

# MAINE STATE LEGISLATURE

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# 124th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2009

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Legislative Document

No. 1458

S.P. 542

In Senate, April 14, 2009

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### **An Act To Increase Opportunities for Commercial Tracks and Agricultural Fairs**

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Reference to the Committee on Legal and Veterans Affairs suggested and ordered printed.

Handwritten signature of Joy J. O'Brien in cursive.

JOY J. O'BRIEN  
Secretary of the Senate

Presented by Senator BRYANT of Oxford.  
Cosponsored by Representative PERRY of Calais and  
Senators: HASTINGS of Oxford, JACKSON of Aroostook, McCORMICK of Kennebec,  
Representatives: FITTS of Pittsfield, SOCTOMAH of the Passamaquoddy Tribe, TUTTLE of  
Sanford.

1 Be it enacted by the People of the State of Maine as follows:

2 Sec. 1. 8 MRSA §270-B is enacted to read:

3 §270-B. Exception to number of racing days

4 Notwithstanding section 275-A, subsection 1, paragraph C and section 275-A,  
5 subsection 12, the commission, after consultation with a statewide harness horseman's  
6 association, may award fewer than 26 race dates in a calendar year if the commission  
7 determines that there is not a sufficient horse supply. Such a decrease does not affect the  
8 license as a commercial track for that calendar year.

9 Sec. 2. 8 MRSA §271, sub-§9, as reallocated by RR 1997, c. 1, §7, is amended to  
10 read:

11 9. **Previous year's dates.** Beginning with licenses issued for calendar year 1996,  
12 notwithstanding any other provision of this chapter, every commercial track or tribal  
13 commercial track that is licensed for a specific calendar year must be assigned all of the  
14 race dates that it requests for that year if it conducted live racing on those dates during the  
15 immediately preceding calendar year. For the purposes of this section, a race date is the  
16 same from year to year if it is the closest calendar date that falls on the same day of the  
17 week.

18 Sec. 3. 8 MRSA §275-A, sub-§1, as amended by PL 2003, c. 401, §10, is further  
19 amended to read:

20 1. **Commercial track.** "Commercial track" means a harness horse racing track  
21 licensed under this chapter to conduct harness horse racing with pari-mutuel wagering  
22 that:

23 A. If the population of the region is 300,000 or more, based on the 1990 U.S.  
24 Census, conducted racing on more than 100 days in each of the previous 2 calendar  
25 years, except that if a racetrack that qualifies as a commercial track under this  
26 paragraph ceases operation, a separate racetrack operated by the owner or operator of  
27 the racetrack that ceased operation qualifies as a commercial track, and for all  
28 purposes is considered the same commercial track as the track that ceased operation,  
29 if the population of the region of that separate racetrack is 300,000 or more, based on  
30 the 1990 U.S. Census, and the sum of the number of days on which racing was  
31 conducted at the track that ceased operation and the number of days on which racing  
32 was conducted at the separate racetrack equals at least 100 days in each of the 2  
33 preceding calendar years; or

34 B. If the population of the region is less than 300,000, based on the 1990 U.S.  
35 Census, conducted racing on more than 25 days in each of the previous 2 calendar  
36 years, except that if a racetrack that qualifies as a commercial track under this  
37 paragraph ceases operation, a separate racetrack operated by the owner or operator of  
38 the racetrack that ceased operation qualifies as a commercial track, and for all  
39 purposes is considered the same commercial track as the track that ceased operation,  
40 if the population of the region of that separate racetrack is less than 300,000, based on

1 the 1990 U.S. Census, and the sum of the number of days on which racing was  
2 conducted at the track that ceased operation and the number of days on which racing  
3 was conducted at the separate racetrack equals at least 26 days in each of the 2  
4 preceding calendar years; or

5 C. Is located in Oxford County, is owned by an agricultural fair association licensed  
6 to conduct harness racing as of January 1, 2009 and conducts racing on more than 25  
7 days each calendar year after being licensed as a commercial track.

8 For the purposes of this subsection, "region" is determined by measuring a distance of 50  
9 miles from the center of the racing track along the most commonly used roadway, as  
10 determined by the Department of Transportation, drawing a circle around the center of  
11 the racing track using that 50-mile measurement and excluding those municipalities or  
12 unorganized territories that do not have boundaries contained entirely by that circle.

13 **Sec. 4. 8 MRSA §275-A, sub-§12** is enacted to read:

14 **12. Tribal commercial track.** "Tribal commercial track" means a harness racing  
15 track, operated by a federally recognized Indian tribe in the State as of January 1, 2005,  
16 that:

17 A. Is located more than 90 miles from an existing commercial track that operates slot  
18 machines but within 45 miles of the operating tribe's Indian reservation as described  
19 in Title 30, chapter 601; and

20 B. Conducts racing on more than 25 days each calendar year after being granted a  
21 license to conduct harness racing.

22 For the purposes of this subsection, distance in miles is determined by measuring the  
23 distance from the center of the tribal commercial track along the most commonly used  
24 roadway as determined by the Department of Transportation.

25 **Sec. 5. 8 MRSA §275-C, sub-§2**, as enacted by PL 1997, c. 390, §1, is amended  
26 to read:

27 **2. Payments to agricultural fairs conducting live racing.** A commercial track or  
28 tribal commercial track located within a 35-mile radius of an agricultural fair track may  
29 not present a simulcast on a day when the commercial track or tribal commercial track is  
30 not conducting live racing and the agricultural fair track is conducting live racing unless  
31 the commercial track or tribal commercial track pays the agricultural fair track 2% of the  
32 wagers made at the commercial track or tribal commercial track at the time live racing is  
33 being conducted at the agricultural fair track and 1% of the wagers on the other races  
34 conducted on a day when live racing is being conducted at the agricultural fair track.

35 **Sec. 6. 8 MRSA §275-D, sub-§3**, as amended by PL 2003, c. 401, §12, is further  
36 amended to read:

37 **3. Notice to commercial racetracks or tribal commercial tracks; objections.** An  
38 applicant shall send written notice of its application for an off-track betting license to any  
39 commercial racetrack or tribal commercial track in whose market area the facility will be  
40 located and shall present proof to the commission that it has provided the notice. The

1 notice must include all information contained in the application except information  
2 described in subsection 2, paragraph Q. A commercial racetrack or tribal commercial  
3 track shall notify the commission within 30 days of receiving notice if the racetrack  
4 objects to the location of the facility based on adverse impact to the commercial track or  
5 tribal commercial track. The commission shall suspend consideration of the application  
6 for the 30-day objection period. If the commission receives an objection from a racetrack  
7 in whose market area the facility would be located within the 30-day period, the  
8 commission shall reject the application. If the commission does not receive an objection  
9 within that period, the commission may proceed to consider the application. For  
10 purposes of this subsection, the market area is determined by measuring a distance of 50  
11 miles from the center of the racetrack along the most commonly used roadway adjacent to  
12 the racetrack, as determined by the Department of Transportation, drawing a circle  
13 around the center of the racetrack using that 50-mile measurement.

14 **Sec. 7. 8 MRSA §275-D, sub-§6, ¶D**, as enacted by PL 1993, c. 388, §8, is  
15 amended to read:

16 D. No commercial racetrack, tribal commercial track or off-track betting facility in  
17 whose market area the facility would be located has filed a written objection to the  
18 facility within the time period prescribed in subsections 3 and 4.

19 **Sec. 8. 8 MRSA §275-N**, as amended by PL 2003, c. 401, §14, is further  
20 amended to read:

21 **§275-N. Limitations on off-track betting facilities**

22 The commission may not allow interstate simulcasting or license any off-track betting  
23 facility for any calendar year unless during the preceding 2 calendar years there were at  
24 least 150 race dates on which live racing actually was conducted at the commercial tracks  
25 or tribal commercial track. Interstate simulcasting always must be allowed at any  
26 commercial track or tribal commercial track that conducted at least 136 race dates during  
27 the immediately preceding 2 calendar years or at an existing commercial track as defined  
28 in section 275-A, subsection 1, paragraph B or tribal commercial track at which at least  
29 35 race dates were conducted during the preceding 2 years if the interstate simulcasting at  
30 the commercial track or tribal commercial track is conducted during the regular meeting.  
31 For the purposes of this section, any race date that the commission determines was  
32 canceled due to a natural or other disaster must be counted as a race date. For the  
33 purposes of this section and for the purpose of meeting the requirements of section 275-  
34 A, subsection 1, any race date that is canceled at a commercial race track due to the  
35 inability to meet the requirements of section 275-A, subsection 9-A because of a horse  
36 shortage, as verified by the state steward, is counted as a race date.

37 **Sec. 9. 8 MRSA §286, sub-§2, ¶A**, as enacted by PL 1997, c. 528, §46, is  
38 amended to read:

39 A. On exotic wagers:

40 (1) The state share is 2.248% for an off-track betting facility located in the same  
41 municipality as a commercial track or tribal commercial track and 2.578% for all  
42 other facilities;

- 1 (2) The Sire Stakes Fund share is 1.551%;
- 2 (3) The Stipend Fund share is 1.169%;
- 3 (4) The Harness Racing Promotional Fund share is 0.25%;
- 4 (5) The horsemen's purse share is 7.871%;
- 5 (6) The track share is 7.922%; and
- 6 (7) The off-track betting facility share is 4.659%.

7 **Sec. 10. 8 MRSA §286, sub-§2, ¶B**, as enacted by PL 1997, c. 528, §46, is  
8 amended to read:

9 B. On regular wagers:

- 10 (1) The state share is 0.493% for an off-track betting facility located in the same  
11 municipality as a commercial track or tribal commercial track and 0.823% for all  
12 other facilities;
- 13 (2) The Sire Stakes Fund share is 0.072%;
- 14 (3) The Stipend Fund share is 1.186%;
- 15 (4) The Harness Racing Promotional Fund share is 0.25%;
- 16 (5) The horsemen's purse share is 5.062%;
- 17 (6) The track share is 7.899%; and
- 18 (7) The off-track betting facility share is 2.718%.

19 **Sec. 11. 8 MRSA §287, sub-§5**, as amended by PL 1999, c. 622, §1, is further  
20 amended to read:

21 **5. Definition.** For the purposes of this section, "improvements" means the amount  
22 paid out for new buildings or for permanent improvements made to improve the facilities  
23 utilized by the licensee for conducting its racing meetings; or the amount expended in  
24 restoring property or in improving the facility or any part of the facility that results in the  
25 addition, replacement or substantial enhancement or restoration of a fixed asset or of a  
26 movable asset that is important to efficient operation of the racing meetings. In general,  
27 the amounts referred to as improvements include amounts paid that add to the value,  
28 improve or substantially prolong the useful life of the racetrack and moveable assets  
29 utilized by the licensee for conducting its racing meetings. Amounts paid or incurred for  
30 routine repairs and maintenance of property, interest expense or lease payments in  
31 connection with the capital improvements are not improvements within the meaning of  
32 this section. In order to qualify as an improvement, a substantial enhancement or  
33 restoration of an asset must cost at least \$2,000 and must be an expenditure that would  
34 qualify for depreciation under the United States Internal Revenue Code. A moveable  
35 asset may be considered important to the efficient operation of a race meeting if the asset  
36 will remain at the commercial track or tribal commercial track or at the offices of the  
37 licensee throughout its use and if that asset is directly associated with running races,  
38 accommodating patrons of the race meet, conducting pari-mutuel wagering or paying  
39 purses.

1           **Sec. 12. 8 MRSA §287, sub-§7**, as amended by PL 2007, c. 539, Pt. G, §9 and  
2 affected by §15, is further amended to read:

3           **7. Interim payments to commercial track or tribal commercial track.** If during  
4 the course of any calendar year the commission finds that wagers placed at facilities  
5 licensed under this chapter for the year are likely to exceed \$35,000,000, it may, if  
6 reasonably necessary for improvements to be effected expeditiously, direct the Treasurer  
7 of State to make interim payments to a commercial track or tribal commercial track in  
8 amounts as the commission finds the commercial track or tribal commercial track is  
9 likely to be entitled to receive under this section. If a commercial track or tribal  
10 commercial track receives interim payments under this subsection that exceed the total  
11 amount the commercial track or tribal commercial track is entitled to receive for the  
12 calendar year, the Treasurer of State shall reimburse the operating account for this excess  
13 by retaining money otherwise due to that commercial track or tribal commercial track  
14 pursuant to section 295.

15           **Sec. 13. 8 MRSA §299, sub-§2**, as enacted by PL 2003, c. 687, Pt. A, §4 and  
16 affected by Pt. B, §11, is amended to read:

17           **2. Distribution.** On May 30th, September 30th and January 30th, all amounts  
18 credited to the fund established by this section as of the last day of the preceding month  
19 and not distributed before that day must be distributed to each commercial track licensed,  
20 including tribal commercial tracks, under section 271, with each track receiving that  
21 amount of the money available for distribution determined by multiplying that amount  
22 times a fraction, the numerator of which is the total number of live race days conducted  
23 by the commercial track during the preceding time period and the denominator of which  
24 is the total number of race days conducted by all commercial tracks licensed under  
25 section 271 during that time period. The payment in January must be adjusted so that for  
26 the prior 3 time periods each commercial track receives that fraction of the total money  
27 distributed over the full year from the fund established by this section, the amount  
28 determined by multiplying the total amount of money times a fraction, the numerator of  
29 which is the number of live race days conducted by the commercial track during the  
30 calendar year and the denominator of which is the total number of race days conducted by  
31 all commercial tracks licensed under section 271 during that calendar year.

32           **Sec. 14. 8 MRSA §1001, sub-§43-A**, is enacted to read:

33           **43-A. Tribal commercial track.** "Tribal commercial track" has the same meaning  
34 as in section 275-A, subsection 12.

35           **Sec. 15. 8 MRSA §1011, sub-§2**, as enacted by PL 2003, c. 687, Pt. A, §5 and  
36 affected by Pt. B, §11, is amended to read:

37           **2. Eligible persons.** The board may accept applications for a license to operate slot  
38 machines from a person licensed to operate a tribal commercial track or a commercial  
39 track in Oxford County if the operation of slot machines is approved by an affirmative  
40 vote at a regular meeting of the governing body or by referendum by the voters of the  
41 municipality where the commercial track or Oxford County commercial track is located.

1 The board may also accept applications for a license to operate slot machines from any  
2 person who is licensed to operate a commercial track that satisfies the following criteria:

3 A. The commercial track is located at or within a ~~5-mile~~ 50-mile radius of the  
4 center of a commercial track that conducted harness racing with pari-mutuel  
5 wagering on more than 25 days during calendar year 2002; and

6 B. The operation of slot machines at the commercial track is approved by the voters  
7 of the municipality in which the commercial track to be licensed is located by  
8 referendum election held at any time after December 31, 2002 ~~and before December~~  
9 ~~31, 2003.~~

10 **Sec. 16. 8 MRSA §1011, sub-§3**, as enacted by PL 2003, c. 687, Pt. A, §5 and  
11 affected by Pt. B, §11, is amended to read:

12 **3. Requirements for license; continued commercial track or tribal commercial**  
13 **track licensure.** The board may not issue a license to operate slot machines to any  
14 person unless that person demonstrates compliance with the qualifications set forth in  
15 sections 1016 and 1019. A person who is granted a license to operate slot machines must  
16 maintain a license to operate a commercial track or tribal commercial track, without  
17 lapse, suspension or revocation for the duration of the slot machine operator's license.

18 **Sec. 17. 8 MRSA §1012, first ¶**, as enacted by PL 2003, c. 687, Pt. A, §5 and  
19 affected by Pt. B, §11, is amended to read:

20 An application for renewal of a slot machine operator license must first be approved  
21 under this section by the municipal officers of the municipality in which the commercial  
22 track or tribal commercial track with slot machines is located or, if the commercial track  
23 or tribal commercial track is in an unincorporated place, the application must be approved  
24 by the county commissioners of the county in which the commercial track or tribal  
25 commercial track with slot machines is located.

26 **Sec. 18. 8 MRSA §1012, sub-§1, ¶B**, as enacted by PL 2003, c. 687, Pt. A, §5  
27 and affected by Pt. B, §11, is amended to read:

28 B. Municipal officers or county commissioners, as the case may be, shall provide  
29 public notice of any hearing held under this section by causing, at the applicant's  
30 prepaid expense, a notice stating the name and place of the hearing to appear on at  
31 least 3 consecutive days before the date of the hearing in a daily newspaper having  
32 general circulation in the municipality where the premises of the commercial track or  
33 tribal commercial track with slot machines are located or one week before the date of  
34 the hearing in a weekly newspaper having general circulation in the municipality  
35 where the premises are located.

36 **Sec. 19. 8 MRSA §1012, sub-§2, ¶A**, as enacted by PL 2003, c. 687, Pt. A, §5  
37 and affected by Pt. B, §11, is amended to read:

38 A. Noncompliance of the commercial track or tribal commercial track licensed to  
39 operate slot machines with any local zoning ordinance or other land use ordinance not  
40 directly related to slot machine operations;



1           **Sec. 20. 8 MRSA §1012, sub-§2, ¶C**, as enacted by PL 2003, c. 687, Pt. A, §5  
2 and affected by Pt. B, §11, is amended to read:

3           C. Repeated incidents of record of breaches of the peace, disorderly conduct,  
4 vandalism or other violations of law on or in the vicinity of the premises of the  
5 commercial track or tribal commercial track with slot machines and caused by  
6 persons patronizing or employed by the commercial track or tribal commercial track  
7 licensed to operate slot machines; and

8           **Sec. 21. 8 MRSA §1012, sub-§3**, as enacted by PL 2003, c. 687, Pt. A, §5 and  
9 affected by Pt. B, §11, is amended to read:

10           **3. Appeal to board.** Any applicant aggrieved by the decision of the municipal  
11 officers or county commissioners under this section may appeal to the board within 15  
12 days of the receipt of the written decision of the municipal officers or county  
13 commissioners. The board shall hold a public hearing in the city, town or unincorporated  
14 place where the premises of the commercial track or tribal commercial track with slot  
15 machines are situated. In acting on such an appeal, the board may consider all licensure  
16 requirements and findings referred to in subsection 2. If the decision appealed is an  
17 application denial, the board may issue the license only if it finds by clear and convincing  
18 evidence that the decision was without justifiable cause.

19           **Sec. 22. 8 MRSA §1016, sub-§1, ¶B**, as enacted by PL 2003, c. 687, Pt. A, §5  
20 and affected by Pt. B, §11, is amended to read:

21           B. The person has sufficient financial assets and responsibility to meet any financial  
22 obligations imposed by this chapter and, if applying for a slot machine operator  
23 license or slot machine operator license renewal, has sufficient financial assets and  
24 responsibility to continue operation of a commercial track or tribal commercial track;

25           **Sec. 23. 8 MRSA §1020, sub-§3, ¶A**, as enacted by PL 2003, c. 687, Pt. A, §5  
26 and affected by Pt. B, §11, is amended to read:

27           A. The total number of slot machines registered in the State may not exceed 1,500  
28 3,500; and

29           **Sec. 24. 8 MRSA §1020, sub-§3, ¶B**, as enacted by PL 2003, c. 687, Pt. A, §5  
30 and affected by Pt. B, §11, is amended to read:

31           B: A slot machine operator may not operate more than 1,500 slot machines at any  
32 one commercial track or tribal commercial track.

33           **Sec. 25. 8 MRSA §1035**, as amended by PL 2007, c. 611, §11, is further amended  
34 to read:

35           **§1035. Location of slot machines**

36           Slot machines may be located only on the premises of a commercial track or tribal  
37 commercial track. For the purposes of this section, "premises of a commercial track"  
38 means property owned by the person who owns the property on which a commercial track  
39 or tribal commercial track is located and that is either within 200 feet of the outside edge

1 of the racing oval or, if the commercial track or tribal commercial track was owned by a  
2 municipality when a license to operate slot machines in association with that commercial  
3 track or tribal commercial track was issued, within 2,000 feet of the center of the racing  
4 oval.

5 **Sec. 26. 8 MRSA §1036, sub-§2**, as amended by PL 2007, c. 466, Pt. A, §29, is  
6 further amended to read:

7 **2. Distribution from commercial track or tribal commercial track.** A slot  
8 machine operator shall collect and distribute ~~39%~~ percentages of the net slot machine  
9 income from slot machines operated by the slot machine operator to the board for  
10 distribution by the board as follows:

11 A. Three percent of the net slot machine income must be deposited to the General  
12 Fund for administrative expenses of the board, including gambling addiction  
13 counseling services, in accordance with rules adopted by the board;

14 B. Ten percent of the net slot machine income must be forwarded by the board to  
15 the Treasurer of State, who shall credit the money to the fund established in section  
16 298 to supplement harness racing purses;

17 C. Three percent of the net slot machine income must be credited by the board to  
18 the Sire Stakes Fund created in section 281;

19 D. Three percent of the net slot machine income must be forwarded by the board to  
20 the Treasurer of State, who shall credit the money to the Agricultural Fair Support  
21 Fund established in Title 7, section 91;

22 E. Ten percent of the net slot machine income must be forwarded by the board to  
23 the State Controller to be credited to the Fund for a Healthy Maine established by  
24 Title 22, section 1511 and segregated into a separate account under Title 22, section  
25 1511, subsection 11, with the use of funds in the account restricted to the purposes  
26 described in Title 22, section 1511, subsection 6, paragraph E;

27 F. Two percent of the net slot machine income must be forwarded by the board to  
28 the University of Maine System Scholarship Fund created in Title 20-A, section  
29 10909;

30 G. One percent of the net slot machine income must be forwarded by the board to  
31 the board of trustees of the Maine Community College System to be applied by the  
32 board of trustees to fund its scholarships program under Title 20-A, section 12716,  
33 subsection 1;

34 H. Four percent of the net slot machine income must be forwarded by the board to  
35 the Treasurer of State, who shall credit the money to the Fund to Encourage Racing at  
36 Maine's Commercial Tracks, established in section 299; however, the payment  
37 required by this paragraph is terminated when all commercial tracks or tribal  
38 commercial track have obtained a license to operate slot machines in accordance with  
39 this chapter;

40 I. Two percent of the net slot machine income from slot machine facilities licensed  
41 for operation before January 1, 2009 must be forwarded by the board to the Treasurer

1 of State, who shall credit the money to the Fund to Stabilize Off-track Betting  
2 Facilities established by section 300, as long as a facility has conducted off-track  
3 wagering operations for a minimum of 250 days during the preceding 12-month  
4 period in which the first payment to the fund is required. After 48 months of  
5 receiving an allocation of the net slot machine income from a licensed operator, the  
6 percent of net slot machine income forwarded to the Fund to Stabilize Off-track  
7 Betting Facilities is reduced to 1% with the remaining 1% to be forwarded to the  
8 State in accordance with subsection 1; and

9 J. One percent of the net slot machine income must be forwarded directly to the  
10 municipality in which the slot machines are located; and

11 K. One percent of the net slot machine income from the Oxford County commercial  
12 track must be forwarded directly to the Department of Agriculture, Food and Rural  
13 Resources to support animal welfare programs within the department.

14 **Sec. 27. 17 MRSA §314-A, sub-§5-A** is enacted to read:

15 **5-A. Games on nontribal land.** Notwithstanding subsection 5, upon proper  
16 application, the Chief of the State Police may issue a high-stakes beano license to a  
17 federally recognized Indian tribe in this State to operate games on nontribal land in  
18 Washington County. The Chief of the State Police may issue a high-stakes beano license  
19 in accordance with this section to all federally recognized Indian tribes in the State  
20 jointly.

## 21 SUMMARY

22 This bill authorizes the operation of slot machines at a tribal commercial track and a  
23 commercial track that is located in Oxford County. The operation of slot machines at the  
24 newly authorized tracks is subject to regulation by the Department of Public Safety,  
25 Gambling Control Board. The operation of slot machines must be approved by the  
26 municipality in which the tribal commercial track or Oxford County commercial track is  
27 located before the Gambling Control Board may grant a license to operate slot machines  
28 within a 50-mile radius of the track that is licensed and conducts harness racing. This bill  
29 also authorizes the issuance of a high-stakes beano license to a federally recognized  
30 Indian tribe in the State to operate games on nontribal land in Washington County.