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

7851--A

2015-2016 Regular Sessions

I N A S S E M B L Y

May 28, 2015

Introduced by M. of A. PRETLOW -- read once and referred to the Committee on Racing and Wagering -- recommitted to the Committee on Racing and Wagering in accordance with Assembly Rule 3, sec. 2 -- 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 certain fiscal requirements imposed with respect to conducting horse races at raceways and racetracks

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

Section 1. Subclauses (i) and (ii) of clause (E) of subparagraph 5 of paragraph b of subdivision 1 of section 1016 of the racing, pari-mutuel wagering and breeding law, as amended by chapter 18 of the laws of 2008, are amended to read as follows:

(i) Such licensed regional harness track shall receive in lieu of any other payments on wagers placed at off-track betting facilities outside the special betting district on races conducted by an in-state thoroughbred racing corporation, two and eight-tenths percent on regular and multiple bets *MADE PRIOR TO JANUARY FIRST, TWO THOUSAND SEVENTEEN, TWO AND ONE-TENTHS PERCENT ON SUCH BETS MADE ON AND AFTER JANUARY FIRST, TWO THOUSAND SEVENTEEN AND ENDING DECEMBER THIRTY-FIRST, TWO THOUSAND SEVENTEEN, AND ONE AND FOUR-TENTHS PERCENT ON SUCH BETS MADE ON AND AFTER JANUARY FIRST, TWO THOUSAND EIGHTEEN* during a regional meeting and one and nine-tenths percent of such bets *MADE PRIOR TO JANUARY FIRST, TWO THOUSAND SEVENTEEN, ONE AND FOUR HUNDRED TWENTY-FIVE THOUSANDTHS PERCENT ON SUCH BETS MADE ON AND AFTER JANUARY FIRST, TWO THOUSAND SEVENTEEN AND ENDING DECEMBER THIRTY-FIRST, TWO THOUSAND SEVENTEEN, AND FOUR-TENTHS PERCENT ON SUCH BETS MADE ON AND AFTER JANUARY FIRST, TWO THOUSAND EIGHTEEN* if there is no regional meeting and four and eight-tenths percent on exotic bets *MADE PRIOR TO JANUARY FIRST, TWO THOUSAND SEVENTEEN, THREE AND SIX-TENTHS PERCENT ON SUCH BETS MADE ON AND AFTER JANUARY*

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

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FIRST, TWO THOUSAND SEVENTEEN, AND TWO AND FOUR-TENTHS PERCENT ON SUCH BETS MADE ON AND AFTER JANUARY FIRST, TWO THOUSAND EIGHTEEN on days on which there is a regional meeting and three and four-tenths percent of such bets MADE PRIOR TO JANUARY FIRST, TWO THOUSAND SEVENTEEN, TWO AND FIFTY-FIVE ONE HUNDREDTHS PERCENT ON SUCH BETS MADE ON AND AFTER JANUARY FIRST, TWO THOUSAND SEVENTEEN AND ENDING DECEMBER THIRTY-FIRST, TWO THOUSAND SEVENTEEN, AND ONE AND SEVEN-TENTHS PERCENT ON SUCH BETS MADE ON AND AFTER JANUARY FIRST, TWO THOUSAND EIGHTEEN if there is no regional meeting.

(ii) [Such] A licensed regional harness track shall receive one and one-half per centum on total regional handle on races conducted at out-of-state or out-of-country thoroughbred tracks PRIOR TO JANUARY FIRST, TWO THOUSAND SEVENTEEN, ONE AND ONE HUNDRED TWENTY-FIVE THOUSANDTHS PER CENTUM ON SUCH HANDLE REALIZED ON AND AFTER JANUARY FIRST, TWO THOUSAND SEVENTEEN AND ENDING DECEMBER THIRTY-FIRST, TWO THOUSAND SEVENTEEN, AND THREE-QUARTERS OF ONE PER CENTUM ON SUCH HANDLE REALIZED ON AND AFTER JANUARY FIRST, TWO THOUSAND EIGHTEEN.

S 2. Clause (G) of subparagraph 6 of paragraph b of subdivision 1 of section 1016 of the racing, pari-mutuel wagering and breeding law, as amended by chapter 18 of the laws of 2008, is amended to read as follows:

(G) Of the sums retained by a licensed harness facility, PRIOR TO JANUARY FIRST, TWO THOUSAND SEVENTEEN, fifty percent shall be used exclusively for purses awarded in races conducted by such licensed facility and the remaining fifty percent shall be retained by such licensed facility for its general purposes, FOR THE PERIOD BEGINNING JANUARY FIRST, TWO THOUSAND SEVENTEEN AND ENDING DECEMBER THIRTY-FIRST, TWO THOUSAND SEVENTEEN, SEVENTY-FIVE PERCENT SHALL BE USED EXCLUSIVELY FOR PURSES AWARDED IN RACES CONDUCTED BY SUCH LICENSED FACILITY AND THE REMAINING TWENTY-FIVE PERCENT SHALL BE RETAINED BY SUCH LICENSED FACILITY FOR ITS GENERAL PURPOSES, AND ON AND AFTER JANUARY FIRST, TWO THOUSAND EIGHTEEN ONE HUNDRED PERCENT SHALL BE USED EXCLUSIVELY FOR PURSES AWARDED IN RACES CONDUCTED BY SUCH LICENSED FACILITY provided, however, that in a harness special betting district the portion of the sums retained by a licensed harness facility to be used for purses or the methodology for calculating the amount to be used for purses may be specified in a written contract between a harness racing association or corporation and its representative horsemen's association.

S 3. Paragraph a of subdivision 2 of section 1017 of the racing, pari-mutuel wagering and breeding law, as amended by chapter 174 of the laws of 2013, is amended to read as follows:

a. Maintenance of effort. Any off-track betting corporation which engages in accepting wagers on the simulcasts of thoroughbred races from out-of-state or out-of-country as permitted under subdivision one of this section shall submit to the commission, for its approval, a schedule of payments to be made in any year or portion thereof, that such off-track corporation engages in nighttime thoroughbred simulcasting. In order to be approved by the commission, PRIOR TO JANUARY FIRST, TWO THOUSAND SEVENTEEN, the payment schedule shall be identical to the actual payments and distributions of such payments to tracks and purses made by such off-track corporation pursuant to the provisions of section one thousand fifteen of this article during the year two thousand two, as derived from out-of-state harness races displayed after 6:00 P.M. FOR THE PERIOD BEGINNING ON AND AFTER JANUARY FIRST, TWO THOUSAND SEVENTEEN, THE PAYMENT SCHEDULE SHALL BE IDENTICAL TO THE ACTUAL PAYMENTS AND DISTRIBUTIONS OF SUCH PAYMENTS TO PURSES MADE BY SUCH OFF-TRACK CORPO-

RATION PURSUANT TO THE PROVISIONS OF SECTION ONE THOUSAND FIFTEEN OF THIS ARTICLE DURING THE YEAR TWO THOUSAND THREE, AS DERIVED FROM OUT-OF-STATE HARNESS RACES DISPLAYED AFTER 6:00 P.M. FOR THE PERIOD BEGINNING JANUARY FIRST, TWO THOUSAND SEVENTEEN AND ENDING DECEMBER THIRTY-FIRST, TWO THOUSAND SEVENTEEN, TWENTY-FIVE PERCENT OF SUCH PAYMENTS AND DISTRIBUTIONS OF PAYMENTS SHALL BE MADE TO TRACKS, AND ON AND AFTER JANUARY FIRST, TWO THOUSAND EIGHTEEN NO SUCH PAYMENTS AND DISTRIBUTIONS OF PAYMENTS SHALL BE MADE TO TRACKS. If approved by the commission, such scheduled payments shall be made from revenues derived from any simulcasting conducted pursuant to this section and section one thousand fifteen of this article.

S 4. Clause (G) of subparagraph (ii) of paragraph 1 of subdivision b of section 1612 of the tax law, as added by chapter 174 of the laws of 2013, is amended to read as follows:

(G) Notwithstanding any provision to the contrary, when a vendor track is located within regions one, two, or five of development zone two as defined by section thirteen hundred ten of the racing, pari-mutuel wagering and breeding law OR IS LOCATED WITHIN ONTARIO COUNTY, such vendor track shall receive an additional commission at a rate equal to the percentage of revenue wagered at the vendor track after payout for prizes pursuant to this chapter less ten percent retained by the commission for operation, administration, and procurement purposes and payment of the vendor's fee, marketing allowance, and capital award paid pursuant to this chapter and the effective tax rate paid on all gross gaming revenue paid by a gaming facility within the same region pursuant to section thirteen hundred fifty-one of the racing, pari-mutuel wagering and breeding law. FOR PURPOSES OF THIS CLAUSE THE EFFECTIVE TAX RATE FOR A TRACK LOCATED IN ONTARIO COUNTY SHALL BE DEEMED TO BE THE EFFECTIVE TAX RATE APPLICABLE TO A VENDOR TRACK LOCATED IN REGION FIVE OF DEVELOPMENT ZONE TWO AS DEFINED IN SECTION THIRTEEN HUNDRED TEN OF THE RACING, PARI-MUTUEL WAGERING AND BREEDING LAW. The additional commission shall be paid to the vendor track within sixty days after the conclusion of the state fiscal year based on the calculated percentage during the previous fiscal year.

S 5. Subparagraph (iii) of paragraph 1 of subdivision b of section 1612 of the tax law, as separately amended by chapters 174 and 175 of the laws of 2013, is amended to read as follows:

(iii) less an additional vendor's marketing allowance at a rate of [ten] ELEVEN percent for the first one hundred million dollars annually, NINE PERCENT FOR THE NEXT ONE HUNDRED MILLION DOLLARS ANNUALLY, and eight percent thereafter of the total revenue wagered at the vendor track after payout for prizes to be used by the vendor track 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] ELEVEN percent in any year for any operator of a racetrack located in the county of Westchester or Queens; provided, however, a vendor track that receives a vendor fee pursuant to clause (G) of subparagraph (ii) of this paragraph shall not receive [the additional vendor's] A marketing allowance WHICH IS NOT LESS THAN THE VENDOR'S MARKETING ALLOWANCE RECEIVED IN TWO THOUSAND FIFTEEN; provided, however, except for a vendor track located west of State Route 14 from

Sodus Point to the Pennsylvania border within New York shall continue to receive a marketing allowance of [ten] ELEVEN percent on total revenue wagered at the vendor track after payout for prizes in excess of one hundred million dollars annually provided, however, a vendor that receives a vendor fee pursuant to clause (G-1) of subparagraph (ii) of this paragraph shall receive an additional marketing allowance at a rate of [ten] ELEVEN percent of the total revenue wagered at the video lottery gaming facility after payout for prizes. In establishing the vendor fee,

S 6. Clause (H) of subparagraph (ii) of paragraph 1 of subdivision b of section 1612 of the tax law, as amended by section 1 of part MM of chapter 59 of the laws of 2015, is amended to read as follows:

(H) notwithstanding clauses (A), (B), (C), (D), (E), (F) and (G) of this subparagraph, the track operator of a vendor track, INCLUDING AQUEDUCT RACETRACK AND A TRACK LOCATED IN SULLIVAN COUNTY, shall be eligible for a vendor's capital award of up to [four] FIVE percent of the total revenue wagered at the vendor track 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, and that such vendor track demonstrates that such capital expenditures will increase patronage at such vendor track's 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] FOUR million [five hundred thousand] dollars, except for Aqueduct racetrack[, for which there shall be no vendor's capital awards] AND A TRACK LOCATED IN WESTCHESTER COUNTY, WHICH SHALL EACH BE ELIGIBLE TO RECEIVE NO MORE THAN FIFTEEN MILLION DOLLARS. Except for tracks having less than one thousand one hundred video gaming machines, and except for a vendor track located west of State Route 14 from Sodus Point to the Pennsylvania border within New York, AND A VENDOR TRACK LOCATED IN EITHER SULLIVAN OR SARATOGA COUNTY, each track operator shall be required to co-invest an amount of capital expenditure equal to its cumulative vendor's capital award. For all tracks[, 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 [sixteen] TWENTY. Any amount attributable to a capital expenditure approved prior to April first, two thousand [sixteen] TWENTY and completed before April first, two thousand [eighteen] TWENTY-TWO; [or approved prior to April first, two thousand twenty and completed before April first, two thousand twenty-two for a vendor track located west of State Route 14 from Sodus Point to the Pennsylvania border within New York,] 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 [sixteen] TWENTY and completed prior to April first, two thousand [eighteen] TWENTY-TWO, exceed the vendor track's cumulative capital award during the five year period ending April first, two thousand [sixteen] TWENTY, the vendor shall continue to receive the capital award after April first, two thousand [sixteen] TWENTY until such approved capital expenditures are paid to

the vendor track subject to any required co-investment. [In no event shall any vendor track 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 which has received a vendor's capital award, choosing to [divest] SELL 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 [sixteen] TWENTY shall be deposited into the state lottery fund for education aid; and

S 7. Paragraph 2 of subdivision c of section 1612 of the tax law, as amended by chapter 174 of the laws of 2013, is amended to read as follows:

2. Of the ten percent retained by the division for administrative purposes, any amounts beyond that which are necessary for the operation and administration of this [pilot] program shall be [deposited in the lottery education account] MADE AVAILABLE FOR CAPITAL AWARDS.

S 8. This act shall take effect immediately.