

## CHAPTER 205

AN ACT concerning the establishment of off-track wagering facilities and amending P.L.2001, c.199.

**BE IT ENACTED** by the Senate and General Assembly of the State of New Jersey:

1. Section 4 of P.L.2001, c.199 (C.5:5-130) is amended to read as follows:

C.5:5-130 Issuance of license to permit off-track wagering; establishment of facilities.

4. a. The commission is authorized to issue a license to the authority to permit off-track wagering at a specified facility, upon application of the authority and in accordance with the provisions of this act. A license issued pursuant to this act shall be valid for a period of one year. The commission shall issue a license pursuant to this subsection only if the permit holder at Monmouth Park and the thoroughbred and standardbred permit holders at Meadowlands Racetrack schedule at least the minimum number of race dates required in section 30 of this act, P.L.2001, c.199 (C.5:5-156), and it is satisfied that the authority has entered into a participation agreement with each and every other person, partnership, association, corporation, or authority or the successor in interest to such person, partnership, association, corporation or authority that:

- (1) held a valid permit to hold or conduct a race horse meeting within this State in the calendar year 2000;
- (2) has complied with the terms of such permit; and
- (3) is in good standing with the commission and the State of New Jersey.

An off-track wagering license may not be transferred or assigned to a successor in interest without the approval of the commission and the Attorney General, which approval may not be unreasonably withheld.

b. (1) As part of the license application process, any participation agreement entered into for the purposes of subsection a. of this section, or any modification to the agreement made thereafter, shall be reviewed by the commission and the Attorney General to determine whether the agreement meets the requirements of this act and shall be subject to the approval of the commission and the Attorney General. Notwithstanding any other law, rule, or regulation to the contrary, a permit holder subject to a participation agreement entered into prior to the effective date of P.L.2011, c.26 shall have made progress since the signing of that agreement toward establishing the permit holder's share of the 15 off-track wagering facilities authorized pursuant to section 10 of P.L.2001, c.199 (C.5:5-136), provided that any facility that has not received a license under section 7 of P.L.2001, c.199 (C.5:5-133) on the effective date of this act, P.L.2011, c.205 shall be subject to a cash deposit, a bond, or an irrevocable letter of credit to be posted or deposited by the permit holder in the amount of \$1 million for each facility in the permit holder's share that remains to be licensed, which deposit shall be paid to the commission within 180 days of the effective date of this act, P.L.2011, c.205. A permit holder making a deposit or posting a bond, or irrevocable letter of credit, in connection with one or more of the off-track wagering facilities in the permit holder's share that remain to be established shall obtain the license and make substantial progress in the commission's judgment pursuant to the progress benchmarks issued by the commission and the New Jersey Economic Development Authority under subsection e. of this section toward establishing the off-track wagering facility or facilities within one-year of making the deposit, or posting the bond, or irrevocable letter of credit, and if so the deposit, bond, or irrevocable letter of credit shall be returned to the permit holder at the end of the one-year period, or the amount deposited or posted shall be forfeited and distributed by the

commission to the representative horsemen's organization in this State for use in establishing an off-track wagering facility or facilities under paragraph (2) of this subsection. Any facility that has not been licensed on the effective date of this act, P.L.2011, c.205, and for which a deposit, bond, or irrevocable letter of credit is not made or posted, and any facility for which a deposit, bond, or irrevocable letter of credit is made or posted which has not been licensed and made progress toward establishment within one year of making such deposit or posting the bond, or irrevocable letter of credit, shall no longer be considered as part of the permit holder's share, and shall be available to be established by a horsemen's organization in this State as provided by paragraph (2) of this subsection. However, if the commission finds that a permit holder is making progress toward obtaining an off-track wagering license and establishing an off-track wagering facility according to specified benchmarks developed by the commission, the commission may allow a permit holder to retain its share of the off-track wagering facilities to be established, provided the permit holder continues to make progress on an annual basis. For the purposes of this section, a permit holder shall be deemed to have made progress toward establishing its share of off-track wagering facilities, and shall not be subject to a cash deposit or be required to post a bond or irrevocable letter of credit as set forth in this section, if it has entered into an agreement, in connection with good faith negotiations over the sale or lease of a racetrack under the permit holder's control, to transfer allocated off-track wagering licenses or facilities to an individual or entity that is a bona fide prospective purchaser or lessee, or has demonstrated to the satisfaction of the Commission that the execution of such an agreement is imminent based upon the portions of such an agreement agreed upon in principle by the parties as evidenced by a memorandum of understanding or similar accord, or has demonstrated to the satisfaction of the commission that negotiations concerning such an agreement have been unsuccessful and the permit holder has plans for soliciting new sources of interest or entering into new negotiations that, in the judgment of the commission, have a reasonable likelihood of resulting in a successful conclusion.

(2) The commission is authorized to issue a license or licenses to any horsemen's organization in this State, for the establishment of one or more of the remaining off-track wagering facilities in partnership with other horsemen's organizations in this State, the authority, or private investors, in accordance with all applicable provisions of the "Off-Track and Account Wagering Act," P.L.2001, c.199 (C.5:5-127 et seq.). Notwithstanding any provision of this paragraph to the contrary, a representative standardbred horsemen's organization shall have the right to establish the off-track wagering facilities not established by the permit holder at Freehold Raceway as provided under paragraph (1) of this subsection, and to receive any deposit, bond, or irrevocable letter of credit forfeited by that permit holder for the establishment of one or more of those off-track wagering facilities, except that if a representative standardbred horsemen's organization does not make application therefor, or fails to make progress in establishing the facility or facilities as provided herein, any amounts received shall be returned as provided in this paragraph and the facility or facilities shall be available to be established in accordance with subsection c. of this section. A horsemen's organization shall make progress on an annual basis in establishing an off-track wagering facility from the date the organization is eligible to apply for an initial license pursuant to this subsection, provided that any facility that has not received a license under section 7 of P.L.2001, c.199 (C.5:5-133) within a reasonable timeframe from the date the horsemen's organization became eligible to apply for its initial license shall no longer be considered eligible to be established by a horsemen's organization under this paragraph, and shall be available to be established by a well-suited entity pursuant to subsection c. of this

section. When a horsemen's organization under this paragraph has received the sum of \$1 million as provided under paragraph (1) of this subsection, the horsemen's organization shall have one year from the date the funds are allocated to it by the commission to obtain a license and make substantial progress in establishing the off-track wagering facility or facilities, provided that, if the horsemen's organization fails to make progress within that year, in the commission's judgment pursuant to the progress benchmarks issued by the commission and the New Jersey Economic Development Authority under subsection e. of this section, the horsemen's organization shall be liable to return to the commission the funds allocated to it in their entirety at the end of the one year period, and the commission shall return such funds to the permit holder originally making the deposit, or posting the bond or irrevocable letter of credit, to be used for capital improvements at the permit holder's racetrack.

c. With respect to any licenses that remain to be issued under paragraph (2) of subsection b. of this section, the commission is also authorized to issue a license to a well-suited entity to permit off-track wagering at a specified facility, upon application of the entity and in accordance with the provisions of this act and the provisions of section 14 of P.L.1940, c.17 (C.5:5-34). A license issued pursuant to this act shall be valid for a period of one year and, if the licensed entity is not a permit holder in this State, the license shall be contingent upon the licensee showing simulcast New Jersey races and allowing wagering thereon at the off-track wagering facility, subject to the rules and regulations of the commission, and shall be issued only if the permit holders schedule at least the minimum number of race dates required in section 30 of P.L.2001, c.199 (C.5:5-156). In assessing the qualifications of an entity to establish and conduct an off-track wagering facility, the commission shall apply substantially similar standards and criteria to those applied to the authority, its assignees, and other permit holders and licensees in the State. These standards and criteria shall enable the commission to determine by clear and convincing evidence in the opinion of the commission that the person or persons applying for licensure on behalf of the entity are well-suited to receive licensure, and shall include, but may not be limited to:

(1) proof of financial resources sufficient to enable the entity to establish and conduct a quality off-track wagering facility or facilities with appropriately staffed and managed operations;

(2) evidence of good character, honesty, competency and integrity;

(3) the absence of a conviction for a crime involving fraud, dishonesty or moral turpitude; and

(4) any additional standards and criteria the commission may establish by rule or regulation in accordance with this act.

d. (1) The commission, in consultation with the State Treasurer, shall develop a process by which the commission will accept bids for each off-track wagering license to be awarded under this act, P.L.2001, c.199. An off-track wagering licensee and an entity interested in establishing an off-track wagering facility and being licensed as an off-track wagering licensee shall be eligible to submit a bid. The bidding process shall include procedures for the establishment of a minimum bid threshold, for the selection of a successful bidder and, when the successful bidder is not yet licensed as an off-track wagering licensee, for the awarding of a bid to that successful bidder subject to its eligibility to be licensed as an off-track wagering licensee in compliance with the provisions of this act, P.L.2001, c.199. As part of the bidding process, and in addition to submitting a monetary bid, a bidder shall submit to the commission a conceptual plan of the off-track wagering facility the bidder intends to establish, which shall include, but may not be limited to, a description of the

proposed facility and the amenities it would offer, and its proposed or intended location. In selecting a successful bidder, the commission shall consider and balance the following: (a) the monetary value of the bid in comparison to other bids submitted; (b) the level of quality of the proposed facility and amenities in striving to be a first-rate experience for the customer that includes the provision of first-class dining facilities; (c) the potential of the proposed facility and amenities to generate greater interest in the horse racing industry and the sport of horse racing in the State; and (d) the proximity of the bidder's proposed or intended location for the off-track wagering facility and its impact on other planned or existing off-track wagering facilities and racetracks in the State. For the purposes of this act, P.L.2001, c.199, a successful bid shall be conditional upon the successful bidder's compliance with all the provisions of this act, P.L.2001, c.199, and the applicable rules and regulations promulgated by the commission.

(2) The commission shall consider the amount of a successful bid pursuant to paragraph (1) of this subsection as a license fee in connection with the issuance of an initial license to an off-track wagering facility licensee. The initial license fee need not be uniform for all off-track wagering facility licenses, and may vary depending on the results of the bidding process for each license. The proceeds generated by the initial license fee shall be distributed as follows: 50% to the New Jersey Thoroughbred Horsemen's Association for programs designed to aid the horsemen, and 50% to the Standardbred Breeders' and Owners' Association of New Jersey for programs designed to aid the horsemen.

e. The commission shall, in consultation with the New Jersey Economic Development Authority, develop progress benchmarks, within three months of the effective date of P.L.2011, c.26, for each off-track wagering licensee to follow for the timely and expeditious establishment of each off-track wagering facility. Such benchmarks shall provide that a permit holder shall be deemed to have made progress toward establishing its share of off-track wagering facilities if it has entered into an agreement, in connection with good faith negotiations over the sale or lease of a racetrack under the permit holder's control, to transfer allocated off-track wagering licenses or facilities to an individual or entity that is a bona fide prospective purchaser or lessee, or has demonstrated to the satisfaction of the Commission that the execution of such an agreement is imminent based upon the portions of such an agreement agreed upon in principle by the parties as evidenced by a memorandum of understanding or similar accord, or has demonstrated to the satisfaction of the commission that negotiations concerning such an agreement have been unsuccessful and the permit holder has plans for soliciting new sources of interest or entering into new negotiations that, in the judgment of the commission, have a reasonable likelihood of resulting in a successful conclusion. The failure of a licensee to meet the benchmarks shall constitute a basis for the denial by the commission of the renewal of the off-track wagering license, except that the licensee shall have the right to appeal the commission's decision.

2. This act shall take effect immediately and shall be retroactive to December 31, 2011.

Approved January 17, 2012.