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I N A S S E M B L Y

March 21, 2012

Introduced by M. of A. ENGLEBRIGHT, ZEBROWSKI, SWEENEY -- Multi-Sponsored by -- M. of A. P. RIVERA, THIELE -- 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 RACETRACK LICENSED TO OPERATE BY THE RACING
5 AND WAGERING BOARD, TO OPERATE VIDEO LOTTERY GAMING AT A CORPORATION'S
6 FACILITY WHICH IS LICENSED PURSUANT TO SECTION ONE THOUSAND EIGHT OR ONE
7 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 6 of part K of chapter 57 of the
10 laws of 2010, clause (I) as added by section 1 of part O of chapter 61
11 of the laws of 2011, is amended to read as follows:
12 (ii) less a vendor's fee the amount of which is to be paid for serving
13 as a lottery agent to the track operator of a vendor track; AND LESS A
14 VENDOR'S FEE TO BE PAID FOR SERVING AS A LOTTERY AGENT TO THE REGIONAL
15 OFF-TRACK BETTING CORPORATION OPERATOR AT AN AUTHORIZED PARTICIPATING
16 OFF-TRACK BETTING FACILITY LICENSED PURSUANT TO EITHER SECTION ONE THOU-
17 SAND EIGHT OR ONE THOUSAND NINE OF THE RACING, PARI-MUTUEL WAGERING AND
18 BREEDING LAW:
19 (A) having fewer than one thousand one hundred video gaming machines,
20 at a rate of thirty-five percent for the first fifty million dollars
21 annually, twenty-eight percent for the next hundred million dollars
22 annually, and twenty-five percent thereafter of the total revenue
23 wagered at the vendor track after payout for prizes pursuant to this
24 chapter;
25 (B) having one thousand one hundred or more video gaming machines, at
26 a rate of thirty-one 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 percent until March thirty-first, two thousand twelve.

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

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

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

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

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

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

39 (G) notwithstanding clauses (A), (B), (C), (D), (E) and (F) of this
40 subparagraph, when no more than one vendor track located in the town of
41 Thompson in Sullivan county at the site of the former Concord Resort at
42 which a qualified capital investment has been made and no fewer than one
43 thousand full-time, permanent employees have been newly hired, is
44 located in Sullivan county and is within sixty miles from any gaming
45 facility in a contiguous state, then for a period of forty years the
46 vendor's fee shall equal the total revenue wagered at the vendor track
47 after payout of prizes pursuant to this subdivision reduced by the
48 greater of (i) twenty-five percent of total revenue after payout for
49 prizes for "video lottery games" or (ii) for the first eight years of
50 operation thirty-eight million dollars, and beginning in the ninth year
51 of operation such amount shall increase annually by the lesser of the
52 increase in the consumer price index or two percent, plus seven percent
53 of total revenue after payout of prizes. In addition, in the event the
54 vendor fee is calculated pursuant to subclause (i) of this clause, the
55 vendor's fee shall be further reduced by 11.11 percent of the amount by
56 which total revenue after payout for prizes exceeds two hundred fifteen

1 million dollars, but in no event shall such reduction exceed five
2 million dollars.

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

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

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

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

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

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

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

1 (ii) seventy-five percent of the recapture amount if the employment
2 shortfall is greater than thirty-three and one-third percent of the
3 employment goal;
4 (iii) forty-nine and one-half percent of the recapture amount if the
5 employment shortfall is greater than thirty percent of the employment
6 goal;
7 (iv) twenty-two percent of the recapture amount if the employment
8 shortfall is greater than twenty percent of the employment goal;
9 (v) eleven percent of the recapture amount if the employment shortfall
10 is greater than ten percent of the employment goal.
11 (H) notwithstanding clauses (A), (B), (C), (D), (E), (F) and (G) of
12 this subparagraph, the track operator of a vendor track OR OFF-TRACK
13 BETTING OPERATOR OF A VENDOR OFF-TRACK BETTING CORPORATION shall be
14 eligible for a vendor's capital award of up to four percent of the total
15 revenue wagered at the vendor track OR VENDOR OFF-TRACK BETTING FACILITY
16 after payout for prizes pursuant to this chapter, which shall be used
17 exclusively for capital project investments to improve the facilities of
18 the vendor track OR VENDOR OFF-TRACK BETTING FACILITY which promote or
19 encourage increased attendance at the video lottery gaming facility
20 including, but not limited to hotels, other lodging facilities, enter-
21 tainment facilities, retail facilities, dining facilities, events
22 arenas, parking garages and other improvements that enhance facility
23 amenities; provided that such capital investments shall be approved by
24 the division, in consultation with the state racing and wagering board,
25 and that such vendor track OR VENDOR OFF-TRACK BETTING FACILITY demon-
26 strates that such capital expenditures will increase patronage at such
27 vendor track's OR VENDOR'S OFF-TRACK BETTING facilities and increase the
28 amount of revenue generated to support state education programs. The
29 annual amount of such vendor's capital awards that a vendor track shall
30 be eligible to receive shall be limited to two million five hundred
31 thousand dollars, except for Aqueduct racetrack, for which there shall
32 be no vendor's capital awards. Except for tracks OR OFF-TRACK BETTING
33 FACILITIES having less than one thousand one hundred video gaming
34 machines, each track operator OR OFF-TRACK BETTING FACILITY OPERATOR
35 shall be required to co-invest an amount of capital expenditure equal to
36 its cumulative vendor's capital award. For all tracks OR OFF-TRACK
37 BETTING FACILITIES, except for Aqueduct racetrack, the amount of any
38 vendor's capital award that is not used during any one year period may
39 be carried over into subsequent years ending before April first, two
40 thousand thirteen. Any amount attributable to a capital expenditure
41 approved prior to April first, two thousand thirteen and completed
42 before April first, two thousand fifteen shall be eligible to receive
43 the vendor's capital award. In the event that a vendor track's capital
44 expenditures, approved by the division prior to April first, two thou-
45 sand thirteen and completed prior to April first, two thousand fifteen,
46 exceed the vendor track's cumulative capital award during the five year
47 period ending April first, two thousand thirteen, the vendor shall
48 continue to receive the capital award after April first, two thousand
49 thirteen until such approved capital expenditures are paid to the vendor
50 track subject to any required co-investment. In no event shall any
51 vendor track OR VENDOR OFF-TRACK BETTING FACILITY that receives a vendor
52 fee pursuant to clause (F) or (G) of this subparagraph be eligible for a
53 vendor's capital award under this section. Any operator of a vendor
54 track OR VENDOR OFF-TRACK BETTING FACILITY which has received a vendor's
55 capital award, choosing to divest the capital improvement toward which
56 the award was applied, prior to the full depreciation of the capital

1 improvement in accordance with generally accepted accounting principles,
2 shall reimburse the state in amounts equal to the total of any such
3 awards. Any capital award not approved for a capital expenditure at a
4 video lottery gaming facility by April first, two thousand thirteen
5 shall be deposited into the state lottery fund for education aid; and

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

14 S 3. Subparagraph (iii) of paragraph 1 and the opening paragraph of
15 paragraph 2 of subdivision b of section 1612 of the tax law, as amended
16 by section 1 of part O-1 of chapter 57 of the laws of 2009, are amended
17 to read as follows:

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

47 As consideration for the operation of a video lottery gaming facility,
48 the division, shall cause the investment in the racing industry of a
49 portion of the vendor fee received pursuant to paragraph one of this
50 subdivision in the manner set forth in this subdivision. With the
51 exception of ANY VENDOR OFF-TRACK BETTING FACILITY AND Aqueduct race-
52 track, each such track shall dedicate a portion of its vendor fees,
53 received pursuant to clause (A), (B), (C), (D), (E), (F), or (G) of
54 subparagraph (ii) of paragraph one of this subdivision, solely for the
55 purpose of enhancing purses at such track, in an amount equal to eight
56 and three-quarters percent of the total revenue wagered at the vendor

1 track after pay out for prizes. In addition, with the exception of Aqueduct racetrack, one and one-quarter percent of total revenue wagered at
2 the vendor track after pay out for prizes, received pursuant to clause
3 (A), (B), (C), (D), (E), (F), or (G) of subparagraph (ii) of paragraph
4 one of this subdivision, shall be distributed to the appropriate breeding
5 fund for the manner of racing conducted by such track.
6

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

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

52 The division, in consultation with the racing and wagering board,
53 shall establish standards for approval of the temporary and permanent
54 physical layout and construction of any facility or building devoted to
55 a video lottery gaming operation. In reviewing such application for the
56 construction or reconstruction of facilities related or devoted to the

1 operation or housing of video lottery gaming operations, the division,
2 in consultation with the racing and wagering board, shall ensure that
3 such facility:
4 (1) possesses superior consumer amenities and conveniences to encour-
5 age and attract the patronage of tourists and other visitors from across
6 the region, state, and nation.
7 (2) has adequate motor vehicle parking facilities to satisfy patron
8 requirements.
9 (3) has a physical layout and location that facilitates access to and
10 from the horse racing track portion of such facility to encourage patro-
11 nage of live horse racing events that are conducted at such track.
12 S 5. This act shall take effect the first of January next succeeding
13 the date on which it shall have become a law.