

New York State Assembly
Carl E. Heastie
Speaker

Committee on
Racing and Wagering

J. Gary Pretlow
Chair



J. Gary Pretlow
Assemblyman 89th District

PLEASE REPLY TO:
845 Legislative Office Building
Albany, New York 12248

THE ASSEMBLY
STATE OF NEW YORK
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Racing & Wagering

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Assembly Steering Committee

December 15, 2017

The Honorable Carl E. Heastie
Speaker of the Assembly
Room 932
Legislative Office Building
Albany, NY 12248

Dear Mr. Speaker:

As Chairman of the Assembly Standing Committee on Racing and Wagering, I am pleased to submit to you the Committee's 2017 Annual Report. Each year, the Committee is tasked with finding new and improved ways to support local communities and increase education funding through the enrichment of racing and gaming activities across the State of New York. The following report is a summary of significant actions taken by the Committee and the Assembly during the 2017 Legislative Session to help achieve that goal.

During the 2017 Legislative Session, the Committee reported several bills that would provide continued support to the horse racing and breeding industry. As a result, legislation was enacted into law authorizing harness tracks to offer races limited to horses wholly owned by residents of New York State. By increasing the number of racing opportunities available for owners at home in New York, this will also provide an incentive for more horses to be bred at local farms and stables, thereby contributing to the growth of the State's agriculture industry. Additional bills in support of the Thoroughbred racing industry extended certain payment procedures for the New York Thoroughbred Breeding and Development Fund and ensured the continued provision of additional funding support for benevolent services for backstretch employees and their families.

The Committee also advanced legislation designed to expand the ways in which games of chance may be offered by religious, charitable, and nonprofit organizations. This included legislation enacted into law authorizing the use of credit and debit cards as payment for games of chance as well as the purchase of raffle tickets via the internet or mobile application. In addition, a bill was reported by the Committee to authorize the installation and operation of electronic bell jar vending machines for charitable gaming purposes. Another important issue addressed by the Committee is the promotion of fair and responsible gaming practices. This year, the Committee reported bills that would reduce potential lottery fraud by unscrupulous retailers, require the

State Police to be used for conducting certain employee background checks for commercial casinos, and establish a legislative taskforce on responsible gaming.

In addition, one of the biggest challenges encountered by the Committee involved the review and evaluation of existing tax rates and revenue distributions imposed on operators of video lottery terminal facilities. An important piece of legislation reported by the Committee would adjust the timing of additional commission payments made by the State to video lottery terminal facilities located in the same region as a commercial casino. Furthermore, recognizing that Vernon Downs Casino & Hotel has been faced with increased competition from nearby tribal casinos operated by the Oneida Indian Nation, throughout the 2017 Legislative Session the Committee was dedicated to finding a solution that would help keep the facility in operation and protect the harness racing and breeding industry as well as preserve the amount of education aid historically contributed by the facility. Part I of Chapter 61 of the Laws of 2017 helped to accomplish this goal by providing Vernon Downs the flexibility to utilize gaming revenues currently earmarked for administration purposes and capital awards for operational expenses.

I would like to take this opportunity to thank the members of the Assembly Standing Committee on Racing and Wagering for their input and support during the 2017 Legislative Session. I would also like to thank you, Mr. Speaker, for your strong leadership. The Committee members and I look forward to working with you during the upcoming 2018 Legislative Session to continue to strengthen New York State's great racing, wagering, and gaming infrastructure.

Warm Personal Regards,

A handwritten signature in black ink that reads "James Gary Pretlow". The signature is written in a cursive, flowing style.

J. Gary Pretlow
Chair, Committee on Racing and Wagering

**2017 ANNUAL REPORT
OF THE
NEW YORK STATE ASSEMBLY
STANDING COMMITTEE ON RACING AND WAGERING**

J. Gary Pretlow, Chair

Committee Members

Majority

Aileen M. Gunther
Michael G. Miller
Michaëlle Solages
Carrie Woerner
Angelo Santabarbara
Michael A. Simanowitz
Stacey C. Pheffer Amato

Minority

Andrew Garbarino
Peter Lawrence
Steve McLaughlin

Staff

Jennifer Best, *Assistant Secretary for Program and Policy*
Christopher Greenidge, *Associate Counsel*
Aubree Heydrick, *Analyst*
Amanda Wagner, *Committee Assistant*
Sarah Conklin, *Program and Counsel Secretary*
Kaitesi Rama-Munroe, *Committee Clerk*

Table of Contents

I. INTRODUCTION	3
II. 2017 LEGISLATIVE ACTION	4
A. State Lottery	4
1. Returning Lottery Tickets	4
2. Quarterly Additional Commission Payments	4
3. Lottery Tickets for Arts Education	4
B. Horse Racing and Breeding	5
1. Payments to the New York State Thoroughbred Breeding and Development Fund	5
2. Payments to the New York Thoroughbred Horsemen’s Association	6
3. New York Bred or Wholly Owned Harness Races	6
4. Additional Funding Support for Buffalo Raceway	6
C. Charitable Gaming	6
1. Electronic Bell Jar Vending Machines	7
2. The Charitable Gaming Act of 2017	7
D. Responsible Gaming	7
1. Legislative Task Force on Responsible Gaming	8
E. Other Legislation	8
1. Online Interactive Gaming	8
2. Casino Employee Background Checks	9
III. STATE FISCAL YEAR 2017-18 ENACTED BUDGET	10
IV. OUTLOOK FOR 2018	11
APPENDIX A: 2017 SUMMARY SHEET	12
APPENDIX B: CHAPTERS OF 2017	13
APPENDIX C: BILLS VETOED IN 2017	14
APPENDIX D: ADDITIONAL BILLS REPORTED IN 2017	15

I. INTRODUCTION

The New York State Assembly Standing Committee on Racing and Wagering has jurisdiction over legislation affecting all activities related to horse racing and various forms of gaming across New York State. Its purview includes the New York State Racing, Pari-Mutuel Wagering and Breeding Law as well as portions of the New York State Tax Law and the New York State General Municipal Law.

The New York State Gaming Commission is responsible for regulating all aspects of racing and gaming activity within the State, including pari-mutuel wagering, Class III Indian Gaming, the New York Lottery, video lottery gaming, charitable gaming, commercial casino gambling, and interactive fantasy sports. The New York State Gaming Commission is comprised of four divisions:

- The *Division of Lottery* is responsible for the operation and administration of the New York Lottery for education, with the exception of video lottery gaming; however, the Division of Lottery is responsible for all aspects of promotional activities related to video lottery gaming.
- The *Charitable Gaming Division* is responsible for licensing charitable organizations and verifying the lawful disbursement of proceeds from games of chance such as bingo, bell jar tickets, Las Vegas nights, and raffles.
- The *Gaming Division* is responsible for the appropriate administration, regulation, and oversight of commercial casino gambling, video lottery gaming, and Indian gaming on tribal land as defined by lawful Tribal-State compacts established pursuant to the federal Indian Gaming Regulatory Act of 1988.
- The *Horse Racing and Pari-Mutuel Wagering Division* is responsible for the supervision, regulation, and administration of all horse racing and pari-mutuel wagering activities.

The New York State Gaming Commission has also recently established a new Office of Interactive Fantasy Sports to register and regulate interactive fantasy sports operators as well as help implement important consumer protections and safeguards, for both players and operators, against fraud, abuse, and underage play.

During the 2017 Legislative Session, 66 Assembly bills were referred to the Committee on Racing and Wagering, of which 12 were reported by the Committee and eight were passed by the Assembly. Over the course of seven Committee meetings, the Committee acted on bills to: expand payment options for games of chance; authorize the operation of electronic bell jar vending machines; allow harness tracks to offer races limited to horses wholly owned by New York State residents; and provide continued support to both the Standardbred and Thoroughbred horse racing and breeding industries.

II. 2017 LEGISLATIVE ACTION

A. State Lottery

The New York Lottery was enacted into the New York State Constitution in 1966 to generate increased aid to education for local school districts. Celebrating its 50th anniversary in 2017, the New York Lottery contributed \$3.27 billion in State Fiscal Year 2016-17 to help support primary and secondary education in New York State. In total, combined sales for traditional and video lottery gaming operations amounted to \$9.68 billion. The New York State lottery program continues to be the largest and most profitable in the United States, earning over \$61.29 billion in education support since its founding.

Along with traditional lottery games, such as scratch-off tickets and number drawings like *Mega Millions* and *Powerball*, the New York Lottery also administers eight video lottery terminal facilities (also known as “racinos”) located at various racetracks across the State. These facilities offer casino-style gaming with winning outcomes transmitted by a central system administered by the New York State Gaming Commission. In addition to contributing a significant amount to State education funding, net proceeds from video lottery gaming also provide vital assistance to New York’s horse racing and breeding industries.

1. Returning Lottery Tickets

A.1823 (Pretlow); Reported to Committee on Ways and Means

In an effort to deter fraudulent practices by lottery ticket vendors, this bill would require lottery sales agents to return to customers any previously purchased lottery tickets submitted for verification, regardless of whether or not such ticket yielded a prize.

2. Quarterly Additional Commission Payments

A.5994-B (Pretlow) / S.4287-A (Bonacic); Veto No. 164 of 2017

Video lottery terminal (VLT) facilities located in the same region as a commercial casino currently receive an “additional commission” from the New York State Gaming Commission at the end of each fiscal year. This commission represents the difference between the VLT facility’s statutory tax rate and the blended tax rate of the casino. To help improve the financial operations of VLT facilities, without any increased cost to the State, this bill would adjust the timing of the payment of each additional commission from annually to quarterly.

3. Lottery Tickets for Arts Education

A.7019 (Titone); Reported to Committee on Ways and Means

Over the years, studies have shown that arts education is an essential component of a well-balanced primary and secondary education curriculum. This bill would direct the Division of Lottery within the New York State Gaming Commission to produce a scratch-off lottery ticket with an arts theme and direct the revenue generated from the sale

of such ticket into a new Arts Education Account within the State Lottery Fund, to be used exclusively for the support of elementary and secondary arts education programs.

B. Horse Racing and Breeding

New York State is home to one of the leading horse racing programs in the nation. Each year, millions of dollars are wagered on races at the three largest Thoroughbred racetracks in the State, operated by the New York Racing Association, Inc. (NYRA): Aqueduct Racetrack in the South Ozone Park neighborhood of Queens; Saratoga Race Course in Saratoga Springs, which is the oldest horse racing venue in the United States and home of the prestigious Travers Stakes; and Belmont Park in Nassau County, host to the longest dirt track in North America as well as the third and final leg of the Triple Crown. Additionally, nestled in the State's picturesque Finger Lakes region is New York's fourth Thoroughbred track: Finger Lakes Gaming and Racetrack in Ontario County.

Across the State, there are also several Standardbred racetracks where patrons can view live harness (also known as "trotting") races: Empire City Casino at Yonkers Raceway in Westchester County; Hamburg Gaming and Buffalo Raceway at the Fairgrounds in Erie County; Batavia Downs Gaming in Genesee County; Vernon Downs Casino and Hotel in Oneida County; Monticello Casino and Raceway in Sullivan County; Saratoga Casino and Raceway in Saratoga County; and Tioga Downs Casino in Tioga County.

In addition to attending live race meetings, racing fans can place wagers remotely through any of the State's five regional off-track betting corporations (OTBs) – Western, Capital, Catskill, Nassau, or Suffolk. Because OTBs are public-benefit corporations, millions of dollars in wagering revenues have been distributed to the aid of local governments across the State since their inception in 1970. Both racetracks and OTBs feature simulcasting of races taking place in New York State as well as races taking place in other states and countries around the world.

1. Payments to the New York State Thoroughbred Breeding and Development Fund

A.2820 (Pretlow) / S.3760 (Bonacic); Chapter 42 of the Laws of 2017

In recent years, due to an overall decline in the amount of money wagered on races, the New York State Thoroughbred Breeding and Development Fund ("the Fund") has experienced a significant reduction in the payments it receives from racetracks and regional off-track betting corporations, limiting its ability to make the required investments in the State's racing and breeding program.

For these reasons, Chapter 473 of 2010 authorized the Fund to collect its percentage of wagers on a quarterly basis instead of annually. The chapter also increased the maximum percentage of the Fund's revenues that could be used for: breeder awards, from 50 percent to 65 percent; publication and dissemination of information relating to the advancement and promotion of the breeding and raising of thoroughbreds in New York

State and related agricultural pursuits, from 5 percent to 6 percent; and administration and management of the Fund, from 4 percent to 5 percent.

This legislation extended such provisions for an additional year, until October 28, 2018.

2. Payments to the New York Thoroughbred Horsemen's Association

A.4413 (Pretlow) / S.4154 (Bonacic); Chapter 111 of the Laws of 2017

This legislation extended the authorization for the New York Thoroughbred Horsemen's Association (NYTHA) to receive an additional 1 percent of all purses collected from race meetings held at racetracks operated by the New York Racing Association, Inc., for a total of 2 percent, for an additional year, until August 31, 2018. This money is used to provide additional benevolence to backstretch employees, including medical and health benefits, counseling and social services, and scholarship opportunities. NYTHA also earmarks funds for retired racehorses, equine health and safety, and equine research.

3. New York Bred or Wholly Owned Harness Races

A.4448-A (Pretlow) / S.999-A (Bonacic); Chapter 284 of the Laws of 2017

This legislation allows harness racetracks to offer non-stakes races limited to horses wholly owned by New York State residents, in the same manner in which they may currently schedule and run races limited to horses bred in New York State. In the case that a horse is owned by a corporation or association, all owners, officers, shareholders and directors must meet the requirement of a New York State resident.

4. Additional Funding Support for Buffalo Raceway

A.7686 (Pretlow) / S.6522 (Jacobs); Chapter 201 of the Laws of 2017

Under current law, a 5 percent surcharge is imposed on all winnings earned from bets placed through regional off-track betting corporations (OTBs). Each month, the revenues derived from this surcharge are distributed proportionally to the municipalities hosting the racetrack for which the bets were placed. However, in the case of monies owed to Erie County, 50 percent of this surcharge amount is instead redirected to Buffalo Raceway. This bill extends such authorization until August 31, 2022.

C. Charitable Gaming

Charitable gaming is a popular fundraising device for local organizations that want to offer games of chance such as bingo, raffles, bell jar tickets, and other similar games. In New York State, these games are offered by licensed charitable, religious, and nonprofit organizations, as approved by the New York State Gaming Commission, on the condition that such games must occur in a municipality that has passed a local law or ordinance authorizing charitable gaming activities. Over the years, revenues from charitable gaming have been steadily decreasing, putting the livelihoods of many of these organizations in jeopardy. Recent focus has been put on finding new ways to increase these revenues in order to provide greater

funding support for important programs and services in the communities in which these organizations serve.

1. Electronic Bell Jar Vending Machines

A.2303-A (Pretlow) / S.994-A (Bonacic); Passed Assembly

Bell jar games, also known as “pull-tabs”, have been a popular and profitable fundraising device for charitable and not-for-profit organizations, including veterans and fraternal clubs, for over 25 years. This bill would authorize a more modern type of vending machine for bell jar tickets in order to help increase charitable gaming profits for such organizations. Electronic bell jar vending machines also provide state-of-the-art accounting and reporting technology to help ease such burdens on the organizations. Each electronic bell jar vending machine would require approval by the New York State Gaming Commission, ensuring that the games are being conducted in accordance with law.

2. The Charitable Gaming Act of 2017

A.6095-A (Schimminger) / S.4329-A (Gallivan); Chapter 464 of the Laws of 2017

This bill would enact the Charitable Gaming Act of 2017, designed to expand the ways in which charitable organizations are able to raise funds for programs and services in their communities. The bill would authorize the use of credit and debit cards as payment for entrance into any game of chance as well as allow raffle tickets to be purchased via the internet or mobile application, both at the discretion of the organization. The New York State Gaming Commission would be required to promulgate rules and regulations to ensure that:

- the purchase of a raffle ticket through this method is initiated and received within a municipality that has authorized games of chance;
- the purchaser is at least 18 years of age; and
- the privacy and online security of purchasers is protected.

D. Responsible Gaming

Gambling addiction can occur in many different forms and affect many different people. It is often referred to as a “hidden illness” because, unlike other addictions, there are no obvious physical signs or symptoms. With the recent expansion of gambling in New York State, now, more than ever, it has become essential to review and improve existing rules and regulations designed to address problem gambling in order to ensure consistency and determine the best ways to advance New York’s long-term commitment to promoting responsible gaming.

1. Legislative Task Force on Responsible Gaming

A.3075 (Cymbrowitz) / S.3067 (Addabbo); Reported to Committee on Ways and Means

This bill would establish the Legislative Task Force on Responsible Gaming to identify and recommend policies and programs that promote responsible gaming and mitigate the risks and consequences associated with compulsive gambling. The Task Force would consist of 11 members and be responsible for:

- identifying policies and programs that diminish risks and consequences associated with problem gambling;
- recommending policies and procedures for the gaming commission to ensure responsible gaming practices;
- recommending a structure for the enforcement of responsible gaming regulations such as penalties for violations;
- identifying methods to measure the effectiveness of implemented procedures; and
- identifying and recommending provisions to ensure responsible gaming practices are included in the enabling legislation.

This bill would also require the Task Force to submit a final report of findings and recommendations to the Governor, the Speaker of the Assembly, and the Temporary President of the Senate no later than February 1, 2018.

E. Other Legislation

1. Online Interactive Gaming

A.5250 (Pretlow); Reported to Committee on Codes

As technology and society continuously advances, the traditional gaming landscape has seen a transition from casino-style slot machines and table games toward internet-based gaming. With the ease of access and popularity of online gaming, a number of states have begun to explore the authorization and regulation of online poker and other forms of online gaming. This bill would amend the definition of “contest of chance” in the New York State Penal Law to allow games that require a significant degree of skill to fall outside the definition of gambling, such as certain poker games. The New York State Gaming Commission would be authorized to issue up to 11 online interactive gaming licenses to existing video lottery gaming or commercial casino operators licensed by New York State to offer such games in an online format. Players would need to be at least 21 years of age and physically located within the State to play.

Licensees would be required to pay a one-time fee of \$10 million, which would be applied as a credit toward any taxes owed over the first 36 months of operation.

Licensees would also be required to pay a 15 percent tax on online interactive gaming gross revenue, which would be deposited into the State Lottery Fund for education.

2. Casino Employee Background Checks

A.6793 (Pretlow) / S.3580 (Gallivan); Veto No. 221 of 2017

This bill would require the New York State Gaming Commission to utilize the State Police to conduct background checks for applications for certain commercial casino employees. The cost of the background check would be paid by the casino which intends to hire such employee. This is the same process currently required of all tribal casinos in New York State.

III. STATE FISCAL YEAR 2017-18 ENACTED BUDGET

The State Fiscal Year (SFY) 2017-18 Enacted Budget made several significant contributions to New York State's racing, wagering, and gaming programs, including:

- enhancing and modernizing the rules for charitable gaming activities;
- extending the current vendor fee (41 percent) paid to Monticello Casino & Raceway for one year;
- extending the current pari-mutuel tax rates and out-of-state simulcasting provisions for one year; and
- extending the video lottery gaming vendor's capital awards program for one year.

The SFY 2017-18 Enacted Budget also established a new assessment for additional costs and expenses of the State's equine drug testing program based on the projected annual deficit of the Racing Regulation Account. This assessment will be imposed as a "per start" fee, split evenly between the owner and the racetrack at which the horse is starting. For accountability purposes, the assessable amount cannot exceed the total funds appropriated to conduct equine drug testing and research at Morrisville State College each year.

In addition to extending existing provisions that allow the New York Jockey Injury Compensation Fund (NYJICF) to utilize purse monies to help pay for workers' compensation insurance, the SFY 2017-18 Enacted Budget also authorized NYJICF to elect to self-insure and provide workers' compensation coverage for employees of licensed owners and trainers. Previously, workers' compensation insurance provided by NYJICF had only covered jockeys, apprentice jockeys, and exercise persons; this legislation expanded coverage to assistant trainers, foreman, watchmen, and stable employees, including grooms and hot-walkers, employed by a trainer or owner licensed by the New York State Gaming Commission. This legislation also established a Racing Safety Committee tasked with making recommendations to identify and address safety-related issues at each of the Thoroughbred racetracks in New York State.

Finally, the SFY 2017-2018 Enacted Budget authorized the return of the New York Racing Association, Inc. (NYRA) back to a privately controlled, not-for-profit organization. Having made the transition in June 2017, the new NYRA board of directors consists of 17 members, including representatives appointed by the Governor, Senate, and Assembly as well as the former NYRA Reorganization Board, the New York Thoroughbred Breeders, Inc., and the New York Thoroughbred Horsemen's Association. The enacting legislation also provided additional oversight powers to the Franchise Oversight Board if it determines that NYRA has deviated materially from its financial plan.

IV. OUTLOOK FOR 2018

Looking ahead to the 2018 Legislative Session, the Assembly Standing Committee on Racing and Wagering will remain steadfast in its commitment to developing legislation that supports all aspects of New York State's racing, wagering, and gaming programs.

In recent years, great strides have been taken by the Legislature and the New York State Gaming Commission, as well as racing operators and horsemen's organizations, to help improve safety practices at racetracks all around the State. Safety is not only an issue for jockeys, exercise riders, and racetrack employees, but also for the many horses that train and compete at both Thoroughbred and Standardbred venues. In 2018, equine health and safety will remain a top priority for the Committee as it continues to work towards finding solutions for reducing equine injuries and fatalities. The Committee will also remain dedicated to ensuring that the State's racing and breeding programs receive adequate support as they contribute to the growth and promotion the State's agriculture industry.

With the opening of a new video lottery terminal facility and three commercial casinos in the past year, with a fourth nearly complete, it is also essential that the Committee continues to monitor and assess the impact of gaming expansion on New York State, its residents, existing gaming facilities, and the gambling industry as a whole. This includes advancing legislation that enhances New York's commitment to promoting responsible gaming practices and providing resources for problem gambling support and assistance.

Finally, the Committee will remain dedicated to supporting legislation that aims to enrich New York State's racing, wagering, and gaming infrastructure by focusing on important issues such as increasing and sustaining charitable gaming profits for local organizations, promoting responsible play practices, protecting the future of retired racehorses, augmenting the Thoroughbred and Standardbred racing industries, and enhancing revenues for education support and municipalities across the State.

APPENDIX A

2017 Summary Sheet

**Summary of Action on All Bills Referred to the
New York State Assembly Standing Committee on Racing and Wagering**

Final Action	Assembly Bills	Senate Bills	Total Bills
Bills Reported With or Without Amendment			
To Floor; Not Returning to Committee (Favorable)	0	0	0
To Ways and Means	7	0	7
To Codes	3	0	3
To Rules	2	0	2
To Judiciary	0	0	0
Total	12	0	12
Bills Having Committee Reference Changed			
To Ways and Means	1	0	1
Total	1	0	1
Senate Bills Substituted or Recalled			
Substituted		2	2
Recalled		0	0
Total		2	2
Bills Defeated in Committee	0	0	0
Bills Held for Consideration with a Roll-Call Vote	0	0	0
Bills Never Reported, Died in Committee	53	12	65
Bills Having Enacting Clauses Stricken	0	0	0
Motions to Discharge Lost	0	0	0
Total Bills in Committee	66	14	80
Total Number of Committee Meetings Held	7		

APPENDIX B

Chapters of 2017

CHAPTER	ASSEMBLY BILL (SPONSOR)	SENATE BILL (SPONSOR)	DESCRIPTION
42	A.2820 (Pretlow)	S.3760 (Bonacic)	Extends payments to the New York State Thoroughbred Breeding and Development Fund for an additional year, until October 28, 2018.
111	A.4413 (Pretlow)	S.4154 (Bonacic)	Extends the authorization for the New York Thoroughbred Horsemen’s Association to receive an additional 1 percent of all purses collected from race meetings held at New York Racing Association racetracks for an additional year, until August 31, 2018.
201	A.7686 (Pretlow)	S.6522 (Jacobs)	Extends the authorization for Buffalo Raceway to receive 50 percent of the surcharge amount placed on players’ winnings from OTBs until August 31, 2022.
284	A.4448-A (Pretlow)	S.999-A (Bonacic)	Authorizes harness racetracks to offer non-stakes races limited to horses wholly owned by New York State residents.
464	A.6095-A (Schimminger)	A.4329-A (Gallivan)	Enacts the “Charitable Gaming Act of 2017” to authorize credit and debit cards as forms of payment for games of chance and authorizes raffle tickets to be purchased via the internet or mobile application.

APPENDIX C

Bills Vetoed in 2017

VETO MEMO	ASSEMBLY BILL (SPONSOR)	SENATE BILL (SPONSOR)	DESCRIPTION
164	A.5994-B (Pretlow)	S.4287-A (Bonacic)	Would adjust the timing of payments of additional commissions to video lottery terminal facilities from annually to quarterly.
221	A.6793 (Pretlow)	S.3580 (Gallivan)	Would require the New York State Gaming Commission to utilize the State Police to conduct background checks for applications for certain casino employees.

APPENDIX D

Additional Bills Reported in 2017

ASSEMBLY BILL (SPONSOR)	LAST ACTION	DESCRIPTION
A.1823 (Pretlow)	Reported to Ways and Means Committee	Would require lottery sales agents to return to customers any previously purchased lottery tickets submitted for verification.
A.2303-A (Pretlow)	Passed Assembly	Would authorize charitable gaming organizations to install and operate electronic bell jar vending machines.
A.3075 (Cymbrowitz)	Reported to Ways and Means Committee	Would establish the Legislative Task Force on Responsible Gaming to identify and recommend policies and programs that promote responsible gaming.
A.5250 (Pretlow)	Reported to Codes Committee	Would authorize online interactive gaming.
A.7019 (Titone)	Reported to Ways and Means Committee	Would create a scratch-off lottery ticket with an arts theme exclusively for the support of elementary and secondary arts education curriculums.