

OFFICE OF POLICY AND LEGAL ANALYSIS

Date: May 12, 2021
To: Veterans and Legal Affairs Committee
From: Janet Stocco, Legislative Analyst
LD 860 **An Act To Clarify the Laws Concerning Off-track Betting Facility Licenses**
(Rep. Bruce White)

SUMMARY

This bill would amend the laws governing off-track betting facility (OTB) licenses to authorize the transfer or assignment of an OTB license and to clarify the rights and obligations of an OTB that was licensed under Public Law 2019, chapter 626.

1. **Transfer or assignment of OTB licenses.** Under current [8 M.R.S. §275-D](#), a hotel, Class A lounge, Class A restaurant or Class A restaurant/lounge (as those terms are defined in Title 28-A), may obtain an OTB license upon approval of the municipality and the State Harness Racing Commission. Current §275-D(10) prohibits the subsequent transfer or assignment of an OTB license.

The bill authorizes an OTB licensee to apply to the State Harness Racing Commission for approval of a license transfer or assignment. Under the bill, the commission *may* deny the request for one of the reasons set forth in §275-D(5)(D) and which currently serve as grounds for a municipality to deny an initial OTB license application:

- Conviction of the applicant or of its majority shareholder of a Class A, B, or C crime.
- The facility's noncompliance with local zoning or land use ordinances;
- Waste disposal, health or safety or repeated parking and traffic violations by the facility's patrons or employees or other unreasonable disturbances or interference with nearby residents' or businesses' ability to use their property in a reasonable manner;
- Repeated breaches of the peace, disorderly conduct or vandalism caused by the facility's patrons or employees; or
- A violation of any of the laws governing OTBs.

2. **OTB license under Public Law 2019, chapter 626.** As an alternative to the procedures established in §275-D for issuance of an OTB license, [P.L. 2019, ch. 626, §16](#) granted the commission authority to issue an OTB license under the following conditions:

Sec. 16. Commercial track ceases operation prior to March 1, 2021. If the State Harness Racing Commission as established by the Maine Revised Statutes, Title 8, section 261-A determines that a commercial track ceased or agreed to cease operation prior to March 1, 2021 following a request from a bona fide statewide organization of horsemen in whole or in part to facilitate the prospect that a modernized commercial track might open, *notwithstanding the requirements of Title 8, section 275-D*, the commission may grant a license to the operator of the former commercial track or an entity controlled by its owners to operate an off-track betting facility in the same municipality of the commercial track at or after the commercial track ceases operation as a commercial track.

Section 2 of the bill provides that an OTB licensed under this P.L. 2019, ch. 626, §16 “has the same rights and privileges and is subject to the statutes and rules applicable to the holder of a license issued under [§275-D] as of the date” the licensee’s application was granted.

PROPOSED AMENDMENTS AND COMPETING LEGISLATION

1. **Sponsor’s proposed amendment - license transfer.** At the public hearing, the sponsor [proposed amending](#) section 1 of the bill to clarify that, in addition to the discretionary grounds for denial of an application to transfer an OTB license established in the bill, the commission *shall* deny the transfer or assignment unless the transferee or assignee will operate an OTB in the same municipality as the existing OTB.
2. **Competing legislation.** [LD 1405](#), which is currently pending before this committee, takes an alternative approach to clarifying the rights and responsibilities of an OTB licensed under P.L. 2019, ch. 626. **Part B** of that bill, which is attached to this bill analysis, does the following.

- It amends the definition of “off-track betting facility” and “off-track betting licensee” for purposes of Title 8, chapter 275-A, the laws governing harness racing, to clarify that the phrase includes OTBs licensed under P.L. 2019, ch. 626, §16.
- It enacts a new statute, §275-P, specifying which subsections of §275-D apply to an OTB licensed under P.L. 2019, ch. 626, §16. Although the provisions of §275-D involving the initial application process do not apply, the following provisions of §275-D are applicable:

§275-D(1)	Type of facility in which an OTB may be located (hotel, class A lounge, etc.)
§275-D(2-A, 2-B)	Required annual license renewal and payment of \$250 license renewal fee
§275-D(7)	Exclusion of minors under age 16 and limited location of minors under age 18
§275-D(8)	Requirements for simulcasting races (approval of racetrack, use of monitors, etc.)
§275-D(10)	Prohibition on transfer or assignment of OTB license [<i>conflicts with LD 860</i>]
§275-D(11)	License revocation, including automatic revocation if majority ownership changes
§275-D(12)	Commission approval of dates on which OTB may conduct pari-mutuel wagering
§275-D(13)	Commission authority to impose conditions on OTB licensees

- It enacts language, similar to LD 860, providing that an OTB licensed under P.L. 2019, ch. 626 has all of the other rights, privileges, duties, and restrictions under Maine law as an OTB licensed under §275-D;
- Like [LD 1205](#), it reduces by half most of the taxes imposed on the commissions than an OTB collects on wagers placed on out-of-state races **if** the OTB was licensed before Jan. 1, 20201 and is not eligible to receive a distribution from the Fund to Stabilize Off-Track Betting. Unlike LD 1205, LD 1405 does not reduce the state share of taxes imposed on these commissions, however.
- It authorizes an OTB licensed under P.L. 2019, ch. 626, §16:
 - To submit a bid for an advance deposit wagering (ADW) license under §1071(1);
 - To receive distributions of revenue from the ADW cascade under §1072(1)(B) for wagers placed on races within the State but does **not** authorize it to receive distributions of revenue from the ADW cascade under §1072(2)(B) for wagers placed on out-of-state races.
(*Is this distinction between in-state and out-of-state race generated ADW revenue intended?*)

- It amends P.L. 2019, ch. 626, §16 itself to specify that an OTB licensed under the public law is subject to the provisions of §275-P, created in the bill.

TECHNICAL ISSUES

1. **Conflict with P.L. 2019, ch. 626.** P.L. 2019, ch. 626, §16 explicitly provides that OTB licenses issued under this law may be granted “notwithstanding the requirements of Title 8, section 275-D.” It is therefore unclear whether section 2 of the bill, which enacts §275-D(14), can effectively change the rights and responsibilities of an OTB licensed under P.L. 2019, ch. 626.

FISCAL IMPACT

Not yet determined.

Attachment: Part B of LD 1405

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PART B

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Sec. B-1. 8 MRSA §275-A, sub-§8, as enacted by PL 1993, c. 388, §8, is amended to read:

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8. Off-track betting facility. "Off-track betting facility" means a facility at which a person is licensed under Public Law 2019, chapter 626, section 16 or a facility other than a racetrack at which a person is licensed under section 275-D to conduct pari-mutuel wagering on simulcast racing.

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Sec. B-2. 8 MRSA §275-A, sub-§9, as enacted by PL 1993, c. 388, §8, is amended to read:

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9. Off-track betting licensee. "Off-track betting licensee" means a person who has obtained a license under section 275-D or Public Law 2019, chapter 626, section 16 to conduct pari-mutuel wagering at an off-track betting facility.

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Sec. B-3. 8 MRSA §275-B, sub-§2, as enacted by PL 1993, c. 388, §8, is amended to read:

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2. Off-track betting facility. A person licensed pursuant to section 275-D or Public Law 2019, chapter 626, section 16 to operate an off-track betting facility may sell pari-mutuel pools at that licensed facility.

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Sec. B-4. 8 MRSA §275-P is enacted to read:

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§275-P. Off-track betting facilities licensed under Public Law 2019, chapter 626, section 16

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1. Provisions applicable. The following provisions of section 275-D apply to off-track betting facility licenses issued under Public Law 2019, chapter 626, section 16:

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A. The off-track betting facility may conduct pari-mutuel wagering only at a facility that meets the requirements of section 275-D, subsection 1;

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B. The off-track betting facility license must be renewed in accordance with section 275-D, subsections 2-A and 2-B and is nontransferable as provided in section 275-D, subsection 10;

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C. The off-track betting facility must be operated in accordance with section 275-D, subsections 7, 8 and 12; and

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D. The off-track betting facility license is subject to the administrative sanctions set forth in section 275-D, subsections 11 and 13.

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1 2. Provisions inapplicable. The following provisions of section 275-D do not apply
 2 to off-track betting facility licenses issued under Public Law 2019, chapter 626, section 16:

3 A. The application and notice requirements in section 275-D, subsections 2, 3 and 4;

4 B. The municipal approval process in section 275-D, subsection 5; and

5 C. The public hearing and commission determination requirements of section 275-D,
 6 subsection 6.

7 3. Effect of other laws. Except as otherwise specified in this section, an off-track
 8 betting facility licensed under Public Law 2019, chapter 626, section 16 is subject to the
 9 same rights and privileges under the laws of this State as an off-track betting facility
 10 licensed under section 275-D and is subject to the same duties, restrictions and penalties
 11 under the laws of this State as an off-track betting facility licensed under section 275-D.

12 **Sec. B-5. 8 MRSA §286, sub-§4**, as amended by PL 2015, c. 200, §3, is further
 13 amended to read:

14 **4. Off-track betting facility interstate simulcasting with commingled pools.** The
 15 distribution of the commission on simulcasting of races with commingled pools originating
 16 at a racetrack in another state by an off-track betting facility is calculated in accordance
 17 with this subsection as a percentage of the commission with respect to the State's share and
 18 as percentages of the net commission with respect to all other participants' shares ~~and is~~
 19 ~~distributed.~~ If the off-track betting facility is eligible to receive a distribution from the
 20 Fund to Stabilize Off-track Betting Facilities established in section 300 or is licensed after
 21 January 1, 2021, the distribution of the commission under this subsection is as follows.

22 A. On exotic wagers:

23 (1) The state share is 8.647% for an off-track betting facility located in the same
 24 municipality as a commercial track and 9.801% for all other facilities;

25 (2) The Sire Stakes Fund share is 5.965%;

26 (3) The Stipend Fund share is 4.494%;

27 (4) The purse supplement share is 16.558%;

28 (5) The Harness Racing Promotional Fund share is 0.962%;

29 (6) The off-track betting facility share is all amounts not otherwise assigned; and

30 (7) The off-track betting facility simulcast fund share is 12.951%.

31 B. On regular wagers:

32 (1) The state share is 2.739% for an off-track betting facility located in the same
 33 municipality as a commercial track and 4.405% for all other facilities;

34 (2) The Sire Stakes Fund share is 0.400%;

35 (3) The Stipend Fund share is 6.590%;

36 (4) The purse supplement share is 8.399%;

37 (5) The Harness Racing Promotional Fund share is 1.389%;

38 (6) The off-track betting facility share is all amounts not otherwise assigned; and

39 (7) The off-track betting facility simulcast fund share is 18.627%.

1 For an off-track betting facility licensed on or before January 1, 2021 that is not eligible to
 2 receive a distribution from the Fund to Stabilize Off-track Betting Facilities established in
 3 section 300, the distributions under paragraph A, subparagraphs (2), (3), (4), (5) and (7)
 4 and the distributions in paragraph B, subparagraphs (2), (3), (4), (5) and (7) must be reduced
 5 by 1/2.

6 **Sec. B-6. 8 MRSA §1071, sub-§1**, as enacted by PL 2015, c. 499, §8, is amended
 7 to read:

8 **1. Eligible bidders; bid proposal factors.** The board may accept bids from an entity
 9 that for a period of at least 2 years has been licensed to accept wagers on horse racing as
 10 either the operator of a commercial track, as an off-track betting facility licensed under
 11 section 275-D or Public Law 2019, chapter 626, section 16 or as an entity licensed in
 12 another state to conduct advance deposit wagering. When considering bids for the privilege
 13 to be licensed to conduct advance deposit wagering, the board shall consider the following:

14 A. The financial suitability of the bidder to operate advance deposit wagering,
 15 including purchase of a bond to secure the accounts of advance deposit wagering
 16 bettors;

17 B. The extent to which the bidder's proposal to conduct advance deposit wagering will
 18 benefit the harness racing industry in the State and the General Fund;

19 C. The percentage of wagers the bidder proposes to pay to the board to cover the costs
 20 of the board for administration and oversight of advance deposit wagering and to make
 21 distributions required under section 1072;

22 D. The adequacy of systems the bidder will use to conduct advance deposit wagering
 23 to ensure that bettors who establish accounts to place bets on horse racing via advance
 24 deposit wagering are 18 years of age or older and residents of the State;

25 E. The likelihood that the bidder will meet the requirements for licensure to conduct
 26 advance deposit wagering as prescribed by the rules of the board;

27 F. The methods by which the bidder will provide access to systems and records to
 28 facilitate adequate monitoring and enforcement by the board; and

29 G. Factors other than those in paragraphs A to F disclosed in the board's request for
 30 proposals that the board determines to be relevant.

31 **Sec. B-7. 8 MRSA §1072, sub-§1, ¶B**, as enacted by PL 2015, c. 499, §8, is
 32 amended to read:

33 B. Twenty percent of the net commission must be distributed to all off-track betting
 34 facilities licensed under section 275-D or Public Law 2019, chapter 626, section 16 so
 35 that each off-track betting facility receives the same amount.

36 **Sec. B-8. PL 2019, c. 626, §16** is amended to read:

37 **Sec. 16. Commercial track ceases operation prior to March 1, 2021.** If the
 38 State Harness Racing Commission as established by the Maine Revised Statutes, Title 8,
 39 section 261-A determines that a commercial track ceased or agreed to cease operation prior
 40 to March 1, 2021 following a request from a bona fide statewide organization of horsemen
 41 in whole or in part to facilitate the prospect that a modernized commercial track might
 42 open, notwithstanding the requirements of Title 8, section 275-D, subsections 2, 3, 4, 5 and

1 6, the commission may grant a license to the operator of the former commercial track or an
 2 entity controlled by its owners to operate an off-track betting facility in the same
 3 municipality of the commercial track at or after the commercial track ceases operation as a
 4 commercial track. A license issued under this section is subject to the provisions of Title
 5 8, section 275-P.