STATE OF NEW YORK

5496

2019-2020 Regular Sessions

IN ASSEMBLY

February 12, 2019

Introduced by M. of A. PRETLOW -- read once and referred to the Committee on Racing and Wagering

AN ACT to amend the tax law and the racing, pari-mutuel wagering and breeding law, in relation to the Catskill regional off-track betting corporation; and repealing certain provisions of the racing, pari-mutuel wagering and breeding law relating thereto

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Paragraph 1 of subdivision a of section 1617-a of the tax law, as amended by section 1 of part SS of chapter 60 of the laws of 2016, is amended to read as follows:

(1) Aqueduct, [~~Monticello,~~] Yonkers, Finger Lakes, and Vernon Downs racetracks;

§ 2. Paragraphs 3 and 4 of subdivision a of section 1617-a of the tax law, as added by section 1 of part SS of chapter 60 of the laws of 2016, are amended and a new paragraph 5 is added to read as follows:

(3) a maximum of two facilities, which shall be vendors for all purposes under this article, neither to exceed one thousand video lottery gaming devices, established within region three of zone one as defined by section one thousand three hundred ten of the racing, pari-mutuel wagering and breeding law, one each operated by a corporation established pursuant to section five hundred two of the racing, pari-mutuel wagering and breeding law in the Suffolk region and the Nassau region to be located within a facility authorized pursuant to sections one thousand eight or one thousand nine of the racing, pari-mutuel wagering and breeding law; [~~and~~]

(4) Aqueduct racetrack, within the lottery terminal facility, pursuant to an agreement between the corporation established pursuant to section five hundred two of the racing, pari-mutuel wagering and breeding law in the Nassau region and the operator of video lottery gaming at Aqueduct racetrack, when such agreement is approved by the gaming commission and

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

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as long as such agreement is in place, and when such agreement is accompanied by a detailed spending plan for the corporation established pursuant to section five hundred two of the racing, pari-mutuel wagering and breeding law in the Nassau region, which includes a plan for the timely payment of liabilities due to the franchised corporation, and when such video lottery devices are hosted by the operator of video lottery gaming at Aqueduct racetrack on behalf of the corporation established pursuant to section five hundred two of the racing, pari-mutuel wagering and breeding law in the Nassau region in lieu of the development of a facility in Nassau county as authorized by paragraph three of **this** subdivision [~~**a of this section**~~]. Such agreement reached by the parties shall identify the agency principally responsible for funding, approving or undertaking any actions of such agreement. Provided, however, nothing in this paragraph shall infringe upon the rights of the corporation established pursuant to section five hundred two of the racing, pari-mutuel wagering and breeding law in the Nassau region to develop a facility pursuant to paragraph three of this subdivision upon the expiration, termination, or withdrawal of such agreement[~~.~~]**; and**

(5) a maximum of three facilities, which shall be vendors for all purposes under this article, with a total of one thousand one hundred ten video lottery gaming devices in the county of Broome, Chemung, Chenango, Delaware, Orange, Rockland, Dutchess, Tompkins, Putnam or Ulster and to be operated by a corporation established pursuant to section five hundred two of the racing, pari-mutuel wagering and breeding law, and located within a facility authorized pursuant to section one thousand eight or one thousand nine of the racing, pari-mutuel wagering and breeding law.

§ 3. Clause (G-1) of subparagraph (ii) of paragraph 1 of subdivision b of section 1612 of the tax law, as amended by chapter 175 of the laws of 2013, is amended to read as follows:

(G-1) Notwithstanding [~~**clause**~~] **clauses** (A) and (B) of this subparagraph, when a video lottery gaming facility is located in [~~**either**~~] the county of **Broome, Chemung, Chenango, Delaware, Orange, Rockland, Dutchess, Tompkins, Putnam, Ulster,** Nassau or Suffolk and is operated by a corporation established pursuant to section five hundred two of the racing, pari-mutuel wagering and breeding law at a rate of thirty-five percent of the total revenue wagered at the vendor after payout for prizes pursuant to this chapter;

§ 4. Paragraph 2 of subdivision b of section 1612 of the tax law, as amended by section 1 of part OO of chapter 59 of the laws of 2014, is amended to read as follows:

2. 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 Aqueduct racetrack or a facility in the county of Nassau or Suffolk operated by a corporation established pursuant to section five hundred two of the racing, pari-mutuel wagering and breeding law, 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, 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. **Any video lottery gaming facility in the Catskill region, as defined in section five hundred nineteen of the racing, pari-mutuel wagering and breeding law and to be operated by a corporation estab-**

lished pursuant to section five hundred two of the racing, pari-mutuel wagering and breeding law, shall dedicate a portion of its vendor fee for the purpose of enhancing purses at Monticello racetrack in an amount equal to eight and three-quarters percent of the total revenue wagered at the facility after pay out for prizes. One percent of the gross purse enhancement amount, as required by this subdivision, 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. One and one-half percent of the gross purse enhancement amount at a thoroughbred track, as required by this subdivision, shall be paid to an account established pursuant to section two hundred twenty-one-a of the racing, pari-mutuel wagering and breeding law to be used exclusively to provide health insurance for jockeys. In addition, with the exception of Aqueduct race-track or a facility in the county of Nassau or Suffolk operated by a corporation established pursuant to section five hundred two of the racing, pari-mutuel wagering and breeding law, 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.

Provided, further, that as additional consideration for the operation of video lottery terminal facilities, the Catskill regional off-track betting corporation shall maintain the same number of race dates at Monticello racetrack being conducted at the time it receives a license to conduct harness race meetings at such racetrack.

Provided, further, that nothing in this paragraph shall prevent each track from entering into an agreement, not to exceed five years, with the organization authorized to represent its horsemen to increase or decrease the portion of its vendor fee dedicated to enhancing purses at such track during the years of participation by such track, or to race fewer dates than required herein.

§ 5. Section 1612 of the tax law is amended by adding a new subdivision g to read as follows:

g. As consideration for operation of a video lottery gaming facility located in the county of Broome, Chemung, Chenango, Delaware, Orange, Rockland, Dutchess, Tompkins, Putnam, or Ulster, and operated by a corporation established pursuant to section five hundred two of the racing, pari-mutuel wagering and breeding law, the division shall cause the vendor's fee to be distributed as follows after the pay out of racing support payments: (1) twenty percent shall be transferred to the county in which the vendor facility is located; and (2) the remainder shall be used for payment of the costs of the corporation's functions pursuant to section five hundred sixteen of the racing, pari-mutuel wagering and breeding law, and the net revenue remaining after payment of such costs shall be divided among the participating counties listed in this paragraph on the basis of population as defined in paragraph b of subdivision two of section five hundred sixteen of the racing, pari-mutuel wagering and breeding law.

§ 6. Section 301 of the racing, pari-mutuel wagering and breeding law is amended by adding a new subdivision 6 to read as follows:

6. The board shall have the power to issue licenses to the Catskill regional off-track betting corporation or to a subsidiary of said corporation for the purpose of conducting harness race meetings at Monticello racetrack and to make capital improvements to said track, provided that such corporation meets the terms and conditions for licensure as provided under this article. Notwithstanding the provisions of articles five and five-a of this chapter, said corporation shall be deemed to be a harness racing corporation with respect to pari-mutuel wagering conducted at said track pursuant to this chapter, except that net revenues derived from such pari-mutuel wagering shall be distributed among the counties that participate in such corporation on the basis of population, as defined as the total population in each participating county shown by the latest preceding decennial federal census of the calendar year in which such distribution is to be made.

§ 7. The opening paragraph of subdivision 1 of section 527 of the racing, pari-mutuel wagering and breeding law, as amended by section 4 of part BB of chapter 60 of the laws of 2016, is amended to read as follows:

The disposition of the retained commission from pools resulting from regular, multiple or exotic bets, as the case may be, whether placed on races run within a region or outside a region, conducted by racing corporations, harness racing associations or corporations, quarter horse racing associations or corporations or races run outside the state shall be governed by the tables in paragraphs a and b of this subdivision. The rate denominated "state tax" shall represent the rate of a reasonable tax imposed upon the retained commission for the privilege of conducting off-track pari-mutuel betting, which tax is hereby levied and shall be payable in the manner set forth in this section. Each off-track betting corporation shall pay to the gaming commission as a regulatory fee, which fee is hereby levied, six-tenths of one percent of the total daily pools of such corporation. Each corporation shall also pay twenty percent of the breaks derived from bets on harness races and fifty percent of the breaks derived from bets on all other races to the agriculture and New York State horse breeding and development fund and to the thoroughbred breeding and development fund, the total of such payments to be apportioned fifty percent to each such fund. For the purposes of this section, the New York city, Suffolk, Nassau, and the Catskill regions shall constitute a single region and any thoroughbred track located within the Capital District region shall be deemed to be within such single region. A "regional meeting" shall refer to either harness or thoroughbred meetings, or both, except that a franchised corporation shall not be a regional track for the purpose of receiving distributions from bets on thoroughbred races conducted by a thoroughbred track in the Catskill region conducting a mixed meeting. With the exception of a harness racing association or corporation first licensed to conduct pari-mutuel wagering at a track located in Tioga [~~or~~], Saratoga **or Sullivan** county after January first, two thousand five, racing corporations first licensed to conduct pari-mutuel racing after January first, nineteen hundred eighty-six or a harness racing association or corporation first licensed to conduct pari-mutuel wagering at a track located in Genesee County after January first, two thousand five, and quarter horse tracks shall not be "regional tracks"; if there is more than one harness track within a region, such tracks shall evenly divide payments made pursuant to the tables in paragraphs a and b of this subdivision when neither track is running. In the event a track elects to reduce its retained percentage from any or all of its pari-mutuel

pools, the payments to the track holding the race and the regional track required by paragraphs a and b of this subdivision shall be reduced in proportion to such reduction. Nothing in this section shall be construed to authorize the conduct of off-track betting contrary to the provisions of section five hundred twenty-three of this article.

§ 8. Section 509-a of the racing, pari-mutuel wagering and breeding law, as added by chapter 681 of the laws of 1989, the opening paragraph as amended by chapter 346 of the laws of 1990, is amended to read as follows:

§ 509-a. Capital acquisition fund. **1.** The corporation may create and establish a capital acquisition fund for the purpose of financing the acquisition, construction or equipping of offices, facilities or premises of the corporation. Such capital acquisition fund shall consist of (i) the amounts specified pursuant to subdivision three-a of section five hundred thirty-two of this chapter; and (ii) contributions from the corporation's pari-mutuel wagering pools, subject to the following limitations:

[~~(1)~~] **a.** no contribution shall exceed the amount of one percent of the total pari-mutuel wagering pools for the quarter in which the contribution is made;

[~~(2)~~] **b.** no contribution shall reduce the amount of quarterly net revenues, exclusive of surcharge revenues, to an amount less than fifty percent of such net revenues; and

[~~(3)~~] **c.** the balance of the fund shall not exceed the lesser of one percent of total pari-mutuel wagering pools for the previous twelve months or the undepreciated value of the corporation's offices, facilities and premises.

2. Notwithstanding any other provision of law or regulation to the contrary, funds in the Catskill off-track betting corporation's capital acquisition fund established pursuant to this section shall be available to the Catskill off-track betting corporation for corporate purposes pursuant to this section until the fund has been exhausted.

§ 9. Subdivision 2 of section 529 of the racing, pari-mutuel wagering and breeding law is amended to read as follow:

2. [~~Ninety-five percent of the balance of such account remaining unclaimed as of the last day of February of such year shall be paid to the state tax commission by March fifteenth. On or before April tenth of each year the balance of such account and any other unclaimed amounts received in the course of conducting off-track betting shall be paid by such corporation to the state tax commission. A penalty of five percent and interest at the rate of one percent per month from the due date to the date of payment of the unclaimed balance due March fifteenth or April tenth, as the case may be, shall be payable in case such balance is not paid when due. Such amounts, interest and penalties when collected by the state tax commission shall be deposited into the general fund of the state treasury.~~] **The balance of such account remaining unclaimed as of April first of such year shall be transferred to the regional corporation's operating account and may be used for any corporate purposes.**

§ 10. Clause (E) of subparagraph 5 of paragraph b of subdivision 1 of section 1016 of the racing, pari-mutuel wagering and breeding law is REPEALED and clause (F) is relettered clause (E).

§ 11. Clause (F) of subparagraph 6 of paragraph b of subdivision 1 of section 1016 of the racing, pari-mutuel wagering and breeding law is REPEALED and clause (G) is relettered clause (F).

§ 12. Subdivision 2 of section 1017 of the racing, pari-mutuel wagering and breeding law is REPEALED.

§ 13. Subdivision 1 of section 519 of the racing, pari-mutuel wagering and breeding law, paragraph e as amended by chapter 260 of the laws of 1987, paragraphs f, g and h as amended by chapter 125 of the laws of 1997, is amended to read as follows:

1. "Region." One or more of the following named regions comprised of the counties indicated:

a. Suffolk: Suffolk county;

b. Nassau: Nassau county;

c. [~~New York city: the five counties comprising the city of New York;~~ ~~d.~~] Catskill: Broome, Chemung, Chenango, Delaware, Orange, Rockland, Sullivan, Tioga, Dutchess, Tompkins, Westchester, Putnam and Ulster counties;

[~~e.~~] d. Capital District: Albany, Clinton, Columbia, Cortland, Essex, Franklin, Fulton, Greene, Hamilton, Herkimer, Madison, Montgomery, Oneida, Otsego, Rensselaer, Saratoga, Schenectady, Schoharie, St. Lawrence, Warren and Washington counties;

[~~f.~~] e. Central: Lewis and Onondaga counties;

[~~g.~~] f. Western: Allegany, Cattaraugus, Cayuga, Chautauqua, Erie, Genesee, Jefferson, Livingston, Monroe, Niagara, Ontario, Orleans, Oswego, Schuyler, Seneca, Steuben, Wayne, Wyoming and Yates counties;

[~~h.~~] g. Notwithstanding the other provisions of this subdivision, when and if the Central regional off-track betting corporation is established, it shall include, in addition to the counties listed in paragraph [~~f~~] e of this subdivision, the following: Cayuga, Chenango, Cortland, Franklin, Herkimer, Jefferson, Madison, Oneida, Oswego, Otsego and Tompkins counties.

§ 14. The racing, pari-mutuel wagering and breeding law is amended by adding four new sections 517-a, 517-b, 517-c and 517-d to read as follows:

§ 517-a. Catskill off-track betting corporation site approval. 1. The purchase or lease of any property to be used in whole or in part as an off-track betting facility by the Catskill off-track betting corporation in the city of New York shall be conditioned on the approval of the mayor of the city of New York; and with respect to a branch office located wholly or partly within a borough of the city, approval shall also be required by such borough president or their designee. The mayor or borough president's failure to act within thirty days of notification in writing of a proposed site shall be deemed to be approval of such site.

2. Notwithstanding subdivision one of this section, the purchase or lease of any property to be used in whole or in part as an off-track betting facility by the Catskill off-track betting corporation in the city of New York which includes or is located within a five mile radius of a site that was approved prior to December sixth, two thousand ten shall not require approval of the mayor or borough president.

§ 517-b. Catskill off-track betting corporation; collective bargaining. Notwithstanding any other provisions of law, rule, or regulation to the contrary, to the extent that Catskill off-track betting opens facilities within one of the boroughs of the city of New York to engage in off-track betting or the support staff thereof, such corporation shall recognize the collective bargaining representative of the employees of the New York city off-track betting corporation as of December sixth, two thousand ten, and shall abide by agreements negotiated between such representative and Catskill off-track betting corporation. Nothing

contained in this section shall be construed to diminish the rights of employees pursuant to paragraph (e) of subdivision one of section two hundred nine-a of the civil service law.

§ 517-c. Catskill off-track betting corporation; reporting. On or before December thirty-first, two thousand nineteen, the Catskill off-track betting corporation shall submit to the commission a report setting forth: 1. the corporation's operations and accomplishments to date; 2. the corporation's receipts and expenditures in accordance with categories or classifications established by the corporation for its own operating and capital outlay purposes; 3. the corporation's assets and liabilities at the time of such report, including a schedule of its bonds, notes, or other obligations and the status of reserves, depreciations, special, sinking, or other funds; and 4. identities of branch offices being planned or in the process of being constructed or otherwise established and branch offices that have been constructed or established.

§ 517-d. Debts of previously established off-track betting corporations. Notwithstanding any other provisions of law, rule, or regulation to the contrary, the debts and obligations of the New York city off-track betting corporation shall not transfer by operation of law or otherwise to the Catskill off-track betting corporation.

§ 15. Subdivisions 3 and 7 of section 532 of the racing, pari-mutuel wagering and breeding law, the opening paragraph of subdivision 3 as amended and subdivision 7 as added by chapter 115 of the laws of 2008, subparagraph (v) of paragraph b of subdivision 3 as added by chapter 286 of the laws of 1985 and subparagraph (vi) of paragraph b of subdivision 3 as amended by chapter 201 of the laws of 2017, are amended to read as follows:

3. The revenues received from any surcharge imposed by subdivision one of this section, plus the breaks, shall be distributed monthly, as follows:

a. Fifty per centum shall be retained by the regional corporation and twenty-five per centum to such city, or to the counties and cities entitled to receive revenues from the regional corporation pursuant to section five hundred sixteen of this chapter and in the same proportion as provided therein, or to an off-track betting operator; and

b. The balance as follows:

(i) where the track conducting the race on which the bet was placed is located within a city with a population in excess of one hundred thousand, but less than one million, to such city;

(ii) where the track conducting the race on which the bet was placed is not located within a city with a population in excess of one hundred thousand, to the county in which such track is located;

(iii) where the track conducting the race on which the bet was placed is located partially within a city with a population in excess of one million and partially within a county, [~~twenty-five per centum of such balance to the city and the remainder~~] to the county; and

(iv) where the track conducting the race on which the bet was placed is located outside the state, in the same manner as described in paragraph a of this subdivision.

(v) where the track conducting the race is located in a thoroughbred special betting district and is simulcasting pursuant to section one thousand eight of this chapter outside such special betting district, ninety per centum to the off-track betting operator and ten per centum to the county in which such track is located.

(vi) for the period of September first, two thousand seventeen until August thirty-first, two thousand twenty-two and where the track conducting the race on which the bet was placed is a harness track located in the county of Erie, to such track.

7. Notwithstanding any other provision of this section, any payments otherwise payable to a city with a population of one million or more, [~~pursuant to this section, other than payments~~] pursuant to subparagraphs (i) and (iii) of paragraph b of subdivision three of this section, shall be payable to the corporation and shall be available for its corporate purposes**, and may be distributed as net revenue pursuant to section five hundred sixteen of this chapter**.

§ 16. This act shall take effect on the thirtieth day after it shall have become a law.