic funding for purse levels", particularly, when realistic purse levels won't be reached even by retaining current premiums. Furthermore, we question whether it is appropriate to level the simulcasting cost burden for racing and non-racing simulcasting licensees when the racing licensees bear the cost and burden of hosting local racing that develops and cultivates the wagering patrons who are the customers placing the simulcast wagers. While revenue of the racing licensees during a live meet does increase, the increase is not sufficient to fund the costs of live racing. Since live racing inures to the benefit of the non-racing simulcasting licensees by developing and maintaining interest in horseracing. In horseracing, it is appropriate that these non-racing simulcasting licensees bear some of the cost burden of maintaining and developing the customer base.

We suggest that the Commission carefully examine each cost of the components of the lucrative simulcasting profits before it recommends abolishing premiums to "level the simulcasting cost burden for racing and non-racing simulcasting licensees". The Commission needs to further consider whether the cost burden should be leveled where leveling will cause the non-racing simulcasting licensees to generate greater profits than the racing simulcasting licensees.

Thank you for your consideration and for providing us with an opportunity to offer our comments.

Sincerely,

Anthony Spadea, President
New England HBPA

George Brown, Chairman
MA Thoroughbred Breeders Association

Cc:
Gayle Cameron, Commissioner, MA Gaming Commissioner
Dr. Jennifer Durenberger, Executive Director, MA Racing Commission