

UNIVERSITY OF THE PACIFIC

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## REVIEW OF SELECTED 2013 CALIFORNIA LEGISLATION

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## Chapter 438: Giving California a Competitive Edge as a Breeders' Cup Venue

Jacquelyn Loyd

### Code Sections Affected

Business & Professions Code § 19605.74 (amended).

SB 819 (Wright); 2013 STAT. Ch. 438 (*Effective September 30, 2013*).

### I. INTRODUCTION

“It is not best that we should all think alike; it is a difference of opinion that makes horse races.”<sup>1</sup> Not only do such differences make for exciting betting and possible large payouts, competing opinions heavily influence the evolution of the horse racing industry.<sup>2</sup> With televised races, electronic betting, and synthetic track surfaces, racing has come a long way from the narrow hippodrome tracks of ancient Greece.<sup>3</sup> Today, the richest weekend of racing in the world is the Breeders' Cup, also called the Super Bowl of horse racing.<sup>4</sup>

Hollywood Park, a California racetrack, hosted the first Breeders' Cup races in 1984.<sup>5</sup> The meet originally moved to a different track each year, but, modernly, it is common for the same track to host the races two years in a row.<sup>6</sup> The Breeders' Cup previously held eight races over the course of a single day, but, in 2007, three new races were added and held the day before the original eight.<sup>7</sup> Presently, there are fourteen races held over the course of two days, and the meet is the richest in the country as far as purses<sup>8</sup> go, with twenty-five million dollars awarded by the end of the weekend.<sup>9</sup>

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1. BRAINYQUOTE, <http://www.brainyquote.com/quotes/quotes/m/marktwain129822.html> (last visited June 9, 2013) (on file with the *McGeorge Law Review*) (quoting Mark Twain).

2. See Lenny Shulman, *Racing's Grand Experiment Is Under Way*, BLOOD-HORSE, Dec. 8, 2007, at 5, 6 (noting that changes to racing typically come about slowly and that the rapid move to synthetic footing on some tracks was influenced by track and horse owners beliefs that the footing would prevent lameness and hold up better to weather).

3. See *Horse Races*, KU LEUVEN, <http://ancientolympics.arts.kuleuven.be/eng/tc008en.html> (last visited June 9, 2013) (on file with the *McGeorge Law Review*) (explaining that horse racing in the ancient Greek Olympics involved chariot and mounted races around two turns of a flattened dirt area).

4. Joe Drape, *The Super Bowl of Racing Has Everything Except an Audience*, N.Y. TIMES (Oct. 25, 2005), [http://www.nytimes.com/2005/10/25/sports/othersports/25racing.html?\\_r=0](http://www.nytimes.com/2005/10/25/sports/othersports/25racing.html?_r=0) (on file with the *McGeorge Law Review*).

5. *Event by Year*, BREEDERS' CUP, <http://www.breederscup.com/history/event-year> (last visited June 7, 2013) (on file with the *McGeorge Law Review*).

6. See *id.* (documenting where each meet was held and indicating that it was never held at the same track in successive years until 2008 and 2009 at Santa Anita, California).

7. See *id.* (containing information on which races were held each year and the dates those races were held on).

8. See *Definition of "purse,"* MERRIAM-WEBSTER, <http://www.merriam-webster.com/dictionary/purse> (last visited August 29, 2013) (on file with the *McGeorge Law Review*) (“[T]he total amount of money offered

Despite growing purses, the popularity of thoroughbred racing in America has sharply declined over the last few decades.<sup>10</sup> All over the country, racetracks have experienced declines in attendance and, frequently, in handle.<sup>11</sup> There are many explanations for the drop in popularity: accessibility of other forms of gambling,<sup>12</sup> high takeout—the amount of money removed from the betting pool before distributing the winnings—resulting in lower returns on betting,<sup>13</sup> drugging controversies,<sup>14</sup> and horse injuries,<sup>15</sup> to name a few. Regardless, many states have implemented measures to try and bring new life to the races, like installing slot machines at tracks<sup>16</sup> and experimenting with adjusting percentages of takeout.<sup>17</sup> California has made several changes in the law in an attempt to draw more horses to California races,<sup>18</sup> but Chapter 438 aims specifically at drawing the lucrative Breeders' Cup to the state on a more permanent basis.<sup>19</sup>

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in prizes for a given event.”).

9. See *Races*, BREEDERS' CUP, <http://www.breederscup.com/races> (last visited June 7, 2013) (on file with the *McGeorge Law Review*) (showing the purse amounts for each individual race, which when added up, total twenty-five million dollars).

10. See generally Bennett Liebman, *Reasons for the Decline of Horse Racing*, N.Y. TIMES BLOGS (June 6, 2010, 10:34 AM), <http://therail.blogs.nytimes.com/2010/06/06/reasons-for-the-decline-of-horse-racing/> (on file with the *McGeorge Law Review*).

11. *Id.*; *Glossary of Racing Terms*, SARATOGA RACE COURSE, <http://www.saratogaracetrack.com/about-horse-racing/glossary-terms/h.cfm> (last visited May 31, 2013) (on file with the *McGeorge Law Review*) (defining the term “handle” as the total amount bet on horse races at a track over a set period of time).

12. See Liebman, *supra* note 10 (explaining that for many years, horse racing essentially had a monopoly on the gambling market, but now other forms of gambling are more popular).

13. *Id.* (reporting that takeout in racing is around twenty percent while in slots it is only around five percent, meaning gamblers get more return on their winnings with slot machines).

14. *Id.* (lamenting that the racing industry has not been able to stop the growing perception that trainers use drugs to enhance their horses' performances).

15. See Walt Bogdanich, et al, *Mangled Horses, Maimed Jockeys*, N.Y. TIMES (Mar. 24, 2012), [http://www.nytimes.com/2012/03/25/us/death-and-disarray-at-americas-racetracks.html?pagewanted=all&\\_r=0](http://www.nytimes.com/2012/03/25/us/death-and-disarray-at-americas-racetracks.html?pagewanted=all&_r=0) (on file with the *McGeorge Law Review*) (noting that race horse injuries are upsetting to spectators and even prompted one child to say, “I don't want to go to a racetrack ever again”).

16. Gary Rotstein, *How Slot Machines Have Saved Racetracks*, PITTSBURGH POST-GAZETTE (Feb. 25, 2007, 12:00 AM), <http://www.post-gazette.com/stories/local/casino-news/how-slot-machines-have-saved-racetracks-473757/> (on file with the *McGeorge Law Review*).

17. See Jeff Platt, *HANA's Position on Takeout*, HORSEPLAYERS ASS'N OF N. AM. (July 28, 2011), <http://www.horseplayersassociation.org/articletakeoutposition.html> (on file with the *McGeorge Law Review*) (explaining that Tampa Bay Downs has been subtly adjusting its takeout for years and has seen an increase in handle).

18. See *infra* Part II (exploring the changes Chapter 283 made to California racing law in 2010).

19. SENATE GOVERNMENTAL ORGANIZATION COMMITTEE, COMMITTEE ANALYSIS OF SB 819, at 2 (Apr. 24, 2013).

## II. LEGAL BACKGROUND

Horse racing differs from other forms of gambling in that the horseplayer bets against other bettors in what is called parimutuel wagering.<sup>20</sup> This type of wagering is more similar to a game of poker rather than a game like blackjack, where the players bet against the casino.<sup>21</sup> This Section will explain both the particulars of betting on horseraces<sup>22</sup> as well as the various statutes and regulations in place that police racing in California.<sup>23</sup>

### A. What is Takeout?

In thoroughbred racing, a certain percentage of the money bet on races, called takeout, is pulled from the betting pool in order to fund race purses, to provide revenue to the track, and to pay taxes.<sup>24</sup> The remaining amount is split between the winning tickets.<sup>25</sup> There is an essential balance to takeout in racing: if the takeout is too high, bettors will move to other forms of gambling and the racetrack and government will not make money; if the takeout is too low, the bettors might be happier, but the track will not be able to pay its costs or the purses and will risk closing.<sup>26</sup>

### B. Changes to Racing Law Under Chapter 283

In 2010, Chapter 283 enacted California Business and Professions Code Section 19602.02.<sup>27</sup> This provision raised the takeout on exotic, multiple interest bets<sup>28</sup> by two percent for bets involving two separate picks (exacta<sup>29</sup> and double<sup>30</sup>) and by three percent for bets involving three picks (trifecta<sup>31</sup> and Pick

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20. Richard Eng, *Betting Against Other Bettors*, DUMMIES.COM (last visited June 6, 2013), <http://www.dummies.com/how-to/content/betting-against-other-bettors.html> (on file with the *McGeorge Law Review*).

21. *See id.* (comparing parimutuel wagering to poker).

22. *Infra* Part II.

23. *Infra*, Part II, III.

24. *See* Platt, *supra* note 17 (explaining what takeout is).

25. *See id.* (describing how the money from betting is allocated to the winners).

26. *See id.* (noting that even horseplayers understand that takeout is necessary, but that current takeout levels are too high).

27. CAL. BUS. & PROF. CODE § 19601.02 (West Supp. 2013); 2010 Cal. Stat. ch. 283 § 2, (enacting CAL. BUS. & PROF. CODE § 19601.02).

28. *See Types of Horse Racing Wagers*, WINNING PONIES, <http://www.winningponies.com/help/wager-types.html> (last visited August 29, 2013) (on file with the *McGeorge Law Review*) (indicating that exotic bets are those in which the bettor wagers on a combination of horses, rather than a single horse in a single race).

29. *Id.* (defining the exacta as a bet in which the horseplayer chooses the first and second place horse from the same race).

30. *Id.* (explaining that the double requires the horseplayer to choose the first place horse in two successive races).

31. *Id.* (defining the trifecta as a bet in which the horseplayer picks the first, second, and third place horse from a single race).

3<sup>32</sup>) or more (superfecta<sup>33</sup> and Pick 4, 5, and 6<sup>34</sup>).<sup>35</sup> Effective in 2011, Chapter 283 raised takeout to 22.68 percent for bets including two horses and to 23.68 percent for bets involving three or more horses.<sup>36</sup>

Chapter 283 also enacted Section 19605.74.<sup>37</sup> This provision allocated the funds taken out of the betting pool in accordance with Section 19601.02 (two or three percent depending on the bet) at Breeders' Cup races to the organizers of the Breeders' Cup for their use in promoting and sponsoring the race.<sup>38</sup> Funds allocated under Section 19601.02 for other California horse races go directly to the purses for those races.<sup>39</sup>

### C. Public Reception of Increased Takeout

After the California Legislature raised the takeout on exotic bets in 2011, horseplayers decided to boycott California races in protest.<sup>40</sup> However, even with the 2010 change and the enactment of Section 19601.02, the takeout on exotic bets in California was still only average compared with other tracks across the country.<sup>41</sup> Nevertheless, horseplayers vowed to return California takeout to its pre-2010 percentage of 20.68 percent for exotic bets.<sup>42</sup>

Despite horseplayers' objections to the raised takeout, several California groups, including the Thoroughbred Owners of California (TOC)<sup>43</sup> and the California Authority of Racing Affairs,<sup>44</sup> as well as national groups like the Thoroughbred Owners and Breeders Association, supported the legislation.<sup>45</sup> These supporters pointed out that New York and Pennsylvania both have even higher takeout on exotic bets than California post-2010, and that their track

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32. *Id.* (explaining that the Pick 3 requires the horseplayer to pick the winners of three successive races).

33. *See Types of Horse Racing Wagers*, *supra* note 28 (defining the superfecta as a bet in which the horseplayer chooses the first, second, third, and fourth place horses in a single race).

34. *Id.* (explaining that the Pick 4, 5, and 6 bets require the horseplayer to choose the winners of either four, five, or six successive races respectively).

35. CAL. BUS. & PROF. CODE § 19601.02(a) (West Supp. 2013).

36. *See* Tom LaMarra & Tracy Gantz, *In California, Politics Colors Takeout Fight*, BLOOD-HORSE (Jul. 1, 2011, 11:32 AM), <http://www.bloodhorse.com/horse-racing/articles/63701/in-california-politics-colors-takeout-fight> (on file with the *McGeorge Law Review*).

37. BUS. & PROF. § 19605.74(a).

38. *Id.*

39. *Id.* § 19601.02.

40. LaMarra, *supra* note 36.

41. *Compare USA Race Tracks Takeout Chart*, HORSEPLAYUSA (Dec. 26, 2011), <http://horseplayusa.com/images/USA-horse-race-tracks-takeout-chart.gif> (on file with the *McGeorge Law Review*) (listing takeout rates from all tracks in the United States), *with* LaMarra, *supra* note 36 (listing California's post-2011 takeout rates).

42. LaMarra, *supra* note 36.

43. *See id.* (stating that the TOC supported Chapter 283).

44. *See* SENATE COMMITTEE ON GOVERNMENTAL ORGANIZATION, COMMITTEE ANALYSIS OF SB 1072, at 5 (Feb. 17, 2010) (listing CARA as support for Chapter 283).

45. *See* LaMarra, *supra* note 36 (reporting that all national racing groups supported Chapter 283 and that the Thoroughbred Owners and Breeders Association expressly supported the TOC).

revenues have actually increased.<sup>46</sup> The Horseplayer's Association of North America (HANA) argues that the ideal balance of takeout is lower than present levels,<sup>47</sup> but the organization has not yet been successful in returning takeout amounts in California to pre-2010 percentages.<sup>48</sup>

While the stated goal of the legislature was to draw more entries to California races by increasing purses with the funds from Section 19601.02,<sup>49</sup> race attendance actually declined in 2011.<sup>50</sup> Additionally, average handle at California tracks plunged.<sup>51</sup> While the HANA boycott is one explanation for this drop in betting, the public trend away from horse racing to other forms of gambling could be responsible.<sup>52</sup> Either way, the legislature's 2010 changes to horse racing law failed to halt the decline in popularity for one of California's most treasured pastimes.<sup>53</sup>

### III. CHAPTER 438

Chapter 438 pertains only to Breeders' Cup races held in California.<sup>54</sup> It amends Section 19605.74 to allow organizers of the Breeders' Cup horse races to use money obtained from takeout pursuant to Section 1901.02 to fund the purses of those races.<sup>55</sup> Chapter 438 still allows organizers to use the funds to promote and support the race, but it gives them discretion as to the best use of the takeout and explicitly permits the use of takeout funds for financing race purses.<sup>56</sup> Chapter 438 also specifies that the Breeders' Cup organizers shall enter into a written agreement with the host venue that specifies how the funds will be set aside, and that the California Horse Racing Board will receive a final report on how the funds were used within ninety days of the Cup.<sup>57</sup>

Furthermore, Chapter 438 authorizes the board to use not only funds from parimutuel wagering at the Breeders' Cup, but it also states that the board can choose one non-thoroughbred race held on the same day as the Cup and

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46. *Id.* (presenting the supporters' arguments).

47. Platt, *supra* note 17.

48. See CAL. BUS. & PROF. CODE § 19601.02 (West Supp. 2013) (showing that the law still has not been repealed, as HANA hopes); see generally LaMarra, *supra* note 36 (describing the political battle surrounding takeout but not noting any specific action by horseplayer organizations to repeal the legislation).

49. SENATE FLOOR, COMMITTEE ANALYSIS OF SB 1072, at 3 (Aug. 20, 2010).

50. LaMarra, *supra* note 36.

51. See *id.* (noting that handle at Golden Gate Fields dropped significantly).

52. See Liebman, *supra* note 10 (explaining that other forms of betting are now more popular than horse racing).

53. See generally *id.* (discussing the continued decline in popularity of horse racing).

54. CAL. BUS. & PROF. CODE § 19605.74 (amended by Chapter 438); see also *Event by Year*, *supra* note 5 (listing the location of every Breeders' Cup meet since the race's inception and indicating that the Breeders' Cup was held in California eight times: 1984, 1986, 1987, 1993, 1997, 2008, 2009, and 2012).

55. BUS. & PROF. § 19601.02.; *id.* § 19605.74 (amended by Chapter 438).

56. *Id.* § 19605.74(a) (amended by Chapter 438).

57. *Id.* § 19605.74(b) (amended by Chapter 438); *id.* § 19605.74(c) (amended by Chapter 438).



appropriate funds from its exotic bets for the promotion of the Breeders' Cup.<sup>58</sup> Lastly, Chapter 438 contains provisions to clarify that no reimbursement is necessary under the California Constitution, and that the revisions are urgent and will take effect before the 2013 Breeders' Cup.<sup>59</sup>

#### IV. ANALYSIS

The Breeders' Cup Classic is one of the richest, most prestigious horse races in existence.<sup>60</sup> It draws horses not just from around the United States, but from around the world.<sup>61</sup> With such prestige, the weekend of racing draws large crowds and has the potential to employ hundreds of people as well as generate an estimated sixty million dollars in revenue.<sup>62</sup> With such an economic boost, it is no wonder that Chapter 438 reflects an effort by the California Legislature to bring the Breeders' Cup to California permanently.<sup>63</sup> While Chapter 438 only makes a small change in the law, it gives California venues an edge to bring the Breeders' Cup to the state on a more regular basis.<sup>64</sup>

##### A. *Every Little Bit Helps a Struggling Industry*

The horse racing industry is floundering in the poor economy compared to other, cheaper forms of gambling.<sup>65</sup> Like many states, the Breeders' Cup organizers have taken steps to attract more horses to the races.<sup>66</sup> The organizers have provided travel allowances for horses from out of state and out of country in the past, but in 2013 they raised the amounts of these allowances to \$10,000 for an out-of-state horse and \$40,000 for a horse traveling from a foreign country.<sup>67</sup> Additionally, the Breeders' Cup lowered the entry fees for each race from three percent of the purse amount down to two percent of the purse amount in order to

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58. *Id.* § 19605.74(d) (amended by Chapter 438).

59. *Id.* § 19605.74(2) (amended by Chapter 438); *id.* § 19605.74(3) (amended by Chapter 438).

60. *See Races*, *supra* note 9 (describing the fame and prestige surrounding the five million dollar Classic).

61. *See* Matt Hegarty, *Breeders' Cup to Provide Travel Allowances, Reduces Entry Fees*, DAILY RACING FORM (Mar. 15, 2013), <http://www.drf.com/news/breeders-cup-provide-travel-allowances-reduces-entry-fees> (on file with the *McGeorge Law Review*) (noting that the Breeders' Cup increased travel allowances to draw more horses from overseas).

62. SENATE COMMITTEE ON GOVERNMENTAL ORGANIZATION, COMMITTEE ANALYSIS OF SB 819, at 1–2 (Apr. 23, 2013).

63. *Id.*

64. *Id.*

65. *See generally* Liebman, *supra* note 10 (putting forth different explanations for the decline in horse racing).

66. *See generally* Hegarty, *supra* note 61 (explaining different techniques that the Breeders' Cup has taken to increase race entries).

67. *Breeders' Cup Awards Travel Allowances for World Championships; Reduces Entry Fees*, BREEDERS' CUP (MAR. 15, 2013), <http://www.breederscup.com/article/breeders-cup-awards-travel-allowances-world-championships-reduces-entry-fees> (on file with the *McGeorge Law Review*).

draw more entries.<sup>68</sup> Even one percent is a significant amount when the purses are worth millions of dollars, making the entrance fee in the hundreds of thousands.<sup>69</sup>

Chapter 438 does not change the percentage of takeout pursuant to exotic bets, and the takeout it makes available to the Breeders' Cup for funding purses might not seem like a lot (only two or three percent of exotic bets).<sup>70</sup> But with handle for the Breeders' Cup weekend regularly around \$150 million, even a single percent is well over a million dollars.<sup>71</sup> The twenty-five million dollars in purse money for the weekend<sup>72</sup> is the biggest draw for horses to enter the races,<sup>73</sup> and the extra millions of dollars the organizers receive pursuant to Chapter 438 when the meet is held in California<sup>74</sup> will allow them to keep the purse money and prestige of the races high. Combined with the provision allowing money from one non-thoroughbred race to be added to the funds that the Breeders' Cup organizers can use under § 19601.02,<sup>75</sup> those extra dollars give the organizers plenty of capital to continue to draw horses from around the world.<sup>76</sup>

### B. Competition from Other States

Despite the millions of dollars the Breeders' Cup can make holding the races in California, popularity of the races tends to be higher when they are held at Churchill Downs, Kentucky.<sup>77</sup> Additionally, total handle is higher in Kentucky than in California.<sup>78</sup> In 2010, Churchill Downs brought in \$173,857,697, the

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68. *Id.* (stating that the organizers want to make the Breeders' Cup races more affordable to enter).

69. See Hegarty, *supra* note 61 (explaining that entry fees are calculated by percentages of purse money, which is in the millions for most Breeders' Cup races).

70. See CAL. BUS. & PROF. CODE § 19601.02(a) (West Supp. 2013); *id.* § 19605.74 (amended by Chapter 438) (empowering the Breeders' Cup to fund the race purses with the takeout pursuant to Section 19601.02(a)).

71. See *Event by Year*, *supra* note 5 (documenting the handle of every Breeders' Cup weekend under each respective link and demonstrating that handle has been above \$145 million every year since 2007, sometimes even reaching above the \$170 million mark).

72. See *Races*, *supra* note 9 (showing the purse amounts for each individual race, which when added up, total twenty-five million dollars).

73. See *2012 Breeders' Cup—World Championship Horse Racing Since 1984*, OFF TRACK BETTING, [http://www.offtrackbetting.com/breeders\\_cup/](http://www.offtrackbetting.com/breeders_cup/) (last visited June 29, 2013) (on file with the *McGeorge Law Review*) (noting that the five million dollar Breeders' Cup Classic is the culmination of the international racing season).

74. BUS. & PROF. § 19605.74 (amended by Chapter 438).

75. *Id.* § 19605.74(d) (amended by Chapter 438).

76. See *2012 Breeders' Cup—World Championship Horse Racing Since 1984*, *supra* note 73 (indicating that the race has garnered more international entries over the last few years, which are also the years the race purses have increased).

77. Compare *The 2011 Breeders' Cup*, BREEDERS' CUP, <http://www.breederscup.com/year/2011> (last visited Jan. 26, 2014) (on file with the *McGeorge Law Review*), with *The 2012 Breeders' Cup*, BREEDERS' CUP, <http://www.breederscup.com/year/2012> (last visited Jan. 26, 2014) (on file with the *McGeorge Law Review*) (showing attendance fell from above 100,000 to under 90,000 when the race moved from Kentucky to California in 2012).

78. *Id.* (indicating that handle fell by almost fifteen million dollars from 2011 to 2012 when the races

single highest handle the Breeders' Cup has ever garnered.<sup>79</sup> The statistics, combined with East Coast and Midwest owners', horseplayers', and breeders' opposition to moving the races permanently to California,<sup>80</sup> are hurdles in the path of the California Legislature and its goal to settle the Breeders' Cup in California.<sup>81</sup>

But even with Churchill Downs' better statistics, Santa Anita, California, has hosted the Breeders' Cup races three out of the last five years.<sup>82</sup> Southern California certainly has better weather for racing in early November, typically sunny and in the seventies, whereas Kentucky is consistently in the forties and fifties and often raining.<sup>83</sup> Additionally, Kentucky lacks a measure such as Chapter 438 that would make it a more attractive location for the Breeder's Cup; it merely has a statute that exempts tracks from state tax when hosting a large, multiple-day racing event like the Breeders' Cup.<sup>84</sup> All of this benefit goes to the track rather than to the organizers.<sup>85</sup> Santa Anita could get some competition from Gulfstream, Florida, since that track announced its intention to bid for the races again in the future.<sup>86</sup> However, the track is still undergoing a remodel, and is not a current threat.<sup>87</sup>

In the last decade, the Breeders' Cup has only been held at four different tracks.<sup>88</sup> It is common racing knowledge that the number of tracks suitable for hosting the Breeders' Cup has shrunk considerably in recent years due to bad track footing and spectator seating.<sup>89</sup> Among these remaining tracks, California

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moved from Kentucky to California).

79. See *Event by Year*, *supra* note 5 (providing links for every Breeders' Cup race where total handle is listed); *The 2010 Breeders' Cup*, BREEDERS' CUP, <http://www.breederscup.com/year/2010> (last visited Jan. 26, 2014) (on file with the *McGeorge Law Review*) (giving the total handle for the 2010 Breeders' Cup).

80. See Liz Mullen, *Breeders' Cup Track Will Affect NBC Plans in '14*, SPORTS BUSINESS J. (March 4, 2013), <http://www.sportsbusinessdaily.com/Journal/Issues/2013/03/04/Media/Breeders.aspx> (on file with the *McGeorge Law Review*) (stating that breeders and fans on the East Coast and Midwest are against Santa Anita as a permanent venue for the Breeders' Cup).

81. SENATE COMMITTEE ON GOVERNMENTAL ORGANIZATION, COMMITTEE ANALYSIS OF SB 819, at 2 (Apr. 23, 2013).

82. See *Event by Year*, *supra* note 5 (documenting that the Breeders' Cup was held at Santa Anita in 2008, 2009, and 2012).

83. *Id.* (recording the weather for all of the Breeders' Cup venues under each corresponding race tab).

84. KY. REV. STAT. § 138.510 (West Supp. 2011).

85. *Id.*

86. LaMarra, *supra* note 36.

87. See Matt Gardner, *Breeders' Cup: Gulfstream Renovation Could Put Them Back in the Hosting Mix*, SB NATION (Nov. 20, 2012), <http://www.anddownthetretchtheycome.com/2012/11/20/3673070/breeders-cup-gulfstream-park-renovations> (on file with the *McGeorge Law Review*) (reporting that Gulfstream was scheduled to begin the remodel at the end of the 2013 racing season).

88. See *Event by Year*, *supra* note 5 (identifying those tracks as Santa Anita, Churchill Downs, Belmont Park, and Monmouth Park).

89. See Matt Gardner, *2013 Breeders' Cup To Santa Anita? Is It Time To Start Thinking Outside-The-Box?*, SB NATION (Aug. 8 2012, 6:52 PM), <http://www.anddownthetretchtheycome.com/2012/8/8/3228940/2013-breeders-cup-santa-anita> (on file with the *McGeorge Law Review*) (explaining why Churchill Downs, Santa Anita, Monmouth Park, and Belmont Park are the only appropriate venues for the Breeders' Cup).

seems to have the edge in weather, state of the art facilities,<sup>90</sup> and the law.<sup>91</sup> Certainly, something is giving the Golden State a leg up, since the Breeders' Cup is coming to Santa Anita again in 2014.<sup>92</sup>

C. *A Permanent Change?*

The announcement that the Breeders' Cup will be held in Santa Anita in 2014 was unprecedented: never before has the Breeders' Cup been held at the same track for three consecutive years.<sup>93</sup> It has long been rumored that the Breeders' Cup might make Santa Anita its permanent home,<sup>94</sup> and with the urgency provision added to Chapter 438, the organizers experienced the new benefits of hosting the race in California at the 2013 Breeders' Cup.<sup>95</sup> The 2013 races saw an increase in both attendance and total betting over the 2012 races despite the elimination of one race from the program.<sup>96</sup> Additionally, NBC, owner of the Breeders' Cup television broadcast rights, wants the races to settle in Southern California because of the good weather and the ability to broadcast the final race live (at 8 PM ET) across the country.<sup>97</sup> But despite this pressure the organizers have not made a decision on where the race will be held in 2015, and state that they are keeping their options open.<sup>98</sup> Even if the Breeders' Cup decides against making California its permanent home, the California Legislature has created an advantage in a competitive field with Chapter 438.<sup>99</sup>

VI. CONCLUSION

The Breeders' Cup brings jobs and substantial income to California during

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90. See *2014 Breeders' Cup World Championships to be Held at Santa Anita Park*, BREEDERS' CUP (June 10, 2013), <http://www.breederscup.com/article/2014-breeders-cup-world-championships-be-held-santa-anita-park> (on file with the *McGeorge Law Review*) (stating that Santa Anita is an ideal venue).

91. See CAL. BUS. & PROF. CODE § 19601.02(a) (West Supp. 2013) (enabling California tracks to raise the takeout on exotic bets); *id.* § 19605.74 (amended by Chapter 438) (empowering the Breeders' Cup to fund the race purses with the takeout pursuant to Section 19601.02(a)).

92. *2014 Breeders' Cup World Championships to be held at Santa Anita Park*, *supra* note 90.

93. See *Event by Year*, *supra* note 5 (listing all of the venues over the history of the Breeders' Cup and never showing that it has been at the same track for more than two consecutive years).

94. See Mullen, *supra* note 80 (on file with the *McGeorge Law Review*) ("There has been talk for years of Santa Anita being named as a permanent site for the Breeders' Cup. . .").

95. BUS. & PROF. § 19605.74(3) (amended by Chapter 438).

96. See *The 2014 Breeders' Cup*, *supra* note 90 (indicating attendance at the races increased by 5% while betting went up 7%).

97. See Liz Mullen, *NBC Wants Permanent Site for Breeders' Cup*, SPORTS BUSINESS J. (Oct. 28, 2013), <http://www.sportsbusinessdaily.com/Journal/Issues/2013/10/28/In-Depth/Breeders-site.aspx> (on file with the *McGeorge Law Review*) (paraphrasing Jon Miller, president of NBC Sports).

98. *2014 Breeders' Cup World Championships to be held at Santa Anita Park*, *supra* note 90.

99. See BUS. & PROF. § 19601.02(a) (West Supp. 2013); *id.* § 19605.74 (amended by Chapter 438) (giving the Breeders' Cup organizers the ability to fund the race purses with the takeout pursuant to Section 19601.02(a)).

the years that it is held in the state.<sup>100</sup> In an effort to bring these prestigious races to California permanently,<sup>101</sup> Chapter 438 allocates the increased takeout from exotic bets collected under Section 19601.02 directly to the organizers of the Cup.<sup>102</sup> Traditionally, different tracks have hosted the Breeders' Cup each year, but for the very first time, it will be held at the same track for three consecutive years: in California.<sup>103</sup> The Breeders' Cup recognizes California as an ideal place to hold the Championship races,<sup>104</sup> and with so few tracks able to host the Breeders' Cup,<sup>105</sup> even a small change like the one effected by Chapter 438 could encourage the organizers to pick California more frequently for the Super Bowl of racing.<sup>106</sup>

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100. SENATE COMMITTEE ON GOVERNMENTAL ORGANIZATION, COMMITTEE ANALYSIS OF SB 819, at 1–2 (Apr. 23, 2013).

101. *Id.* at 1.

102. BUS. & PROF. § 19605.74 (amended by Chapter 438).

103. *2014 Breeders' Cup World Championships to Be Held at Santa Anita Park*, *supra* note 90.

104. *Id.*

105. Gardner, *supra* note 89 (listing the few venues appropriate for hosting the Breeders' Cup).

106. SENATE GOVERNMENTAL ORGANIZATION COMMITTEE, COMMITTEE ANALYSIS OF SB 819, at 2 (Apr. 24, 2013).