

4989

2013-2014 Regular Sessions

I N S E N A T E

May 2, 2013

Introduced by Sen. BOYLE -- read twice and ordered printed, and when printed to be committed to the Committee on Racing, Gaming and Wagering

AN ACT to amend the racing, pari-mutuel wagering and breeding law and the tax law, in relation to allowing off-track betting corporations in the state to host video lottery terminals

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

1 Section 1. Section 503 of the racing, pari-mutuel wagering and breed-
2 ing law is amended by adding a new subdivision 10-a to read as follows:
3 10-A. IN A REGION IN WHICH NO PARTICIPATING COUNTY CONTAINS EITHER A
4 THOROUGHBRED OR STANDARD BRED RACETRACK LICENSED TO OPERATE BY THE
5 COMMISSION, TO OPERATE VIDEO LOTTERY GAMING AT A CORPORATION'S FACILITY
6 WHICH IS LICENSED PURSUANT TO SECTION ONE THOUSAND EIGHT OR ONE THOUSAND
7 NINE OF THIS CHAPTER;
8 S 2. Subparagraph (ii) of paragraph 1 of subdivision b of section 1612
9 of the tax law, as amended by section 6 of part K of chapter 57 of the
10 laws of 2010, clause (F) as amended by section 1 of part T of chapter 59
11 of the laws of 2013, clause (H) as amended by chapter 454 of the laws of
12 2012, clause (I) as added by section 1 of part O of chapter 61 of the
13 laws of 2011, is amended to read as follows:
14 (ii) less a vendor's fee the amount of which is to be paid for serving
15 as a lottery agent to the track operator of a vendor track; AND LESS A
16 VENDOR'S FEE TO BE PAID FOR SERVING AS A LOTTERY AGENT TO THE REGIONAL
17 OFF-TRACK BETTING CORPORATION OPERATOR AT AN AUTHORIZED PARTICIPATING
18 OFF-TRACK BETTING FACILITY LICENSED PURSUANT TO EITHER SECTION ONE THOU-
19 SAND EIGHT OR ONE THOUSAND NINE OF THE RACING, PARI-MUTUEL WAGERING AND
20 BREEDING LAW:
21 (A) having fewer than one thousand one hundred video gaming machines,
22 at a rate of thirty-five percent for the first fifty million dollars
23 annually, twenty-eight percent for the next hundred million dollars

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

LBD09719-04-3

1 annually, and twenty-five percent thereafter of the total revenue
2 wagered at the vendor track after payout for prizes pursuant to this
3 chapter;

4 (B) having one thousand one hundred or more video gaming machines, at
5 a rate of thirty-one percent of the total revenue wagered at the vendor
6 track after payout for prizes pursuant to this chapter, except for such
7 facility located in the county of Westchester, in which case the rate
8 shall be thirty percent until March thirty-first, two thousand twelve.

9 Notwithstanding the foregoing, not later than April first, two thou-
10 sand twelve, the vendor fee AT SUCH TRACK OR VENDOR OFF-TRACK BETTING
11 FACILITY shall become thirty-one percent and remain at that level there-
12 after; and except for Aqueduct racetrack, in which case the vendor fee
13 shall be thirty-eight percent of the total revenue wagered at the vendor
14 track after payout for prizes pursuant to this chapter;

15 (C) notwithstanding clauses (A) and (B) of this subparagraph, when the
16 vendor track OR VENDOR OFF-TRACK BETTING FACILITY is located in an area
17 with a population of less than one million within the forty mile radius
18 around such track, at a rate of thirty-nine percent for the first fifty
19 million dollars annually, twenty-eight percent for the next hundred
20 million dollars annually, and twenty-five percent thereafter of the
21 total revenue wagered at the vendor track OR VENDOR OFF-TRACK BETTING
22 FACILITY after payout for prizes pursuant to this chapter;

23 (D) notwithstanding clauses (A), (B) and (C) of this subparagraph,
24 when the vendor track OR VENDOR OFF-TRACK BETTING FACILITY is located
25 within fifteen miles of a Native American class III gaming facility at a
26 rate of forty-one percent of the total revenue wagered at the vendor
27 track after payout for prizes pursuant to this chapter;

28 (E) notwithstanding clauses (A), (B), (C) and (D) of this subpara-
29 graph, when a Native American class III gaming facility is established,
30 after the effective date of this subparagraph, within fifteen miles of
31 the vendor track OR VENDOR OFF-TRACK BETTING FACILITY, at a rate of
32 forty-one percent of the total revenue wagered after payout for prizes
33 pursuant to this chapter;

34 (E-1) for purposes of this subdivision, the term "class III gaming"
35 shall have the meaning defined in 25 U.S.C. S 2703(8).

36 (F) notwithstanding clauses (A), (B), (C), (D) and (E) of this subpar-
37 agraph, when a vendor track, is located in Sullivan county and within
38 sixty miles from any gaming facility in a contiguous state such vendor
39 fee shall, for a period of six years commencing April first, two thou-
40 sand eight, be at a rate of forty-one percent of the total revenue
41 wagered at the vendor track after payout for prizes pursuant to this
42 chapter, after which time such rate shall be as for all tracks in clause
43 (C) of this subparagraph.

44 (G) notwithstanding clauses (A), (B), (C), (D), (E) and (F) of this
45 subparagraph, when no more than one vendor track located in the town of
46 Thompson in Sullivan county at the site of the former Concord Resort at
47 which a qualified capital investment has been made and no fewer than one
48 thousand full-time, permanent employees have been newly hired, is
49 located in Sullivan county and is within sixty miles from any gaming
50 facility in a contiguous state, then for a period of forty years the
51 vendor's fee shall equal the total revenue wagered at the vendor track
52 after payout of prizes pursuant to this subdivision reduced by the
53 greater of (i) twenty-five percent of total revenue after payout for
54 prizes for "video lottery games" or (ii) for the first eight years of
55 operation thirty-eight million dollars, and beginning in the ninth year
56 of operation such amount shall increase annually by the lesser of the

1 increase in the consumer price index or two percent, plus seven percent
2 of total revenue after payout of prizes. In addition, in the event the
3 vendor fee is calculated pursuant to subclause (i) of this clause, the
4 vendor's fee shall be further reduced by 11.11 percent of the amount by
5 which total revenue after payout for prizes exceeds two hundred fifteen
6 million dollars, but in no event shall such reduction exceed five
7 million dollars.

8 Provided, however, that in the case of no more than one vendor track
9 located in the town of Thompson in Sullivan county at the site of the
10 former Concord Resort with a qualified capital investment, and one thou-
11 sand full-time, permanent employees if at any time after three years of
12 opening operations of the licensed video gaming facility or licensed
13 vendor track, the vendor track experiences an employment shortfall, then
14 the recapture amount shall apply, for only such period as the shortfall
15 exists.

16 For the purposes of this section "qualified capital investment" shall
17 mean an investment of a minimum of six hundred million dollars as
18 reflected by audited financial statements of which not less than three
19 hundred million dollars shall be comprised of equity and/or mezzanine
20 financing as an initial investment in a county where twelve percent of
21 the population is below the federal poverty level as measured by the
22 most recent Bureau of Census Statistics prior to the qualified capital
23 investment commencing that results in the construction, development or
24 improvement of at least one eighteen hole golf course, and the
25 construction and issuance of certificates of occupancy for hotels, lodg-
26 ing, spas, dining, retail and entertainment venues, parking garages and
27 other capital improvements at or adjacent to the licensed video gaming
28 facility or licensed vendor track which promote or encourage increased
29 attendance at such facilities.

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

41 For the purpose of this section "employment goal" shall mean one thou-
42 sand five hundred full-time permanent employees after three years of
43 opening operations of the licensed video gaming facility or licensed
44 vendor track.

45 For the purpose of this section "employment shortfall" shall mean a
46 level of employment that falls below the employment goal, as certified
47 annually by vendor's certified accountants and the chairman of the
48 empire state development corporation.

49 For the purposes of this section "recapture amount" shall mean the
50 difference between the amount of the vendor's fee paid to a vendor track
51 with a qualified capital investment, and the vendor fee otherwise paya-
52 ble to a vendor track pursuant to clause (F) of this subparagraph, that
53 is reimbursable by the vendor track to the division for payment into the
54 state treasury, to the credit of the state lottery fund created by
55 section ninety-two-c of the state finance law, due to an employment

1 shortfall pursuant to the following schedule only for the period of the
2 employment shortfall:

3 (i) one hundred percent of the recapture amount if the employment
4 shortfall is greater than sixty-six and two-thirds percent of the
5 employment goal;

6 (ii) seventy-five percent of the recapture amount if the employment
7 shortfall is greater than thirty-three and one-third percent of the
8 employment goal;

9 (iii) forty-nine and one-half percent of the recapture amount if the
10 employment shortfall is greater than thirty percent of the employment
11 goal;

12 (iv) twenty-two percent of the recapture amount if the employment
13 shortfall is greater than twenty percent of the employment goal;

14 (v) eleven percent of the recapture amount if the employment shortfall
15 is greater than ten percent of the employment goal.

16 (H) notwithstanding clauses (A), (B), (C), (D), (E), (F) and (G) of
17 this subparagraph, the track operator of a vendor track OR OFF-TRACK
18 BETTING OPERATOR OF A VENDOR OFF-TRACK BETTING CORPORATION shall be
19 eligible for a vendor's capital award of up to four percent of the total
20 revenue wagered at the vendor track OR VENDOR OFF-TRACK BETTING FACILITY
21 after payout for prizes pursuant to this chapter, which shall be used
22 exclusively for capital project investments to improve the facilities of
23 the vendor track which promote or encourage increased attendance at the
24 video lottery gaming facility including, but not limited to hotels,
25 other lodging facilities, entertainment facilities, retail facilities,
26 dining facilities, events arenas, parking garages and other improvements
27 that enhance facility amenities; provided that such capital investments
28 shall be approved by the division, in consultation with the state
29 [racing and wagering board] GAMING COMMISSION, and that such vendor
30 track OR VENDOR OFF-TRACK BETTING FACILITY demonstrates that such capi-
31 tal expenditures will increase patronage at such vendor track's OR
32 VENDOR'S OFF-TRACK BETTING facilities and increase the amount of revenue
33 generated to support state education programs. The annual amount of such
34 vendor's capital awards that a vendor track shall be eligible to receive
35 shall be limited to two million five hundred thousand dollars, except
36 for Aqueduct racetrack, for which there shall be no vendor's capital
37 awards. Except for tracks OR OFF-TRACK BETTING FACILITIES having less
38 than one thousand one hundred video gaming machines, each track operator
39 OR OFF-TRACK BETTING FACILITY OPERATOR shall be required to co-invest an
40 amount of capital expenditure equal to its cumulative vendor's capital
41 award. For all tracks OR OFF-TRACK BETTING FACILITIES, except for Aque-
42 duct racetrack, the amount of any vendor's capital award that is not
43 used during any one year period may be carried over into subsequent
44 years ending before April first, two thousand fourteen. Any amount
45 attributable to a capital expenditure approved prior to April first, two
46 thousand fourteen and completed before April first, two thousand sixteen
47 shall be eligible to receive the vendor's capital award. In the event
48 that a vendor track's capital expenditures, approved by the division
49 prior to April first, two thousand fourteen and completed prior to April
50 first, two thousand sixteen, exceed the vendor track's cumulative capi-
51 tal award during the five year period ending April first, two thousand
52 fourteen, the vendor shall continue to receive the capital award after
53 April first, two thousand fourteen until such approved capital expendi-
54 tures are paid to the vendor track subject to any required co-invest-
55 ment. In no event shall any vendor track OR VENDOR OFF-TRACK BETTING
56 FACILITY that receives a vendor fee pursuant to clause (F) or (G) of

1 this subparagraph be eligible for a vendor's capital award under this
2 section. Any operator of a vendor track OR VENDOR OFF-TRACK BETTING
3 FACILITY which has received a vendor's capital award, choosing to divest
4 the capital improvement toward which the award was applied, prior to the
5 full depreciation of the capital improvement in accordance with general-
6 ly accepted accounting principles, shall reimburse the state in amounts
7 equal to the total of any such awards. Any capital award not approved
8 for a capital expenditure at a video lottery gaming facility by April
9 first, two thousand fourteen shall be deposited into the state lottery
10 fund for education aid; and

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

19 S 3. Subparagraph (iii) of paragraph 1 and the opening paragraph of
20 paragraph 2 of subdivision b of section 1612 of the tax law, subpara-
21 graph (iii) of paragraph 1 as amended by section 1 of part O-1 of chap-
22 ter 57 of the laws of 2009, and the opening paragraph of paragraph 2 as
23 amended by section 1 of part J of chapter 55 of the laws of 2013, are
24 amended to read as follows:

25 (iii) less an additional vendor's marketing allowance at a rate of ten
26 percent for the first one hundred million dollars annually and eight
27 percent thereafter of the total revenue wagered at the vendor track OR
28 VENDOR OFF-TRACK BETTING FACILITY after payout for prizes to be used by
29 the vendor track OR VENDOR OFF-TRACK BETTING FACILITY for the marketing
30 and promotion and associated costs of its video lottery gaming oper-
31 ations and pari-mutuel horse racing operations, as long as any such
32 costs associated with pari-mutuel horse racing operations simultaneously
33 encourage increased attendance at such vendor's video lottery gaming
34 facilities, consistent with the customary manner of marketing comparable
35 operations in the industry and subject to the overall supervision of the
36 division; provided, however, that the additional vendor's marketing
37 allowance shall not exceed eight percent in any year for any operator of
38 a racetrack located in the county of Westchester or Queens; provided,
39 however, a vendor track OR VENDOR OFF-TRACK BETTING FACILITY that
40 receives a vendor fee pursuant to clause (G) of subparagraph (ii) of
41 this paragraph shall not receive the additional vendor's marketing
42 allowance. In establishing the vendor fee, the division shall ensure the
43 maximum lottery support for education while also ensuring the effective
44 implementation of section sixteen hundred seventeen-a of this article
45 through the provision of reasonable reimbursements and compensation to
46 vendor tracks OR VENDOR OFF-TRACK BETTING FACILITIES for participation
47 in such program. Within twenty days after any award of lottery prizes,
48 the division shall pay into the state treasury, to the credit of the
49 state lottery fund, the balance of all moneys received from the sale of
50 all tickets for the lottery in which such prizes were awarded remaining
51 after provision for the payment of prizes as herein provided. Any reven-
52 ues derived from the sale of advertising on lottery tickets shall be
53 deposited in the state lottery fund.

54 As consideration for the operation of a video lottery gaming facility,
55 the division, shall cause the investment in the racing industry of a
56 portion of the vendor fee received pursuant to paragraph one of this

1 subdivision in the manner set forth in this subdivision. With the
2 exception of ANY VENDOR OFF-TRACK BETTING FACILITY AND Aqueduct race-
3 track, each such track shall dedicate a portion of its vendor fees,
4 received pursuant to clause (A), (B), (C), (D), (E), (F), or (G) of
5 subparagraph (ii) of paragraph one of this subdivision, solely for the
6 purpose of enhancing purses at such track, in an amount equal to eight
7 and three-quarters percent of the total revenue wagered at the vendor
8 track after pay out for prizes. One percent of such purse enhancement
9 amount shall be paid to the gaming commission to be used exclusively to
10 promote and ensure equine health and safety in New York. Any portion of
11 such funding to the gaming commission unused during a fiscal year shall
12 be returned to the video lottery gaming operators on a pro rata basis in
13 accordance with the amounts originally contributed by each operator and
14 shall be used for the purpose of enhancing purses at such track. In
15 addition, with the exception of Aqueduct racetrack, one and one-quarter
16 percent of total revenue wagered at the vendor track after pay out for
17 prizes, received pursuant to clause (A), (B), (C), (D), (E), (F), or (G)
18 of subparagraph (ii) of paragraph one of this subdivision, shall be
19 distributed to the appropriate breeding fund for the manner of racing
20 conducted by such track.

21 S 4. Subdivision a of section 1617-a of the tax law, as amended by
22 section 2 of part O-1 of chapter 57 of the laws of 2009, is amended to
23 read as follows:

24 a. The division of the lottery is hereby authorized to license, pursu-
25 ant to rules and regulations to be promulgated by the division of the
26 lottery, the operation of video lottery gaming at (1) Aqueduct, Monti-
27 cello, Yonkers, Finger Lakes, and Vernon Downs racetracks, or at any
28 other racetrack licensed pursuant to article three of the racing, pari-
29 mutuel wagering and breeding law that are located in a county or coun-
30 ties in which video lottery gaming has been authorized pursuant to local
31 law, excluding the licensed racetrack commonly referred to in article
32 three of the racing, pari-mutuel wagering and breeding law as the "New
33 York state exposition" held in Onondaga county and the racetracks of the
34 non-profit racing association known as Belmont Park racetrack and the
35 Saratoga thoroughbred racetrack; AND (2) AT ONE REGIONAL OFF-TRACK
36 BETTING CORPORATION FACILITY LICENSED PURSUANT TO SECTION ONE THOUSAND
37 EIGHT OR ONE THOUSAND NINE OF THE RACING, PARI-MUTUEL WAGERING AND
38 BREEDING LAW WITHIN ANY REGION IN WHICH NO PARTICIPATING COUNTY CONTAINS
39 EITHER A THOROUGHBRED OR STANDARD BRED RACETRACK LICENSED TO OPERATE BY
40 THE STATE GAMING COMMISSION. Such rules and regulations shall provide,
41 as a condition of licensure, that racetracks OR REGIONAL OFF-TRACK
42 BETTING CORPORATIONS, AS CREATED BY SECTION FIVE HUNDRED TWO OF THE
43 RACING, PARI-MUTUEL WAGERING AND BREEDING LAW, to be licensed are certi-
44 fied to be in compliance with all state and local fire and safety codes,
45 that the division is afforded adequate space, infrastructure, and amen-
46 ities consistent with industry standards for such video gaming oper-
47 ations as found at racetracks in other states, that racetrack OR
48 REGIONAL OFF-TRACK BETTING CORPORATION employees involved in the opera-
49 tion of video lottery gaming pursuant to this section are licensed by
50 the racing and wagering board, and such other terms and conditions of
51 licensure as the division may establish. Notwithstanding any inconsis-
52 tent provision of law, video lottery gaming at a racetrack OR REGIONAL
53 OFF-TRACK BETTING CORPORATION pursuant to this section shall be deemed
54 an approved activity for such racetrack OR REGIONAL OFF-TRACK BETTING
55 CORPORATION under the relevant city, county, town, or village land use
56 or zoning ordinances, rules, or regulations. No entity licensed by the

1 division operating video lottery gaming pursuant to this section may
2 house such gaming activity in a structure deemed or approved by the
3 division as "temporary" for a duration of longer than eighteen-months.
4 Nothing in this section shall prohibit the division from licensing an
5 entity to operate video lottery gaming at an existing racetrack as
6 authorized in this subdivision whether or not a different entity is
7 licensed to conduct horse racing and pari-mutuel wagering at such race-
8 track pursuant to article two or three of the racing, pari-mutuel wager-
9 ing and breeding law.

10 The division, in consultation with the [racing and wagering board]
11 STATE GAMING COMMISSION, shall establish standards for approval of the
12 temporary and permanent physical layout and construction of any facility
13 or building devoted to a video lottery gaming operation. In reviewing
14 such application for the construction or reconstruction of facilities
15 related or devoted to the operation or housing of video lottery gaming
16 operations, the division, in consultation with the racing and wagering
17 board, shall ensure that such facility:

18 (1) possesses superior consumer amenities and conveniences to encour-
19 age and attract the patronage of tourists and other visitors from across
20 the region, state, and nation.

21 (2) has adequate motor vehicle parking facilities to satisfy patron
22 requirements.

23 (3) has a physical layout and location that facilitates access to and
24 from the horse racing track portion of such facility to encourage patro-
25 nage of live horse racing events that are conducted at such track.

26 S 5. This act shall take effect the first of January next succeeding
27 the date on which it shall have become a law.