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## FYI – A New Enterprise

# Casino Gaming Is Coming To A Racetrack Near You<sup>©</sup>

By Jason K. Gross

The United States is in the midst of a significant casino gaming expansion resulting from individual states' needs to reduce their bloated budget deficits. Unlike past periods of robust gaming expansion that created entirely new casino resorts with state-of-the-art hotels, entertainment venues, conference centers and golf courses, the current expansion is based on transforming beleaguered and downtrodden racetracks into Racinos.

Many people ask, "What is a Racino?" and "Why all of a sudden is there so much interest in Racinos?" A Racino is a pari-mutuel racetrack that adds slot machines and/or Video Lottery Terminals, known as VLTs. However, in practical terms, a Racino is really a slots emporium with an attached racetrack because slots are the major attraction. Racinos are horse tracks, harness tracks and even dog tracks that are retrofitted and expanded to add scores of slots and/or VLTs, restaurants and related amenities.

Because of the dire budget crisis facing state governments and the economic troubles affecting traditional racetrack owners, both groups view Racinos as the Holy Grail. The proliferation of Racinos and the tremendous support of politicians for new Racino projects are not surprising, considering that the main alternative available to politicians is raising taxes. The emergence of Racinos, especially in the Eastern and Mid-Atlantic Regions of the United States, is an interesting gaming phenomenon, but even more interesting are the recent actions taken by states to authorize Racinos.

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*(c) 2004 by Jason K. Gross. Mr. Gross is Counsel to Sills Cummis Epstein & Gross P.C. where he focuses on Corporate Transactional work. He is former Corporate Counsel to Caesars Entertainment, Inc., one of the largest casino companies in the world. The views and opinions expressed in this article are those of the author and do not necessarily reflect the views of Sills Cummis Epstein & Gross P.C.*



Jason K. Gross

### The History Of Racinos

The first Racino opened in 1989 in Iowa at the Prairie Meadows Racetrack and Casino, formerly a racetrack only facility. Currently, the racetrack brings in about \$6 million per year, while slot machines pull in an estimated \$150 million annually, according to Jack P. Ketterer, administrator of the Iowa Racing and Gaming Commission.<sup>1</sup> The next defining event in the history of Racinos occurred in 1992 when Rhode Island authorized VLTs at its Lincoln Park greyhound racing track and Newport jai alai facility, in response to the huge opening success of Foxwoods Casino in nearby Connecticut. Today, after significant increases in the number of machines at each location, VLTs represent approximately 70 percent of Rhode Island's state lottery income.<sup>2</sup> Then, Delaware and West Virginia passed legislation permitting VLTs at their racetracks and these Racinos began competing for customers against casino resorts in Atlantic City. Already, seven states have racetrack slot machines or VLTs – New York, Delaware, Iowa, Louisiana, New Mexico, Rhode Island and West Virginia. There are now twenty Racinos operating in the United States, with powerhouse facilities such as Delaware's

Dover Downs (operated by Caesars Entertainment) and Delaware Park, Iowa's Bluffs Run Casino (greyhound racing only, operated by Harrah's Entertainment), and West Virginia's Charles Town Raceway (operated by Penn National Gaming) and Mountaineer Park.

### States Favor Racinos To Remedy Budget Shortfalls

The economic recession of the last three years has ravaged state budgets, and it is estimated that 31 states are projecting budget deficits in 2005, versus 18 reporting deficits this year.<sup>3</sup> At the same time, state legislators and governors are watching hundreds of millions of dollars leave their states each year as people travel to neighboring states to play slots. Of course, the elected officials could just raise taxes, but it is a rare politician that would endorse increased taxation of his or her constituents without first examining, and discounting, all other conceivable options. The answer for many states is casino gaming and, in particular, Racinos.

### Racing Interests Embrace Racinos

State governments and horse racing interests have formed an unlikely alliance in seeking to create Racinos. Horse breeders, racetrack owners and related interests watched for years as state lotteries, commercial casinos (land-based and riverboat) and Native American casinos proliferated and profited. While the states' share of lottery proceeds and casino gaming revenues has risen as those games increase in popularity, horse racing has declined in popularity and racing purses have shrunk at traditional horse racing (and harness racing) tracks. To compound matters, several forward-thinking racetrack owners developed slot parlors at their racetracks and immediately realized tremendous revenue increases, which they have used to subsidize their racing operations. Thus, Racinos are increasing purses, attracting better horses and jockeys and staging more prestigious racing events. The bottom line is that traditional horse and harness tracks are losing ground not only to casinos and state lotteries, but also to racetracks located at Racinos.

### Practical Factors Support Racinos

Why are states suddenly encouraging the development of Racinos, as opposed to traditional casinos, riverboat casinos or Native American casinos? There are several reasons, but the most important is that Racinos can be constructed and opened in a matter of months after approval, thereby providing in short order important revenue to states. By contrast, the time required to design, construct and obtain permits for entirely new casinos is so slow that it is literally years before the state receives a nickel from gaming revenues. Similarly, the cost of capital is significantly cheaper. In addition, politicians favor Racinos because racetrack sites already have approvals permitting gambling (by placing bets on horse or dog races), and the public accepts the locations as gambling sites. Racino advocates also claim that they are doing a public service by preserving open spaces, such as racetracks and grazing land, from developers who seek to turn such undeveloped land into urban sprawl.

### State By State Analysis

#### New York

The rest of the country stood up and took notice when, in the aftermath of the World Trade Center tragedy, Gov. George Pataki signed groundbreaking legislation in October 2001 permitting VLTs at 5 racetracks in the State, and allowing other racetracks to operate VLTs if the counties in which such racetracks are located approve video lottery gaming by local law.<sup>4</sup> Despite ongoing litigation regarding the constitutionality of the legislation, there are currently three Racinos operating in New York. Five more New York Racinos are in various stages of development.

On January 28, 2004, Saratoga Gaming and Raceway earned the distinction of becoming the first New York Racino to open for business. The gaming facility cost approximately \$15 million, covers 55,000 square feet and has 1,323 VLTs, 2 restaurants and a food court. On February 18, 2004, Finger Lakes Gaming and Racetrack near Rochester became the state's second Racino. The gaming facility cost approximately \$10.5 million, has 1,010 VLTs and over 28,000 square feet of gaming space. On March 17, 2004, Fairgrounds Gaming & Raceway just outside of Buffalo opened as the state's third Racino. It cost approximately \$8 million, has approximately 1,000 VLTs and 27,000 square feet of gaming space. All three casinos are operated by Delaware North Companies.

Plans for Monticello Raceway in the Catskills include a \$24 million renovation and approximately 1,800 VLTs. The facility, owned by Empire Resorts, Inc., is scheduled to open July 1, 2004 and will be renamed the Mighty M at Monticello. Plans for Vernon Downs, located outside of Syracuse, include 1,100 VLTs, although the facility has not

obtained the requisite regulatory approvals. Plans for Batavia Downs Race Track include approximately 750 VLTs and a \$6.5 million renovation. Other racetracks assured of slots under the legislation include the two well-known racetracks, Yonkers Raceway in Westchester and Aqueduct Racetrack in Queens. It is anticipated that Yonkers Raceway will install 5,500 VLTs as part of a \$140 million renovation, although an impasse in negotiations between the raceway and the horsemen has apparently delayed the project. Aqueduct's plans include 4,500 VLTs and a \$100 million renovation by casino gaming giant, MGM Mirage. However, those plans were set back by the U.S. Attorneys Office's investigation into alleged criminal activity of Aqueduct Race Track's operator, the New York Racing Association ("NYRA"). Not only did MGM Mirage halt construction, but also NYRA was indicted. NYRA agreed to a deferred prosecution agreement pursuant to which NYRA will avoid prosecution by paying \$3 million in fines and agreeing to certain reforms. In addition, the indictment will be dismissed provided NYRA does not violate the terms of the agreement.<sup>5</sup> Although NYRA contends the VLTs could be up and running at Aqueduct by December 2004, this timetable seems aggressive.

#### Louisiana

On March 21, 2004, Harrah's opened its new slot-machine only casino at Harrah's Louisiana Downs racetrack in Northern Louisiana. The facility has approximately 1,400 slot and video poker machines, three restaurants, a bar and a lounge within 150,000 square feet of gaming and entertainment space.

#### Rhode Island

The Rhode Island Lottery Commission approved the request of Lincoln Park Greyhound Racetrack to nearly double the amount of VLTs at its facility. It is estimated that the State will realize \$90 million annually if these new VLTs are brought on-line. Together with the nearby Newport Grand Jai Alai, the legislation would increase the total number of VLTs to approximately 4,282 at Rhode Island locations.

#### West Virginia

The West Virginia Lottery Commission recently approved Charles Town Raceway's request to add 1,000 slot machines which will bring its total to 4,500. In the last three years, the state's Racinos have nearly doubled their number of slots. It has been reported that Gov. Bob Wise would consider adding table games to the State's three Racinos if either Pennsylvania or Maryland legalizes VLTs or slot machines.

#### Maine

Gov. John Baldacci signed a bill on May 7, 2004 permitting a Racino at Bangor Raceway with up to 1,500 slot machines. Penn National Gaming, the casino and racetrack owner,

recently purchased the track and will operate the casino. Before slots are up and running, however, the state's newly formed gambling control board must adopt and implement licensing and operating rules.

#### Pennsylvania

First-term Gov. Ed Rendell wants slot machines at the state's racetracks, and reports indicate he also supports slots at non-racetrack venues. The existing racetracks likely to benefit are Philadelphia Park, The Meadows (owned by Magna Entertainment), Pocono Downs and Penn National (both owned by Penn National Gaming). Proponents of slots in Pennsylvania argue that the state must take action to stop the flow of money to neighboring states where slots or VLTs are permitted – in this case New Jersey, Delaware and West Virginia.

#### Maryland

Pro-gaming forces were thought to have the upper hand in Maryland. However, for the second time in two years, first-term Gov. Robert Ehrlich tried and failed to pass legislation intended to add thousands of VLTs to state racetracks. In 2004, Ehrlich sought to add up to 15,500 slot machines at three racetracks and three non-racetrack venues, but his proposal failed to pass the House Ways and Means Committee. Like in Pennsylvania, proponents of gaming argue that the State is losing significant revenue to neighboring states that have casino gaming.

#### Other States

There are no less than a dozen other states that are contemplating the addition of VLTs or slot machines at their racetracks. The prospects for Racinos in such states are not as far along and are harder to handicap. For the most part, however, they seem to depend upon whether the subject state or a neighboring state introduces or expands their casino gaming opportunities.

### Conclusion

The needs of elected state officials to reduce their budget deficits have aligned with the needs of the horse racing industry for survival. VLTs are breathing new life into dying racetracks by contributing millions of dollars into purses and making Racino owners and operators very wealthy. They are also providing crucial state revenue. It is clear that Racinos are coming to a town, county, or state near you.

<sup>1</sup> Kristina Buchtal, "Gaming Lobby to Try Luck with Pull-Tab Bill Again," *The Indianapolis Star*, January 6, 2003.

<sup>2</sup> Joe Bob Briggs, "The Slot Wars," *The Vegas Guy* (<http://www.joebriggs.com>), January 14, 2003.

<sup>3</sup> Rod Smith, "More States Consider Turning to Gambling," *The Las Vegas Review-Journal*, March 25, 2004.

<sup>4</sup> Chapter 383 of Laws of 2001, *Consolidated Laws of the State of New York*.

<sup>5</sup> Ed Fountaine, "Big A Casino May Open in December," *New York Post*, (2004 WL 70984252), February 28, 2004.