S T A T E O F N E W Y O R K

S. 5904 A. 8112

2013-2014 Regular Sessions

S E N A T E - A S S E M B L Y

June 20, 2013

IN SENATE -- Introduced by Sen. BONACIC -- (at request of the Governor) -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

IN ASSEMBLY -- Introduced by M. of A. PRETLOW, GUNTHER -- (at request of the Governor) -- read once and referred to the Committee on Ways and Means

AN ACT to amend the racing, pari-mutuel wagering and breeding law, the penal law and the tax law, in relation to commercial gaming; to amend a chapter of the laws of 2013 amending the racing, pari-mutuel wagering and breeding law and other laws relating to commercial gaming, as proposed in legislative bill numbers S. 5883 and A. 8101, in relation to the effective date of certain provisions thereof; to repeal certain provisions of the racing, pari-mutuel wagering and breeding law relating to the tribes that have gaming compacts with the state; and to repeal certain provisions of the tax law relating to disposition of revenues

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Subdivisions 9 and 15 of section 1300 of the racing, pari-mutuel wagering and breeding law, as added by section 2 of a chapter of the laws of 2013 amending the racing, pari-mutuel wagering and breeding law and other laws relating to commercial gaming, as proposed in legislative bill numbers S. 5883 and A. 8101, are REPEALED, and subdivisions 10, 11, 12, 13, 14 and 16 are renumbered subdivisions 9, 10, 11, 12, 13 and 14.

S 2. Subdivision 5 of section 1306 of the racing, pari-mutuel wagering and breeding law, as added by section 2 of a chapter of the laws of 2013 amending the racing, pari-mutuel wagering and breeding law and other laws relating to commercial gaming, as proposed in legislative bill

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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numbers S.5883 and A.8101, is REPEALED, and subdivisions 6, 7, 8, 9, 10 and 11 are renumbered subdivisions 5, 6, 7, 8, 9 and 10.

S 3. Subdivision 15 of section 225.00 of the penal law, as added by section 3 of a chapter of the laws of 2013 amending the racing, pari-mutuel wagering and breeding law and other laws relating to commercial gaming, as proposed in legislative bill numbers S. 5883 and A. 8101, is amended to read as follows:

15. "Casino gaming" means games authorized to be played pursuant to a license granted under article thirteen of the racing, pari-mutuel wagering and breeding law or by federally recognized Indian nations or tribes pursuant to a [valid] gaming compact reached in accordance with the federal Indian Gaming Regulatory Act of 1988, Pub. L. 100-497, 102 Stat. 2467, codified at 25 U.S.C. SS 2701-21 and 18 U.S.C. SS 1166-68.

S 4. Subdivision (f) of section 52 of a chapter of the laws of 2013 amending the racing, pari-mutuel wagering and breeding law and other laws relating to commercial gaming, as proposed in legislative bill numbers S. 5883 and A. 8101, is amended and a new subdivision (a-1) is added to read as follows:

(A-1) NOTWITHSTANDING SUBDIVISION (A) OF THIS SECTION, SECTION 1330-A OF THE RACING, PARI-MUTUEL WAGERING AND BREEDING LAW, AS ADDED BY SECTION TWO OF THIS ACT, SHALL TAKE EFFECT IMMEDIATELY;

(f) [section forty] SECTIONS FORTY-THREE through [forty-eight] FIFTY-ONE of this act shall take effect January 1, 2014; except that the New York state gaming commission may accept and review applications for licenses for account wagering and for multi-jurisdictional account wagering providers commencing on October 1, 2013.

S 5. The opening paragraph, the second, fourth, fifth undesignated paragraphs and the opening paragraph of the 7th undesignated paragraph of clause (G) of subparagraph (ii) of paragraph 1 of subdivision b of section 1612 of the tax law, as amended by section 40 of a chapter of the laws of 2013 amending the racing, pari-mutuel wagering and breeding law and other laws relating to commercial gaming, as proposed in legislative bill numbers S. 5883 and A. 8101, are amended to read as follows:

notwithstanding clauses (A), (B), (C), (D), (E) and (F) of this subparagraph, when no more than one vendor track located in the town of Thompson in Sullivan county at the site of the former Concord Resort at which a qualified capital investment has been made and no fewer than one thousand full-time, permanent employees have been newly hired, is located in Sullivan county and is within sixty miles from any gaming facility in a contiguous state, then for a period of forty years the vendor's fee shall equal the total revenue wagered at the vendor track after payout of prizes pursuant to this subdivision reduced by the greater of (i) twenty-five percent of total revenue after payout for prizes for "video lottery games" or (ii) for the first eight years of operation thirty-eight million dollars, and beginning in the ninth year of operation such amount shall increase annually by the lesser of the increase in the consumer price index or two percent, plus seven percent of total revenue after payout of prizes. In addition, in the event the vendor fee is calculated pursuant to subclause (i) of this clause, the vendor's fee shall be further reduced by 11.11 percent of the amount by which total revenue after payout for prizes exceeds two hundred fifteen million dollars, but in no event shall such reduction exceed five million dollars. [Provided, further, no vendor is eligible for the vendor's fee described in this clause who operates or invests in or owns, in whole or in part, another vendor license or is licensed as a

vendor track that currently receives a vendor fee for the operation of video lottery gaming pursuant to this article.]

Provided, however, that in the case of [a resort facility] NO MORE THAN ONE VENDOR TRACK located IN THE TOWN OF THOMPSON in Sullivan county AT THE SITE OF THE FORMER CONCORD RESORT with a qualified capital investment, and one thousand full-time, permanent employees if at any time after three years of opening operations of the licensed video gaming facility OR LICENSED VENDOR TRACK, the [resort facility] VENDOR TRACK experiences an employment shortfall, then the recapture amount shall apply, for only such period as the shortfall exists.

For the purposes of this section, "full-time, permanent employee" shall mean an employee who has worked at the video gaming facility, VENDOR TRACK or related and adjacent facilities for a minimum of thirty-five hours per week for not less than four consecutive weeks and who is entitled to receive the usual and customary fringe benefits extended to other employees with comparable rank and duties; or two part-time employees who have worked at the video gaming facility, vendor track or related and adjacent facilities for a combined minimum of thirty-five hours per week for not less than four consecutive weeks and who are entitled to receive the usual and customary fringe benefits extended to other employees with comparable rank and duties.

For the purpose of this section "employment goal" shall mean one thousand five hundred full-time permanent employees after three years of opening operations of the licensed video gaming facility OR LICENSED VENDOR TRACK.

For the purposes of this section "recapture amount" shall mean the difference between the amount of the vendor's fee paid to a vendor TRACK with a qualified capital investment, and the vendor fee otherwise payable to a vendor TRACK pursuant to clause (F) of this subparagraph, that is reimbursable by the vendor track to the division for payment into the state treasury, to the credit of the state lottery fund created by section ninety-two-c of the state finance law, due to an employment shortfall pursuant to the following schedule only for the period of the employment shortfall:

S 6. Clause (H) of subparagraph (ii) of paragraph 1 of subdivision b of section 1612 of the tax law, as added by section 40 of a chapter of the laws of 2013 amending the racing, pari-mutuel wagering and breeding law and other laws relating to commercial gaming, as proposed in legislative bill numbers S. 5883 and A. 8101, is REPEALED.

S 7. Clauses (I) and (J) of subparagraph (ii) of paragraph 1 of subdivision b of section 1612 of the tax law, as added by section 40 of a chapter of the laws of 2013 amending the racing, pari-mutuel wagering and breeding law and other laws relating to commercial gaming, as proposed in legislative bill numbers S. 5883 and A. 8101, are amended to read as follows:

[(I)] (H) notwithstanding clauses (A), (B), (C), (D), (E), (F)[,] and [(G-1)] (G) of this subparagraph, the track operator of a vendor track shall be eligible for a vendor's capital award of up to four percent of the total revenue wagered at the vendor track after payout for prizes pursuant to this chapter, which shall be used exclusively for capital project investments to improve the facilities of the vendor track which promote or encourage increased attendance at the video lottery gaming facility including, but not limited to hotels, other lodging facilities, entertainment facilities, retail facilities, dining facilities, events arenas, parking garages and other improvements that enhance facility amenities; provided that such capital investments shall be approved by

the division, in consultation with the state racing and wagering board, and that such vendor track demonstrates that such capital expenditures will increase patronage at such vendor track's facilities and increase the amount of revenue generated to support state education programs. The annual amount of such vendor's capital awards that a vendor track shall be eligible to receive shall be limited to two million five hundred thousand dollars, except for Aqueduct racetrack, for which there shall be no vendor's capital awards. Except for tracks having less than one thousand one hundred video gaming machines, each track operator shall be required to co-invest an amount of capital expenditure equal to its cumulative vendor's capital award. For all tracks, except for Aqueduct racetrack, the amount of any vendor's capital award that is not used during any one year period may be carried over into subsequent years ending before April first, two thousand fourteen. Any amount attributable to a capital expenditure approved prior to April first, two thousand fourteen and completed before April first, two thousand sixteen shall be eligible to receive the vendor's capital award. In the event that a vendor track's capital expenditures, approved by the division prior to April first, two thousand fourteen and completed prior to April first, two thousand sixteen, exceed the vendor track's cumulative capital award during the five year period ending April first, two thousand fourteen, the vendor shall continue to receive the capital award after April first, two thousand fourteen until such approved capital expenditures are paid to the vendor track subject to any required co-investment. In no event shall any vendor track that receives a vendor fee pursuant to clause (F) or (G) of this subparagraph be eligible for a vendor's capital award under this section. Any operator of a vendor track which has received a vendor's capital award, choosing to divest the capital improvement toward which the award was applied, prior to the full depreciation of the capital improvement in accordance with generally accepted accounting principles, shall reimburse the state in amounts equal to the total of any such awards. Any capital award not approved for a capital expenditure at a video lottery gaming facility by April first, two thousand fourteen shall be deposited into the state lottery fund for education aid; and

[(J)] (I) Notwithstanding any provision of law to the contrary, free play allowance credits authorized by the division pursuant to subdivision f of section sixteen hundred seventeen-a of this article shall not be included in the calculation of the total amount wagered on video lottery games, the total amount wagered after payout of prizes, the vendor fees payable to the operators of video lottery facilities, vendor's capital awards, fees payable to the division's video lottery gaming equipment contractors, or racing support payments.

S 8. Subparagraph (iii) of paragraph 1 of subdivision b of section 1612 of the tax law, as added by section 40 of a chapter of the laws of 2013 amending the racing, pari-mutuel wagering and breeding law and other laws relating to commercial gaming, as proposed in legislative bill numbers S. 5883 and A. 8101, is amended to read as follows:

(iii) less an additional vendor's marketing allowance at a rate of ten percent for the first one hundred million dollars annually and eight percent thereafter of the total revenue wagered at the vendor track after payout for prizes to be used by the vendor track for the marketing and promotion and associated costs of its video lottery gaming operations and pari-mutuel horse racing operations, as long as any such costs associated with pari-mutuel horse racing operations simultaneously encourage increased attendance at such vendor's video lottery gaming

facilities, consistent with the customary manner of marketing comparable operations in the industry and subject to the overall supervision of the division; provided, however, that the additional vendor's marketing allowance shall not exceed eight percent in any year for any operator of a racetrack located in the county of Westchester or Queens; provided, however, a vendor track that receives a vendor fee pursuant to clause (G) of subparagraph (ii) of this paragraph shall not receive the additional vendor's marketing allowance provided, however, a vendor that receives a vendor fee pursuant to clause (G-1) of subparagraph (ii) of this paragraph shall receive an additional marketing allowance at a rate of ten percent of the total revenue wagered at the video lottery gaming facility after payout for prizes. [the division shall ensure the maximum lottery support for education while also ensuring the effective implementation of section sixteen hundred seventeen-a of this article through the provision of reasonable reimbursements and compensation to vendor tracks for participation in such program. Within twenty days after any award of lottery prizes, the division shall pay into the state treasury, to the credit of the state lottery fund, the balance of all moneys received from the sale of all tickets for the lottery in which such prizes were awarded remaining after provision for the payment of prizes as herein provided. Any revenues derived from the sale of advertising on lottery tickets shall be deposited in the state lottery fund.]

S 9. The opening paragraph of paragraph 2 of subdivision b of section 1612 of the tax law, as added by section 40 of a chapter of the laws of 2013 amending the racing, pari-mutuel wagering and breeding law and other laws relating to commercial gaming, as proposed in legislative bill numbers S. 5883 and A. 8101, is amended to read as follows:

As consideration for the operation of a video lottery gaming facility, the division, shall cause the investment in the racing industry of a portion of the vendor fee received pursuant to paragraph one of this subdivision in the manner set forth in this subdivision. With the exception of Aqueduct racetrack or a facility in the county of Nassau or Suffolk operated by a corporation established pursuant to section five hundred two of the racing, pari-mutuel wagering and breeding law [or a facility in the county of Nassau or Suffolk operated by a corporation established pursuant to section five hundred two of the racing, pari-mutuel wagering and breeding law], each such track shall dedicate a portion of its vendor fees, received pursuant to clause (A), (B), (C), (D), (E), (F), or (G) of subparagraph (ii) of paragraph one of this subdivision, solely for the purpose of enhancing purses at such track, in an amount equal to eight and three-quarters percent of the total revenue wagered at the vendor track after pay out for prizes. One percent of such purse enhancement amount shall be paid to the gaming commission to be used exclusively to promote and ensure equine health and safety in New York. Any portion of such funding to the gaming commission unused during a fiscal year shall be returned to the video lottery gaming operators on a pro rata basis in accordance with the amounts originally contributed by each operator and shall be used for the purpose of enhancing purses at such track. In addition, with the exception of Aqueduct racetrack OR A FACILITY IN THE COUNTY OF NASSAU OR SUFFOLK OPERATED BY A CORPORATION ESTABLISHED PURSUANT TO SECTION FIVE HUNDRED TWO OF THE RACING, PARI-MUTUEL WAGERING AND BREEDING LAW, one and one-quarter percent of total revenue wagered at the vendor track after pay out for prizes, received pursuant to clause (A), (B), (C), (D), (E), (F), or (G) of subparagraph (ii) of paragraph one of this

subdivision, shall be distributed to the appropriate breeding fund for the manner of racing conducted by such track.

S 10. Subdivision (f-1) of section 1612 of the tax law, as added by section 40 of a chapter of the laws of 2013 amending the racing, pari-mutuel wagering and breeding law and other laws relating to commercial gaming, as proposed in legislative bill numbers S. 5883 and A. 8101, is amended to read as follows:

[(f-1)] F-1. As consideration for operation of video lottery gaming facility located in the county of Nassau [of] OR Suffolk and operated by a corporation established pursuant to section five hundred two of the racing, pari-mutuel wagering and breeding law, the division shall cause the INVESTMENT in the racing industry of the following percentages of the vendor fee to be deposited or paid as follows:

[(1)] 1. Two and three tenths percent of the total wagered after payout of prizes for the purpose of enhancing purses at Aqueduct racetrack, Belmont Park racetrack and Saratoga race course, provided, however, that any amount that is in excess of the amount necessary to maintain purse support from video lottery gaming at Aqueduct racetrack, Belmont Park racetrack and Saratoga race course at the same level realized [in] in two thousand thirteen, to be adjusted by the consumer price index for all urban consumers, as published annually by the United States department of LABOR, bureau of labor statistics, shall [be] instead be returned to the commission.

[(2)] 2. five tenths percent of the total wagered after payout of prizes for the appropriate breeding fund for the manner of racing at Aqueduct racetrack, Belmont Park racetrack and Saratoga race course, provided, however, that any amount that is in excess of the amount necessary to maintain payments from video lottery gaming at Aqueduct racetrack at the same level realized [in] in two thousand thirteen, to be adjusted by the consumer price index for all urban consumers, as published annually by the United States department of LABOR, bureau of labor statistics, shall [be] instead be returned to the commission.

[(3)] 3. one and three tenths percent of the total revenue wagered after payout of prizes to be deposited into an account of the franchised corporation established pursuant to section two hundred six of the racing, pari-mutuel wagering and breeding law to be used for capital expenditures in maintaining and upgrading Aqueduct racetrack, Belmont Park racetrack and Saratoga race course, provided, however, that any amount that is in excess of the amount necessary to maintain payments for capital expenditures from video lottery gaming at Aqueduct racetrack at the same level realized [in] in two thousand thirteen, to be adjusted by the consumer price index for all urban consumers, as published annually by the United States department of LABOR, bureau of labor statistics, shall [be] instead be returned to the commission.

[(4)] 4. Nine tenths percent of the total revenue wagered after payout for prizes to be deposited into an account of the franchised corporation established pursuant to section two hundred six of the racing, pari-mutuel wagering and breeding law to be used for general thoroughbred racing operations at Aqueduct racetrack, Belmont Park racetrack and Saratoga race course, provided, however, that any amount that is in excess of the amount necessary to maintain payments for general thoroughbred racing operations from video lottery gaming at Aqueduct racetrack at the same level realized [in] in two thousand thirteen, to be adjusted by the consumer price index for all urban consumers, as published annually by the United States department of LABOR, bureau of labor statistics, shall [be] instead be returned to the commission.

S 11. The opening paragraph of the first clause (G) of subparagraph (ii) of paragraph 1 of subdivision b of section 1612 of the tax law, as amended by section 42 of a chapter of the laws of 2013 amending the racing, pari-mutuel wagering and breeding law and other laws relating to commercial gaming, as proposed in legislative bill numbers S. 5883 and A. 8101, is amended to read as follows:

notwithstanding clauses (A), (B), (C), (D), (E) and (F) of this subparagraph, when [a resort facility to be operated by other than a presently licensed video lottery gaming operator or any entity affiliated therewith selected by the division following a competitive process located] NOT MORE THAN ONE VENDOR TRACK LOCATED IN THE TOWN OF THOMPSON in Sullivan county AT THE SITE OF THE FORMER CONCORD RESORT at which a qualified capital investment has been made and no fewer than one thousand full-time, permanent employees have been newly hired, is located in Sullivan county and is within sixty miles from any gaming facility in a contiguous state, then for a period of forty years the vendor's fee shall equal the total revenue wagered at the vendor track after payout of prizes pursuant to this subdivision reduced by the greater of (i) twenty-five percent of total revenue after payout for prizes for "video lottery games" or (ii) for the first eight years of operation thirty-eight million dollars, and beginning in the ninth year of operation such amount shall increase annually by the lesser of the increase in the consumer price index or two percent, plus seven percent of total revenue after payout of prizes. In addition, in the event the vendor fee is calculated pursuant to subclause (i) of this clause, the vendor's fee shall be further reduced by 11.11 percent of the amount by which total revenue after payout for prizes exceeds two hundred fifteen million dollars, but in no event shall such reduction exceed five million dollars. PROVIDED, FURTHER, NO VENDOR IS ELIGIBLE FOR THE VENDOR'S FEE DESCRIBED IN THIS CLAUSE WHO OPERATES OR INVESTS IN OR OWNS, IN WHOLE OR IN PART, ANOTHER VENDOR LICENSE OR IS LICENSED AS A VENDOR TRACK THAT CURRENTLY RECEIVES A VENDOR FEE FOR THE OPERATION OF VIDEO LOTTERY GAMING PURSUANT TO THIS ARTICLE.

S 12. The second clause (G) of subparagraph (ii) of paragraph 1 of subdivision b of section 1612 of the tax law, as amended by section 42 of a chapter of the laws of 2013 amending the racing, pari-mutuel wagering and breeding law and other laws relating to commercial gaming, as proposed in legislative bill numbers S. 5883 and A. 8101, is REPEALED.

S 13. Clause (G-1) of subparagraph (ii) of paragraph 1 of subdivision b of section 1612 of the tax law, as amended by section 42 of a chapter of the laws of 2013 amending the racing, pari-mutuel wagering and breeding law and other laws relating to commercial gaming, as proposed in legislative bill numbers S. 5883 and A. 8101, is REPEALED.

S 14. Paragraph 2 of subdivision b of section 1612 of the tax law, as amended by section 42 of a chapter of the laws of 2013 amending the racing, pari-mutuel wagering and breeding law and other laws relating to commercial gaming, as proposed in legislative bill numbers S. 5883 and A. 8101, is amended to read as follows:

2. As consideration for the operation of a video lottery gaming facility, the division, shall cause the investment in the racing industry of a portion of the vendor fee received pursuant to paragraph one of this subdivision in the manner set forth in this subdivision. With the exception of Aqueduct racetrack AND A FACILITY LOCATED IN NASSAU COUNTY AUTHORIZED PURSUANT TO PARAGRAPH FIVE OF SUBDIVISION A OF SECTION ONE THOUSAND SIX HUNDRED SEVENTEEN-A OF THIS ARTICLE, each such track shall dedicate a portion of its vendor fees, received pursuant to clause (A),

(B), (C), (D), (E), (F), or (G) of subparagraph (ii) of paragraph one of this subdivision, solely for the purpose of enhancing purses at such track, in an amount equal to eight and three-quarters percent of the total revenue wagered at the vendor track after pay out for prizes. One percent of such purse enhancement amount shall be paid to the gaming commission to be used exclusively to promote and ensure equine health and safety in New York. Any portion of such funding to the gaming commission unused during a fiscal year shall be returned to the video lottery gaming operators on a pro rata basis in accordance with the amounts originally contributed by each operator and shall be used for the purpose of enhancing purses at such track. In addition, with the exception of Aqueduct racetrack AND A FACILITY LOCATED IN NASSAU COUNTY AUTHORIZED PURSUANT TO PARAGRAPH FIVE OF SUBDIVISION A OF SECTION ONE THOUSAND SIX HUNDRED SEVENTEEN-A OF THIS ARTICLE, one and one-quarter percent of total revenue wagered at the vendor track after pay out for prizes, received pursuant to clause (A), (B), (C), (D), (E), (F), or (G) of subparagraph (ii) of paragraph one of this subdivision, shall be distributed to the appropriate breeding fund for the manner of racing conducted by such track.

Provided, further, that nothing in this paragraph shall prevent each track from entering into an agreement, not to exceed five years, with the organization authorized to represent its horsemen to increase or decrease the portion of its vendor fee dedicated to enhancing purses at such track during the years of participation by such track, or to race fewer dates than required herein.

S 15. Subdivision (f-2) of section 1612 of the tax law, as added by section 42 of a chapter of the laws of 2013 amending the racing, pari-mutuel wagering and breeding law and other laws relating to commercial gaming, as proposed in legislative bill numbers S. 5883 and A. 8101, is amended to read as follows:

[(f-2)] F-2. As consideration for operation of a video lottery gaming facility located in the county of Nassau established pursuant to a competitive process pursuant to paragraph [(5)] FIVE OF SUBDIVISION A of section [six] ONE thousand [seventeen a] SIX HUNDRED SEVENTEEN-A of this article, the division shall cause the INVESTMENT in the racing industry of the following percentages of the vendor fee to be deposited or paid as follows:

[(1)] 1. Two and three tenths percent of the total wagered after payout of prizes for the purpose of enhancing purses at Aqueduct race-track, Belmont Park racetrack and Saratoga race course, provided, howev-er, that any amount that is in excess of the amount necessary to main-tain purse support from video lottery gaming at Aqueduct racetrack, Belmont Park racetrack and Saratoga race course at the same level real-ized [in] in two thousand thirteen, to be adjusted by the consumer price index for all urban consumers, as published annually by the United States department of LABOR, bureau of labor statistics, shall [be] instead be returned to the commission.

[(2)] 2. five tenths percent of the total wagered after payout of prizes for the appropriate breeding fund for the manner of racing at Aqueduct racetrack, Belmont Park racetrack and Saratoga race course, provided, however, that any amount that is in excess of the amount necessary to maintain payments from video lottery gaming at Aqueduct racetrack at the same level realized [in] in two thousand thirteen, to be adjusted by the consumer price index for all urban consumers, as published annually by the United States department of LABOR, bureau of labor statistics, shall [be] instead be returned to the commission.

[(3)] 3. one and three tenths percent of the total revenue wagered after payout of prizes to be deposited into an account of the franchised corporation established pursuant to section two hundred six of the racing, pari-mutuel wagering and breeding law to be used for capital expenditures in maintaining and upgrading Aqueduct racetrack, Belmont Park racetrack and Saratoga race course, provided, however, that any amount that is in excess of the amount necessary to maintain payments for capital expenditures from video lottery gaming at Aqueduct racetrack at the same level realized [in] in two thousand thirteen, to be adjusted by the consumer price index for all urban consumers, as published annually by the United States department of LABOR, bureau of labor statistics, shall [be] instead be returned to the commission.

[(4)] 4. Nine tenths percent of the total revenue wagered after payout for prizes to be deposited into an account of the franchised corporation established pursuant to section two hundred six of the racing, pari-mutuel wagering and breeding law to be used for general thoroughbred racing operations at Aqueduct racetrack, Belmont Park racetrack and Saratoga race course, provided, however, that any amount that is in excess of the amount necessary to maintain payments for general thoroughbred racing operations from video lottery gaming at Aqueduct racetrack at the same level realized [in] in two thousand thirteen, to be adjusted by the consumer price index for all urban consumers, as published annually by the United States department of LABOR, bureau of labor statistics, shall [be] instead be returned to the commission.

S 16. Subdivision 6 of section 1340 of the racing, pari-mutuel wagering and breeding law, as added by section 2 of a chapter of the laws of 2013 amending the racing, pari-mutuel wagering and breeding law and other laws relating to commercial gaming, as proposed in legislative bill numbers S. 5883 and A. 8101, is amended to read as follows:

6. Notwithstanding any provision of law to the contrary, any manufacturer or wholesaler licensed under the alcoholic beverage control law may, as authorized under the alcoholic beverage control law, sell alcoholic beverages to a gaming facility holding a retail license or permit to sell alcoholic beverages for consumption on the premises issued under this section, and any gaming facility holding a retail license or permit to sell alcoholic beverages FOR CONSUMPTION ON THE PREMISES issued under this section may, as authorized under the alcoholic beverage control law, purchase alcoholic beverages from a manufacturer or wholesaler licensed under the alcoholic beverage control law.

S 17. Paragraph 3 of subdivision a of section 1617-a of the tax law, as amended by section 32 of a chapter of the laws of 2013 amending the racing, pari-mutuel wagering and breeding law and other laws relating to commercial gaming, as proposed in legislative bill numbers S. 5883 and A. 8101, is amended to read as follows:

(3) at [facilities] ONE FACILITY PER REGION established, pursuant to a competitive process to be determined by the state gaming commission within regions one, two, and five of zone two as established by section one thousand three hundred ten of the racing, pari-mutuel wagering and breeding law following local governmental consultation and consideration of market factors including potential revenue impact, anticipated job development and capital investment to be made. The facilities authorized pursuant to this paragraph shall be deemed vendors for all purposes under this article, and need not be operated by licensed thoroughbred or harness racing associations or corporations.

S 18. Clause (G-1) of subparagraph (ii) of paragraph 1 of subdivision b of section 1612 of the tax law, as added by section 40 of a chapter of

the laws of 2013 amending the racing, pari-mutuel wagering and breeding law and other laws relating to commercial gaming, as proposed in legislative bill numbers S. 5883 and A. 8101, is amended to read as follows:

(G-1) Notwithstanding clause (A) and (B) of this subparagraph, when a video lottery gaming facility is located in either the county of Nassau or Suffolk and is operated by a corporation established pursuant to section five hundred two of the racing, pari-mutuel wagering and breeding law at a rate of thirty-five percent of the total revenue wagered at the vendor [track] after payout for prizes pursuant to this chapter;

S 19. Clause (G-2) of subparagraph (ii) of paragraph 1 of subdivision b of section 1612 of the tax law, as added by section 42 of a chapter of the laws of 2013 amending the racing, pari-mutuel wagering and breeding law and other laws relating to commercial gaming, as proposed in legislative bill numbers S. 5883 and A. 8101, are amended to read as follows:

(G-2) Notwithstanding clause (A) and (B) of this subparagraph, when a video lottery gaming facility is located in the county of Nassau established pursuant to a competitive process pursuant to paragraph [(5)] FIVE OF SUBDIVISION A of section [six] ONE thousand SIX HUNDRED seventeen-a of this article at a rate of thirty-five percent of the total revenue wagered at the vendor [track] after payout for prizes pursuant to this chapter;

S 20. Subdivision 1 of section 1311 of the racing, pari-mutuel wagering and breeding law, as added by section 2 of a chapter of the laws of 2013 amending the racing, pari-mutuel wagering and breeding law and other laws relating to commercial gaming, as proposed in legislative bill numbers S. 5883 and A. 8101, is amended to read as follows:

1. The commission is authorized to award up to four gaming facility licenses, in regions one, two and five of zone two. The duration of such initial license shall be ten years. The term of renewal shall be determined by the commission. The commission may award a second license to a qualified applicant in no more than a single region. The commission is not empowered to award any license in zone one. No gaming facilities are authorized under this article for the city of New York or any other portion of zone one.

As a condition of licensure, licensees are required to commence gaming operations no [less] MORE than twenty-four months following license award. No additional licenses may be awarded during the twenty-four month period, nor for an additional sixty months following the end of the twenty-four month period. Should the state legislatively authorize additional gaming facility licenses within these periods, licensees shall have the right to recover the license fee paid pursuant to section one thousand three hundred six of this article.

This right shall be incorporated into the license itself, vest upon the opening of a gaming facility in zone one or in the same region as the licensee and entitle the holder of such license to bring an action in the court of claims to recover the license fee paid pursuant to section one thousand three hundred fifteen of this article in the event that any gaming facility license in excess of the number authorized by this section as of the effective date of this section is awarded within seven years from the date that the initial gaming facility license is awarded. This right to recover any such fee shall be proportionate to the length of the respective period that is still remaining upon the vesting of such right.

Additionally, the right to bring an action in the court of claims to recover the fee paid to the state on the twenty-fourth day of September, two thousand ten, by the operator of a video lottery gaming facility in

a city of more than one million shall vest with such operator upon the opening of any gaming facility licensed by the commission in zone one within seven years from the date that the initial gaming facility license is awarded; provided however that the amount recoverable shall be limited to the pro rata amount of the time remaining until the end of the seven year exclusivity period, proportionate to the period of time between the date of opening of the video lottery facility until the conclusion of the seven year period.

S 21. This act shall take effect on the same date and in the same manner as a chapter of the laws of 2013 amending the racing, pari-mutuel wagering and breeding law and other laws relating to commercial gaming, as proposed in legislative bill numbers S. 5883 and A. 8101, takes effect.