

8211

2009-2010 Regular Sessions

I N A S S E M B L Y

May 7, 2009

Introduced by M. of A. FIELDS -- read once and referred to the Committee on Racing 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 RACE TRACK LICENSED TO OPERATE BY THE  
5 RACING AND WAGERING BOARD, TO OPERATE VIDEO LOTTERY GAMING AT A CORPO-  
6 RATION'S FACILITY WHICH IS LICENSED PURSUANT TO SECTION ONE THOUSAND  
7 EIGHT OR ONE THOUSAND 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 1 of part O-1 of chapter 57 of the  
10 laws of 2009, is amended to read as follows:  
11 (ii) less a vendor's fee the amount of which is to be paid for serving  
12 as a lottery agent to the track operator of a vendor track[:]; AND LESS  
13 A VENDOR'S FEE TO BE PAID FOR SERVING AS A LOTTERY AGENT TO THE REGIONAL  
14 OFF-TRACK BETTING CORPORATION OPERATOR AT AN AUTHORIZED PARTICIPATING  
15 OFF-TRACK BETTING FACILITY LICENSED PURSUANT TO EITHER RACING, PARI-MU-  
16 TUEL WAGERING AND BREEDING LAW SECTION ONE THOUSAND EIGHT OR SECTION ONE  
17 THOUSAND NINE.  
18 (A) having fewer than one thousand one hundred video gaming machines,  
19 at a rate of thirty-six percent for the first fifty million dollars  
20 annually, twenty-nine percent for the next hundred million dollars annu-  
21 ally, and twenty-six percent thereafter of the total revenue wagered at  
22 the vendor track after payout for prizes pursuant to this chapter;  
23 (B) having one thousand one hundred or more video gaming machines, at  
24 a rate of thirty-two percent of the total revenue wagered at the vendor

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

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1 track after payout for prizes pursuant to this chapter, except for such  
2 facility located in the county of Westchester, in which case the rate  
3 shall be thirty-four percent of the total revenue wagered at the vendor  
4 track after payout for prizes pursuant to this chapter, for a period of  
5 twenty-four months effective beginning April first, two thousand eight;  
6 provided, however, that in the event that the vendor track located in  
7 Westchester county completes a successful restructuring prior to March  
8 thirty-first, two thousand ten, the vendor fee will be reduced to thir-  
9 ty-two percent ninety days following the completion of the successful  
10 restructuring. A successful restructuring is defined as a restructuring  
11 of the existing debt obligations of such vendor track located in West-  
12 chester county that meets the following two conditions:

13 (i) it requires no more than twenty million dollars of additional  
14 equity invested in such track; and

15 (ii) results in average net interest costs of less than nine percent.

16 Notwithstanding the foregoing, the vendor fee at such track OR VENDOR  
17 OFF-TRACK BETTING FACILITY will become thirty-one percent effective  
18 April first, two thousand ten and remain at that level for a period  
19 equal to two times the period of time (measured in days) that the vendor  
20 fee was thirty-four percent or until March thirty-first, two thousand  
21 twelve, whichever is later. Notwithstanding the foregoing, not later  
22 than April first, two thousand twelve, the vendor fee shall become thir-  
23 ty-two percent and remain at that level thereafter; and except for Aque-  
24 duct racetrack, in which case the vendor fee shall be thirty-eight  
25 percent of the total revenue wagered at the vendor track after payout  
26 for prizes pursuant to this chapter;

27 (C) notwithstanding clauses (A) and (B) of this subparagraph, when the  
28 vendor track OR VENDOR OFF-TRACK BETTING FACILITY is located in an area  
29 with a population of less than one million within the forty mile radius  
30 around such track, at a rate of forty percent for the first fifty  
31 million dollars annually, twenty-nine percent for the next hundred  
32 million dollars annually, and twenty-six percent thereafter of the total  
33 revenue wagered at the vendor track OR VENDOR OFF-TRACK BETTING FACILITY  
34 after payout for prizes pursuant to this chapter;

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

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

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

48 (F) notwithstanding clauses (A), (B), (C), (D) and (E) of this subpar-  
49 agraph, when a vendor track, is located in Sullivan county and within  
50 sixty miles from any gaming facility in a contiguous state such vendor  
51 fee shall, for a period of five years commencing April first, two thou-  
52 sand eight, be at a rate of forty-two percent of the total revenue  
53 wagered at the vendor track after payout for prizes pursuant to this  
54 chapter, after which time such rate shall be as for all tracks in clause  
55 (C) of this subparagraph.

1 (G) notwithstanding any other provisions of this section, when a relo-  
2 cated vendor track at which a qualified capital investment has been made  
3 and no fewer than two thousand full-time, permanent employees have been  
4 newly hired, is located in Sullivan county and is within sixty miles  
5 from any gaming facility in a contiguous state, then for a period of  
6 forty years the division shall pay into the state treasury, to the cred-  
7 it of the state lottery fund created by section ninety-two-c of the  
8 state finance law the greater of (i) twenty-five percent of total reven-  
9 ue after payout for prizes for "video lottery games" or (ii) for the  
10 first eight years of operation thirty-eight million dollars, and begin-  
11 ning in the ninth year of operation such amount shall increase annually  
12 by the lesser of the increase in the consumer price index or two percent  
13 plus the division shall retain an amount equal to all actual expenses  
14 related to operations, administration and procurement of the video  
15 lottery terminal operation at the relocated vendor track, provided,  
16 however, such amount retained by the division shall not exceed seven  
17 percent of total revenue after payout of prizes. In addition, in the  
18 event the division makes a payment pursuant to subclause (i) of this  
19 clause, the division shall pay to the credit of the state lottery fund  
20 created by section ninety-two-c of the state finance law 11.11 percent  
21 of the amount by which total revenue after payout for prizes exceeds two  
22 hundred fifteen million dollars, but in no event shall such payment  
23 exceed five million dollars.

24 The balance shall be paid as a vendor's fee to the track operator of  
25 the relocated vendor track for serving as a lottery agent under this  
26 chapter.

27 Provided, however, that in the case of a relocated vendor track with a  
28 qualified capital investment, if at any time after July first, two thou-  
29 sand ten the vendor track experiences an employment shortfall, then the  
30 recapture amount shall apply, for only such period as the shortfall  
31 exists.

32 For the purposes of this section "qualified capital investment" shall  
33 mean an investment of a minimum of one billion dollars as reflected by  
34 audited financial statements of which not less than three hundred  
35 million dollars shall be comprised of equity and/or mezzanine financing  
36 as an initial investment in a county where twelve percent of the popu-  
37 lation is below the federal poverty level as measured by the most recent  
38 Bureau of Census Statistics prior to the qualified capital investment  
39 commencing that results in the construction, development or improvement  
40 of at least one eighteen hole golf course, and the construction and  
41 issuance of certificates of occupancy for hotels, lodging, convention  
42 centers, spas, dining, retail and entertainment venues, parking garages  
43 and other capital improvements at or adjacent to the licensed video  
44 gaming facility or licensed vendor track which promote or encourage  
45 increased attendance at such facilities.

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

1 For the purpose of this section "employment goal" shall mean two thou-  
2 sand full-time permanent employees.

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

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

16 (i) sixty-six percent of the recapture amount if the employment short-  
17 fall is greater than fifty percent of the employment goal;

18 (ii) sixty percent of the recapture amount if the employment shortfall  
19 is greater than forty percent of the employment goal;

20 (iii) forty-five percent of the recapture amount if the employment  
21 shortfall is greater than thirty percent of the employment goal;

22 (iv) twenty percent of the recapture amount if the employment short-  
23 fall is greater than twenty percent of the employment goal;

24 (v) ten percent of the recapture amount if the employment shortfall is  
25 greater than ten percent of the employment goal.

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

1 before April first, two thousand fifteen shall be eligible to receive  
2 the vendor's capital award. In the event that a vendor track's capital  
3 expenditures, approved by the division prior to April first, two thou-  
4 sand thirteen and completed prior to April first, two thousand fifteen,  
5 exceed the vendor track's cumulative capital award during the five year  
6 period ending April first, two thousand thirteen, the vendor shall  
7 continue to receive the capital award after April first, two thousand  
8 thirteen until such approved capital expenditures are paid to the vendor  
9 track subject to any required co-investment. In no event shall any  
10 vendor track OR VENDOR OFF-TRACK BETTING FACILITY that receives a vendor  
11 fee pursuant to clause (F) or (G) of this subparagraph be eligible for a  
12 vendor's capital award under this section. Any operator of a vendor  
13 track OR VENDOR OFF-TRACK BETTING FACILITY which has received a vendor's  
14 capital award, choosing to divest the capital improvement toward which  
15 the award was applied, prior to the full depreciation of the capital  
16 improvement in accordance with generally accepted accounting principles,  
17 shall reimburse the state in amounts equal to the total of any such  
18 awards. Any capital award not approved for a capital expenditure at a  
19 video lottery gaming facility by April first, two thousand thirteen  
20 shall be deposited into the state lottery fund for education aid; and

21 S 3. Subparagraph (iii) of paragraph 1 and the opening paragraph of  
22 paragraph 2 of subdivision b of section 1612 of the tax law, as amended  
23 by section 1 of part O-1 of chapter 57 of the laws of 2009, are amended  
24 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. In addition, with the exception of Aque-  
9 duct racetrack, one and one-quarter percent of total revenue wagered at  
10 the vendor track after pay out for prizes, received pursuant to clause  
11 (A), (B), (C), (D), (E), (F), or (G) of subparagraph (ii) of paragraph  
12 one of this subdivision, shall be distributed to the appropriate breed-  
13 ing fund for the manner of racing conducted by such track.

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

17 a. The division of the lottery is hereby authorized to license, pursu-  
18 ant to rules and regulations to be promulgated by the division of the  
19 lottery, the operation of video lottery gaming at (1) Aqueduct, Monti-  
20 cello, Yonkers, Finger Lakes, and Vernon Downs racetracks, or at any  
21 other racetrack licensed pursuant to article three of the racing, pari-  
22 mutuel wagering and breeding law that are located in a county or coun-  
23 ties in which video lottery gaming has been authorized pursuant to local  
24 law, excluding the licensed racetrack commonly referred to in article  
25 three of the racing, pari-mutuel wagering and breeding law as the "New  
26 York state exposition" held in Onondaga county and the racetracks of the  
27 non-profit racing association known as Belmont Park racetrack and the  
28 Saratoga thoroughbred racetrack; AND (2) AT ONE REGIONAL OFF-TRACK  
29 BETTING CORPORATION FACILITY LICENSED PURSUANT TO SECTION ONE THOUSAND  
30 EIGHT OR ONE THOUSAND NINE OF THE RACING, PARI-MUTUEL WAGERING AND  
31 BREEDING LAW WITHIN ANY REGION IN WHICH NO PARTICIPATING COUNTY CONTAINS  
32 EITHER A THOROUGHBRED OR STANDARDBRED RACETRACK LICENSED TO OPERATE BY  
33 THE RACING AND WAGERING BOARD. Such rules and regulations shall  
34 provide, as a condition of licensure, that racetracks OR REGIONAL  
35 OFF-TRACK BETTING CORPORATIONS, AS CREATED BY SECTION FIVE HUNDRED TWO  
36 OF THE RACING, PARI-MUTUEL WAGERING AND BREEDING LAW, to be licensed are  
37 certified to be in compliance with all state and local fire and safety  
38 codes, that the division is afforded adequate space, infrastructure, and  
39 amenities consistent with industry standards for such video gaming oper-  
40 ations as found at racetracks in other states, that racetrack OR  
41 REGIONAL OFF-TRACK BETTING CORPORATION employees involved in the opera-  
42 tion of video lottery gaming pursuant to this section are licensed by  
43 the racing and wagering board, and such other terms and conditions of  
44 licensure as the division may establish. Notwithstanding any inconsis-  
45 tent provision of law, video lottery gaming at a racetrack OR REGIONAL  
46 OFF-TRACK BETTING CORPORATION pursuant to this section shall be deemed  
47 an approved activity for such racetrack OR REGIONAL OFF-TRACK BETTING  
48 CORPORATION under the relevant city, county, town, or village land use  
49 or zoning ordinances, rules, or regulations. No entity licensed by the  
50 division operating video lottery gaming pursuant to this section may  
51 house such gaming activity in a structure deemed or approved by the  
52 division as "temporary" for a duration of longer than eighteen-months.  
53 Nothing in this section shall prohibit the division from licensing an  
54 entity to operate video lottery gaming at an existing racetrack as  
55 authorized in this subdivision whether or not a different entity is  
56 licensed to conduct horse racing and pari-mutuel wagering at such race-

1 track pursuant to article two or three of the racing, pari-mutuel wager-  
2 ing and breeding law.

3 The division, in consultation with the racing and wagering board,  
4 shall establish standards for approval of the temporary and permanent  
5 physical layout and construction of any facility or building devoted to  
6 a video lottery gaming operation. In reviewing such application for the  
7 construction or reconstruction of facilities related or devoted to the  
8 operation or housing of video lottery gaming operations, the division,  
9 in consultation with the racing and wagering board, shall ensure that  
10 such facility:

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

14 (2) has adequate motor vehicle parking facilities to satisfy patron  
15 requirements.

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

19 S 5. Subdivision a of section 1617-a of the tax law, as separately  
20 amended by chapter 286 of the laws of 2008 and section 2 of part O-1 of  
21 chapter 57 of the laws of 2009, is amended to read as follows:

22 a. The division of the lottery is hereby authorized to license, pursu-  
23 ant to rules and regulations to be promulgated by the division of the  
24 lottery, the operation of video lottery gaming at [a vendor track pursu-  
25 ant to clause (G) of subparagraph (ii) of paragraph one of subdivision b  
26 of section sixteen hundred twelve of this article.] (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 RACING AND WAGERING BOARD. Such rules and regulations shall provide,  
41 as a condition of licensure, that such [racetrack] RACETRACKS OR  
42 REGIONAL OFF-TRACK BETTING CORPORATIONS, AS CREATED BY SECTION FIVE  
43 HUNDRED TWO OF THE RACING, PARI-MUTUEL WAGERING AND BREEDING LAW, TO BE  
44 LICENSED ARE certified to be in compliance with all state and local fire  
45 and safety codes, that the division is afforded adequate space, infras-  
46 tructure, and amenities consistent with industry standards for such  
47 video gaming operations as found at racetracks in other states, that  
48 racetrack OR REGIONAL OFF-TRACK BETTING CORPORATION employees involved  
49 in the operation of video lottery gaming pursuant to this section are  
50 licensed by the racing and wagering board, and such other terms and  
51 conditions of licensure as the division may establish. Notwithstanding  
52 any inconsistent provision of law, video lottery gaming at a racetrack  
53 OR REGIONAL OFF-TRACK BETTING CORPORATION pursuant to this section shall  
54 be deemed an approved activity for such racetrack OR REGIONAL OFF-TRACK  
55 BETTING CORPORATION under the relevant city, county, town, or village  
56 land use or zoning ordinances, rules, or regulations. No entity

1 licensed by the division operating video lottery gaming pursuant to this  
2 section may house such gaming activity in a structure deemed or approved  
3 by the division as "temporary" for a duration of longer than eighteen-  
4 months. Nothing in this section shall prohibit the division from licens-  
5 ing an entity to operate video lottery gaming at an existing racetrack  
6 as 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 shall establish standards for approval of the temporary and permanent  
12 physical layout and construction of any facility or building devoted to  
13 a video lottery gaming operation. In reviewing such application for the  
14 construction or reconstruction of facilities related or devoted to the  
15 operation or housing of video lottery gaming operations, the division,  
16 in consultation with the racing and wagering board, shall ensure that  
17 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 The division shall not approve the construction or alteration of any  
27 facility or building devoted to the operation or housing of video  
28 lottery gaming until the person or entity selected to operate such video  
29 lottery gaming shall have submitted to the division a statement of the  
30 location of the proposed facility or building, together with a plan of  
31 such racetrack, and plans of all existing buildings, seating stands and  
32 other structures on the grounds of such racetrack, in such form as the  
33 division may prescribe, and such plans shall have been approved by the  
34 division. The division, at the expense of the applicant, may order such  
35 engineering examination thereof as the division may deem necessary. Such  
36 construction or alteration may be made only with the approval of the  
37 division and after examination and inspection of the plans thereof and  
38 the issuance of a permit therefor by the division.

39 S 6. This act shall take effect January 1, 2010, provided, however,  
40 that the amendments to subdivision a of section 1617-a of the tax law  
41 made by section four of this act shall not affect the repeal of such  
42 section and shall be deemed repealed therewith; provided however, the  
43 amendments to subdivision a of section 1617-a of the tax law made by  
44 section five of this act shall take effect on the same date and in the  
45 same manner as chapter 286 of the laws of 2008 takes effect; and  
46 provided further that the amendments to subdivision a of section 1617-a  
47 of the tax law made by section five of this act shall be subject to the  
48 repeal of such subdivision pursuant to section 4 of part C of chapter  
49 383 of the laws of 2001, as amended by chapter 286 of the laws of 2008.