



**TESTIMONY OF**  
**MICHAEL CIANCHETTE, MANAGER**  
**FIRST TRACKS CUMBERLAND**  
**IN SUPPORT OF**

*LD 731 - An Act Regarding the Licensing of Persons to Conduct Advance Deposit Wagering*  
*Sponsor: Senator B. Farrin*

Senator Hickman, Rep. Supica, and Distinguished Members of the Committee:

As you may be aware, First Tracks Investments, LLC is the licensed Commercial Track in Cumberland. Please let this serve as a statement of qualified support for LD 731. We understand that Senator Farrin will be presenting an amendment to align the commission rate for future Maine ADW licensees with current law and support that amendment.

Current Maine law provided for a competitive bid process to license ADW providers in Maine. Penn National, operator of the Bangor track and casino, won that first bid and is presently the sole legal ADW operator in the state. Any changes should affirm their existing license status. Further, we understand that they may suggest that new licenses under LD 731 should not be effective until the expiration of their existing contract and, as a practical matter, that timeline is likely to be appropriate given the nature and length of the rulemaking process. We have no objection to clarification on that matter.

Our support for LD 731 is qualified due to a few specific issues. One is likely a relatively minor clarification, while two are slightly more substantive. Our goal is to avoid any negative impacts on live, in-person Maine racing. The harness racing industry generates attendant economic activity supporting Maine blacksmiths, trainers, horsemen, hay farmers, veterinarians, auto dealers, and everyone else who has direct or indirect involvement in putting on these athletic events.

The suggestions which follow focus on ensuring that in-person experiences are not supplanted by ADW activities, but rather place them together in an integrated fashion for fans. With these amendments, the tentativeness of our support would cease and we would look forward to encouraging enactment by the 131<sup>st</sup> Maine Legislature. Specifically, we would propose 3 substantive changes in order to ensure the strength of Maine's harness racing industry in the future, draft language for which is appended hereto. They are:

1. **Require ADW providers to carry Maine racing.** Maine off-track betting (OTBs) facilities are already legally required to carry races originating in Maine (*see* 8 M.R.S. 275-D(8)). The change proposed in the attached amendment would apply the same requirement to an ADW provider. This will both provide equal treatment between off-

track wagers of in-state races (e.g. OTBs and ADWs) as well as prevent an ADW from blacklisting Maine racing while still offering services to Maine residents. The draft provides a rulemaking “escape hatch” to prevent a track from unfairly constraining an ADW provider.

2. **Require ADW providers to offer their out-of-state races to Maine facilities.** Many of the largest ADW providers who are likely to seek licenses under this statute, should it be enacted, also operate tracks outside of Maine. For example, Penn National operates the Plainridge harness racing facility, MGM through the Empire City Casino operates Yonkers Raceway, and Churchill Downs operates Churchill Downs, home of the Kentucky Derby. This requirement just provides a level playing field for existing Maine operators to access those races, again with a rulemaking “escape hatch.”
3. **Include Geofencing Requirements.** Many ADW providers have wonderful platforms. Additionally, customers may enjoy utilizing a single system whether they are at home or at a track. However, there exists a possible perverse outcome if a patron wishes to bet on a live race while at a track through their mobile phone. The track itself incurs many operating costs to put on Maine races; track maintenance, buildings, infrastructure, and the like are significant costs and generate direct economic activity in Maine. Those costs are paid through the delivery of gaming and entertainment products to customers, including the retention of commissions from on-track wagers.

The attached language would essentially treat on-track wagers made through an ADW as a “normal” on-track wager. The ADW service provider would retain a reasonable fee, to be established by rule, for serving as a virtual teller. With this approach, the ADW provider gains customers for their platform and earns a fee for their service while the track is incentivized to get patrons attending live Maine racing in person generating new fans and excitement for the sport. In short, this would create a fairer system so that an operating track would not shoulder an outsized portion of the operating costs that go directly into the Maine economy without the corresponding revenues.

We understand the geofencing may present a technical challenge for ADW providers. However, this regulation presently exists in California and many ADW providers operate in that jurisdiction.<sup>1</sup> Enclosed herein are (1) an excerpt from the existing California law and (2) legislative language from a bill presented in the Arizona Senate which would functionally lead to the same result. We are very willing to work with the committee and other members of the industry to come up with workable language.

As noted, we believe these are relatively minor tweaks to a good bill that provides licensing certainty moving forward, rather than an ongoing competitive bid process. We are happy to answer any questions the committee may have. Thank you for your time and service to the State.

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<sup>1</sup> See, e.g., [TOC Says TwinSpires Now In Compliance With Geolocation Tracking, Restores Signal - Horse Racing News | Paulick Report](https://paulickreport.com/news/the-biz/toc-says-twinspires-now-compliance-geolocation-tracking-restores-signal/) (<https://paulickreport.com/news/the-biz/toc-says-twinspires-now-compliance-geolocation-tracking-restores-signal/>); [2021-08-Board.pdf \(delmarfairgrounds.com\)](https://delmarfairgrounds.com/pdf/2021/2021-08-Board.pdf) (<https://delmarfairgrounds.com/pdf/2021/2021-08-Board.pdf>).

**Proposed Amendment LD 731**  
**Live Racing Support**

Amend Section 11 of the Amendment presented by the sponsors (new 8 MRSA §1073):

- 4. Conditions of licensure.** An advance deposit wagering licensee shall:
- A. Purchase a bond to secure the advance deposit wagering accounts; and**
  - B. Ensure that a person who establishes an account to place a wager on horse racing by means of advance deposit wagering has attained 18 years of age and is a resident of this State;**
  - C. Provide geolocation checks prior to the acceptance of a wager;**
  - D. Make all parimutuel races originating at a commercial track in this State available on the wagering platform of the advance deposit wagering licensee subject to a written contract between the advance deposit wagering licensee and each commercial track or, in the absence of a written contract, by rule adopted by the board; and**
  - E. In the event a licensee is a multijurisdictional account wagering provider, provide access to any parimutuel pools operated by tracks affiliated with the provider in jurisdictions other than this State to all persons licensed as pari-mutuel facilities subject to a written contract between the multijurisdictional account wagering provider and the pari-mutuel facility or, in the absence of a written contract, by rule adopted by the board.**

Amend Section 10 of the Amendment presented by the sponsors (amend 8 MRSA §1072, add new section):

- 3. Distributions for On Premises Wagering.** Notwithstanding any other provisions of this section to the contrary, any wagers placed through an advance deposit wagering licensee that are determined to have been placed from the physical location of a pari-mutuel facility pursuant to any geolocation check shall be distributed pursuant to section 286 as if the wager was placed with the pari-mutuel facility. The advance deposit wagering licensee shall be entitled to retain an amount established by rule from the share due to the pari-mutuel facility for providing the service. The board shall adopt rules to enforce this subsection.

## Selected Statutory or Legislative Provisions

### **California Law (Cal. B&P §19604(g)):**

A racing association, a fair, a satellite wagering facility, or a minisatellite wagering facility may enter into an agreement with an ADW provider to accept and facilitate the placement of any wager from a patron at its facility that a California resident could make through that ADW provider. Deductions from wagers made pursuant to this agreement shall be distributed in accordance with the provisions of this chapter governing wagers placed at that facility, except that the board may authorize alternative distributions as agreed to by the ADW provider, the operator of the facility accepting the wager, the association or fair conducting that breed of racing in the zone where the wager is placed, and the respective horsemen's organization.

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### **Excerpt, Arizona Senate Bill 1442 (55<sup>th</sup> Legislature):**

5-119. Geofencing; racetrack enclosures; additional wagering facilities

A. ALL RACETRACK ENCLOSURES AND ADDITIONAL WAGERING FACILITIES THAT ARE LICENSED TO ACCEPT WAGERS SHALL USE A GEOFENCE SYSTEM TO DYNAMICALLY MONITOR THE PHYSICAL LOCATION OF PATRONS ATTEMPTING TO PLACE WAGERS ON MOBILE WAGERING PLATFORMS.

B. THE GEOFENCE SYSTEM SHALL PERFORM A GEOLOCATION CHECK BEFORE THE PLACEMENT OF A WAGER IN AN AUTHORIZED SESSION.

C. THE GEOFENCE SYSTEM SHALL PERFORM RECURRING GEOLOCATION CHECKS THROUGHOUT A PATRON'S AUTHORIZED SESSION.

D. WAGERS PLACED THROUGH A MOBILE WAGERING PLATFORM AT A RACETRACK ENCLOSURE OR ADDITIONAL WAGERING FACILITY SHALL BE TREATED AS A WAGER MADE BY THE PATRON ON THE GROUNDS OF THE RACETRACK ENCLOSURE.

E. THE RACETRACK ENCLOSURE, THE ADDITIONAL WAGERING FACILITY OR THE GEOFENCE PROVIDER SHALL PROVIDE ACCESS TO REAL-TIME GEOFENCE DATA TO THE DEPARTMENT AND COMMISSION.