§ 307. Licenses for harness race meetings. 1. Any association or corporation desiring to conduct harness race meetings at which pari-mutuel betting shall be permitted may apply annually to the commission for a license so to do. If, in the judgment of the commission the public interest, convenience or necessity will be served thereby and a proper case for the issuance of such license is shown consistent with the purposes of sections two hundred twenty-two through seven hundred five of this chapter and the best interests of racing generally, it may grant such license for a term ending not later than the thirty-first day of December next succeeding the granting thereof, specifying dates and hours during which and the place where the licensee may operate; provided, however, that any harness racetrack which applies to the commission for permission to make one or more capital improvements may, in connection with such application or before or after such application, also apply to the commission for, and the commission shall, as an inducement for or in recognition of the making of such capital improvement, grant a capital improvement license, which may be conditioned on the completion of the capital improvement if not yet made, for a period of not more than twenty-five years, but in no event for a period longer than is necessary to amortize any loan for capital improvements and shall specify for each year of the term of said license the minimum number of days on which, and the minimum number of hours on each such day, and the places where said licensee may conduct such harness race meetings at which pari-mutuel betting shall be permitted. Such a capital improvement license shall be issued if in the judgment of the commission the public interest, convenience or necessity will be served thereby and a proper case for the issuance of such a license is shown consistent with the purposes of sections two hundred twenty-two through seven hundred five of this chapter and the best interests of racing generally, and in determining the period and other terms of such capital improvement license, the commission shall be guided by the nature of the capital improvement and the cost thereof. Such capital improvement license shall automatically expire, irrespective of the term thereof, when the loan of funds upon which it has been issued, has been paid off by the licensee. Where a capital improvement license is granted, the commission shall specify annually the dates on which, but not beyond the thirty-first day of December, and hours during which such

licensee may operate, at the places and for the full number of days and hours specified in its capital improvement license.

2. Every such license shall be issued upon condition:

a. that every harness horse race meeting at which pari-mutuel betting is conducted shall be subject to the supervision of and to the reasonable rules and regulations from time to time prescribed by the commission, and

b. that pari-mutuel betting conducted thereunder shall also be subject to the supervision of and to the reasonable regulations from time to time prescribed by the department of taxation and finance. Any such license may also be issued upon any other condition that the commission shall determine to be necessary or desirable to insure that the public interest, convenience or necessity is served.

3. Applications for licenses shall be in such form as may be prescribed by the commission and shall contain such information or other material or evidence as the commission may require. Each application for renewal of a license shall be deemed to be an application for a new license. The fee for such licenses shall be one hundred dollars for each racing day payable in installments in advance of each week's racing which sums shall be paid into the general fund of the state treasury by the commission. The term "racing week" shall include those days as defined by the rules and regulations of the commission.

4. In considering an application for a license under this section the commission may give consideration to the number of licenses already granted and to the location of the tracks previously licensed. No such license shall be granted to any track which has not conducted pari-mutuel harness racing during at least ten calendar years and which is located within ten miles of a state, county or town fair conducting harness racing for the three consecutive years immediately preceding April second, nineteen hundred fifty-three, which license shall be operative during the racing dates of such fair, unless the association, corporation or society conducting such fair shall affirmatively waive

objection to the issuance of such license for dates within such period. No such license shall be granted to any track located within the corporate limits of a city of the first class. No such license shall be granted to any harness horse racetrack located within twenty-five miles of any track already licensed for the same dates and hours except with the consent of the licensee located within such twenty-five mile area.

5. The commission may refuse to grant a license to an association or corporation if it shall determine that:

a. Any officer, director, member or stockholder of such association or corporation applying for a license, or of any association or corporation that owns stock in or shares in the profits, or participates in the management, of the affairs of such applicant, or that leases to such applicant the track where such applicant will operate has:

(i) been convicted of a crime involving moral turpitude;

(ii) engaged in bookmaking or other forms of illegal gambling;

(iii) been found guilty of any fraud or misrepresentation in connection with racing or breeding;

(iv) been guilty of any violation or attempt to violate any law, rule or regulation of any racing jurisdiction for which suspension from racing might be imposed in such jurisdiction;

(v) violated any rule, regulation or order of the commission; or

b. The experience, character or general fitness of any officer, director or stockholder of any of the aforesaid associations or corporations is such that the participation of such person in harness racing or related activities would be inconsistent with the public interest, convenience or necessity or with the best interests of racing generally; but if the commission determines that the interest of any stockholder referred to in this paragraph or in paragraph a of this subdivision is insufficient in the opinion of the commission to affect adversely the conduct of pari-mutuel harness racing by such association or corporation in accordance with the provisions of this article, the commission may disregard such interest in determining whether or not to grant a license to such association or corporation; or

c. The applicant is not the owner of the track at which it will conduct pari-mutuel harness racing pursuant to the license applied for, or that any person, firm, association or corporation other than the applicant shares, or will share, in the profits of the applicant, other than by dividends as a stockholder, or participates or will participate in the management of the affairs of the applicant.

5-a. The commission shall not issue a license pursuant to this section to any harness racing association or corporation that does not apply to conduct at its facilities a minimum number of pari-mutuel programs and pari-mutuel races at its facilities equal to at least seventy-five percent of the programs and races so conducted during nineteen hundred eighty-five or during nineteen hundred eighty-six, or one hundred percent of the programs and races so conducted during two thousand, whichever is greater; provided, however, that for a harness racing association or corporation located in Westchester and Erie counties, such minimum number of pari-mutuel programs and pari-mutuel races at its facilities shall equal at least one hundred percent of the programs and races conducted during two thousand. If the track did not conduct races during two thousand, such minimum number of pari-mutuel programs and pari-mutuel races at its facilities shall equal at least ninety percent of the programs and races conducted during two thousand at Buffalo raceway, in the town of Hamburg and county of Erie, unless cancellation of a race day because of an act of God, that the commission approves or because of weather conditions that are unsafe or hazardous that the commission approves shall not be construed as a failure to conduct a race day; provided further, the commission shall not grant a license to such association or corporation upon application unless such programs and races are conducted during the same calendar year period as were conducted during the applicable period above used to measure the minimum number of pari-mutuel programs and pari-mutuel races, as approved by the commission. Nothing in the foregoing paragraph shall affect any agreement in effect on or before the effective date of this paragraph. The commission may grant a license to such association or corporation to conduct fewer such programs and races for good cause shown due to factors beyond the control of such association or corporation, and upon consent of the representative horsemen's association, as determined

pursuant to section three hundred eighteen of this article.

5-b. Notwithstanding any inconsistent provision of subdivision five-a of this section and article ten of this chapter, where the commission certifies by December first of the proceeding year that the number of standardbred horses eligible for competition is less than that of the base year as defined in subdivision five-a of this section, and only if the authorized horsemen's association concurs as evidenced by a written agreement between the track and the horsemen's association, a licensee pursuant to this section may submit and the commission may accept a license application requesting a reduced number of race dates where it is in the best interest of racing within this state and provided that the licensee shall not be penalized or required by the commission to diminish simulcasting activities or incur an increased tax liability as a result of a commission-sanctioned reduction in its live racing activity under this subdivision.

6. The commission shall also have power to refuse to grant a license:

a. to any association or corporation, the charter or certificate of incorporation of which fails to contain a provision requiring any stockholder, upon written demand of the association or corporation, to sell his, her or its stock to the association or corporation at a price to be fixed in the manner otherwise provided by law, provided such demand be made pursuant to written direction of the commission; and from and after the date of the making of such demand, prohibiting the transfer of such certificate of stock, except to the association or corporation; or

b. to any association or corporation that, having been a licensee, has failed in the opinion of the commission to properly maintain its track and plant in good condition or has failed to make adequate provision for rehabilitation and capital improvements to its track and plant.

7. Pending final determination of any question under this section, the commission may issue a temporary license upon such terms and conditions as it may deem necessary, desirable or proper to effectuate the

provisions of sections two hundred twenty-two through seven hundred five of this chapter.

8. Notwithstanding any other provision of this article, the commission may, no more than once in any calendar year, grant a license to any authorized harness racing association or corporation to hold and conduct one additional harness race meeting of not more than seven days duration, with pari-mutuel betting, on any mile track within this state, to enable said authorized harness racing association or corporation to conduct a special stakes race not limited to the Hambletonian stakes and associated events.

9. The commission shall have power to direct that every certificate of stock of an association or corporation licensed under the provisions of sections two hundred twenty-two through seven hundred five of this chapter shall bear a legend plainly and prominently imprinted upon the face of the certificate reading: "This certificate of stock is transferable only subject to the provisions of section three hundred three of the racing, pari-mutuel wagering and breeding law".

10. Notwithstanding the provisions of section three hundred twenty-one of this article, the refusal of an application for such license shall be preceded by notice and an opportunity to be heard. In the conduct of such hearing the commission shall not be bound by technical rules of evidence but all evidence offered before the commission shall be reduced to writing, and such evidence together with the exhibits, if any, and the findings of the commission, shall be permanently preserved and shall constitute the record of the commission in such case. Such hearing may be presided over by the chair of the commission or by any member or by an officer of the commission designated by the chair in writing to act as hearing officer and such person or persons may issue subpoenas for witnesses and administer oaths to witnesses. The hearing officer, at the conclusion of the hearing shall make findings which, if concurred in by a majority of the commission, shall become the findings of the commission. The action of the commission in refusing a license shall be reviewable in the supreme court in the manner provided by the provisions of article seventy-eight of the civil practice law and rules.