

6562

2013-2014 Regular Sessions

I N A S S E M B L Y

April 9, 2013

Introduced by M. of A. ENGLEBRIGHT, WEISENBERG, SCHIMEL, RAIA, MONTESANO, RAMOS, LUPINACCI, SWEENEY -- Multi-Sponsored by -- M. of A. McDOUGH -- 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 the Nassau and Suffolk off-track betting corporations 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 THE NASSAU AND SUFFOLK REGIONS, TO OPERATE VIDEO LOTTERY
4 GAMING AT A CORPORATION'S FACILITY WHICH IS LICENSED PURSUANT TO SECTION
5 ONE THOUSAND EIGHT OR ONE THOUSAND NINE OF THIS CHAPTER;
6 S 2. Subparagraph (ii) of paragraph 1 of subdivision b of section 1612
7 of the tax law, as amended by section 6 of part K of chapter 57 of the
8 laws of 2010, clause (H) as amended by chapter 454 of the laws of 2012,
9 clause (I) as added by section 1 of part O of chapter 61 of the laws of
10 2011, 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 VENDOR'S FEES TO BE PAID FOR SERVING AS A LOTTERY AGENT TO THE NASSAU
14 AND SUFFOLK REGIONAL OFF-TRACK BETTING CORPORATIONS OPERATORS AT AUTHOR-
15 IZED PARTICIPATING OFF-TRACK BETTING FACILITIES LICENSED PURSUANT TO
16 EITHER SECTION ONE THOUSAND EIGHT OR ONE THOUSAND NINE OF THE RACING,
17 PARI-MUTUEL WAGERING AND BREEDING LAW, WHICH FEES SHALL BE AGGREGATED
18 AND PAID IN EQUAL AMOUNTS TO THE COUNTIES OF NASSAU AND SUFFOLK:
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

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

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1 wagered at the vendor track after payout for prizes pursuant to this
2 chapter;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

50 As consideration for the operation of a video lottery gaming facility,
51 the division, shall cause the investment in the racing industry of a
52 portion of the vendor fee received pursuant to paragraph one of this
53 subdivision in the manner set forth in this subdivision. With the
54 exception of ANY VENDOR OFF-TRACK BETTING FACILITY AND Aqueduct race-
55 track, each such track shall dedicate a portion of its vendor fees,
56 received pursuant to clause (A), (B), (C), (D), (E), (F), or (G) of

subparagraph (ii) of paragraph one of this subdivision, solely for the purpose of enhancing purses at such track, in an amount equal to eight and three-quarters percent of the total revenue wagered at the vendor track after pay out for prizes. In addition, with the exception of Aqueduct racetrack, one and one-quarter percent of total revenue wagered at the vendor track after pay out for prizes, received pursuant to clause (A), (B), (C), (D), (E), (F), or (G) of subparagraph (ii) of paragraph one of this subdivision, shall be distributed to the appropriate breeding fund for the manner of racing conducted by such track.

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

a. The division of the lottery is hereby authorized to license, pursuant to rules and regulations to be promulgated by the division of the lottery, the operation of video lottery gaming at (1) Aqueduct, Monticello, Yonkers, Finger Lakes, and Vernon Downs racetracks, or at any other racetrack licensed pursuant to article three of the racing, pari-mutuel wagering and breeding law that are located in a county or counties in which video lottery gaming has been authorized pursuant to local law, excluding the licensed racetrack commonly referred to in article three of the racing, pari-mutuel wagering and breeding law as the "New York state exposition" held in Onondaga county and the racetracks of the non-profit racing association known as Belmont Park racetrack and the Saratoga thoroughbred racetrack; AND (2) AT ONE REGIONAL OFF-TRACK BETTING CORPORATION FACILITY LICENSED PURSUANT TO SECTION ONE THOUSAND EIGHT OR ONE THOUSAND NINE OF THE RACING, PARI-MUTUEL WAGERING AND BREEDING LAW WITHIN THE NASSAU REGION AND THE SUFFOLK REGION. Such rules and regulations shall provide, as a condition of licensure, that racetracks OR REGIONAL OFF-TRACK BETTING CORPORATIONS, AS CREATED BY SECTION FIVE HUNDRED TWO OF THE RACING, PARI-MUTUEL WAGERING AND BREEDING LAW, to be licensed are certified to be in compliance with all state and local fire and safety codes, that the division is afforded adequate space, infrastructure, and amenities consistent with industry standards for such video gaming operations as found at racetracks in other states, that racetrack OR REGIONAL OFF-TRACK BETTING CORPORATION employees involved in the operation of video lottery gaming pursuant to this section are licensed by the racing and wagering board, and such other terms and conditions of licensure as the division may establish. Notwithstanding any inconsistent provision of law, video lottery gaming at a racetrack OR REGIONAL OFF-TRACK BETTING CORPORATION pursuant to this section shall be deemed an approved activity for such racetrack OR REGIONAL OFF-TRACK BETTING CORPORATION under the relevant city, county, town, or village land use or zoning ordinances, rules, or regulations. No entity licensed by the division operating video lottery gaming pursuant to this section may house such gaming activity in a structure deemed or approved by the division as "temporary" for a duration of longer than eighteen-months. Nothing in this section shall prohibit the division from licensing an entity to operate video lottery gaming at an existing racetrack as authorized in this subdivision whether or not a different entity is licensed to conduct horse racing and pari-mutuel wagering at such racetrack pursuant to article two or three of the racing, pari-mutuel wagering and breeding law.

The division, in consultation with the [racing and wagering board] STATE GAMING COMMISSION, shall establish standards for approval of the temporary and permanent physical layout and construction of any facility or building devoted to a video lottery gaming operation. In reviewing

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