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

4989--A

2013-2014 Regular Sessions

I N S E N A T E

May 2, 2013

Introduced by Sen. BOYLE -- read twice and ordered printed, and when printed to be committed to the Committee on Racing, Gaming 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:

Section 1. Section 503 of the racing, pari-mutuel wagering and breeding law is amended by adding a new subdivision 10-a to read as follows:

10-A. IN A REGION IN WHICH NO PARTICIPATING COUNTY CONTAINS EITHER A THOROUGHBRED OR STANDARDBRED RACETRACK LICENSED TO OPERATE VIDEO LOTTERY GAMING, AT SUCH A CORPORATION'S FACILITY WHICH IS LICENSED PURSUANT TO SECTION ONE THOUSAND EIGHT OR ONE THOUSAND NINE OF THIS CHAPTER OPERATE VIDEO LOTTERY GAMING;

S 2. Subparagraph (ii) of paragraph 1 of subdivision b of section 1612 of the tax law, as amended by section 6 of part K of chapter 57 of the laws of 2010, clause (F) as amended by section 1 of part T of chapter 59 of the laws of 2013, clause (H) as amended by chapter 454 of the laws of 2012, clause (I) as added by section 1 of part O of chapter 61 of the laws of 2011, is amended to read as follows:

(ii) less a vendor's fee the amount of which is to be paid for serving as a lottery agent to the track operator of a vendor track; AND LESS A VENDOR'S FEE TO BE PAID FOR SERVING AS A LOTTERY AGENT TO THE REGIONAL OFF-TRACK BETTING CORPORATION OPERATOR AT AN AUTHORIZED PARTICIPATING OFF-TRACK BETTING FACILITY LICENSED PURSUANT TO EITHER SECTION ONE THOUSAND EIGHT OR ONE THOUSAND NINE OF THE RACING, PARI-MUTUEL WAGERING AND BREEDING LAW:

(A) having fewer than one thousand one hundred video gaming machines, at a rate of thirty-five percent for the first fifty million dollars

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

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annually, twenty-eight percent for the next hundred million dollars annually, and twenty-five percent thereafter of the total revenue wagered at the vendor track after payout for prizes pursuant to this chapter;

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

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

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

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

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

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

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

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

of operation such amount shall increase annually by the lesser of the increase in the consumer price index or two percent, plus seven percent of total revenue after payout of prizes. In addition, in the event the vendor fee is calculated pursuant to subclause (i) of this clause, the vendor's fee shall be further reduced by 11.11 percent of the amount by which total revenue after payout for prizes exceeds two hundred fifteen million dollars, but in no event shall such reduction exceed five million dollars.

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

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

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

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

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

For the purposes of this section "recapture amount" shall mean the difference between the amount of the vendor's fee paid to a vendor track with a qualified capital investment, and the vendor fee otherwise payable to a vendor track pursuant to clause (F) of this subparagraph, that is reimbursable by the vendor track to the division for payment into the state treasury, to the credit of the state lottery fund created by section ninety-two-c of the state finance law, due to an employment

shortfall pursuant to the following schedule only for the period of the employment shortfall:

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

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

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

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

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

(H) notwithstanding clauses (A), (B), (C), (D), (E), (F) and (G) of this subparagraph, the track operator of a vendor track OR OFF-TRACK BETTING OPERATOR OF A VENDOR OFF-TRACK BETTING CORPORATION shall be eligible for a vendor's capital award of up to four percent of the total revenue wagered at the vendor track OR VENDOR OFF-TRACK BETTING FACILITY after payout for prizes pursuant to this chapter, which shall be used exclusively for capital project investments to improve the facilities of the vendor track which promote or encourage increased attendance at the video lottery gaming facility including, but not limited to hotels, other lodging facilities, entertainment facilities, retail facilities, dining facilities, events arenas, parking garages and other improvements that enhance facility amenities; provided that such capital investments shall be approved by the division, in consultation with the state [racing and wagering board] GAMING COMMISSION, and that such vendor track OR VENDOR OFF-TRACK BETTING FACILITY demonstrates that such capital expenditures will increase patronage at such vendor track's OR VENDOR'S OFF-TRACK BETTING facilities and increase the amount of revenue generated to support state education programs. The annual amount of such vendor's capital awards that a vendor track shall be eligible to receive shall be limited to two million five hundred thousand dollars, except for Aqueduct racetrack, for which there shall be no vendor's capital awards. Except for tracks OR OFF-TRACK BETTING FACILITIES having less than one thousand one hundred video gaming machines, each track operator OR OFF-TRACK BETTING FACILITY OPERATOR shall be required to co-invest an amount of capital expenditure equal to its cumulative vendor's capital award. For all tracks OR OFF-TRACK BETTING FACILITIES, except for Aqueduct racetrack, the amount of any vendor's capital award that is not used during any one year period may be carried over into subsequent years ending before April first, two thousand fourteen. Any amount attributable to a capital expenditure approved prior to April first, two thousand fourteen and completed before April first, two thousand sixteen shall be eligible to receive the vendor's capital award. In the event that a vendor track's capital expenditures, approved by the division prior to April first, two thousand fourteen and completed prior to April first, two thousand sixteen, exceed the vendor track's cumulative capital award during the five year period ending April first, two thousand fourteen, the vendor shall continue to receive the capital award after April first, two thousand fourteen until such approved capital expenditures are paid to the vendor track subject to any required co-investment. In no event shall any vendor track OR VENDOR OFF-TRACK BETTING FACILITY that receives a vendor fee pursuant to clause (F) or (G) of

this subparagraph be eligible for a vendor's capital award under this section. Any operator of a vendor track OR VENDOR OFF-TRACK BETTING FACILITY which has received a vendor's capital award, choosing to divest the capital improvement toward which the award was applied, prior to the full depreciation of the capital improvement in accordance with generally accepted accounting principles, shall reimburse the state in amounts equal to the total of any such awards. Any capital award not approved for a capital expenditure at a video lottery gaming facility by April first, two thousand fourteen shall be deposited into the state lottery fund for education aid; and

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

S 3. Subparagraph (iii) of paragraph 1 and the opening paragraph of paragraph 2 of subdivision b of section 1612 of the tax law, subparagraph (iii) of paragraph 1 as amended by section 1 of part O-1 of chapter 57 of the laws of 2009, and the opening paragraph of paragraph 2 as amended by section 1 of part J of chapter 55 of the laws of 2013, are amended to read as follows:

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

As consideration for the operation of a video lottery gaming facility, the division, shall cause the investment in the racing industry of a portion of the vendor fee received pursuant to paragraph one of this

subdivision in the manner set forth in this subdivision. With the exception of ANY VENDOR OFF-TRACK BETTING FACILITY AND Aqueduct racetrack, each such track shall dedicate a portion of its vendor fees, 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. One percent of such purse enhancement amount shall be paid to the gaming commission to be used exclusively to promote and ensure equine health and safety in New York. Any portion of such funding to the gaming commission unused during a fiscal year shall be returned to the video lottery gaming operators on a pro rata basis in accordance with the amounts originally contributed by each operator and shall be used for the purpose of enhancing purses at such track. 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 ANY REGION IN WHICH NO PARTICIPATING COUNTY CONTAINS EITHER A THOROUGHBRED OR STANDARDBRED RACETRACK LICENSED TO OPERATE VIDEO LOTTERY GAMING BY THE STATE GAMING COMMISSION ON THE EFFECTIVE DATE OF THE CHAPTER OF THE LAWS OF TWO THOUSAND THIRTEEN WHICH ADDED THIS PARAGRAPH. 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 such application for the construction or reconstruction of facilities related or devoted to the operation or housing of video lottery gaming operations, the division, in consultation with the racing and wagering board, shall ensure that such facility:

(1) possesses superior consumer amenities and conveniences to encourage and attract the patronage of tourists and other visitors from across the region, state, and nation.

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

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

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