

Issue: Gambling Expansion in Kentucky

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A History of Gambling Expansion in Kentucky

- Before 1881
 - The General Assembly “could grant charters to private organizations to conduct lotteries as a means of funding public works such as roads and schools.”ⁱ
 - Labor groups across the nation opposed lotteries and similar forms of gambling because it exploited their class.ⁱⁱ
- 1881
 - For the first time in Kentucky pari-mutuel wagering was defined in law in the case *Commonwealth v. Simonds*.
 - The essential elements of pari-mutuel wagering: “patrons wagering on a particular horse race, creating the pool, and setting the odds, with the winners sharing the pool, less the pool operator’s commission.”ⁱⁱⁱ
- 1891
 - The newly adopted Kentucky Constitution prohibits gambling by lottery and, by the interpretation of Kentucky courts, all forms of gambling except pari-mutuel wagering (Section 226).
- 1931
 - The Kentucky Court of Appeals upheld a statute permitting pari-mutuel wagering on horse races.
- 1980
 - Pari-mutuel wagering was permitted “only upon the licensed premises and on the dates and hours for which racing has been authorized by the commission.”^{iv}
- 1982
 - The horse industry began to lobby the General Assembly to loosen restrictions on wagering.
 - Horse racing pari-mutuel wagering was expanded by the General Assembly to include simulcasting, intertrack, international, and interstate wagering.^v
- 1988
 - Kentuckians voted to approve a constitutional amendment to allow for the establishment of a state lottery.^{vi}
- 1989
 - The first legally authorized lottery is held in nearly a century.
- 1992
 - The General Assembly amended the Constitution to permit charitable gaming. This would include bingo, pull tabs, raffles, non-cash prize wheels, etc.
- 1994-2009
 - Numerous bills were proposed to the General Assembly to permit casino-style gambling in the commonwealth, particularly at horse tracks, but to no avail.

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- 2010
 - The Kentucky Horse Racing Commission (KHRC) unilaterally changed pari-mutuel wagering regulations to permit “instant racing” or “historical horse race” (HHR) gaming. The changes were challenged in court.^{vii}
- 2011
 - Kentucky Downs in Franklin, KY introduces HHR gaming
- 2012
 - Ellis Park in Henderson, KY introduces HHR gaming.
- 2014
 - The Kentucky Supreme Court ruled that the KHRC acted legally in changing the regulations for “historical racing,” but didn’t determine the nature of the machines.
- September 2015
 - Red Mile partners with Keeneland in Lexington, KY to introduce HHR gaming.
- 2018
 - Franklin Circuit Court judge ruled that HHR is a form of pari-mutuel wagering
 - Churchill Downs Inc. opens Derby City Gaming to introduce HHR gaming in Louisville.
- 2020
 - The Kentucky Supreme Court overruled the 2018 Franklin Circuit Court decision. The Court ruled that HHR machines, which use the Encore Software, is not a form of pari-mutuel wagering and is unconstitutional. This ruling jeopardizes almost all HHR gaming facilities, except for Derby City Gaming in Louisville which uses a different system.
 - The KHRC will seek a new alternative in the HHR software to comply with the ruling. Exacta Systems is in the process of creating a new system and will present this to KHRC in the near future.^{viii}
 - A few bills are introduced for the 2021 General Assembly to permit casino gaming (BR 80), sports wagering and online poker (BR 364), etc.
- 2021
 - SB 120, which redefines pari-mutuel wagering to include HHR, is passes legislature. HHR will become legal with Gov. Beshear’s signature.

ⁱ Kentucky Legislative Research Commission, *Compulsive Gambling in Kentucky*, Research Report No. 316, (Frankfort, KY: 2003), 10.

ⁱⁱ James C. Klotter, "Two Centuries of the Lottery in Kentucky," *The Register of the Kentucky Historical Society* 87, no. 4 (1989): 410, <https://www.jstor.org/stable/23381965>.

ⁱⁱⁱ *The Family Trust Foundation of Kentucky v. The Kentucky Horse Racing Commission* (2018), 7n9, <https://law.justia.com/cases/kentucky/supreme-court/2020/2018-sc-0630-tg.html>.

^{iv} *Ibid.*, 11. See also KRS 230.361(1) (1980).

^v Kentucky Revised Statutes 230.3751-230.804.

^{vi} LRC, *Compulsive Gambling in Kentucky*, 10.

^{vii} Ron Mitchell, “KY Commission Approves Form of Instant Racing,” *Bloodhorse*, July 20, 2020, <https://www.bloodhorse.com/horse-racing/articles/141327/ky-commission-approves-form-of-instant-racing>.

^{viii} Steve Bittenbender, “Kentucky Racing Officials Want State Supreme Court to Reconsider HHR Ruling,” *Casino.org*, October 8, 2020, <https://www.casino.org/news/ky-racing-officials-want-state-supreme-court-to-reconsider-hhr-ruling/>.