

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

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| _____ |) | |
| THE NEW YORK RACING |) | |
| ASSOCIATION, INC., |) | |
| |) | |
| |) | Case No. 10 Civ. 03958 (MGC) |
| Appellant, |) | |
| |) | On Appeal from an Order of the |
| v. |) | United States Bankruptcy Court for |
| |) | the Southern District of New York in |
| NEW YORK OFF-TRACK |) | <i>In re: New York City Off-Track Betting</i> |
| BETTING CORPORATION, |) | <i>Corporation</i> |
| |) | Case No. 09-17121 (MG) |
| |) | |
| Appellee. |) | |
| _____ |) | |

APPELLANT'S APPENDIX

A. 507 through A. 514

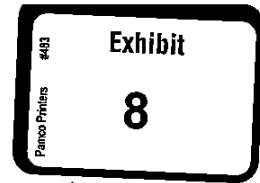
(Part 8 of 8)

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May 26, 2010



GOVERNOR'S PROGRAM BILL

PROGRAM BILL # 218

2010

MEMORANDUM

AN ACT to amend the racing, pari-mutuel wagering and breeding law and the penal law, in relation to the powers and duties of the New York state racing and wagering board and the New York city off-track betting corporation; and providing for a temporary retirement incentive program for the New York city off-track betting corporation; and to repeal certain provisions of the racing, pari-mutuel wagering and breeding law relating thereto; and providing for the repeal of certain provisions upon expiration thereof

Purpose:

This bill would assist the New York City Off-Track Betting Corporation (NYCOTB) to successfully effectuate a reorganization of its business operations and restructuring of its existing pre-petition indebtedness totaling nearly \$300 million as it progresses toward completion of its Chapter 9 proceedings in the United States Bankruptcy Court for the Southern District of New York.

Summary of Provisions:

Section 1 of the bill would amend Racing, Pari-Mutuel Wagering and Breeding (Racing) Law § 105 to clarify that the regional off track betting (OTB) corporations or any authorized entity may operate on Palm Sunday.

Section 2 of the bill would amend Racing Law § 503 to specifically identify several additional powers that may be exercised by the regional OTB corporations in the area of joint ventures and other forms of cooperative operating or shared services arrangements.

Section 3 of the bill would amend Racing Law § 520 to remove the mandate that the Racing and Wagering Board (Board) must prohibit the sale of food and beverages in all OTB facilities where bets may be placed.

Section 4 of the bill would amend Racing Law § 523 to clarify that the various authorizations for acceptance of wagering and display of simulcast signals from out-of-state race tracks by OTB branch offices and teletheaters contained in Article 10 of the Racing Law control, whenever the conditions stated therein are in effect, notwithstanding the otherwise broad general prohibition against accepting wagering on races run at out of state tracks stated in § 523.

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Section 5 of the bill would amend Racing Law § 527(1) to exclude NYCOTB from its application relating to the disposition of the net amount of retained commissions.

Section 6 of the bill would amend Racing Law § 527 to add a new subdivision 1-a to apply exclusively to NYCOTB.

Section 7 of the bill would amend Racing Law § 527(3)(c) to exclude NYCOTB from its application.

Section 8 of the bill would amend Racing Law § 527(6) in relation to the disposition of net amounts remaining available to NYCOTB after payment of taxes, distributions, operating expenses and debt service.

Section 9 of the bill would amend Racing Law § 529(2) to authorize NYCOTB to retain for its corporate purposes the value of winning tickets remaining uncashed as of April first of the calendar year following the year in which such tickets were issued.

Section 10 of the bill would amend Racing Law § 530 to reflect that the job security agreements between OTB corporations and tracks are not mandatory, but merely optional.

Section 11 of the bill would amend Racing Law § 532 relating to the surcharge to permit an OTB operator to establish a variable level of surcharge of up to five percent of the value of winning wagers other than multiple, exotic and super exotic wagers, and of up to six percent of multiple, exotic and super exotic wagers. This section also makes a technical amendment to clarify the disposition of surcharge on winning wagers placed on out-of-state races.

Section 12 of the bill would renumber an internal reference within Racing Law § 532(5).

Section 13 of the bill would change an internal cross reference within Racing Law § 532(7).

Section 14 of the bill would add a new Racing Law § 533 relating to rebates and other rewards by OTB corporations.

Section 15 of the bill would amend Racing Law § 602 to define certain additional terms and supplement the definition of other terms as used in Article Six of the Racing Law.

Section 16 of the bill would amend Racing Law § 604 in a fashion similar to the amendments to Racing Law § 503 effected by Section 2. Also, the requirement for consent of the mayor as a condition of condemnation of real property by NYCOTB would be eliminated, and the specifically enumerated powers of NYCOTB would include the authority to file a petition under Chapter 9 of the Federal Bankruptcy Code.

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Section 17 of the bill would amend Racing Law § 611 in relation to the rights of holders of bonds issued by NYCOTB to have the payment of principal and interest thereon be a first charge against the revenues of NYCOTB and for all other of NYCOTB's payments required by the Racing Law to be subordinated to the full and timely servicing of that debt.

Section 18 of the bill would amend Racing Law § 618 in regard to the authorized means for service of a notice of claim upon NYCOTB.

Section 19 of the bill would amend Racing Law § 619 in regard to (i) indemnification of an employee of NYCOTB who has been named as an individual defendant in a civil action when acting within the scope of the employee's employment and in discharge of the employee's duties; and (ii) representation of NYCOTB by the City Corporation Counsel in any action or proceeding that was in existence prior to June 17, 2008.

Section 20 of the bill would enact a new Article VI-A to the Racing Law governing distribution of revenues of NYCOTB.

Section 21 of the bill would amend Racing Law § 1001 in a fashion similar to the amendments to Racing Law § 602 effected by Section 11; specifically added are definitions relating to the process of licensing and regulation of out-of-state account wagering operators introduced to the Racing Law by Sections 31 and 39 of the bill.

Section 22 of the bill would amend Racing Law § 1002 to make explicit the authority of the Racing and Wagering Board to exercise general jurisdiction over account wagering activity occurring within the State.

Section 23 of the bill would amend Racing Law § 1003 in relation to authorization of in-home simulcasting within the State by the Racing and Wagering Board, including video streaming via the Internet.

Section 24 of the bill would amend Racing Law § 1008 in regard to authorization of OTB corporations to display in their branches simulcasts of races from tracks located both within and outside of the State.

Section 25 of the bill would amend Racing Law § 1008(5)(a) in regard to the obligation of an OTB corporation to display simulcasts of races being held at a track in the Catskill region conducting a mixed meeting in all of its branches that will be displaying other race simulcasts on the same day.

Section 26 of the bill would amend Racing Law § 1009(2-a)(b) in relation to the authorization of special demonstration districts by the Racing and Wagering Board.

Section 27 of the bill would amend Racing Law § 1009 in relation to mandated provisions of the written agreement required between an OTB corporation seeking a teletheater license and an in-state sending track.

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Section 28 of the bill would amend Racing Law § 1009(3)(e) to dispense with the requirement of approval by the city council for the proposed siting of a teletheater located within a city of one million or more.

Section 29 of the bill would repeal subdivision 11 of Racing Law § 1009 dealing with binding arbitration.

Section 30 of the bill would amend Racing Law § 1012 in relation to account wagering and the discretion of a regional OTB corporation to suspend, in whole or in part, imposition of the surcharge on winning wagers placed in wagering accounts maintained with such OTB. Also, the requirement that funds held in an account with inactivity for a period of three years escheat to the State would be modified to exempt such accounts maintained with NYCOTB. In addition, authorization is granted to NYCOTB for establishing physical sites within its betting region where account holders may place wagers, make deposits and withdrawals from their accounts and view simulcasts of races on which NYCOTB is accepting wagers.

Section 31 of the bill would (i) repeal existing Racing Law § 1013 relating to binding arbitration, and (ii) would enact a new § 1013 that would provide the authorization and a protocol for New York licensing and regulation of out-of-state advanced deposit account wagering entities that are licensed in another state or jurisdiction.

Section 32 of the bill would repeal Racing Law § 1014 dealing with simulcasting of out-of-state thoroughbred races.

Section 33 of the bill would amend Racing Law § 1015(1)&(2) to make this section permanent and specify the circumstances under which an OTB corporation is obligated to display the simulcast signal and accept wagering on races run at its regional harness track and other in-state harness tracks as a condition of accepting wagering upon and displaying the simulcast signal of one or more out-of-state harness tracks.

Section 34 of the bill would amend Racing Law § 1016 to provide that the provisions of this section shall be generally applicable all year round to the acceptance of wagering upon and display of simulcasts of races conducted at thoroughbred tracks located in another state or in a foreign country, and to specify the circumstances under which an OTB corporation is required to accept wagering upon and display simulcasts of races held at in-state thoroughbred racetracks as a condition of accepting wagering upon and displaying the simulcasts of races held at an out-of-state or country thoroughbred track. This section also discontinues so-called "Dark Day" payments from NYCOTB to its regional harness tracks.

Section 35 of the bill would amend Racing Law § 1017 to eliminate the requirement for NYCOTB to make Maintenance of Effort and certain additional payments to its regional licensed harness tracks as a pre-condition to engaging in simulcasting of nighttime thoroughbred races.

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Section 36 of the bill would repeal Racing Law § 1018 dealing with distribution.

Section 37 of the bill would enact a savings clause, preserving intact contractual agreements entered into prior to the effective date of the bill.

Section 38 of the bill would amend Penal Law § 225.00 by adding definitions for the terms "account wagering" and "multi-jurisdictional account wagering provider."

Section 39 of the bill would amend Article 225 of the Penal Law by enacting provisions to criminalize account wagering activity within the State by persons who have not been licensed to engage in such activity by the Racing and Wagering Board.

Section 40 of the bill would enable NYCOTB to offer a temporary retirement incentive to its employees following a planned restructuring of its indebtedness under Chapter 9 of the Federal Bankruptcy Code.

Section 41 of the bill would provide for a severability clause.

Section 42 of the bill would provide for an effective date.

Existing Law:

The regulatory framework for NYCOTB and other entities in the horse racing industry are contained in Articles V, V-a, VI and X of the Racing Law.

Statement in Support:

This legislation is being submitted to enable the New York City Off-Track Betting Corporation (NYCOTB) to successfully effectuate a reorganization of its business operations and restructuring of its existing pre-petition indebtedness totaling nearly \$300 million as it progresses toward completion of its Chapter 9 proceedings in the United States Bankruptcy Court for the Southern District of New York.

On December 3, 2009, NYCOTB filed a petition under Chapter 9 of the Federal Bankruptcy Code. NYCOTB took this step in order to achieve temporary relief from its creditors, predominantly from those stakeholders within the horse racing industry in New York to whom NYCOTB is mandated to make statutory distributions from the retained commissions on wagering accepted by NYCOTB in accordance with multiple provisions of the Racing, Pari-Mutuel Wagering and Breeding Law ("Racing Law"). At the time of filing, NYCOTB owed, in the aggregate, nearly \$57 million to New York racetracks, the State's thoroughbred and harness breeding funds, the State, New York City and other local governmental units. This debt had continued to accumulate over the ensuing 18-month period following enactment on June 17, 2008 of Chapter 115 of the Laws of 2008 whereby governance and control of NYCOTB was transferred from the City of New York to the State.

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When enacting Chapter 115 the Legislature issued the following findings:

"The legislature hereby finds that [NYC OTB] is insolvent and facing closure. The legislature further finds that nearly 1.1 billion dollars, almost half of all money wagered on horse racing in New York state, is wagered through NYC OTB. The revenue distributed to the racing industry, which is derived from wagering through NYC OTB, plays an integral role in sustaining the viability of the entire horse racing industry, and NYCOTB employs almost 1,500 people in New York. The legislature therefore determines that the continued operation of NYC OTB Corporation is of paramount importance to the public interest".

Despite certain limited modifications to provisions in the Racing Law effected by Chapter 115 that were designed and intended to enable NYCOTB to retain an enlarged share of the volume of wagering that it accepts annually, the financial condition of NYCOTB today remains seriously impaired. This is due, among other factors, to the significant deterioration of general economic conditions in the period subsequent to enactment of Chapter 115. In turn, the declining economy has led to generalized industry wide declines in wagering volumes nationally, as well as at the racetracks and OTB corporations in New York, including at NYCOTB, which has experienced more than a 20% decline in handle from the levels which obtained immediately prior to Chapter 115 becoming law.

In addition, and of no inconsiderable significance, over the past decade NYCOTB and the five other regional OTB corporations increasingly have faced, and now at present continue to confront, vigorous competition for New Yorkers' wagering dollars from out-of-state (and in some instances, out-of-country) advanced deposit account wagering providers (ADWs) that are unlicensed in New York, and consequently are operating in violation of New York law and in derogation of the plain and unequivocal mandate of Article I, Section 9 of the State constitution that the only horse race wagering that is allowable and may be permitted to occur within this State is limited to pari-mutuel wagering in the manner "as may be prescribed by the legislature and from which the state shall derive a reasonable revenue for the support of government." Unlicensed ADWs do not comply with this constitutional mandate because they pay absolutely no pari-mutuel taxes or regulatory fees to the State on account of the wagers which they accept from persons within the State, nor do they make statutory payments to New York racetracks or the New York breeding funds with respect to those wagers. By some estimates, the volume of wagering processed by these out of state ADWs each year from New Yorkers may be as high as \$ 400 million.

The very same circumstances and compelling public policy issues that were identified, recognized, acknowledged and applied by the Legislature some 18 months ago to form the predicate justification to enact Chapter 115 and upon which the express legislative determination "that the continued operation of NYC OTB Corporation is of paramount importance to the public interest" rested remain equally applicable and operative now as NYCOTB faces imminent closure if a

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restructuring of its accumulated liabilities and reorganization of its business operations can not successfully be achieved prior to the date – projected by NYCOTB as being no later than the end of its current fiscal year on March 31, 2010 – when unrestricted cash available for continued operations will have been exhausted.

This bill makes adjustments, amendments and modifications to the regulatory framework of the Racing Law in accordance with which retained commissions from wagering accepted by NYCOTB are required to be allocated between NYCOTB and the statutorily identified beneficiaries from its operations. In addition, the bill introduces a regimen for licensing and regulation of out-of-state ADW providers to insure adherence to the requirements of Article I, Section 9 of the State constitution, adds specific criminal sanctions for unlicensed account wagering, and in multiple other respects seeks broadly to reform and eliminate the circumstances that have thwarted or impeded the meaningful and significant improvements in NYCOTB's financial well being and fiscal solvency that are required to establish and maintain a state of fiscal equilibrium for NYCOTB and permit it to fulfill and attain the original tri-partite mission assigned to it by the legislature of: (i) generating reasonable revenue for the support of government, (ii) preventing and curbing unlawful bookmaking and illegal wagering on horse races, and (iii) ensuring that off-track betting is conducted in a manner compatible with the well being of the horse racing and breeding industries in this State.

Finally, to facilitate a much needed downsizing of NYCOTB to permit it to achieve cost savings which are critical to transitioning to an expanded technologically laden, revenue enhanced infrastructure that forms the core of its going forward business plan post-Chapter 9, the bill authorizes and allows NYCOTB to implement an Early Retirement Incentive (ERI) for its eligible employees who are members of the New York City Employees Retirement System. This ERI will not establish a general precedent for other public sector employees as it will be a one time only, limited program of short duration, in which no one but currently active NYCOTB employees may participate. Furthermore, the full costs of the enhanced retirement benefits to be received by the departing workers will be borne entirely by NYCOTB, and these will be funded externally as part, and from the proceeds of, NYCOTB's financial restructuring.

Budget Implications:

This legislation would not have any significant impact on the State's Financial Plan.

Effective Date:

This act would take effect immediately; provided section 35 would be deemed to have been effective on and after January 1, 2009; and further, sections 14, 30 and 31 would take effect 60 days thereafter; and finally, section 40 would take effect the same date that NYCOTB's Board of Directors adopts a resolution certifying that NYCOTB has successfully concluded the sale of tax exempt bonds, or an alternative financing transaction or other means of restructuring its financial

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obligations, in an amount that is no less than is projected to be necessary to fully fund the anticipated costs of the retirement incentive benefit authorized by section 40 of this act and all other elements of NYCOTB's going forward business restructuring plan. If NYCOTB's Board of Directors fails to adopt such a resolution before September 30, 2010, section 40 shall be of no further force and effect, and shall expire and be deemed repealed as of October 1, 2010.