

26:2H-12.61

LEGISLATIVE HISTORY CHECKLIST

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LAWS OF: 2011 **CHAPTER:** 16

NJSA: 26:2H-12.61 (Requires assisted living residence or comprehensive personal care home that surrenders its license and promised not to discharge Medicaid residents to escrow funds to pay for care in alternate facility)

BILL NO: A3405 (Substituted for S2284)

SPONSOR(S) Vainieri and others

DATE INTRODUCED: October 18, 2010

COMMITTEE: **ASSEMBLY:** Health and Senior Services

SENATE: ---

AMENDED DURING PASSAGE: Yes

DATE OF PASSAGE: **ASSEMBLY:** November 22, 2010

SENATE: December 13, 2010

DATE OF APPROVAL: January 28, 2011

FOLLOWING ARE ATTACHED IF AVAILABLE:

FINAL TEXT OF BILL (First reprint enacted)

A3405

SPONSOR'S STATEMENT: (Begins on page 2 of original bill) Yes

COMMITTEE STATEMENT: **ASSEMBLY:** Yes

SENATE: No

(Audio archived recordings of the committee meetings, corresponding to the date of the committee statement, *may possibly* be found at www.njleg.state.nj.us)

FLOOR AMENDMENT STATEMENT: No

LEGISLATIVE FISCAL ESTIMATE: No

S2284

SPONSOR'S STATEMENT: (Begins on page 2 of original bill) Yes

COMMITTEE STATEMENT: **ASSEMBLY:** No

SENATE: Yes

FLOOR AMENDMENT STATEMENT: No

LEGISLATIVE FISCAL ESTIMATE: No

(continued)

VETO MESSAGE: No

GOVERNOR'S PRESS RELEASE ON SIGNING: No

FOLLOWING WERE PRINTED:

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REPORTS: No

HEARINGS: No

NEWSPAPER ARTICLES: No

VETO MESSAGE A1705 MENTIONED IN GOVERNOR'S PRESS RELEASE Yes

CASE LAW (referenced in sponsors' statement):

New Jersey Assisted Living Concepts, Inc. v. Depart. of Health & Senior Svcs., 2010 N.J. Super. Unpub. LEXIS 842

LAW/RWH

P.L.2011, CHAPTER 16, *approved January 28, 2011*
Assembly, No. 3405 (*First Reprint*)

1 AN ACT concerning assisted living residences ¹and comprehensive
2 personal care homes¹ and supplementing Title 26 of the Revised
3 Statutes.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. ¹a.¹ If a facility licensed to operate as an assisted living
9 residence ¹or comprehensive personal care home¹ pursuant to
10 P.L.1971, c.136 (C.26:2H-1 et seq.) opts to surrender its license and
11 has promised a resident ¹[of the assisted living residence] of the
12 facility¹ or the resident's responsible party, in writing through a
13 resident agreement or other instrument, or through a condition of
14 licensure or certificate of need with the Department of Health and
15 Senior Services, that it will not discharge a resident who becomes
16 Medicaid-eligible, as that term is defined in section 1 of P.L.2001,
17 c.234 (C.26:2H-12.16), the facility shall escrow sufficient funds, as
18 determined by the Commissioner of Health and Senior Services, to
19 cover the cost of providing such a resident with care in an alternate
20 State-licensed assisted living residence ¹or comprehensive personal
21 care home¹ for as long as the resident shall require such care.

22 ¹b. The facility shall cover any costs necessary to utilize such
23 actuarial services as the Department of Health and Senior Services
24 may require to determine the amount to be escrowed pursuant to
25 subsection a. of this section.

26 c. In the event of a facility bankruptcy, any monies left over
27 after all creditors have been paid shall be used, to the maximum
28 extent practicable, to cover the cost of care provided to a resident in
29 an alternate State-licensed assisted living residence or
30 comprehensive personal care home pursuant to subsection a. of this
31 section.¹

32

33 2. This act shall take effect immediately.

34

35

36

37 Requires assisted living residence or comprehensive personal
38 care home that surrenders its license and promised not to discharge
39 Medicaid residents to escrow funds to pay for care in alternate
40 facility.

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly AHE committee amendments adopted November 08, 2010.

ASSEMBLY, No. 3405

STATE OF NEW JERSEY 214th LEGISLATURE

INTRODUCED OCTOBER 18, 2010

Sponsored by:

Assemblywoman VALERIE VAINIERI HUTTLE

District 37 (Bergen)

Assemblywoman CELESTE M. RILEY

District 3 (Salem, Cumberland and Gloucester)

Assemblyman MATTHEW W. MILAM

District 1 (Cape May, Atlantic and Cumberland)

Assemblyman NELSON T. ALBANO

District 1 (Cape May, Atlantic and Cumberland)

Co-Sponsored by:

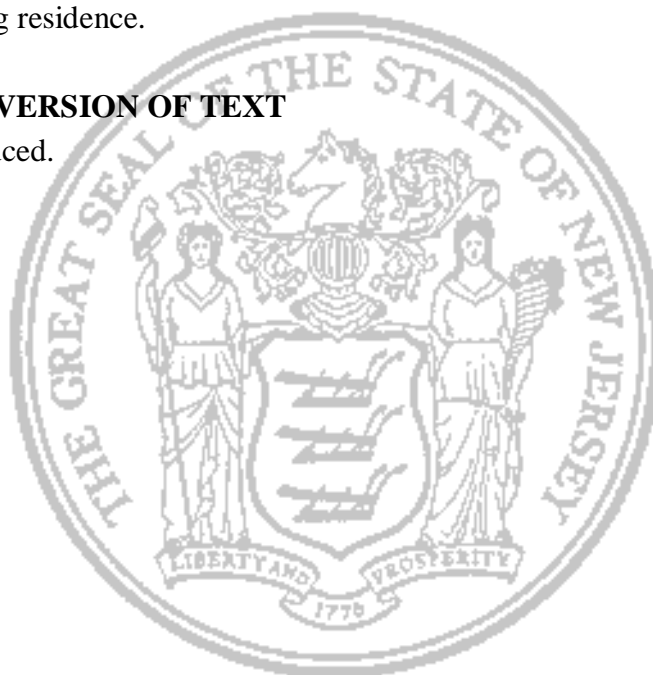
Assemblywoman Tucker and Assemblyman Conaway

SYNOPSIS

Requires assisted living residence that surrenders its license and promised not to discharge Medicaid residents to escrow funds to pay for care in alternate assisted living residence.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 11/9/2010)

1 AN ACT concerning assisted living residences and supplementing
2 Title 26 of the Revised Statutes.

3

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

6

7 1. If a facility licensed to operate as an assisted living
8 residence pursuant to P.L.1971, c.136 (C.26:2H-1 et seq.) opts to
9 surrender its license and has promised a resident of the assisted
10 living residence or the resident's responsible party, in writing
11 through a resident agreement or other instrument, or through a
12 condition of licensure or certificate of need with the Department of
13 Health and Senior Services, that it will not discharge a resident who
14 becomes Medicaid-eligible, as that term is defined in section 1 of
15 P.L.2001, c.234 (C.26:2H-12.16), the facility shall escrow sufficient
16 funds, as determined by the Commissioner of Health and Senior
17 Services, to cover the cost of providing such a resident with care in
18 an alternate State-licensed assisted living residence for as long as
19 the resident shall require such care.

20

21 2. This act shall take effect immediately.

22

23

24

STATEMENT

25

26 This bill requires an assisted living residence that opts to
27 surrender its license and promised not to discharge residents who
28 become Medicaid-eligible to escrow sufficient funds to pay for care
29 of such residents in an alternate assisted living residence for as long
30 as needed.

31 Specifically, the bill provides that if a facility licensed to operate
32 as an assisted living residence pursuant to P.L.1971, c.136
33 (C.26:2H-1 et seq.) opts to surrender its license and has promised a
34 resident of the assisted living residence or the resident's responsible
35 party, in writing through a resident agreement or other instrument,
36 or through a condition of licensure or certificate of need with the
37 Department of Health and Senior Services (DHSS), that it will not
38 discharge a resident who becomes Medicaid-eligible, the facility
39 shall escrow sufficient funds, as determined by the Commissioner
40 of Health and Senior Services, to cover the cost of providing such a
41 resident with care in an alternate State-licensed assisted living
42 residence for as long as the resident shall require such care.

43 This bill is intended to address a situation that arose from a
44 dispute over a promise by a facility licensed to operate as an
45 assisted living residence that it would not discharge a resident if the
46 resident converted from private pay to Medicaid status. In an
47 unpublished opinion issued by the Appellate Division of the
48 Superior Court of New Jersey, Assisted Living Concepts, Inc. v.

1 Dep't. of Health and Senior Svcs., 2010 N.J. Super. Unpub. LEXIS
2 842, the court upheld a DHSS ruling that the facility was in
3 violation of its certificate of need application that had promised that
4 it would not discharge private pay residents who spend down their
5 resources and become eligible for the Medicaid program. (Such
6 promises had similarly been made to residents of the assisted living
7 residence.) This legislation is intended to ensure that Medicaid-
8 eligible residents can reside in another State-licensed assisted living
9 residence if a facility opts to surrender its license after making such
10 promises.

ASSEMBLY HEALTH AND SENIOR SERVICES COMMITTEE

STATEMENT TO

ASSEMBLY, No. 3405

with committee amendments

STATE OF NEW JERSEY

DATED: NOVEMBER 8, 2010

The Assembly Health and Senior Services Committee reports favorably and with committee amendments Assembly Bill No. 3405.

As amended by the committee, the purpose of this bill is to ensure that Medicaid-eligible residents of a State-licensed assisted living residence or comprehensive personal care home, which has promised not to discharge residents who become Medicaid-eligible, are able to reside in another such facility if the former facility opts to surrender its license after making that promise.

The bill provides specifically as follows:

- If a facility licensed to operate as an assisted living residence or comprehensive personal care home pursuant to P.L.1971, c.136 (C.26:2H-1 et seq.) opts to surrender its license and has promised a resident of the facility or the resident's responsible party, in writing through a resident agreement or other instrument, or through a condition of licensure or certificate of need with the Department of Health and Senior Services (DHSS), that it will not discharge a resident who becomes Medicaid-eligible, the facility is to escrow sufficient funds, as determined by the Commissioner of Health and Senior Services, to cover the cost of providing the resident with care in an alternate State-licensed assisted living residence or comprehensive personal care home for as long as the resident requires that care.
- The facility is to cover any costs necessary to utilize such actuarial services as DHSS may require to determine the amount to be escrowed pursuant to the bill.
- In the event of a facility bankruptcy, any monies left over after all creditors have been paid are to be used, to the maximum extent practicable, to cover the cost of care provided to a resident in an alternate State-licensed assisted living residence or comprehensive personal care home pursuant to the bill.

As reported by the committee, this bill is identical to Senate Bill No. 2284 SCA (Weinberg), which is pending before the Senate.

COMMITTEE AMENDMENTS

The committee amendments to the bill:

-- apply its provisions to State-licensed comprehensive personal care homes as well as assisted living residences;

-- require the facility to cover any costs necessary to utilize such actuarial services as DHSS may require to determine the amount to be escrowed pursuant to the bill; and

-- stipulate that, in the event of a facility bankruptcy, any monies left over after all creditors have been paid are to be used, to the maximum extent practicable, to cover the cost of care provided to a resident in an alternate facility pursuant to the bill.

SENATE, No. 2284

STATE OF NEW JERSEY 214th LEGISLATURE

INTRODUCED SEPTEMBER 23, 2010

Sponsored by:

Senator LORETTA WEINBERG

District 37 (Bergen)

Senator JEFF VAN DREW

District 1 (Cape May, Atlantic and Cumberland)

SYNOPSIS

Requires assisted living residence that surrenders its license and promised not to discharge Medicaid residents to escrow funds to pay for care in alternate assisted living residence.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 11/9/2010)

1 AN ACT concerning assisted living residences and supplementing
2 Title 26 of the Revised Statutes.

3

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

6

7 1. If a facility licensed to operate as an assisted living
8 residence pursuant to P.L.1971, c.136 (C.26:2H-1 et seq.) opts to
9 surrender its license and has promised a resident of the assisted
10 living residence or the resident's responsible party, in writing
11 through a resident agreement or other instrument, or through a
12 condition of licensure or certificate of need with the Department of
13 Health and Senior Services, that it will not discharge a resident who
14 becomes Medicaid-eligible, as that term is defined in section 1 of
15 P.L.2001, c.234 (C.26:2H-12.16), the facility shall escrow sufficient
16 funds, as determined by the Commissioner of Health and Senior
17 Services, to cover the cost of providing such a resident with care in
18 an alternate State-licensed assisted living residence for as long as
19 the resident shall require such care.

20

21 2. This act shall take effect immediately.

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23

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STATEMENT

25

26 This bill requires an assisted living residence that opts to
27 surrender its license and promised not to discharge residents who
28 become Medicaid-eligible to escrow sufficient funds to pay for care
29 of such residents in an alternate assisted living residence for as long
30 as needed.

31 Specifically, the bill provides that if a facility licensed to operate
32 as an assisted living residence pursuant to P.L.1971, c.136
33 (C.26:2H-1 et seq.) opts to surrender its license and has promised a
34 resident of the assisted living residence or the resident's responsible
35 party, in writing through a resident agreement or other instrument,
36 or through a condition of licensure or certificate of need with the
37 Department of Health and Senior Services (DHSS), that it will not
38 discharge a resident who becomes Medicaid-eligible, the facility
39 shall escrow sufficient funds, as determined by the Commissioner
40 of Health and Senior Services, to cover the cost of providing such a
41 resident with care in an alternate State-licensed assisted living
42 residence for as long as the resident shall require such care.

43 This bill is intended to address a situation that arose from a
44 dispute over a promise by a facility licensed to operate as an
45 assisted living residence that it would not discharge a resident if the
46 resident converted from private pay to Medicaid status. In an
47 unpublished opinion issued by the Appellate Division of the
48 Superior Court of New Jersey, Assisted Living Concepts, Inc. v.

1 Dep't. of Health and Senior Svcs., 2010 N.J. Super. Unpub. LEXIS
2 842, the court upheld a DHSS ruling that the facility was in
3 violation of its certificate of need application that had promised that
4 it would not discharge private pay residents who spend down their
5 resources and become eligible for the Medicaid program. (Such
6 promises had similarly been made to residents of the assisted living
7 residence.) This legislation is intended to ensure that Medicaid-
8 eligible residents can reside in another State-licensed assisted living
9 residence if a facility opts to surrender its license after making such
10 promises.

SENATE HEALTH, HUMAN SERVICES AND SENIOR
CITIZENS COMMITTEE

STATEMENT TO
SENATE, No. 2284

with committee amendments

STATE OF NEW JERSEY

DATED: NOVEMBER 8, 2010

The Senate Health, Human Services and Senior Citizens Committee reports favorably and with committee amendments Senate Bill No. 2284.

As amended by committee, this bill requires an assisted living residence or comprehensive personal care home that opts to surrender its license and promised not to discharge residents who become Medicaid-eligible to escrow sufficient funds to pay for care of such residents in an alternate assisted living residence or comprehensive personal care home for as long as needed.

Specifically, the bill provides that if a facility licensed to operate as an assisted living residence or a comprehensive personal care home pursuant to P.L.1971, c.136 (C.26:2H-1 et seq.) opts to surrender its license and has promised a resident of the facility or the resident's responsible party, in writing through a resident agreement or other instrument, or through a condition of licensure or certificate of need with the Department of Health and Senior Services (DHSS), that it will not discharge a resident who becomes Medicaid-eligible, the facility shall escrow sufficient funds, as determined by the Commissioner of Health and Senior Services, to cover the cost of providing such a resident with care in an alternate State-licensed assisted living residence or comprehensive personal care home for as long as the resident shall require such care.

The bill further provides that the facility shall cover any costs necessary to utilize such actuarial services as DHSS may require to determine the amount to be escrowed.

In the event of a facility bankruptcy, any monies left over after all creditors have been paid shall be used, to the maximum extent practicable, to cover the cost of care provided to a resident in an alternate State-licensed assisted living residence or a comprehensive personal care home.

The committee amended the bill to:

-- specify that the provisions of the bill also apply to comprehensive personal care homes;

-- require the facility to cover costs necessary for actuarial services that DHSS may require; and

-- provide for the disposition of remaining funds in the event of a facility bankruptcy.

As reported by the committee, this bill is identical to Assembly No. 3405 ACA (Vainieri Huttle), which is pending before the General Assembly.



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Governor Christie Takes Action on Legislation to Ensure Future Viability of Horse Racing in New Jersey

Monday, January 31, 2011 Tags: [Bill Action](#)

New measures move forward Christie Administration goals of securing a future for horseracing in New Jersey without taxpayer subsidy

Trenton, NJ – Furthering his commitment to ensuring a self-sustaining horse racing industry in New Jersey, Governor Chris Christie today signed two bills that provide additional tools for horse racing to operate successfully without taxpayer subsidy. These measures include allowing for “exchange wagering” at New Jersey’s horse racing venues as well as establishing a single pari-mutuel pool for every horse race. Governor Christie also proposed revisions by conditional veto of the “Off Track and Account Wagering Act” that will help facilitate self-sustaining operations at both the Meadowlands Racetrack and Monmouth Park.

“These measures represent the next steps in following through on my Administration’s commitment to securing a strong, independent, self-sufficient horse-racing industry in New Jersey,” Governor Christie said. “We are providing new tools to help the industry implement new strategies, generate additional revenue and capitalize on interest in horse racing around the state. Along with our ongoing efforts to transform racing at the Meadowlands and Monmouth Park through private management, these measures will place horseracing on a path to economic stability and sustainability without public subsidy that New Jersey taxpayers can simply no longer afford.”

By signing, A-2926 authorizing “exchange wagering,” New Jersey will follow California as only the second state in the country where this type of wagering is permitted. Exchange wagering will provide opportunities to increase revenue for the racing industry by attracting new bettors.

In addition, the enactment of S-2229 will permit racetrack permit holders to provide a single pari-mutuel pool for every horse race, resulting in the attraction of new bettors and increased racing revenues. This will reduce the adverse effect that large wagers have on the payoff odds of winning bets by pooling all bets together.

Governor Christie also conditionally vetoed A-1705, which provided for revisions to the “Off Track and Account Wagering Act” to expedite the development of off track wagering facilities throughout the State.

“While I wholeheartedly endorse the objectives behind A-1705, a conditional veto is necessary to give us the necessary flexibility and latitude in negotiations, as it relates to the assignment of Off Track Wagering locations, and that any future OTW locations not be hampered out of the gate with additional fees on their operations,” Governor Christie said. “While we continue to progress in a dialogue to develop a self-sustaining thoroughbred racing industry in New Jersey, it is critical that we have all tools available to reach an agreement that protects taxpayers and the needs of industry partners.”

On December 17, 2010, Governor Christie announced a plan to preserve live Standardbred racing at the Meadowlands Racetrack through the lease of that facility to the Standardbred Breeders and Owners Association (SBOA). The assignment of four off-track wagering locations to the SBOA is a critical component of that agreement.

Consistent with the Governor’s commitment to ease the burden borne by taxpayers in subsidizing New Jersey’s horseracing industry and the recommendations of the supplementary report of the Hanson Commission issued on November 15th, the Christie Administration today also announced that the New Jersey Sports and Exposition Authority will issue in the near future a Request for Proposals for the sale of Monmouth Park, including assignment of additional off-track wagering operations.

A copy of the Governor Christie’s conditional veto letter is attached.

- Governor Christie’s conditional veto letter [pdf 140kB]

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STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT
ASSEMBLY BILL NO. 1705
(Second Reprint)

To the General Assembly:

Pursuant to Article V, Section I, Paragraph 14 of the New Jersey Constitution, I am returning Assembly Bill No. 1705 (Second Reprint) with my recommendations for reconsideration.

This bill revises the "Off-Track and Account Wagering Act" to expedite the establishment of off-track wagering facilities in this State. Specifically, the bill would permit entities other than racetrack operators to obtain licenses from the New Jersey Racing Commission to establish and operate off-track wagering facilities provided that they meet certain requirements, standards and criteria. Under the bill's provisions, current racetrack operators will have the opportunity to demonstrate to the satisfaction of the Commission that they have made progress towards establishing their share of the off-track wagering facilities authorized by law. If a licensee fails to establish the foregoing by January 1, 2012, all unused licenses will be forfeited and offered first to horsemen's organizations, and subsequently to any well-suited entity that meets the bill's requirements.

While I commend the sponsors for their interest in enhancing the horse racing industry and wholeheartedly support the expeditious development of off-track wagering facilities in this State, I am concerned that some of the bill's provisions may impede the Administration's progress in developing a self-sustaining horse racing industry. Specifically, on December 17, 2010, in an effort to preserve live Standardbred racing at the Meadowlands I directed the Sports and Exposition Authority to negotiate with the Standardbred Breeders and Owners Association (SBOA) for the lease of the Meadowlands Racetrack. Moreover, because the full development of the State's off-track wagering

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network is essential to the future economic viability of the horse racing industry, I further directed the Authority to assign up to four off-track wagering locations as a component of any such lease agreement.

Moreover, in furtherance of our efforts to develop a self-sustaining horse racing industry, my Administration is also pursuing the sale or lease of Monmouth Park Racetrack. In connection with these proposed transactions, the assignment of additional off-track wagering locations by the Authority may be necessary. Thus, it is essential that the Administration and the Authority retain the flexibility to assign off-track wagering licenses in connection with the sale or lease of Monmouth Park.

Based upon the foregoing, I am concerned that the bill's provision requiring the forfeiture of off-track wagering licenses absent a showing of "progress" toward the development of such facilities may adversely impact the Authority's ability to assign off track wagering locations pursuant to an agreement with the SBOA or its designee in connection with the Meadowlands Racetrack or with a potential purchaser or operator of Monmouth Park. Accordingly, I am recommending that the legislation be revised to clarify that negotiations concerning the transfer or assignment of off-track wagering licenses in the context of a potential sale or lease of a racetrack shall be deemed "progress" toward the establishment of such facilities. Moreover, I am recommending that the bill be revised to require the Racing Commission to adhere to the standard set forth above in its development of progress benchmarks for licensees and to permit the Commission to adopt administrative regulations on an expedited basis.

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In addition, I am concerned that the bill's provision requiring licensees to pay annually to their host municipality an amount equal to 1% of profits will be a barrier to the development of off-track wagering facilities. While I fully support the sponsors' efforts to provide economic incentives for municipalities where off-track wagering facilities are being considered, existing law already requires facility operators to pay property taxes and, as such, this new fee would be an additional form of taxation that may discourage the development of new locations. While I am recommending through this conditional veto that the 1% fee be eliminated, I pledge to work with the sponsors to find alternatives to defray any additional cost burdens that host municipalities may incur.

Accordingly, I herewith return Assembly Bill No. 1705 (Second Reprint) and recommend that it be amended as follows:

- Page 3, Section 1, Lines 7-8: Delete ", and additional compensation as provided in this act,"
- Page 3, Section 1, Lines 13-15: Delete "and be further required to pay a portion of its wagering revenues to its host municipality" [pursuant to the terms of this act] as provided by law"
- Page 7, Section 3, Line 43: After "basis.", insert "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 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

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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."

Page 10, Section 3, Line 1:

After "facility.", insert "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."

Page 15, Section 7, Line 35:

Delete "a. An off-track wagering licensee, or its"

Page 15, Section 7, Lines 36-47:

Delete Lines 36-47 in their entirety

Page 16, Section 7, Lines 1-15:

Delete Lines 1-15 in their entirety

Page 16, Section 7, Line 16:

Delete "d."

Page 16, Line 45:

Insert new section 8:
"8. (New Section) Notwithstanding any provision of P.L.1968, c.410 (C.52:14B-1 et seq.) to the contrary, the Commission may adopt immediately upon filing with the Office of

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Administrative Law such regulations as the Commission deems necessary to implement the provisions of this act, which shall be effective for a period not to exceed 180 days and may thereafter be amended, adopted or readopted by the Commission in accordance with the requirements of P.L.1968, c.410."

Page 16, Line 46:

Renumber Section 8 as Section 9

Respectfully,

/s/ Chris Christie

Governor

[seal]

Attest:

/s/ Jeffrey S. Chiesa

Chief Counsel to the Governor