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

4189

2011-2012 Regular Sessions

I N A S S E M B L Y

February 2, 2011

Introduced by M. of A. GABRYSZAK -- 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 making persons convicted of certain felonies ineligible for thoroughbred racing, harness racing and video lottery gaming licenses

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

Section 1. The racing, pari-mutuel wagering and breeding law is amended by adding a new section 113 to read as follows:

S 113. PERSONS CONVICTED OF CERTAIN FELONIES INELIGIBLE FOR CERTAIN LICENSES. 1. THE PROVISIONS OF THIS SECTION APPLY TO LICENSES SUBJECT TO SECTION TWO HUNDRED FIVE OF THIS CHAPTER FOR RUNNING THOROUGHBRED RACES AND LICENSES SUBJECT TO SECTION THREE HUNDRED SEVEN OF THIS CHAPTER FOR THE CONDUCT OF HARNESS RACE MEETINGS.

2. A. FOR THE PURPOSES OF THIS SECTION, A CONVICTION OF A FELONY SHALL MEAN THE CONVICTION OF A FELONY INVOLVING MORAL TURPITUDE BY ANY COURT IN THIS STATE OR BY ANY COURT OF THE UNITED STATES OR BY ANY COURT OF ANY OTHER STATE OF THE UNITED STATES; PROVIDED, HOWEVER, THAT IF A CRIME OF WHICH A PERSON IS CONVICTED BY ANY COURT OF THE UNITED STATES OR ANY OTHER STATE IS A FELONY IN THE JURISDICTION IN WHICH THE CONVICTION IS HAD BUT IS NOT A FELONY INVOLVING MORAL TURPITUDE IN THIS STATE, THEN THE CONVICTION SHALL NOT BE DEEMED A CONVICTION OF A FELONY FOR THE PURPOSES OF THIS SECTION. IN THE EVENT THAT A CRIME OF WHICH A PERSON IS CONVICTED BY ANY COURT OF THE UNITED STATES OR BY ANY COURT OF ANY OTHER STATE IS NOT A FELONY IN THE JURISDICTION IN WHICH THE CONVICTION IS HAD BUT IS A FELONY INVOLVING MORAL TURPITUDE IN THIS STATE, THEN THE CONVICTION SHALL BE DEEMED A CONVICTION OF A FELONY FOR THE PURPOSES OF THIS SECTION. IF A PERSON CONVICTED OF SUCH A FELONY OR CRIME DEEMED TO BE SUCH A FELONY IS SUBSEQUENTLY PARDONED BY THE GOVERNOR OF THE STATE WHERE SUCH CONVICTION WAS HAD, OR BY THE PRESIDENT OF

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

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THE UNITED STATES, OR SHALL RECEIVE A CERTIFICATE OF GOOD CONDUCT GRANTED BY THE BOARD OF PAROLE PURSUANT TO THE PROVISIONS OF THE EXECUTIVE LAW FOR THE PURPOSE OF REMOVING THE DISABILITY UNDER THIS SECTION BECAUSE OF SUCH CONVICTION, THE BOARD MAY, IN ITS DISCRETION, ON APPLICATION OF SUCH PERSON, AND ON THE SUBMISSION TO IT OF SATISFACTORY EVIDENCE OF GOOD MORAL CHARACTER AND SUITABILITY, LICENSE SUCH PERSON.

B. FOR THE PURPOSES OF THIS SECTION, "MAJOR STOCKHOLDER" SHALL MEAN ANY PERSON WHICH OWNS OR SEEKS TO OWN TWENTY-FIVE PERCENT OR MORE OF THE STOCK OF AN ASSOCIATION, FRANCHISEE OR CORPORATION.

3. A. THE STATE RACING AND WAGERING BOARD SHALL REFUSE TO GRANT A LICENSE TO AN ASSOCIATION, FRANCHISEE OR CORPORATION IF IT SHALL DETERMINE THAT ANY OFFICER, DIRECTOR, MEMBER OR MAJOR STOCKHOLDER OF SUCH ASSOCIATION, FRANCHISEE OR CORPORATION APPLYING FOR A LICENSE HAS BEEN CONVICTED OF A FELONY.

B. THE STATE RACING AND WAGERING BOARD SHALL REVOKE ANY LICENSE IN EFFECT ON OR AFTER THE EFFECTIVE DATE OF THIS SECTION IF THE PROVISIONS OF PARAGRAPH A OF THIS SUBDIVISION WOULD PRECLUDE ITS ISSUANCE IF IT WERE TO BE APPLIED FOR ON OR AFTER THE EFFECTIVE DATE OF THIS SECTION.

4. UPON THE REVOCATION OF A LICENSE PURSUANT TO PARAGRAPH B OF SUBDIVISION THREE OF THIS SECTION, THE STATE RACING AND WAGERING BOARD SHALL ISSUE A LICENSE TO A PROVISIONAL OPERATOR TO OPERATE SUCH RACE MEETINGS OR OTHERWISE, AS THE CASE MAY BE, FOR A PERIOD NOT IN EXCESS OF ONE YEAR PENDING THE APPROVAL OF A SUCCESSOR LICENSEE. A PROVISIONAL OPERATOR SHALL RECEIVE NO COMPENSATION OR OTHER REVENUE FROM SUCH OPERATION OTHER THAN A MANAGEMENT FEE, THE AMOUNT OF WHICH OR MANNER OF FIXING WHICH SHALL BE DETERMINED BY THE BOARD.

5. ANY INFORMATION OBTAINED BY THE STATE RACING AND WAGERING BOARD IN THE ENFORCEMENT OF THIS SECTION PERTAINING TO A FELONY CONVICTION SHALL BE FORTHWITH TRANSMITTED TO THE DIVISION OF THE LOTTERY IN FURTHERANCE OF SUCH DIVISION'S DUTIES UNDER SUBDIVISION F OF SECTION SIXTEEN HUNDRED SEVENTEEN-A OF THE TAX LAW.

6. THE STATE RACING AND WAGERING BOARD SHALL APPROVE NO STOCK TRANSFER SUBJECT TO THE PROVISIONS OF SECTION TWO HUNDRED FOUR-A OR THREE HUNDRED THREE OF THIS CHAPTER TO ANY PERSON WHO WOULD BE INELIGIBLE FOR THE ISSUANCE OF A LICENSE PURSUANT TO PARAGRAPH A OF SUBDIVISION THREE OF THIS SECTION AND SHALL ACCORDINGLY REQUIRE DIVESTMENT THEREOF.

S 2. The racing, pari-mutuel wagering and breeding law is amended by adding a new section 204-a to read as follows:

S 204-A. FILING OF INFORMATION CONCERNING STOCK TRANSFERS; NECESSITY FOR STATE RACING AND WAGERING BOARD'S APPROVAL. 1. WHENEVER A TRANSFER OF TWENTY-FIVE PERCENT OR MORE OF THE STOCK OF ANY FRANCHISEE OR CORPORATION WHICH IS LICENSED UNDER THIS ARTICLE, OR OF ANY FRANCHISEE OR CORPORATION WHICH LEASES TO SUCH LICENSEE THE TRACK AT WHICH IT CONDUCTS PARI-MUTUEL THOROUGHBRED RUNNING RACES, OR WHICH OWNS TWENTY-FIVE PERCENT OR MORE OF THE STOCK OF SUCH LICENSEE SHALL BE MADE, THERE SHALL BE FILED SIMULTANEOUSLY WITH THE FRANCHISEE OR CORPORATION WHICH ISSUED SUCH STOCK THE FOLLOWING:

A. IN DUPLICATE, AN AFFIDAVIT EXECUTED BY THE TRANSFEREE STATING THAT HE OR SHE IS TO BE THE SOLE BENEFICIAL OWNER THEREOF, AND WHETHER OR NOT HE OR SHE (I) HAS BEEN CONVICTED OF A FELONY, AS DEFINED IN SUBDIVISION TWO OF SECTION ONE HUNDRED THIRTEEN OF THIS CHAPTER, OR OTHER CRIME INVOLVING MORAL TURPITUDE, (II) HAS BEEN ENGAGED IN BOOKMAKING OR OTHER FORM OF ILLEGAL GAMBLING, (III) HAS BEEN FOUND GUILTY OF ANY FRAUD OR MISREPRESENTATION IN CONNECTION WITH RACING OR BREEDING, (IV) HAS BEEN FOUND GUILTY OF ANY VIOLATION OR ATTEMPT TO VIOLATE ANY LAW, RULE OR REGULATION OF ANY RACING JURISDICTION FOR WHICH SUSPENSION FROM RACING

MIGHT BE IMPOSED IN SUCH JURISDICTION, OR (V) HAS VIOLATED ANY RULE, REGULATION OR ORDER OF THE STATE RACING AND WAGERING BOARD; IF THE TRANSFEREE IS NOT OR IS NOT TO BE THE SOLE BENEFICIAL OWNER THEREOF, THEN THERE SHALL BE ANNEXED TO SAID AFFIDAVIT OF THE TRANSFEREE, AND EXPRESSLY STATED IN SUCH AFFIDAVIT TO BE DEEMED A PART THEREOF, A TRUE AND COMPLETE COPY OR IF ORAL, A COMPLETE STATEMENT OF ALL THE TERMS, OF THE AGREEMENT OR UNDERSTANDING PURSUANT TO WHICH THE STOCK IS TO BE SO HELD BY THE TRANSFEREE, INCLUDING A DETAILED STATEMENT OF THE INTEREST THEREIN OF EACH PERSON WHO IS TO HAVE ANY INTEREST THEREIN; AND AT THE SAME TIME.

B. IN DUPLICATE, AN AFFIDAVIT EXECUTED BY EACH PERSON FOR WHOM THE SAID STOCK OR ANY INTEREST THEREIN IS TO BE HELD BY SAID TRANSFEREE, SETTING FORTH WHETHER OR NOT THE AFFIANT (I) HAS BEEN CONVICTED OF A FELONY, AS DEFINED IN SUBDIVISION TWO OF SECTION ONE HUNDRED THIRTEEN OF THIS CHAPTER, OR OTHER CRIME INVOLVING MORAL TURPITUDE, (II) HAS ENGAGED IN BOOKMAKING OR OTHER FORM OF ILLEGAL GAMBLING, (III) HAS BEEN FOUND GUILTY OF ANY FRAUD OR MISREPRESENTATION IN CONNECTION WITH RACING OR BREEDING, (IV) HAS BEEN GUILTY OF ANY VIOLATION OR ATTEMPT TO VIOLATE ANY LAW, RULE OR REGULATION OF ANY RACING JURISDICTION FOR WHICH SUSPENSION FROM RACING MIGHT BE IMPOSED IN SUCH JURISDICTION, OR (V) HAS VIOLATED ANY RULE, REGULATION OR ORDER OF THE STATE RACING AND WAGERING BOARD; TO EACH OF WHICH AFFIDAVITS SHALL BE ANNEXED, AND EXPRESSLY STATED IN SUCH AFFIDAVIT TO BE DEEMED A PART THEREOF, A TRUE AND COMPLETE COPY OR IF ORAL, A COMPLETE STATEMENT OF ALL THE TERMS, OF THE AGREEMENT OR UNDERSTANDING PURSUANT TO WHICH THE STOCK IS TO BE SO HELD BY THE TRANSFEREE, INCLUDING A DETAILED STATEMENT OF THE INTEREST THEREIN OF EACH PERSON WHO IS TO HAVE ANY INTEREST THEREIN.

C. SAID FRANCHISEE OR CORPORATION SHALL FORTHWITH FILE WITH THE STATE RACING AND WAGERING BOARD ONE OF EACH OF SAID DUPLICATE AFFIDAVITS.

2. IF, AFTER THE FILING OF ANY AFFIDAVIT REQUIRED TO BE FILED PURSUANT TO SUBDIVISION ONE OF THIS SECTION, THERE BE ANY CHANGE IN THE STATUS OF ANY SUCH AFFIANT WITH RESPECT TO ANY OF THE MATTERS SET FORTH IN SUBPARAGRAPH (I), (II), (III), (IV) OR (V) OF PARAGRAPH A OF SUBDIVISION ONE OF THIS SECTION OF THE AFFIDAVIT THERETOFORE FILED BY HIM OR HER, SUCH AFFIANT SHALL FORTHWITH FILE WITH THE FRANCHISEE OR CORPORATION WITH WHICH HIS OR HER AFFIDAVIT WAS SO FILED A NEW AFFIDAVIT, EXECUTED BY HIM OR HER IN DUPLICATE, SETTING FORTH SUCH CHANGE OF STATUS, AND THE FRANCHISEE OR CORPORATION SHALL FORTHWITH FILE ONE OF SAID AFFIDAVITS WITH THE STATE RACING AND WAGERING BOARD.

3. WHENEVER ANY CHANGE SHALL BE MADE IN THE AMOUNT, NATURE OR OTHERWISE OF THE INTEREST OF ANY PERSON HAVING A TWENTY-FIVE PERCENT OR MORE INTEREST IN THE ISSUED STOCK OF ANY SUCH FRANCHISEE OR CORPORATION, OR ANY NEW INTEREST SHALL BE CREATED THEREIN, WITHOUT A TRANSFER THEREOF, THE RECORD OWNER OF SUCH STOCK AND EACH PERSON WHOSE INTEREST THEREIN HAS BEEN SO ATTEMPTED TO BE CHANGED OR CREATED SHALL FILE WITH THE FRANCHISEE OR CORPORATION WHICH ISSUED SUCH STOCK, IN DUPLICATE, AFFIDAVITS AS PROVIDED BY PARAGRAPHS A AND B OF SUBDIVISION ONE OF THIS SECTION, EXCEPT THAT SUCH AFFIDAVITS NEED NOT INCLUDE THE MATTERS REFERRED TO IN SUBPARAGRAPHS (I), (II), (III), (IV) AND (V) OF PARAGRAPH A OF SUBDIVISION ONE OF THIS SECTION, UNLESS THEN REQUIRED PURSUANT TO SUBDIVISION TWO OF THIS SECTION AND ONE COPY THEREOF SHALL FORTHWITH BE FILED BY THE FRANCHISEE OR CORPORATION WITH THE STATE RACING AND WAGERING BOARD.

4. IF THE STATE RACING AND WAGERING BOARD DETERMINES THAT IT IS INCONSISTENT WITH THE PUBLIC INTEREST, CONVENIENCE OR NECESSITY, OR WITH THE BEST INTERESTS OF RACING GENERALLY, THAT ANY PERSON CONTINUE TO BE A MAJOR STOCKHOLDER, AS DEFINED IN SUBDIVISION TWO OF SECTION ONE HUNDRED

THIRTEEN OF THIS CHAPTER, OF RECORD OR THE BENEFICIAL OWNER OF ANY INTEREST IN STOCK STANDING IN THE NAME OF ANOTHER IN ANY FRANCHISEE OR CORPORATION LICENSED UNDER THIS ARTICLE, OR WHICH OWNS TWENTY-FIVE PERCENT OR MORE OF THE STOCK OF SUCH LICENSEE, THE STATE RACING AND WAGERING BOARD SHALL HAVE FULL POWER AND AUTHORITY TO ORDER OR DIRECT EACH SUCH STOCKHOLDER OR BENEFICIAL OWNER IRRESPECTIVE OF THE TIME WHEN SUCH STOCKHOLDER OR BENEFICIAL OWNER ACQUIRED HIS OR HER STOCK OR INTEREST THEREIN TO DISPOSE OF SUCH STOCK OR INTEREST WITHIN A PERIOD OF TIME TO BE SPECIFIED BY THE STATE RACING AND WAGERING BOARD, WHICH PERIOD THE BOARD SHALL HAVE FULL POWER AND AUTHORITY TO EXTEND FROM TIME TO TIME.

5. IF THE STATE RACING AND WAGERING BOARD SHALL MAKE ANY ORDER OR DIRECTION AS PROVIDED IN SUBDIVISION FOUR OF THIS SECTION, THE PERSON AGGRIEVED THEREBY SHALL BE GIVEN NOTICE OF THE TIME AND PLACE OF A HEARING BEFORE THE BOARD AT WHICH THE BOARD WILL HEAR SUCH PERSON IN REFERENCE THERETO. THE ACTION OF THE BOARD IN MAKING ANY SUCH ORDER OR DIRECTION SHALL BE REVIEWABLE IN THE COURTS OF THIS STATE IN THE MANNER PROVIDED BY, AND SUBJECT TO THE PROVISIONS OF ARTICLE SEVENTY-EIGHT OF THE CIVIL PRACTICE LAW AND RULES.

6. UPON APPLICATION OF THE STATE RACING AND WAGERING BOARD, THE SUPREME COURT SHALL HAVE JURISDICTION TO ISSUE FINAL ORDERS, ON NOTICE AND AFTER HEARING, COMMANDING ANY PERSON TO COMPLY WITH THE PROVISIONS OF THE ORDERS OR DIRECTIONS ISSUED BY THE BOARD UNDER SUBDIVISION FOUR OF THIS SECTION.

7. IN CASE OF CONFLICT BETWEEN THIS SECTION AND ARTICLE EIGHT OF THE UNIFORM COMMERCIAL CODE, THE PROVISIONS OF THIS SECTION SHALL CONTROL.

S 3. Section 303 of the racing, pari-mutuel wagering and breeding law is amended to read as follows:

S 303. Filing of information concerning stock transfers; necessity for board's approval. 1. Whenever a transfer of stock of any association or corporation which is licensed under this article, or of any association or corporation which leases to such licensee the track at which it conducts pari-mutuel harness races, or which owns twenty-five percent or more of the stock of such licensee shall be made, there shall be filed simultaneously with the association or corporation which issued such stock the following:

a. In duplicate, an affidavit executed by the transferee stating that he OR SHE is to be the sole beneficial owner thereof, and whether or not he OR SHE (i) has been convicted of a FELONY, AS DEFINED IN SUBDIVISION TWO OF SECTION ONE HUNDRED THIRTEEN OF THIS CHAPTER, OR OTHER crime involving moral turpitude, (ii) has been engaged in bookmaking or other forms of illegal gambling, (iii) has been found guilty of any fraud or misrepresentation in connection with racing or breeding, (iv) has been guilty of any violation or attempt to violate any law, rule or regulation of any racing jurisdiction for which suspension from racing might be imposed in such jurisdiction, or (v) has violated any rule, regulation or order of the board; if the transferee is not, or is not to be, the sole beneficial owner thereof, then there shall be annexed to said affidavit of the transferee, and expressly stated in such affidavit to be deemed a part thereof, a true and complete copy, or if oral, a complete statement of all the terms, of the agreement or understanding pursuant to which the stock is to be so held by the transferee, including a detailed statement of the interest therein of each person who is to have any interest therein; and at the same time.

b. In duplicate, an affidavit executed by each person for whom the said stock, or any interest therein, is to be held by said transferee, setting forth whether or not the affiant (i) has been convicted of a

FELONY, AS DEFINED IN SUBDIVISION TWO OF SECTION ONE HUNDRED THIRTEEN OF THIS CHAPTER, OR OTHER crime involving moral turpitude, (ii) has engaged in bookmaking or other forms of illegal gambling, (iii) has been found guilty of any fraud or misrepresentation in connection with racing or breeding, (iv) has been guilty of any violation or attempt to violate any law, rule or regulation of any racing jurisdiction for which suspension from racing might be imposed in such jurisdiction, or (v) has violated any rule, regulation or order of the board; to each of which affidavits shall be annexed, and expressly stated in such affidavit to be deemed a part thereof, a true and complete copy, or if oral, a complete statement of all the terms, of the agreement or understanding pursuant to which the stock is to be so held by the transferee, including a detailed statement of the interest therein of each person who is to have any interest therein.

c. Said association or corporation shall forthwith file with the board one of each of said duplicate affidavits.

2. If, after the filing of any affidavit hereinabove required to be filed, there be any change in the status of any such affiant with respect to any of the matters set forth in subparagraph (i), (ii), (iii), (iv) or (v) of paragraph a of subdivision one of this section of the affidavit theretofore filed by him OR HER, such affiant shall forthwith file with the association or corporation with which his OR HER affidavit was so filed a new affidavit, executed by him OR HER in duplicate, setting forth such change of status, and the association or corporation shall forthwith file one of said affidavits with the board.

3. Whenever any change shall be made in the amount, nature, or otherwise, of the interest of any person having an interest in stock of any such association or corporation, or any new interest shall be created therein, without a transfer thereof as hereinabove provided, the record owner of such stock, and each person whose interest therein has been so attempted to be changed or created, shall file with the association or corporation which issued such stock, in duplicate, affidavits as provided by paragraphs a and b of subdivision one of this section, except that such affidavits need not include the matters referred to in subparagraphs (i), (ii), (iii), (iv) and (v) of paragraph a of subdivision one of this section, unless then required pursuant to subdivision two of this section, and one copy thereof shall forthwith be filed by the association or corporation with the board.

4. [The board may, upon application to it for good cause shown, waive compliance with subdivisions one, two and three of this section.

5.] If the board determines that it is inconsistent with the public interest, convenience or necessity, or with the best interests of racing generally, that any person continue to be a stockholder of record, or the beneficial owner of any interest in stock standing in the name of another, in any association or corporation licensed under this article, or of any association or corporation which leases to such licensee the track at which it conducts pari-mutuel harness racing or which owns twenty-five percent or more of the stock of such licensee, the board shall have full power and authority to order or direct each such stockholder or beneficial owner irrespective of the time when such stockholder or beneficial owner acquired his OR HER stock or interest therein to dispose of such stock or interest within a period of time to be specified by the board, which period the board shall have full power and authority to extend from time to time.

[6.] 5. If the board shall make any order or direction as provided in subdivision [five] FOUR of this section, the person aggrieved thereby

shall be given notice of the time and place of a hearing before the board at which the board will hear such person in reference thereto. The action of the board in making any such order or direction shall be reviewable in the courts of this state in the manner provided by, and subject to the provisions of article seventy-eight of the civil practice law and rules.

[7.] 6. Upon application of the board, the supreme court of this state shall have jurisdiction to issue final orders, on notice and after hearing, commanding any person to comply with the provisions of the orders or directions issued by the board under subdivision [five] FOUR of this section.

[8.] 7. In case of conflict between this section and article eight of the uniform commercial code, this section shall control.

S 4. Section 1617-a of the tax law is amended by adding a new subdivision f to read as follows:

F. (1) NO LICENSE UNDER THIS SECTION SHALL BE ISSUED TO ANY PERSON OR OTHER ENTITY WHICH HAS BEEN CONVICTED OF A FELONY.

(2) FOR THE PURPOSES OF THIS SECTION, THE TERM "CONVICTION OF A FELONY" HAS THE MEANING PRESCRIBED THEREFOR IN SUBDIVISION TWO OF SECTION ONE HUNDRED THIRTEEN OF THE RACING, PARI-MUTUEL WAGERING AND BREEDING LAW.

(3) THE DIVISION SHALL REVOKE ANY SUCH LICENSE IN EFFECT ON OR AFTER THE EFFECTIVE DATE OF THIS SUBDIVISION IF THE PROVISIONS OF PARAGRAPH ONE OF THIS SUBDIVISION WOULD PRECLUDE ITS ISSUANCE IF IT WERE TO BE APPLIED FOR ON OR AFTER THE EFFECTIVE DATE OF THIS SUBDIVISION.

S 5. This act shall take effect on the first of January next succeeding the date on which it shall have become a law; provided that any and all rules and regulations and any other measures necessary to implement any provision of this act on its effective date may be promulgated and taken, respectively, on or before the effective date of such provision.