

5963--A

2013-2014 Regular Sessions

I N A S S E M B L Y

March 12, 2013

Introduced by M. of A. ENGLEBRIGHT, ZEBROWSKI, SWEENEY, RAMOS, BOYLAND, MONTESANO, GRAF -- Multi-Sponsored by -- M. of A. THIELE -- read once and referred to the Committee on Racing and Wagering -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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
5 COMMISSION, TO OPERATE VIDEO LOTTERY GAMING AT A CORPORATION'S FACILITY
6 WHICH IS LICENSED PURSUANT TO SECTION ONE THOUSAND EIGHT OR ONE THOUSAND
7 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 (F) as amended by section 1 of part T of chapter 59
11 of the laws of 2013, clause (H) as amended by chapter 454 of the laws of
12 2012, clause (I) as added by section 1 of part O of chapter 61 of the
13 laws of 2011, is amended to read as follows:
14 (ii) less a vendor's fee the amount of which is to be paid for serving
15 as a lottery agent to the track operator of a vendor track; AND LESS A
16 VENDOR'S FEE TO BE PAID FOR SERVING AS A LOTTERY AGENT TO THE REGIONAL
17 OFF-TRACK BETTING CORPORATION OPERATOR AT AN AUTHORIZED PARTICIPATING
18 OFF-TRACK BETTING FACILITY LICENSED PURSUANT TO EITHER SECTION ONE THOU-
19 SAND EIGHT OR ONE THOUSAND NINE OF THE RACING, PARI-MUTUEL WAGERING AND
20 BREEDING LAW:

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

LBD09719-03-3

1 (A) having fewer than one thousand one hundred video gaming machines,
2 at a rate of thirty-five percent for the first fifty million dollars
3 annually, twenty-eight percent for the next hundred million dollars
4 annually, and twenty-five percent thereafter of the total revenue
5 wagered at the vendor track after payout for prizes pursuant to this
6 chapter;

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

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

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

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

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

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

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

47 (G) notwithstanding clauses (A), (B), (C), (D), (E) and (F) of this
48 subparagraph, when no more than one vendor track located in the town of
49 Thompson in Sullivan county at the site of the former Concord Resort at
50 which a qualified capital investment has been made and no fewer than one
51 thousand full-time, permanent employees have been newly hired, is
52 located in Sullivan county and is within sixty miles from any gaming
53 facility in a contiguous state, then for a period of forty years the
54 vendor's fee shall equal the total revenue wagered at the vendor track
55 after payout of prizes pursuant to this subdivision reduced by the
56 greater of (i) twenty-five percent of total revenue after payout for

1 prizes for "video lottery games" or (ii) for the first eight years of
2 operation thirty-eight million dollars, and beginning in the ninth year
3 of operation such amount shall increase annually by the lesser of the
4 increase in the consumer price index or two percent, plus seven percent
5 of total revenue after payout of prizes. In addition, in the event the
6 vendor fee is calculated pursuant to subclause (i) of this clause, the
7 vendor's fee shall be further reduced by 11.11 percent of the amount by
8 which total revenue after payout for prizes exceeds two hundred fifteen
9 million dollars, but in no event shall such reduction exceed five
10 million dollars.

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

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

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

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

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

52 For the purposes of this section "recapture amount" shall mean the
53 difference between the amount of the vendor's fee paid to a vendor track
54 with a qualified capital investment, and the vendor fee otherwise paya-
55 ble to a vendor track pursuant to clause (F) of this subparagraph, that
56 is reimbursable by the vendor track to the division for payment into the

1 state treasury, to the credit of the state lottery fund created by
2 section ninety-two-c of the state finance law, due to an employment
3 shortfall pursuant to the following schedule only for the period of the
4 employment shortfall:

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

8 (ii) seventy-five percent of the recapture amount if the employment
9 shortfall is greater than thirty-three and one-third percent of the
10 employment goal;

11 (iii) forty-nine and one-half percent of the recapture amount if the
12 employment shortfall is greater than thirty percent of the employment
13 goal;

14 (iv) twenty-two percent of the recapture amount if the employment
15 shortfall is greater than twenty percent of the employment goal;

16 (v) eleven percent of the recapture amount if the employment shortfall
17 is greater than ten percent of the employment goal.

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

1 ment. In no event shall any vendor track OR VENDOR OFF-TRACK BETTING
2 FACILITY that receives a vendor fee pursuant to clause (F) or (G) of
3 this subparagraph be eligible for a vendor's capital award under this
4 section. Any operator of a vendor track OR VENDOR OFF-TRACK BETTING
5 FACILITY which has received a vendor's capital award, choosing to divest
6 the capital improvement toward which the award was applied, prior to the
7 full depreciation of the capital improvement in accordance with general-
8 ly accepted accounting principles, shall reimburse the state in amounts
9 equal to the total of any such awards. Any capital award not approved
10 for a capital expenditure at a video lottery gaming facility by April
11 first, two thousand fourteen shall be deposited into the state lottery
12 fund for education aid; and

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

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, subpara-
23 graph (iii) of paragraph 1 as amended by section 1 of part O-1 of chap-
24 ter 57 of the laws of 2009, and the opening paragraph of paragraph 2 as
25 amended by section 1 of part J of chapter 55 of the laws of 2013, are
26 amended to read as follows:

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

1 As consideration for the operation of a video lottery gaming facility,
2 the division, shall cause the investment in the racing industry of a
3 portion of the vendor fee received pursuant to paragraph one of this
4 subdivision in the manner set forth in this subdivision. With the
5 exception of ANY VENDOR OFF-TRACK BETTING FACILITY AND Aqueduct race-
6 track, each such track shall dedicate a portion of its vendor fees,
7 received pursuant to clause (A), (B), (C), (D), (E), (F), or (G) of
8 subparagraph (ii) of paragraph one of this subdivision, solely for the
9 purpose of enhancing purses at such track, in an amount equal to eight
10 and three-quarters percent of the total revenue wagered at the vendor
11 track after pay out for prizes. One percent of such purse enhancement
12 amount shall be paid to the gaming commission to be used exclusively to
13 promote and ensure equine health and safety in New York. Any portion of
14 such funding to the gaming commission unused during a fiscal year shall
15 be returned to the video lottery gaming operators on a pro rata basis in
16 accordance with the amounts originally contributed by each operator and
17 shall be used for the purpose of enhancing purses at such track. In
18 addition, with the exception of Aqueduct racetrack, one and one-quarter
19 percent of total revenue wagered at the vendor track after pay out for
20 prizes, received pursuant to clause (A), (B), (C), (D), (E), (F), or (G)
21 of subparagraph (ii) of paragraph one of this subdivision, shall be
22 distributed to the appropriate breeding fund for the manner of racing
23 conducted by such track.

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

27 a. The division of the lottery is hereby authorized to license, pursu-
28 ant to rules and regulations to be promulgated by the division of the
29 lottery, the operation of video lottery gaming at (1) Aqueduct, Monti-
30 cello, Yonkers, Finger Lakes, and Vernon Downs racetracks, or at any
31 other racetrack licensed pursuant to article three of the racing, pari-
32 mutuel wagering and breeding law that are located in a county or coun-
33 ties in which video lottery gaming has been authorized pursuant to local
34 law, excluding the licensed racetrack commonly referred to in article
35 three of the racing, pari-mutuel wagering and breeding law as the "New
36 York state exposition" held in Onondaga county and the racetracks of the
37 non-profit racing association known as Belmont Park racetrack and the
38 Saratoga thoroughbred racetrack; AND (2) AT ONE REGIONAL OFF-TRACK
39 BETTING CORPORATION FACILITY LICENSED PURSUANT TO SECTION ONE THOUSAND
40 EIGHT OR ONE THOUSAND NINE OF THE RACING, PARI-MUTUEL WAGERING AND
41 BREEDING LAW WITHIN ANY REGION IN WHICH NO PARTICIPATING COUNTY CONTAINS
42 EITHER A THOROUGHBRED OR STANDARD BRED RACETRACK LICENSED TO OPERATE BY
43 THE STATE GAMING COMMISSION. Such rules and regulations shall provide,
44 as a condition of licensure, that racetracks OR REGIONAL OFF-TRACK
45 BETTING CORPORATIONS, AS CREATED BY SECTION FIVE HUNDRED TWO OF THE
46 RACING, PARI-MUTUEL WAGERING AND BREEDING LAW, to be licensed are certi-
47 fied to be in compliance with all state and local fire and safety codes,
48 that the division is afforded adequate space, infrastructure, and amen-
49 ities consistent with industry standards for such video gaming oper-
50 ations as found at racetracks in other states, that racetrack OR
51 REGIONAL OFF-TRACK BETTING CORPORATION employees involved in the opera-
52 tion of video lottery gaming pursuant to this section are licensed by
53 the racing and wagering board, and such other terms and conditions of
54 licensure as the division may establish. Notwithstanding any inconsis-
55 tent provision of law, video lottery gaming at a racetrack OR REGIONAL
56 OFF-TRACK BETTING CORPORATION pursuant to this section shall be deemed

1 an approved activity for such racetrack OR REGIONAL OFF-TRACK BETTING
2 CORPORATION under the relevant city, county, town, or village land use
3 or zoning ordinances, rules, or regulations. No entity licensed by the
4 division operating video lottery gaming pursuant to this section may
5 house such gaming activity in a structure deemed or approved by the
6 division as "temporary" for a duration of longer than eighteen-months.
7 Nothing in this section shall prohibit the division from licensing an
8 entity to operate video lottery gaming at an existing racetrack as
9 authorized in this subdivision whether or not a different entity is
10 licensed to conduct horse racing and pari-mutuel wagering at such race-
11 track pursuant to article two or three of the racing, pari-mutuel wager-
12 ing and breeding law.

13 The division, in consultation with the [racing and wagering board]
14 STATE GAMING COMMISSION, shall establish standards for approval of the
15 temporary and permanent physical layout and construction of any facility
16 or building devoted to a video lottery gaming operation. In reviewing
17 such application for the construction or reconstruction of facilities
18 related or devoted to the operation or housing of video lottery gaming
19 operations, the division, in consultation with the racing and wagering
20 board, shall ensure that such facility:

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

24 (2) has adequate motor vehicle parking facilities to satisfy patron
25 requirements.

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

29 S 5. This act shall take effect the first of January next succeeding
30 the date on which it shall have become a law.