

Update of Racino Legislation
in the
United States
from
2004-2006

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Passed Legislation	Green
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-Proposed	Orange
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EXECUTIVE SUMMARY

Multiple forms of alternative gaming (slot machines, video lottery terminals, table games, Instant Racing®) at the racetracks around the United States have continued to grow and change over recent years.

Amongst states that have passed new racino legislation are Florida, Oklahoma, and Pennsylvania. New legislation has been proposed in Illinois, Indiana, Kentucky, Maryland, Massachusetts, and Ohio. There have been attempts to expand, or changes made in existing legislation in Delaware, Iowa, Louisiana, Maine, Michigan, New Mexico, New York, Oregon, Rhode Island, and West Virginia. Legislation allowing for Instant Racing® has been present in Arkansas since 2000, and other states are now following suit. The legislation in California that would have allowed for Instant Racing® was postponed after this year's legislative session. Virginia is currently pursuing similar legislation as well. Wyoming had Instant Racing® in four off track betting sites for a brief time, but in May 2006 they were found to be prohibited by law.

While many states continue to experience profits from forms of alternative gaming, others are beginning to realize the need to differentiate their once rare product. For example, Delaware is now surrounded by other mid-Atlantic states with existing or proposed legislation for racinos, and it is increasingly obvious that they no longer have significant power in the market. Coming years should reveal similar cases throughout the United States and competitive, innovative states may come into the spotlight as the ones that will continue to prosper from alternative gaming.

INTRODUCTION

This research portrays the changes that have occurred in racino legislation in North America from 2004-2006. An earlier edition of an update on racino legislation (co-authored by Mark Mulier and Joe Pulli) is available, and this report is meant to build upon the data the previous report includes.

Topics covered within this research document include evaluations of states with newly passed racino legislation, newly proposed racino legislation, expansion of existing racino legislation, and those pursuing or currently hosting Instant Racing®. Within these subjects are explanations of passed, pending, or failed legislation; as well as distributions of revenues from video lottery terminals (VLTs), slot machines, electronic games of skill, or any other unique revenue source.

It should be noted that racino legislation (as any legislation) is constantly evolving to meet the current demands of individual jurisdictions and provinces. In order to simplify this variable, the cut-off date for gathering research was set for November 1, 2006.

PASSED NEW LEGISLATION

FLORIDA

Legislation enabling the installation of slot machines in Florida was passed in 2005. Although Broward County and Miami-Dade County were both on the referendum ballot, only Broward County was awarded permission to implement slots. Pari-mutuel facilities in Broward County include: Gulfstream Park, Pompano Park, Mardi Gras Gaming Center and Dania Jai-Alai. In December 2005, legislation on slots was passed on slots that included a 50 percent tax earmarked toward education.¹

The state of Florida does not receive a portion of slot revenue. Rather, it charges \$3 million for the required license to operate slots. From that \$3 million, \$250,000 goes to fund compulsive gambling programs. The annual license renewal cost is currently \$3 million as well.²

The slot machines are required to pay back at an 85 percent rate (minimum) in accordance with the enabling legislation.

State legislation requires thoroughbred racetrack operators to have signed contracts with both the Florida Horseman's Benevolent Protective Association (FHBPA) and the Florida Thoroughbred Breeders' and Owners' Association before a gaming license can be issued. The contracts govern how much of the revenue from slots would go toward increased horse racing purses and breeders' and owners' awards.

An agreement between Magna Entertainment Corporation (MEC) and the FHBPA called for the installation of 500 machines at Gulfstream Park in October 2006. The maximum amount of slot machines allowed by law is 1,500 and should be installed by 2007.

The revenue distribution terms of the agreement between MEC and the FTBOA are as follows³:

1. 0.75 percent of slot revenue, up to \$200,000,000, to go to breeders' awards.
2. On revenue above \$200,000,000, breeders' awards receive 1.4 percent.

The revenue distribution terms of the agreement between MEC and the FHBPA are as follows⁴:

1. FHBPA receives 7.5 percent of initial installation of 500 machines.
2. When 1,500 machines are installed, FHBPA receives 6.75 percent of revenue up to \$200,000,000.
3. When 1,500 machines are installed, FHBPA receives 12.6 percent of revenue over \$200,000,000.

The Florida Horse estimates that after one year of operation with 500 machines, purses should increase to just over \$350,000 daily, up from the 2006 average of \$275,000 daily. At 1,500 machines, the estimate is more than \$450,000 daily. Breeders' awards would increase by approximately \$1.766 million after one full year of operation. Finally, at full operation, slots at Gulfstream Park are predicted to bring in over \$100 million annually for public education.⁵

OKLAHOMA

When the 2004 report was produced, the state of Oklahoma had passed Question 712 in November 2004. Question 712 allowed for the installation of electronic bingo or other games of skill at the state’s three racetracks: Remington Park, Blue Ribbon Downs and Will Rogers Downs. In order for the machines to be installed at racetracks, a minimum of four of the state’s Indian casinos had to enter into a model compact. That requirement was met and the state racing commission approved the implementation of the electronic bingo machines and games of skill in August 2005.

Remington Park may operate 650 machines while Blue Ribbon Downs and Will Rogers Downs may operate 250 machines each.⁶ The revenue distribution follows.⁷

Distribution of the First \$10,000,000	
In a county with a Population of 600,000+	650 player terminals permitted
<i>Revenue Distribution:</i>	
Oklahoma Tax Commission	10%
Racetrack	60%
Racing Commission	9%
Horsemen	1.5%
Breeders	1%
Purses	18.5%
In a county with population of < 400,000	250 player terminals permitted
<i>Revenue Distribution:</i>	
Oklahoma Tax Commission	10%
Racetrack	65%
Racing Commission	9%
Horsemen	1.5%
Breeders	1%
Purses	13.5%
Distribution of Revenue from \$10,000,000 to \$30,000,000	
<i>Revenue Distribution:</i>	
Oklahoma Tax Commission	15%
Racetrack	55%
Racing Commission	9%
Horsemen	1.5%
Breeders	1%
Purses	18.5%

Distribution of Revenue from \$30,000,000 to \$40,000,000	
<i>Revenue Distribution:</i>	
Oklahoma Tax Commission	15%
Racetrack	55%
Racing Commission	9%
Horsemen	1.5%
Breeders	1%
Purses	18.5%
Distribution of Revenue from \$40,000,000 to \$50,000,000	
<i>Revenue Distribution:</i>	
Oklahoma Tax Commission	20%
Racetrack	55%
Racing Commission	9%
Horsemen	1.5%
Breeders	1%
Purses	13%
Distribution of Revenue from \$50,000,000 to \$70,000,000	
<i>Revenue Distribution:</i>	
Oklahoma Tax Commission	25%
Racetrack	50%
Racing Commission	9%
Horsemen	1.5%
Breeders	1%
Purses	8.5%
Distribution of Revenue in Excess of \$70,000,000	
<i>Revenue Distribution:</i>	
Oklahoma Tax Commission	30%
Racetrack	50%
Racing Commission	9%
Horsemen	1.5%
Breeders	1%
Purses	8.5%

PENNSYLVANIA

Legislation enabling the installation of slot machines had been enacted when the 2004 edition of this report was produced. The legislation allows for the operation of 61,000 machines at a maximum of 14 licensed facilities. The license fee is \$50 million, and that money is deposited into the state property tax relief fund. With that number of machines, Pennsylvania is second only to Nevada in number of slot machines in operation. The slot machines were expected to have been installed during 2005. However, only in September 2006 did the Pennsylvania Gaming Control Board grant licenses to five racetracks. Two thoroughbred tracks, Philadelphia Park and Penn National Race Course, and three standardbred facilities, Harrah's Chester Casino and Racetrack, Mohegan Sun at Pocono Downs and The Meadows, are allowed to operate slot machine casinos. A sixth license was granted in October 2006 to Presque Isle Downs.⁸ Please see the next page for the revenue distribution (which has not changed since the 2004 report) from slot machine gaming.

PENNSYLVANIA SLOT REVENUE DISTRIBUTION

<i>Revenue Distribution:</i>	
Daily Tax to State Gaming Fund	34%
Local Share Assessment	4%
Improvement/Maintenance of Racetrack	\$5,000,000 over initial 5 years; \$250,000-\$1,000,000 per year for five years thereafter
PA Race Horse Development Fund	(Licensee's Daily Gross Terminal Revenue/ Total Daily Gross Terminal Revenue) x 18% of Total Daily Gross Terminal Revenue
PA Economic Development and Tourism Fund	5%

<i>The State Gaming Fund is to be transferred as follows:</i>	
Compulsive Problem Gambling Treatment	\$1,500,000 of 0.1%
Volunteer fire Company Grant Program	\$25,000,000
Law Enforcement Grants	\$5,000,000
Each County with a Racetrack	\$0.80 per acre
Each School District	\$0.80 per acre
Each Township with a Racetrack	\$0.80 per acre
Property Tax Relief	Remaining balance of State Gaming Fund

<i>PA Race Horse Development Fund is to be transferred as follows:</i>	
Racetrack/Licensee	18%
Purses	80% of the Development Fund is placed in an interest-bearing account. The interest earned goes into purses.
PA Breeding Fund (Thoroughbred Racetracks Only)	16%
PA Standardbred Fund (Standardbred Racetracks Only)	8%
PA Sire Stakes Fund (Standardbred Racetracks Only)	8%
Health and Pension Benefits for Members of Horsemen Organizations	4% (\$250,000 must go to Thoroughbred Jockeys and Standardbred Drivers Organizations)

PROPOSED NEW LEGISLATION

ILLINOIS

A 2004 proposal cleared the Executive Committee of the Illinois Senate. The proposal called for 3,800 slot machines to be divided between Arlington Park, Hawthorne Race Course, Fairmount Park, Balmoral Park and Maywood Park. Approximately 14 percent of the adjusted gross receipts from slot machines would be split between thoroughbred and standardbred horsemen.⁹

Two more bills were proposed in the state legislature during 2005. One of the bills proposed the installation of slot machines at on-track facilities. The other proposal involved racetracks receiving 3 percent of adjusted gross revenues from state casinos.¹⁰ Neither the 2004 nor the 2005 proposals were enacted into law.

In 2006, the Governor signed a bill that provides 3 percent of riverboat gaming revenues to be put into a trust fund and used by the state's racetracks. Although the law is expected to be challenged by the riverboat interests, it is expected to provide \$37.5 million for purses and track improvements. The thoroughbred industry receives 57 percent of that revenue and the standardbred industry receives the remaining 43 percent.¹¹

INDIANA

In 2005, the House passed a bill authorizing a total of 5,000 slot machines at Indiana's two pari-mutuel racetracks, Hoosier Park and Indiana Downs, and two off-track betting parlors. Hoosier Park and Indiana Downs would operate 1,000 machines each. Off-track sites in Fort Wayne and Indianapolis would operate 1,500 machines each. These sites would be co-owned by Hoosier Park and Indiana Downs.¹²

In 2006, House Bill 1077 was introduced in the state legislature. The bill authorizes slot machines at racetracks and imposes a state wagering tax of 32 percent of the adjusted gross receipts from slot machine wagering. House Bill 1077 also imposes a horse racing promotion fee of 15.25 percent of the adjusted gross receipts from slot machine wagering. The remaining revenues are divided between breeds: thoroughbreds (46 percent), standardbred (46 percent) and quarter horse (8 percent).¹³

For thoroughbred and standardbred breeds the 46 percent is divided as follows: 70 percent to purses and horsemen's associations. The remaining 30 percent is deposited to the breed development funds. The quarter horse breed follows the same distribution on its 8 percent.

Also in 2006, Senate Bill 0239 was introduced into the state legislature. The bill authorizes up to 500 slot machines at racetracks and satellite facilities. It requires live horse racing be conducted at least 160 days per year at each permit holders race track and imposes an annual license fee of \$100 per slot machine.¹⁴

None of these measures have been signed into law.

KENTUCKY

In February 2006, House Bill #600 was introduced to the state legislature. The act called for a referendum on whether casino-style gaming should be legalized at Kentucky's eight racetracks. Some types of gaming included under the bill are poker (and other card games), blackjack, roulette, slot machines, video lottery terminals and other electronic games of chance or skill.

Under the specifications of the proposal, the thoroughbred industry would receive 64 percent of the gaming revenue. The 64 percent is divided between the racetracks and the horsemen. Racetracks would keep 49.35 percent of the casino revenue and the horsemen receive 14.65 percent in the form of purses. The remaining revenue (36 percent total) is divided in the following manner: 35 percent of adjusted gaming receipts paid to the Commonwealth of Kentucky as a tax on casino gaming and 1 percent allocated and used to benefit breeds other than thoroughbred and standardbred.¹⁵

A passage of this referendum would have given the eight racetracks in Kentucky a monopoly on casinos in the state. The Kentucky Legislative Research Commission estimated that the total annual proceeds from the casinos would be \$1.25 billion.¹⁶

The bill was recommitted to the Committee on Appropriations and Revenue on March 22, 2006. It has not been passed.

MARYLAND

Maryland has arguably been the most active state pursuing expanded forms of gaming at its pari-mutuel facilities. Since the 2004 edition of this report, the Maryland legislature has considered no less than five bills between the House and Senate, none of which have passed. A synopsis of each proposal is provided below.

House Bills:

#318: Public Education Bridge to Excellence and Public School Construction Act

House Bill 318 authorizes the operation of video lottery terminals in Maryland. The VLTs would be regulated by the State Lottery Commission and would require the governor to include up to \$400,000 for funding public school construction and capital improvements in the budget from fiscal years 2008 through 2014. It further requires the Department of Health and Mental Hygiene to establish regional centers and conduct a specified study regarding gambling.¹⁷

#442: Maryland Education Trust Fund – Video Lottery Terminals

House Bill 442 authorizes the operation of video lottery terminals in Maryland. The VLTs would be regulated by the State Lottery Commission. The bill alters a specific geographic cost of education index grant that reflects regional differences in the cost of education that are due to factors outside the control of local jurisdictions to be a mandatory education funding requirement.¹⁸

#575: Public Construction – Funding – Video Lottery Terminals

House Bill 575 requires the State Lottery Commission to regulate the operation of video lottery terminals at horse racetracks in Maryland. The bill authorizes the operation of video lottery terminals connected to a central computer that allows the State Lottery Commission to monitor a video lottery terminal.¹⁹

Senate Bills:

#42: Video Lottery Terminals – Statewide Straw Ballot

Senate Bill 42 requires that a question be placed on the ballot in the next general election of the State to determine the sense of voters in the State on the issue of locating video lottery terminals licensed by the State for commercial gaming purposes at up to three licensed horse racetracks and up to three non-racetrack destination locations in Maryland.²⁰

#225: Public Education Bridge to Excellence and Public School Construction Act (cross-filed with House Bill 318)

Senate Bill 225 authorizes the operation of video lottery terminals in Maryland. The VLTs would be regulated by the State Lottery Commission and would require the governor to include up to \$400,000 for funding public school construction and capital improvements in the budget from fiscal years 2008 through 2014. It further requires the Department of Health and Mental Hygiene to establish regional centers and conduct a specified study regarding gambling.²¹

MASSACHUSETTS

The Massachusetts Senate approved Senate Bill #230 on October 7, 2005. The bill gives the state's four pari-mutuel facilities a monopoly on slot machine gambling. Under the legislation, Suffolk Downs, Plainridge Racecourse, Wonderland Greyhound Park and Raynham Taunton Greyhound Park would each be allowed to operate up to 2,000 slot machines each.²²

Under maximum operating conditions, these four facilities were expected to generate \$350 million in state revenue annually, through a 60 percent tax on gambling profits, plus a one-time \$100 million license fee for each facility. Using those estimations, the racetracks would retain approximately \$230 million annually.²³

The bill was voted down in the House (100-55) on April 6, 2006.

OHIO

Measures to add video lottery terminals to Ohio racetracks have failed in the past. However, a referendum allowing the operation of 31,500 slot machines at seven commercial horse racing tracks and two proposed casinos in Ohio will be on the ballot in November 2006. If passed, the revenues from the slot machines would be as follows.²⁴

Proposed Distribution of Revenues:

- 30% - Set aside for college scholarship and grant programs
- 8% - Local governments for capital improvements or economic development
- 6% - Purse Funds for Ohio's horse racing tracks
- 1% - Gambling Addiction Program

“Learn & Earn (a group supporting slots at racetracks) projects that slot machines would bring in \$2.84-billion a year...”²⁵ This group has been integral in the public campaign surrounding this legislation, and in television ads has promised that the machines will produce, “...an estimated \$800 million for education in Ohio...”²⁶ “The measure also would provide for another \$200 million a year for economic development in Ohio's 99 counties, and about \$170 million a year for the state's horse racing industry...”²⁷

The seven racetracks to be included if the measure passes would include:

- | | |
|--------------------|-----------------|
| 1. Beulah Park | 5. River Downs |
| 2. Lebanon Raceway | 6. Scioto Downs |
| 3. Northfield Park | 7. Thistledown |
| 4. Raceway Park | |

Two proposed VLT casinos would be located in the Cleveland area.

Subsequent to the publishing of this paper (on November 7th, 2006) the “Ohio Learn and Earn” measure was voted down. Thus, the expansion of gaming in Ohio was rejected for the third time in 16 years.

EXPANSION OF EXISTING GAMING

DELAWARE

The Horseman's Re-Development Act of 1994 legalized video lottery terminals (VLTs) at Delaware's three horse racing venues. Delaware Park, Dover Downs Gaming & Entertainment, and Harrington Raceway have thrived over the past decade; however, growth in the gaming industry in the Mid-Atlantic region has forced Delaware to consider increasing its hold in the gaming market, and work on passing legislation that will protect its standing. The legislation passed in 1994 allows for the distribution of revenues as follows:²⁸

Delaware Revenue Distribution:

Racetrack	48%
General Fund	35%
Purses	11%
Gaming Maintenance	6%

Note: All of the VLTs are run in conjunction with the Delaware State Lottery and the racetracks are paid a commission for operating the machines.

The revenue distribution has not changed since the 2004 edition of this report, however, several pieces of legislation have been active since. Following are the topics addressed and current status.

House Bills:

#440: An Act Proposing an Amendment to Article II of the Delaware Constitution of 1897

Addressing the threat of the new gaming operations in the Mid-Atlantic Region that will challenge the success that Delaware has experienced over the past decade. As of May 11, 2006, this bill was assigned to the House Gaming & Pari-Mutuels Committee. ²⁹

#34: An Act to Amend Title 29 of the Delaware Code Relating to the Establishment of Additional Video Lottery Facilities

This act provides for the expansion of Delaware's video lottery in up to two designated districts in the City of Wilmington. These new facilities would be subject to the same controls, licensure and regulation as the current video lottery operations at the three horse racing tracks. As for February 8, 2006, this bill was assigned to the House Gaming & Pari-Mutuels Committee.³⁰

#25: An Act to Amend Title 29 of the Delaware Code Relating to the Establishment, Regulation and Operation of Video Lottery Gaming Facilities Within a Video Lottery Redevelopment District in the City of Wilmington, and the Allocation of Video Lottery Proceeds and Terminals

This act provides for modifications to Delaware's public gaming system to increase competitiveness of Delaware video lottery within the Mid-Atlantic market. This Act authorizes up to 4,000 VLTs at existing race tracks and new video lottery casinos, expands racetrack hours to 24 hours per day, and provides a means to promote re-development activity along Wilmington's riverfronts by creating a Video Lottery Redevelopment District (possibly up to three video lottery casinos in the district). As of May 12, 2005, this bill was assigned to the House Gaming & Pari-Mutuels Committee.³¹

Senate Bill:

#185: An Act to Amend Title 29 of the Delaware Code Relating to Lotteries and Establishing a Delaware Certified Thoroughbred Program.

This bill establishes a Delaware Certified Thoroughbred Fund (DCTB) from a portion of the proceeds from VLTs (\$500,000). The fund will be used to advance the development of thoroughbred foals and yearlings in the State. As of June 21, 2005 this bill was assigned to the Finance Committee in the Senate.³²

As competition in the Mid-Atlantic region increases, Delaware is spending time and energy attempting to increase and maintain their market power.

IOWA

With regard to racino legislation, Iowa has experienced minimal change since the 2004 report was published. Prairie Meadows was the only racetrack in Iowa that applied for and received a table games license in 2004. Table games began there in December 2004.

Dubuque Greyhound Park & Casino and Bluffs Run Casino also applied for and received a table games license in 2005, but neither had begun table games operations by the end of that year.³³ Table games were open for play in 2006.

Below are the existing distributions of revenues:

Iowa Revenue Distribution – Greyhound Racetracks:

Purses*	8% of gross receipts less gaming taxes
Tax Rate	22-24%
Cost of Running Business/Grants	Remainder of the money

*Purse agreements are negotiated annually.

Iowa Revenue Distribution – Horse Racetracks:

Purses*	\$15 million
Tax Rate	22-24%
Cost of Running Business/Grants	Remainder of the money

*Purse agreements are negotiated annually. 88.25% goes to Thoroughbred purses and 11.75% goes to Quarter Horse purses.

LOUISIANA

There have been very few legislative changes in Louisiana since the 2004 report. Delta Downs Racetrack & Casino operates 1,492 slot machines, Evangeline Downs Racetrack & Casino operates 1,627 slot machines and Harrah's Louisiana Downs has 1,402 slot machines in operation. Video poker is available at off-track betting outlets.

Act 591, which allows for the installation of slot machines in the Orleans parish, was amended to allow a maximum of 700 at eligible facilities, which in this case, would include Fairgrounds Racecourse. Other changes in Act 591 regard how a portion of the revenue generated from those machines is used. With 700 machines in operation, 30 percent, not to exceed \$2 million, must be deposited into the New Orleans City Park Fund. An additional 20 percent, not to exceed \$1 million, must be deposited in the Greater New Orleans Sports Foundation Fund.³⁴

The revenue distribution model presented in the 2004 report remains unchanged.

<u>Revenue Distribution Before Taxes:</u>	
Purses	15%
LA Thoroughbred Breeders Association	2%
LA Quarter Horse Breeders Association	1%
<u>Revenue Distribution After Taxes:</u>	
State Tax	15.17%
Local Tax	3.28%
State Police, Gaming Control Board, Department of Justice	15.17%
Racetrack	48.38%

Another legislative measure since the 2004 edition of this report is a proposal for an additional gaming facility. Senate Bill #66 would have authorized casino gaming at an eligible live racing facility in the St. Landry parish. That proposal, however, did not pass.³⁵

MAINE

Per Legislative Document 1820, passed in 2004, slots are currently installed and operating (in a temporary facility) at Bangor Raceway in Bangor, Maine. It is expected that the machines will soon be operating from a more permanent facility.

According the Legislative Document 1820 in Section 1036, the allocation of funds are as follows:³⁶

Of the 25% of the Total Slot Machine Income:

- 1% - Administrative expenses of the board
- 7% - Supplement harness racing purses
- 1% - Sire Stakes Fund
- 3% - Agricultural Fair Support Fund
- 10% - State Controller for Fund for a Healthy Maine
- 2% - University of Maine
- 1% - Main Community College System for scholarships

In May 2006, Legislative Document 1748 became Public Law, demanding changes in the revenue divisions from slot machines at Bangor Raceway. The changes are noted in the Legislative Document 1748 information that follows.

Legislative Document 1748: An Act to Make Technical Changes to the Gambling Laws

The technical changes encompassed by LD 1748 were proposed as follows:³⁷

Of the 39% of the Net Slot Machine Income:

- 3% - Administrative expenses of the board
- 10% - Supplement harness racing purses
- 3% - Sire Stakes Fund
- 3% - Agricultural Fair Support Fun
- 10% - State Controller for Fund for a Healthy Maine
- 2% - University of Maine
- 1% - Main Community College System for scholarships
- 4% - Fund to Encourage Racing at Maine's Commercial Tracks
(Terminated when all commercial tracks have a license to operate slots.)
- 2% - Fund to Stabilize Off-track Betting Facilities
- 1% - Forwarded directly to municipality where slot machines are located

In further developments, Legislative Document 1690 failed by only one vote. This legislation was backed by a strong petition drive.

Legislative Document 1690: (Amended LD 1573) An Act to Authorize, Subject to State Referendum, a Tribal Commercial Track and Slot Machines in Washington County.

Had it passed, LD 1690 would have authorized the Department of Public Safety, Gambling Control Board to issue a license to operate up to 3,000 slot machines to a tribal commercial track.³⁸

MICHIGAN

House Bills 4609-4612 (*See below*) made up what was referred to as the Agricultural Enhancement Package.³⁹

House Bills:

#4609:

Would amend the Horse Racing Law of 1995 to permit account wagering an off-track wagering at racing theaters, and would specify how revenue from video lottery terminals at racetracks would be distributed. As of May 27, 2003, this bill was referred to the Committee on Gaming and Casino Oversight.⁴⁰

#4610:

Would amend the McCauley-Traxler-Law-Bowman-McNeely Lottery Act to authorize the placement of video lottery games at racetracks and provide detailed regulation of video lottery terminals (VLTs). As of May 11, 2004, this bill was referred to conference committee.⁴¹

#4611:

Would amend the Code of Criminal Procedure, generally speaking, to provide statutory maximum penalties for criminal violations of laws governing the newly authorized gaming activities. As of May 27, 2003, this bill was referred to the Committee on Gaming and Casino Oversight.⁴²

#4612:

Would amend the Michigan Gaming and Revenue Act to allow a casino licensee to operate a racing theater at which off-track wagering on horse races could take place. A casino licensee is entitled to the same commission from money wagered on horse races simulcast by the licensee as a race meeting licensee is entitled to receive from wagering on simulcast horse races under the horse racing law of 1995. As of August 25, 2004, this bill was passed, and assigned as Public Act 306.⁴³

When Proposition 1 passed, it prohibited the expansion of any new forms of gaming aside from existing tribal and non-tribal casinos. Proposition 1 also made House Bills 4609-4611 effectively dead.⁴⁴

Although 4609-4611 were no longer under consideration, House Bill 4612 was pushed forward and declared effective on September 1, 2004. Prior to this legislation, non-native casinos in Detroit were paying an 18 percent tax, but upon the passage of HB 4612, the tax was raised to 24 percent. Of this 24 percent, the distributions are as follows:⁴⁵

Distribution of 24% Tax Received from Non-native Casinos:

- 8% - Funds to be received by the city of Detroit
- 14%- Funds to be received by the State General Fund
- 2% - Funds to be received by the Michigan Agricultural Equine Industry Development Fund (Which encompasses the horse racing industry)

NEW MEXICO

The original legislation passed that divided the revenues generated from slot machines has not been amended. The distributions are as follows:⁴⁶

New Mexico Revenue Distribution:

Racetracks	54.75%
Gaming Tax to the State	25%
Purses/Breeders*	20%
Problem Gambling	0.25%

*This money is to be distributed based on the rules of the New Mexico Racing Commission. As a result, 80.7 percent is to be distributed to the existing purse structure and 19.3 percent is to be distributed to the New Mexico Horse Breeders' Association.

NEW YORK

Since the passage of legislation that allowed for video lottery terminals at eight tracks in New York, seven have successfully done so. However, the politics and current financial crisis of NYRA in general is delaying the opening of the final location, a casino at Aqueduct racetrack. A few locations that follow have recently inaugurated their status as racinos.

On October 11, 2006, Yonkers Raceway re-opened after being closed for renovation for 15 months. The new Yonkers Raceway is now the host to Empire City Gaming, a \$240 million video lottery casino. Currently, the facility houses 1,870 machines, but that number will be increased to 5,500 after the final portions of phase one construction are finished. "A portion of the proceeds are used to enhance racing purses, expected to increase some \$60 million over the next year...While the track gets a cut, the bulk of the revenue goes to education. Empire City is expected to generate \$420,000 a day for education and more than \$400 million a year."⁴⁷

Vernon Downs hosted its grand opening of Vernon Downs Gaming Floor on October 26, 2006. Batavia Downs Gaming is currently running and hosts 580 gaming machines with over 100 of the game titles.

The details of legislation passed that designate a scaled distribution of the revenues from VLTs follow:⁴⁸

	\$0-\$50M	\$50-\$100M	\$100-\$150M	\$150M +
Upstate				
Education Contribution	50%	53%	56%	59%
Enhanced Purses	0%	0%	0%	0%
Breeding Fund	0%	0%	0%	0%
Facility Management	32%	29%	29%	26%
Marketing Funds	8%	8%	5%	5%
Lottery Administration	10%	10%	10%	10%
Westchester & Queens				
Education Contribution	54%	57%	57%	60%
Enhanced Purses	0%	0%	0%	0%
Breeding Fund	0%	0%	0%	0%
Facility Management	32%	29%	29%	26%
Marketing Funds	4%	4%	4%	4%
Lottery Administration	10%	10%	10%	10%
Previous Legislation				
Education Contribution	61%	61%	61%	61%
Enhanced Purses	7.5%	7.5%	7.5%	7.5%
Breeding Fund	1.25%	1.25%	1.25%	1.25%
Facility Management	20%	20%	20%	20%
Marketing Funds	0%	0%	0%	0%
Lottery Administration	10%	10%	10%	10%

OREGON

As stated in the 2004 edition of this report, Portland Meadows and Multnomah Greyhound Park were permitted to operate a maximum of 10 video lottery terminals each. Multnomah closed in December 2004 and no longer conducts live racing.

The Oregon legislature proposed House Bill 2671 during its 2005 session. House Bill 2671 would have allowed an increase in the number of VLTs in operation at a pari-mutuel facility to 30 total machines, up from the current number of 10 in operation. The bill, however, did not pass.⁴⁹

The revenue distribution from VLTs is determined by contract by the Oregon Lottery Commission, not by statute as it is in most states.

<u>Revenue Distribution for 2004:</u>	
State	60%
Retailer/Racetrack	32%
Lottery Administrative Costs	8%

Oregon has the legal authority to install Instant Racing® machines at pari-mutuel racetracks like Portland Meadows, but management at that facility has not decided to implement such games of skill. Instant Racing® machines had been installed at Multnomah Greyhound Park but were removed in a decision by management in November 2003.

RHODE ISLAND

Legislation was passed in 2005 that permitted pari-mutuel facilities to increase the number of slot machines in operation. Lincoln Park Greyhound track was permitted to add an additional 1,750 slot machines to the existing 2,543 machines that were operating in 2004. In exchange for the passage of this legislation, Lincoln Park Greyhound track was required to invest \$125 million to upgrade the track. There are now over 3,600 VLTs in operation at Lincoln Park Greyhound track.⁵⁰

Newport Grand, which operates over 1,000 terminals, was required to upgrade its facility and will likely add a hotel to its property as a condition of additional slots.⁵¹

The revenue distribution from the VLTs at these facilities was not altered from the 2004 report. The revenue distributions for Lincoln Park and Newport Grand follow:

<u>Lincoln Park Greyhound</u>	2004	2005	2006 and on
State Lottery Commission Fund	53%	54%	55%
Pari-Mutuel Facility	30%	29.5%	29%
Greyhound Kennel Owners (Purses)	5%	4.5%	4%
Technology Provider	8.5%	8.5%	8.5%
Communication System Provider	2.5%	2.5%	2.5%
City/Town	1%	1%	1%
<u>Newport Grand Jai Alai</u>	2004	2005	2006 and on
State Lottery Commission Fund	58%	58.5%	59%
Pari-Mutuel Facility	30%	29.5%	29%
Technology Provider	8.5%	8.5%	8.5%
Communication System Provider	2.5%	2.5%	2.5%
City/Town	1%	1%	1%

WEST VIRGINIA

As of 2004, all four of West Virginia's pari-mutuel racetracks are operating slot machines. The distribution of the revenues has not been amended, and the details are as follows:⁵²

West Virginia Revenue Distribution

State Lottery Fund	30%
Purse Fund Established by the Licensed Track	14%
County Where Terminals are Located	2%
Pension Plan for Employees of the Racing Association	0.5%
Thoroughbred Development Fund/Greyhound Breeding Fund*	1.5%
West Virginia Racing Commission	1%
Racetrack (License)	47%
Tourism Promotion Fund	3%
Veterans Memorial Program	1%

*For any racetrack that does not have a breeder's program supported by one of these funds, the 1.5% will be placed in a small fund that will go to purses.

Currently, proposed legislation to introduce table gaming to West Virginia racetracks is on hold until the 2007 regular legislative session begins. The goal of those backing the legislation is to have it on the ballot for voting purposes in November 2007.

INSTANT RACING®

INTRODUCTION TO INSTANT RACING®

Instant Racing® was developed by RaceTech LLC, a partnership of Oaklawn Jockey Club and AmTote.

Instant Racing® is pari-mutuel wagering on the official historic results of horse races conducted at licensed, regulated racing facilities. It uses handicapping information from the official results of a library of some 250,000 historic races. Instant Racing machines share the same tote system as live and simulcast racing, but is presented in a modified and updated self-service terminal designed for prolonged individual play. Although the identities of the race and the horses are withheld from the patron, the patron is provided with actual handicapping information to use in making an informed wager.⁵³

ARKANSAS

Arkansas implemented Instant Racing® machines in 2000. In 2005 the Arkansas legislature also passed Act 1151, which allowed for the implementation of up to 1,000 electronic games of skill, such as video poker, at both Oaklawn Park and Southland Greyhound Park. According to Act 1151 electronic games of skill are defined as being played through any electronic device or machine that afford an opportunity for the exercise of skill or judgment where the outcome is not completely defined by chance. The Arkansas Racing Commission approved the installation of electronic games of skill on August 1, 2006.⁵⁴

The revenue distribution from electronic games of skill is provided below.

Distribution of Revenues from Electronic Games of Skill:

14% net wagering revenues for purses (Horse and Greyhound)

1% net wagering revenues to breeders' awards (Horse)

1% net wagering revenues to breeders' awards (Greyhound)

Privilege Fees: 18% for Arkansas Department of Finance and Administration

0.5% net wagering revenues to county where facility is located

1.5% net wagering revenue to town/city where facility is located

Funds remaining after the deductions shown in the table above are either returned to the players or retained by the pari-mutuel facility. The electronic games of skill are required to pay back at a minimum of 83 percent.⁵⁵

The Southland proposal calls for 900 machines to be installed and open for public play by November 1, 2006. Oaklawn has a similar plan to install 125 machines by mid-November 2006 at the earliest.

Some estimates for revenue to the state are in excess of \$12 million annually.⁵⁶

CALIFORNIA

Spurred by the fact that the costs of involvement in the horse racing industry are high, and that California has failed over the years to enact any type of racino legislation to help alleviate these high costs, a group of stakeholders in California's racing industry met in January 2006 and decided that action should be taken to move toward the adoption of Instant Racing® in California.⁵⁷

The legislation concerning Instant Racing® - Assembly Bill No. 2409 - was submitted to the Senate Governmental Organization Committee on June 20, 2006 and was scheduled to be heard in June 2006. However, due to the fact that Legislators felt that it needed more time and attention, the hearing was postponed. The legislative session ended August 31st, before there was any further action on this bill.⁵⁸

VIRGINIA

Virginia is pursuing legislation (House Bill 5045) that would add historical horse racing, or Instant Racing®, to the types of horse racing on which pari-mutuel wagering is permitted in Virginia. Proceeds from the wager, after payment of prizes, would be split as follows:⁵⁹

Proposed Revenue Distribution:

49% - Transportation Trust Fund

49% - Colonial Downs

2% - Horsemen's Purse Account

*Licensee would receive any proceeds from unredeemed tickets and breakage.

“Subject to the number of machines allowed, it has been estimated that the game could generate revenue that would exceed \$660 million annually once fully implemented.”⁶⁰

WYOMING

Four off-track betting sites began operating Instant Racing® machines in August 2003. The Wyoming Pari-Mutuel Commission stated that the Cheyenne OTB ceased its Instant Racing® operations in 2004 due to legal concerns and another site in Casper was not involved in Instant Racing®. During 2004, Instant Racing® accounted for 38 percent of handle, according to the Wyoming Pari-Mutuel Commission 2004 Annual Report.⁶¹

Instant Racing®, however, was the subject of legal scrutiny the following year. In 2005, the Wyoming Senate and House of Representatives passed House enrolled Act 58 (House Bill 156), which permitted the pari-mutuel commission to authorize and regulate wagering on historical pari-mutuel events using electronic systems (i.e. Instant Racing®). This act allows for the implementation of Instant Racing®, or games similar to Instant Racing® machines at pari-mutuel facilities.

The bill stated: “‘Pari-mutuel event’ means the events which are authorized by the commission for the conduct of horse racing (to include quarter horse, thoroughbred or other approved races), harness racing, cutter racing, chariot racing, chuckwagon racing, professional roping events and simulcasting of dog racing and the events described in this paragraph as prescribed by the commission. Notwithstanding W. S. 6-7-101(a)(iv) and W.S. 11-25-107, the commission may authorize and promulgate rules for providing for pari-mutuel wagering on events that have previously occurred utilizing an electronic system or device.”⁶²

However, the Governor of Wyoming vetoed the bill on February 25, 2005. The House voted to override the veto but the Senate did not. On July 7, 2005, a judge ruled the Instant Racing® machines are prohibited by law. The decision was appealed to the Wyoming Supreme Court. On May 4, 2006, it was ruled that the Wyoming Pari-Mutuel Commission had exceeded its authority to install Instant Racing® machines at four off-track sites in 2004.⁶³

CONCLUSION

Racino legislation continues to be a developing addition to the thoroughbred, standardbred, and greyhound racing industries. As when legislation was initially drafted, and the first racinos were being implemented, every jurisdiction which eventually participates adopts vastly different rules and revenue distributions.

Many jurisdictions that have already invited racinos in and are now trying to stay ahead by planning for what the market will do as competition increases. An example of this is Delaware. Since adopting racino legislation they have certainly realized profits, but are now no longer unique in the Mid-Atlantic market for racinos. In the next few years the most powerful market holders will survive and continue to profit while the weak auxiliary firms will fail and fall away.

Another push has been in legislation allowing Instant Racing® in certain states. For example, during 2006, a representative group from California decided that in order to increase purses and overall California industry revenues, they should pursue an alternative to installing slot machines at the racetracks. After viewing the success of Instant Racing® at Oaklawn Park in Arkansas, it was an obvious choice. However, their effort to pass this legislation failed. Other states such as Virginia are also planning to pursue Instant Racing® legislation in the coming year.

Ultimately, the market for racinos and other alternatives continues to be revealed. Some participants will have to learn to mold to the inevitable results, some will continue to profit, and others will fail. In the coming years the phenomenon of racinos will become less mysterious, and the true story will be told.

United States
RACINO LEGISLATION UPDATE
2004-2006

Presentation Handout/Summary

I. Passed Legislation

- A. Oklahoma: Slots
- B. Florida: Slots
- C. Pennsylvania: Approved more slots (61,000) than any state but Nevada

II. Proposed New Legislation

- A. Illinois
 - 1. Pushed multiple bills for slots; instead getting 3% from riverboat gaming revenues as a subsidy.
- B. Indiana
 - 1. Pushed 3 bills for slots in 2005 and 2006. One bill requested a total of 5,000 slots to be located at Hoosier Park, Indiana Downs and two OTBs owned by Hoosier Park and Indiana Downs. No bills passed.
- C. Kentucky
 - 1. Pushed for casino style gaming (poker, blackjack, video lottery terminals, roulette, slot machines, etc.). Racing industry would have retained 64% of revenue. No bills passed.
- D. Maryland
 - 1. The busiest of all states with no less than five bills requesting video lottery terminals and expanded gaming. No bills passed.
- E. Massachusetts
 - 1. Proposal for 2,000 slots each at Suffolk Downs, Plainridge Racecourse, Wonderland Greyhound and Raynham Taunton Greyhound. Racetracks anticipated retaining \$230 million annually if passed. Bill voted down in April 2006.
- F. Ohio
 - 1. A proposed referendum allowing 31,500 slot machines at seven commercial horse racing tracks and two proposed casinos
 - 2. On the ballot for November 2006

III. Expansion of Existing Gaming

- A. Delaware
 - 1. Delaware has attempted to pass several pieces of legislation to expand their current racino status.
 - 2. Many of these measures are backed by the fear of growing racino competition in Mid-Atlantic states.
- B. Iowa
 - 1. Between December 2004-2006, Prairie Meadows, Dubuque Greyhound Park & Casino and Bluffs Run Casino all get table games in addition to existing slot machines
- C. Louisiana
 - 1. Approved 700 slot machines in Orleans parish (Fairgrounds Race Course)

D. Maine

1. Changes in revenue distribution for slot machines at Bangor Raceway
 - a. Amongst other changes, the new legislation allows for a 3 percent increase in the amount harness purses were previously receiving (from 7%-10%)

E. Michigan

1. Passage of legislation that will require non-native casinos to increase their tax rate of 18% to 24%.
 - a. 2% will be devoted to the Michigan Agricultural Equine Industry, which encompasses the horse racing

F. New York

1. New scaled distributions of revenues.
2. 7 out of 8 capable facilities have installed slot machines (Aqueduct is left).
3. Yonkers and Vernon are the most recent to open (October).

G. New Mexico

1. No significant changes have been made

H. Oregon

1. Attempted to increase number of video lottery terminals allowed at pari-mutuel facilities from 10 to 30. Bill did not pass.

I. Rhode Island

1. Passed legislation allowing additional VLTs at Lincoln Greyhound track (3,600+ slots now) and Newport Grand (1,000+ slots now) facility. Conditions of approval for additional VLTs were improvement of current facilities. Lincoln under going \$125 million expansion; Newport Grand adding hotel to property.

J. West Virginia

1. Pushing for legislation allowing for table games at race tracks
 - a. Ideally this legislation will be voted on in November 2007

IV. Instant Racing® Legislation

A. Arkansas

1. Instant Racing® in 2000. Oaklawn Jockey Club had large role in development of Instant Racing® technology.

B. California

1. Failed attempt to pass legislation to allow Instant Racing® during the 2006 legislative session

C. Virginia

1. Pursuing Instant Racing® legislation that will split the revenues in a way that 49 percent will go to Colonial Downs, 49 percent to the Transportation Trust Fund, and 2 percent to the Horsemen's Purse Account

D. Wyoming

1. August 2003: Implemented Instant Racing® at Wyoming Downs' four OTBs before legality of the machines was challenged. Then tried to get bill passed explicitly approving this type of gaming. The bill passed the House and Senate, but was vetoed by the Governor and not overridden. Wyoming Downs filed suit, lost and then appealed to State Supreme Court, who decided Instant Racing® is illegal.

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