

New York State Assembly | Sheldon Silver, Speaker



committee on

Racing and Wagering

J. Gary Pretlow, Chairman



J. Gary Pretlow
Assemblyman 87th District

**THE ASSEMBLY
STATE OF NEW YORK
ALBANY**

December 15, 2009

The Honorable Sheldon Silver
Speaker of the Assembly
Room 932 – Legislative Office Building
Albany, New York 12248

Dear Speaker Silver:

As Chairman of the Assembly Standing Committee on Racing and Wagering, I am pleased to submit the 2009 Annual Report of the committee. It has been an interesting year to say the least. The matter of awarding the franchise to conduct Video Lottery Gaming at Aqueduct Race Track once again remains unresolved. The consequence, of course, is the loss of what has been estimated to be a million dollars a day to our State to be earmarked for support of education. While the choice of the franchisee is yours as Speaker, to make on behalf of the Assembly, I am prepared – having closely followed the analysis/selection process from its beginning – to offer some thoughts on what qualifications I believe to be more important than others.

Too, while such a situation is not unique to my committee, it is important to note that a significant number of topics within the Racing Committee's jurisdiction/purview continue to be dealt with in Budget Bills. As a result, the number of bills referred directly to us is often limited by action on the state budget. Accordingly, I do look forward to participating – as the Racing Chairman – in budget decisions which will affect my program areas.

During 2009, of those legislative proposals that were directed to the committee, the subjects ranged from some which would have advanced very specific parochial interests, to those intended to change operations and relationships throughout the entire racing/wagering/breeding industry. This report contains the summary information on legislation that was acted upon by the committee.

Matters which must be considered during 2010 will include fashioning/negotiating the future of the statewide off-track betting system. Because of its enormous financial impact, whatever we do will, in effect, restructure our entire pari-mutuel industry.

One issue certainly deserving of attention/discussion during the coming year is giving first passage to amendments to the state constitution in order to authorize the operation of other-than-tribal casinos in the Catskills. I am urging enactment of various amendments at this time so as not to exclude any of the options that might be contained in the version to be eventually selected for second passage.

I want to thank you for your leadership and all the members of the committee for their hard work and dedication to the issues before us.

Warm Personal Regards,

A handwritten signature in black ink that reads "James Gary Pretlow". The signature is written in a cursive style with a large, looping initial "J".

J. Gary Pretlow
Chairman
Assembly Racing & Wagering Committee

NEW YORK STATE ASSEMBLY
STANDING COMMITTEE ON RACING AND WAGERING

J. Gary Pretlow, Chair

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Majority

Margaret M. Markey
Francine DelMonte
Aileen M. Gunther
Bob Reilly
Tim Gordon
Mike Spano

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Committee Staff

Louann Ciccone, Assistant Secretary for Program and Policy
Stephen Bochnak, Principal Committee Analyst
Jonathan Lynch, Committee Assistant
Natisha Alexander, Committee Clerk
Molly McDonald, Program and Counsel Secretary

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I. INTRODUCTION

The Racing and Wagering Committee's jurisdiction includes all legislation involving pari-mutuel wagering on- and off-track, intra- and inter-state, thoroughbred and standardbred horse racing and breeding, regulation of racing and wagering, lotteries – including video lottery gaming – bingo, games of chance, Indian gaming, charitable gaming and constitutional amendment resolutions concerning any of the above.

II. RACING: THOROUGHBRED & HARNESS

Task Force on Retired Race Horses A.8017 (Magee) / S.5405 (Valesky) Chapter 342 of the Laws of 2009

This chapter will continue for two more years, from December 31, 2009 to December 31, 2011, the Task Force on Retired Race Horses in order to identify and encourage more productive uses for race horses after their racing careers have ended. Race horses, once retired, sometimes do not have bright prospects for the future. Exploring “employment” opportunities for these animals will go a long way toward keeping them alive and useful. The Task Force will also explore the possibility of developing new markets to increase the value of retired race horses.

Imposition of Fines Relating to Horse Racing and Breeding A.933-A (DelMonte) / S.646-A (Larkin)

This bill increases the maximum fine from \$5,000 to \$20,000 that can be imposed by the Racing and Wagering Board upon licensees and franchisees for violations relating to thoroughbred, harness and quarter horse racing and breeding, and simulcasts of horse racing. Low fine limits have little deterrent effect to stop individuals from administering performance enhancing drugs to horses or committing other violations of the Racing Law. Increasing the fine structure is a much more effective way to ensure that violations of the Racing Law do not occur and encourage racing licensees to comply with the law.

Passed Assembly, returned from Senate, enacting clause stricken.

III. WAGERING: ON-TRACK & OFF-TRACK IN-STATE & OUT-OF-STATE

Wagers on Out-of-State Tracks

A.4750-A (Pretlow) / S.2363 (Adams)

Chapter 6 of the Laws of 2009

This chapter repeals sections 22, 23 and 24 of Chapter 115 of the Laws of 2008 amending the Racing, Pari-mutuel Wagering and Breeding Law and the Public Officers Law, which would have mandated the New York City Off-Track Betting Corporation to increase by one percent the retention rates from wagers it accepted on races conducted at out-of-state tracks. It prevented the takeout increase from going into effect on March 15, 2009.

Distribution of Surcharges on Off-Track Winnings

A.4749 (Pretlow) / S.3452 (Stachowski)

Chapter 365 of the Laws of 2009

This chapter restores the requirement that certain regional surcharge revenues are to continue to be distributed to a harness track in Erie County. A provision of Chapter 18 of the Laws of 2008 mistakenly repealed the provision which had been extended in law during 2007.

IV. OFF-TRACK BETTING: BY REGION

OTB Corporation's Annual Budget A.3322 (Pretlow) / S.2717 (Adams)

This bill would have authorized the Racing and Wagering Board, upon a reasonable finding that an off-track betting corporation (OTB) is not complying with law, to order that OTB cause its business and managerial practices to be audited by an independent auditor at the OTB's expense. It also would require OTB corporations to submit copies of the corporations' annual budgets to the Board no later than 20 days after approval by the corporations' boards of directors. OTB corporations are public benefit corporations, which are intended to be operated in the public interest. Currently, because of ambiguities in law, the Board has been found to have no authorization to audit an OTB even if it appears that an OTB is in violation of law. Recent events have focused attention on the practices of these public benefit corporations and have demonstrated the need to require this type of managerial and business examination, when necessary, in order to provide a basis for assuring compliance with statutory objectives and generally accepted business management practices.

The bill passed assembly and died in Senate Rules.

OTB-Related Fines A.8182 (Spano) / S.3021 (Adams)

This bill would empower the Racing and Wagering Board to impose fines on off-track betting (OTB) corporations and other persons or corporations participating in off-track betting for violations of any provision of racing law. It was intended to fill a gap in the Board's regulatory authority concerning the imposition of fines on OTB corporations. Currently, lacking the ability to impose fines, the Board must either suspend the entire operation of an OTB or do nothing to penalize violations.

The bill passed Assembly and died in Senate Rules.

V. REGULATION OF RACING & WAGERING

Tax Qualified Capital Investments A.8767-A (Gunther) / S.5828-A (Bonacic) Chapter 342 of 2009

This chapter amends the tax law, in relation to a qualified capital investment at no more than one VLT vendor track in Sullivan County. It facilitates the investment of over \$600 million for capital improvements at and adjacent to the Monticello Racetrack. In particular it supports the development of a hotel and golf course at the former site of the Concord Hotel. It is intended to revitalize the Catskill region by providing at least 1,000 full time permanent jobs, as well as thousands of construction-related jobs during the construction period. Moreover, this chapter purports to guarantee a stream of funding to education that will double the current VLT revenues produced at Monticello Racetrack.

Relates to Certain Payments to the Horsemen's Organization A.8310-A (Pretlow) / S.2860-C (Stachowski) Chapter 400 of the Laws of 2009

This chapter continues the payment of an additional 1.0% from all purses paid to horse owners to be allocated to the horsemen's organization in order for it to continue (until 8.31.2010) to support benevolent activities for backstretch employees, including medical and mental health services, drug and alcohol counseling, various tests and screenings.

Casino Gambling in Sullivan County A.219 (Pretlow) / S.634 (Bonacic)

This proposed amendment to the state constitution would permit the construction and operation of no more than three privately owned (as opposed to Tribal operated) casinos in Sullivan County. It would expand wagering permitted at those casinos to include all forms of gambling usually associated with casinos, including pari-mutuel betting on horse races. It is intended to stimulate economic development in the Catskill Region, where there are no casinos in operation. Currently the state constitution prohibits gambling of any kind unless it is specifically permitted by that document. This resolution is presented for passage as the first step in the process of amending the state constitution, with a second passage needed for the proposed change to be voted upon as a public referendum.

The bill was reported to the Assembly Ways & Means Committee.

**Casino Gambling in Sullivan County (including sports wagering)
A.221 (Pretlow) / S.633(Bonacic)**

This proposed amendment to the state constitution would permit the construction and operation of no more than three privately owned (as opposed to Tribal operated) casinos in Sullivan County. It would expand wagering permitted at those casinos to include all forms of gambling usually associate with casinos, including pari-mutuel betting on horse races and wagering on professional sports. It is intended to stimulate economic development in the Catskill Region, where there are no casinos in operation. Currently, the state constitution prohibits gambling of any kind unless it is specifically permitted by that document. This resolution is presented for passage as the first step in the process of amending the state constitution, with a second passage needed for the proposed change to be voted upon as a public referendum.

The bill was reported to the Assembly Ways & Means Committee.

**Expansion of Free Pass, Card, or Badge Allowances at Thoroughbred Tracks
A.932 (DelMonte) / S.644 (Larkin)**

This bill would enable thoroughbred race track management to issue free passes, badges or cards to permit track access at its discretion to members of the public. Currently, such entry is restricted to specific licensees of the Racing Board.

The bill was passed by the Senate and advanced to third reading by the Assembly.

**Antitrust Exemptions for Certain Horseracing Agreements
A.2750 (Pretlow) / S.6197 (Klein)**

This bill would permit racetracks and other racing event producers or retailers to join together to establish agreements governing the scheduling of their races and to establish joint agreements involving the sale and purchase of broadcasting and simulcasting rights. These entities would be granted anti-trust immunity to develop agreements which coordinate the dates and time of their races and are also given immunity to enter into contracts involving the joint purchase or sale of their broadcasts, simulcasts, and electronic transmissions. Any such agreements must be approved by the Racing & Wagering Board.

The bill was reported to the Rules Committee.

Display of Live Races and Special Events on Telephones
A.2752 (Pretlow)

This bill would provide specific authority to video stream live races to advance deposit wagering account holders who choose to bet via the internet. The Racing & Wagering Board concluded that Chapter 314 of the Laws of 2006 did not authorize video streaming of live races, and as a result, bettors are discouraged from wagering on races they cannot watch live.

The bill advanced to third reading.

Imposition of Certain Fines by the Racing & Wagering Board
A.8181 (DelMonte) / S.3023 (Adams)

This bill would increase from \$5,000 to \$25,000 the maximum amount of fine that can be imposed for violation of the Racing, Pari-mutuel Wagering and Breeding Law, and Rules and Regulations. Currently, the \$5,000 maximum fine is inadequate to address the severity of a violation, and not a significant deterrent to violations.

The bill passed the Assembly and died in Senate Rules.

Interstate Compact for Occupational Horse Race Licenses
A.8183 (Pretlow) / S.3022 (Adams)

This bill would allow New York State to enter an Interstate Compact on Regulation of Horse and Greyhound Racing and Pari-Mutuel Wagering Activities. This compact would allow New York to join with other states to create uniform practices, programs, and rules and to act collectively.

The bill was referred to Rules.

VI. LOTTERY

Regulations of Hours of Operation and Video Lottery Games A.5669-B (Pretlow) / S.706-C (Klein)

This bill is intended to clarify the types of video lottery games that are permitted at video lottery facilities in the State. It would “recognize” that in addition to the games currently offered, video lottery programs could offer other games that are based on the same game features that have been traditionally associated with casino table games. The bill also sets a maximum and minimum on the amount of hours a video lottery game can operated during a week.

The bill was reported to Ways & Means.

VII. GAMES OF CHANCE/ CHARITABLE GAMING

Bingo Age Limits

A.935 (DelMonte) / S.437 (Maziarz)

This bill would amend the general municipal law, in relation to establishing age sixteen as the minimum age for assisting in the conduct of any game of bingo. Many organizations that run bingo games operate with limited manpower. This measure is intended to allow younger volunteers to assist with these games, while continuing to prevent them from actually conducting the games.

The bill advanced to third reading.

VIII. NATIVE AMERICAN GAMING

Removal of Ulster County from List of Casino Approved Sites A.679-A (Cahill)

This bill would remove Ulster County, with exception of the Town of Wawarsing, from the counties that the Governor is authorized to enter into tribal compacts for the locating of casinos. The measure is intended to assure the residents of Ulster County - outside of the Town of Wawarsing - that a casino cannot be approved without further amendment to the authorizing legislation.

The bill passed the Assembly and died in Senate Rules.

IX. FOCUS OF THE 2010 LEGISLATIVE SESSION

In 2010 the committee will focus on the selection of an operator for a video lottery facility at Aqueduct racetrack and a restructuring of the off-track wagering system in the state – perhaps a complete reorganization of the pari-mutuel industry, including on- as well as off-track venues; first concerning New York City OTB.

**APPENDIX A
2009 SUMMARY SHEET**

**Summary of Action on All Bills Referred to the
Racing & Wagering Committee**

<u>Final Action</u>	<u>Assembly Bills</u>	<u>Senate Bills</u>	<u>Total Bills</u>
Bills Reported With or Without Amendment			
To Floor; Not Returning To Committee	0		0
To Floor; Recommitted and Died	7		7
To Ways and Means	8		8
To Codes	7		7
To Rules	4		4
To Judiciary	0		0
Total	26		26
Bills Having Committee Reference Changed	0		0
Senate Bills Substituted or Recalled			
Substituted		6	6
Recalled		2	2
Total		8	8
Bills Defeated in Committee	0		0
Bills Never Reported, Held in Committee	34	13	47
Bills Never Reported, Died in Committee	0		0
Bills Having Enacting Clause Stricken	1		1
Motions to Discharge Lost	0		0
TOTAL Number of Bills in Committee	61	21	82
Total Number of Committee Meetings Held	4		

**APPENDIX B
CHAPTERS OF 2009**

Chapter #	Bill # and Sponsor	Description
6	A.4750-A (Pretlow)	Repeals provisions of law relating to retention rates for facilities authorized to accept wagers on out-of-state tracks.
342	A. 8767-A (Gunther)	Relates to qualified capital investments at relocated vendor tracks in Sullivan County.
365	A.4749 (Pretlow)	Relates to the distribution of surcharges on off-track winnings. Corrects a mistaken repeal of a section of law affecting the distribution of surcharge collections to Buffalo Raceway.
392	A.8017 (Magee)	Extends provisions of law relating to establishing a task force on the utilization of retired horses.
400	A.8310-A (Pretlow)	Relates to certain payments to the horsemen's organization. Earmarks horsemen's purse money for horsemen's organization use to include funding for benevolence programs for backstretch employees.

**APPENDIX C
BILLS THAT PASSED THE ASSEMBLY IN 2009**

Bill #	Sponsor	Description
A.679-A	Cahill (MS)	Adds the town of Wawarsing located in Ulster county to the sites the governor is authorized to enter into tribal compacts of certain gaming facilities.
A.3322	Pretlow	Directs OTB corporations to submit copy of annual budget to the Racing and Wagering Board, and, upon finding of reasonable basis by such board to believe any such OTB corporation is not complying with applicable laws of rules and regulations, cause its business and managerial practices to be audited at its own expense.
A.4749	Pretlow	Relates to the distribution of surcharges on off-track winnings.
A.4750-A	Pretlow	Repeals provisions of law relating to facilities authorized to accept wagers on out-of-state tracks.
A.8017	Magee	Extends provisions of law relating to establishing a task force on the utilization of retired horses.
A.8181	DelMonte	Relates to the powers and duties of the Racing and Wagering Board to impose certain fines; increases certain fines from five thousand to twenty-five thousand dollars.
A.8182	Spano	Empowers the Racing and Wagering Board to impose fines on off-track betting (OTB) corporations and other persons or corporations participating in off-track betting.
A.8310-A	Pretlow	Continues the payment of an additional 1.0% from all purses paid to horse owners to be allocated to the horsemen's organization in order for it to continue (until 8.31.2012) to support benevolent activities for backstretch employees, including medical and mental health services, drug and alcohol counseling, various tests and screenings.
A.8767-A	Gunther	Relates to qualified capital investments at relocated vendor tracks in Sullivan County and reduces employment goal from 2,000 to 1,000 full-time permanent employees.

**APPENDIX D
BILLS THAT WERE REPORTED IN 2009**

Bill #	Sponsor	Description
A.218	Pretlow	Relates to regulations implementing video lottery gaming in this state and sets minimum and maximum hours of operation based upon the number of terminals offered by vendor tracks. It also requires regulations for games capable of generating random results and approved by the director of the division of the lottery.
A.219	Pretlow	Authorizes and limits casino gambling in Sullivan County. Subjects amounts offered as prizes for games to the approval of the legislature which periodically shall revise prize levels as it deems necessary.
A.221	Pretlow	Permits the construction and operation of no more than three privately-owned casinos in Sullivan County.
A.679-A	Cahill	Adds the town of Wawarsing located in Ulster County to the sites the governor is authorized to enter into tribal compacts of certain gaming facilities.
A.932	DelMonte	Provides for the issuance of free passes, cards, or badges for racetracks to any qualified person, as deemed appropriate by the operator of the racetrack, subject to the rules of the State Racing and Wagering Board. It authorizes the issuance of such passes, cards, or badges to the general public as part of a promotion or marketing program to increase attendance at live race meets.
A.933-A	DelMonte	Increases the maximum fine from \$5,000 to \$20,000 that can be imposed by the Racing and Wagering Board.
A.935	DelMonte	Establishes age sixteen as the minimum age for assisting in the conduct of any game of bingo.
A.2750	Pretlow	Provides that antitrust laws shall not apply to any joint agreement entered into, in consultation with and approved by the State Racing and Wagering Board, by any racing associations, non profit associations, or off-track betting corporations to coordinate the dates and times under which they will conduct programs of racing and offer pari-mutuel wagering. It also provides that such laws shall not apply to agreements entered into to sell, transfer, assign or purchase the rights to broadcast, simulcast, electronically transmit or offer pari-mutuel wagering on horse races.

Bill #	Sponsor	Description
A.2752	Pretlow	This bill provides specific authority to video stream live races to any New York licensed track or off-track betting corporations which accepts internet wagers.
A.3322	Pretlow	Directs OTB corporations to submit copy of annual budget to the Racing and Wagering Board, and, upon finding of reasonable basis by such board to believe any such OTB corporation is not complying with applicable laws or rules and regulations, cause its businesses and managerial practices to be audited at its own expense.
A.4749	Pretlow	Adds back into law the requirement that certain regional surcharge revenues are to continue to be distributed to a harness track in Erie County.
A.4750-A	Pretlow	This bill would prevent a takeout increase from going into effect on March 15, 2009 from bets made with New York pari-mutuel licensees on thoroughbred horse races outside New York State.
A.5669-B	Pretlow	This legislation is intended to clarify the types of video lottery games that are permitted at video lottery facilities in the State. It would set minimum and maximum hours of operation based upon the number of terminals offered by vendor track and also requires regulations for games capable of generating random results.
A.8017	Magee	Extends provisions of law relating to establishing a task force on the utilization of retired horses.
A.8181	DelMonte	This bill increases from \$5,000 to \$25,000 the maximum amount of fine that can be imposed for violation of the Racing, Pari-mutuel Wagering and Breeding Law.
A.8182	Spano	This bill empowers the Racing and Wagering Board to impose fines on off-track betting (OTB) corporations and other persons or corporations participating in off-track betting.
A.8183	Pretlow	This bill allows New York State to enter the Interstate Compact on Regulation of Horse and Greyhound Racing and Pari-Mutuel Wagering Activities.
A.8310-A	Pretlow	This bill continues the requirement that the horsemen's organization use the collection of an additional 1.0% of purses for bona fide benevolent purposes and adds support for the maintenance of steroid testing equipment.

Bill #	Sponsor	Description
A.8767-A	Gunther	This bill will facilitate the investment of over six hundred million dollars for capital improvements at and adjacent to the Monticello Race Track.