STATE OF NEW YORK

8485

IN SENATE

March 7, 2022

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

AN ACT to amend the tax law, in relation to the investment of funds wagered on video lottery gaming for certain horse races; to repeal certain provisions of the tax law relating thereto; and to repeal paragraph b of subdivision 1 of section 1355 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. Subdivision f of section 1612 of the tax law, as amended by chapter 174 of the laws of 2013, paragraph 1 as amended by section 2 of part OO of chapter 59 of the laws of 2014 and paragraph 3 as amended by section 2 of part V of chapter 59 of the laws of 2020, is amended to read as follows:

f. As consideration for the operation of the video lottery gaming facility at Aqueduct racetrack, the division shall cause the investment in **the education system of the state of New York and** the racing industry of the following percentages of the vendor fee to be deposited or paid, as follows:

1. Six and one-half percent of the total wagered after payout of prizes for the first year of operation of video lottery gaming at Aqueduct racetrack, seven percent of the total wagered after payout of prizes for the second year of operation, and seven and one-half percent of the total wagered after payout of prizes for the third year of operation and thereafter, for the purpose of [~~enhancing purses at Aqueduct racetrack, Belmont Park racetrack and Saratoga race course. 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 on a pro rata basis in accordance with the amounts originally contributed and shall be used for the purpose of enhancing purses at such tracks~~] **funding the education system of the state of New York,**

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

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shall be deposited in the state lottery fund for additional lottery grants to eligible school districts, including schools serving students with disabilities and schools with preschool special education programs. [~~One and one-half percent of the gross purse enhancement amount, 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.~~]

2. [~~One~~] Eight and one-half percent of the total wagered after payout of prizes [~~for the first year of operation of video lottery gaming at Aqueduct racetrack, one and one-quarter percent of the total wagered after payout of prizes for the second year of operation, and one and one-half percent of the total wagered after payout of prizes for the third year of operation and thereafter, for an appropriate breeding fund for the manner of racing conducted at Aqueduct racetrack, Belmont Park racetrack and Saratoga race course~~] shall be deposited in the state lottery fund for additional lottery grants to eligible school districts, including schools serving students with disabilities and schools with preschool special education programs.

3. [~~Four percent of the total revenue wagered after payout of prizes to be deposited into an account of the franchised corporation established pursuant to section two hundred six of the racing, pari-mutuel wagering and breeding law to be used for capital expenditures in maintaining and upgrading Aqueduct racetrack, Belmont Park racetrack and Saratoga race course. Capital expenditures may include funding the construction of and initially equipping a state-based equine drug testing and research laboratory to be used pursuant to subdivision seven of section nine hundred two of the racing, pari-mutuel wagering and breeding law.~~

~~4. Three percent of the total revenue wagered after payout for prizes to be deposited into an account of the franchised corporation established pursuant to section two hundred six of the racing, pari-mutuel wagering and breeding law to be used for general thoroughbred racing operations at Aqueduct racetrack, Belmont Park racetrack and Saratoga race course.~~

~~5.~~] Paragraphs one[~~,~~] and two[~~, three and four~~] of this subdivision shall be known collectively as the "[~~racing~~] education support payments".

§ 2. Paragraph 1-b of subdivision b of section 1612 of the tax law, as added by section 2 of part EE of chapter 59 of the laws of 2019, is amended to read as follows:

1-b. Notwithstanding any provision of law to the contrary, free play allowance credits authorized by the division pursuant to subdivision i 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 gaming facilities, fees payable to the division's video lottery gaming equipment contractors, [~~or~~] racing support payments, or education support payments.

§ 3. Subdivision f-1 of section 1612 of the tax law, as amended by chapter 175 of the laws of 2013, is amended to read as follows:

f-1. As consideration for operation of video lottery gaming facility located in the county of Nassau or Suffolk 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 [~~investment~~

~~in the racing industry of the~~] following [~~percentages~~] **percentage** of the vendor fee to be deposited or paid as follows:

[~~1. Two and three tenths~~] **Five** percent of the total wagered after payout of prizes [~~for the purpose of enhancing purses at Aqueduct racetrack, Belmont Park racetrack and Saratoga race course, provided, however, that any amount that is in excess of the amount necessary to maintain purse support from video lottery gaming at Aqueduct racetrack, Belmont Park racetrack and Saratoga race course at the same level realized in two thousand thirteen, to be adjusted by the consumer price index for all urban consumers, as published annually by the United States department of labor, bureau of labor statistics, shall instead be returned to the commission~~] **shall be deposited in the state lottery fund for additional lottery grants to eligible school districts, including schools serving students with disabilities and schools with preschool special education programs**.

[~~2. five tenths percent of the total wagered after payout of prizes for the appropriate breeding fund for the manner of racing at Aqueduct racetrack, Belmont Park racetrack and Saratoga race course, provided, however, that any amount that is in excess of the amount necessary to maintain payments from video lottery gaming at Aqueduct racetrack at the same level realized in two thousand thirteen, to be adjusted by the consumer price index for all urban consumers, as published annually by the United States department of labor, bureau of labor statistics, shall instead be returned to the commission.~~

~~3. one and three tenths percent of the total revenue wagered after payout of prizes to be deposited into an account of the franchised corporation established pursuant to section two hundred six of the racing, pari-mutuel wagering and breeding law to be used for capital expenditures in maintaining and upgrading Aqueduct racetrack, Belmont Park racetrack and Saratoga race course, provided, however, that any amount that is in excess of the amount necessary to maintain payments for capital expenditures from video lottery gaming at Aqueduct racetrack at the same level realized in two thousand thirteen, to be adjusted by the consumer price index for all urban consumers, as published annually by the United States department of labor, bureau of labor statistics, shall instead be returned to the commission.~~

~~4. Nine tenths percent of the total revenue wagered after payout for prizes to be deposited into an account of the franchised corporation established pursuant to section two hundred six of the racing, pari-mutuel wagering and breeding law to be used for general thoroughbred racing operations at Aqueduct racetrack, Belmont Park racetrack and Saratoga race course, provided, however, that any amount that is in excess of the amount necessary to maintain payments for general thoroughbred racing operations from video lottery gaming at Aqueduct racetrack at the same level realized in two thousand thirteen, to be adjusted by the consumer price index for all urban consumers, as published annually by the United States department of labor, bureau of labor statistics, shall instead be returned to the commission.~~]

§ 4. The opening paragraph of paragraph 2 of subdivision b of section 1612 of the tax law, as amended by section 2 of part S of chapter 39 of the laws of 2019, is amended to read as follows:

As consideration for the operation of a video lottery gaming facility, the division, shall cause the investment [~~in the racing industry~~] **in those counties that host video lottery gaming facilities,** 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, a video lottery gaming facility authorized pursuant to paragraph five of subdivision a of section sixteen hundred seventeen-a of this article 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), (B-1), (B-2), (C), or (D) of subparagraph (ii) of paragraph one of this subdivision, for the purpose of [~~enhancing purses at such track~~] **funding economic development, job creation, and workforce protections in the counties that host video lottery gaming facilities**, 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 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~~] **Such funds shall be credited to the host county in which each vendor track resides. Such funds shall be utilized by such counties for the purposes of economic development, job creation, and workforce protections. If a vendor track ceases racing operations, such vendor fee shall continue to be paid**.

[~~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 racetrack, a video lottery gaming facility authorized pursuant to paragraph five of subdivision a of section sixteen hundred seventeen-a of this article 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), (B-1), (B-2), (C), or (D) 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~~] **for funding economic development, job creation, and workforce protections in the counties that host video lottery gaming facilities**.

§ 5. Paragraph 3 of subdivision b of section 1612 of the tax law is REPEALED.

§ 6. Subdivision h of section 1612 of the tax law, as amended by section 3 of part S of chapter 39 of the laws of 2019, is amended to read as follows:

h. As consideration for the operation of a video lottery gaming facility located in Orange county, the division shall cause the investment in the [~~racing industry~~] **education system of the state of New York** at the following amount from the vendor fee to be paid as follows:

[~~As amount to the horsemen for purses at a licensed racetrack in Sullivan county in an~~] **An** amount equal to eight and three-quarters percent of the total revenue wagered at the video lottery gaming facility, after pay out for prizes **to be deposited in the state lottery fund for additional lottery grants to eligible school districts, including schools serving students with disabilities and schools with preschool**

special education programs. [~~The facility located in Orange county, as defined in paragraph five of subdivision a of section sixteen hundred seventeen-a of this article shall pay to the horsemen at a licensed racetrack at Yonkers racetrack an amount to maintain purses for such horsemen at the same dollar levels realized in two thousand eighteen, to be adjusted by the consumer price index for all urban consumers, as published annually by the United States department of labor bureau of labor statistics.~~] In addition, one and one-quarter percent of total revenue wagered at the video lottery gaming facility after pay out for prizes, received pursuant to clause (B) of subparagraph (ii) of paragraph one of subdivision b of this section, shall be distributed to the [~~appropriate breeding~~] state lottery fund for [~~the manner of racing conducted by such track~~] additional lottery grants to eligible school districts, including schools serving students with disabilities and schools with preschool special education programs. In no circumstance shall net proceeds of the lottery, including the proceeds from video lottery gaming, be used for the payment of non-lottery expenses of the gaming commission, administrative or otherwise.

§ 7. Paragraph 5 of subdivision a of section 1617-a of the tax law, as added by section 4 of part S of chapter 39 of the laws of 2019, is amended to read as follows:

(5) At a facility located in Orange county to be operated by the entity otherwise licensed to operate video lottery gaming at Monticello racetrack, provided that: (i) such licensed entity is no longer operating video lottery gaming at Monticello racetrack [~~and provided that Monticello racetrack is conducting racing operations~~]; (ii) such facility in Orange county is not sited within a thirty mile radius of the video lottery gaming facility at Yonkers racetrack; and (iii) the licensed entity, its subsidiaries and affiliates, including the entity licensed to operate a commercial gaming facility in Sullivan county, and the entity licensed to operate video lottery gaming at Yonkers racetrack enter into a mitigation agreement, to be approved by the gaming commission, which shall include, but not be limited to, terms that require: (A) the operator of the facility in Orange county to make an annual payment to the entity licensed to operate video lottery gaming or commercial gaming at Yonkers racetrack to account for the effects that siting such facility in Orange county would likely have on the gross gaming revenue of the entity licensed to operate at Yonkers racetrack; (B) employment levels at the affected facilities; and (C) that upon expiration or termination of the agreement, the authority to operate video lottery gaming in Orange county shall cease. Notwithstanding any other provision of this subdivision, at no time shall an entity operating video lottery gaming in Orange county be permitted to apply for or receive a license to operate a commercial gaming facility in that county.

§ 8. Paragraph (b) of subdivision 1 of section 1355 of the racing, pari-mutuel wagering and breeding law is REPEALED.

§ 9. Severability. If any provision or term of this act is, for any reason, declared unconstitutional or invalid or ineffective by any competent jurisdiction, such decision shall not affect the validity of the effectiveness of the remaining portions of this act or any part thereof.

§ 10. This act shall take effect immediately.