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I N   A S S E M B L Y

March 21, 2012

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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.