

9591

I N A S S E M B L Y

May 9, 2014

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

AN ACT to amend the racing, pari-mutuel wagering and breeding law and the penal law, in relation to allowing certain interactive poker games

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

1 Section 1. The racing, pari-mutuel wagering and breeding law, is
2 amended by adding a new article 14 to read as follows:

3 ARTICLE 14

4 INTERACTIVE GAMING

5 SECTION 1400. LEGISLATIVE FINDINGS AND PURPOSE.

6 1401. DEFINITIONS.

7 1402. AUTHORIZATION.

8 1403. REQUIRED SAFEGUARDS/MINIMUM STANDARDS.

9 1404. SCOPE OF LICENSING REVIEW.

10 1405. STATE TAX.

11 S 1400. LEGISLATIVE FINDINGS AND PURPOSE. THE LEGISLATURE HEREBY FINDS
12 AND DECLARES THAT: 1. UNDER THE NEW YORK PENAL LAW A PERSON ENGAGES IN
13 GAMBLING WHEN HE OR SHE STAKES OR RISKS SOMETHING OF VALUE UPON THE
14 OUTCOME OF A CONTEST OF CHANCE OR A FUTURE CONTINGENT EVENT NOT UNDER
15 HIS OR HER CONTROL OR INFLUENCE, UPON AN AGREEMENT OR UNDERSTANDING THAT
16 HE OR SHE WILL RECEIVE SOMETHING OF VALUE IN THE EVENT OF A CERTAIN
17 OUTCOME.

18 2. A CONTEST OF CHANCE IS DEFINED AS ANY CONTEST, GAME, GAMING SCHEME
19 OR GAMING DEVICE IN WHICH THE OUTCOME DEPENDS IN A MATERIAL DEGREE UPON
20 AN ELEMENT OF CHANCE, NOTWITHSTANDING THAT SKILL OF THE CONTESTANTS MAY
21 ALSO BE A FACTOR THEREIN. (SUBDIVISION 1 OF SECTION 225.00 OF THE PENAL
22 LAW). THUS, GAMES OF CHANCE MAY INVOLVE SOME SKILL, BUT IN THOSE GAMES
23 THE LEVEL OF SKILL DOES NOT DETERMINE THE OUTCOME REGARDLESS OF THE
24 DEGREE OF SKILL EMPLOYED. SEE PEOPLE V. TURNER, 165 MISC. 2D 222, 224,
25 629 N.Y.S.2D 661, 662 (CRIM. CT. 1995). ON THE OTHER HAND, WHERE A
26 CONTEST PITS THE SKILL LEVELS OF THE PLAYERS AGAINST EACH OTHER, NEW
27 YORK COURTS HAVE FOUND A GAME TO BE ONE OF SKILL RATHER THAN CHANCE. SEE
28 PEOPLE V. HUNT, 162 MISC. 2D 70, 72, 616 N.Y.S.2D 168, 170 (CRIM. CT.

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

LBD14301-01-4

1 1994) ("PLAYED FAIRLY, SKILL RATHER THAN CHANCE IS THE MATERIAL COMPO-
2 NENT OF THREE-CARD MONTE.");

3 3. POKER IN MANY INSTANCES HAS BEEN DEFINED AS A GAME OF SKILL AND A
4 NEW YORK FEDERAL COURT IN U.S. V. DICRISTINA, 886 F. SUPP. 2D 164, 224,
5 ASSESSED THAT UNDER FEDERAL LAW POKER WAS PREDOMINANTLY A GAME OF SKILL;

6 4. NEW YORK COURTS HAVE INTERPRETED NEW YORK LAW TO APPLY A MORE
7 RIGOROUS TEST IN IDENTIFYING A "CONTEST OF CHANCE" THAN IS APPLIED BY
8 MOST STATES IN THIS NATION AND THE COURTS HAVE FOUND THAT WHERE A
9 CONTEST PITS THE SKILL LEVELS OF THE PLAYERS AGAINST EACH OTHER, THOSE
10 GAMES ARE GAMES OF SKILL AND NOT GAMES OF CHANCE. FURTHERMORE, THE
11 COURTS HAVE NOT LIMITED THE LEGISLATURE'S ABILITY TO DETERMINE THAT
12 CERTAIN FORMS OF POKER SHOULD FALL OUTSIDE THE GENERAL DEFINITION OF
13 GAMBLING SINCE THOSE GAMES ARE GAMES OF SKILL;

14 5. TEXAS HOLD'EM POKER INVOLVES TWO CARDS DEALT FACE DOWN TO EACH
15 PLAYER AND THEN FIVE COMMUNITY CARDS PLACED FACE-UP BY THE DEALER, A
16 SERIES OF THREE, THEN TWO ADDITIONAL SINGLE CARDS, WITH PLAYERS DETER-
17 MINING WHETHER TO CHECK, BET, RAISE OR FOLD AFTER EACH DEAL. OMAHA
18 HOLD'EM POKER IS A SIMILAR GAME, IN WHICH EACH PLAYER IS DEALT FOUR
19 CARDS AND MAKES HIS OR HER BEST HAND USING EXACTLY TWO OF THEM, PLUS
20 EXACTLY THREE OF THE FIVE COMMUNITY CARDS. THESE GAMES ARE CONSIDERED TO
21 BE COMPLEX FORMS OF POKER WHICH INVOLVE PLAYER STRATEGY AND
22 DECISION-MAKING AND WHICH PIT THE SKILL LEVELS OF THE PLAYERS AGAINST
23 EACH OTHER. AS GAMES OF SKILL, THESE FORMS OF POKER DO NOT FALL UNDER
24 THE DEFINITION OF GAMBLING AS PROHIBITED BY THE PENAL LAW;

25 6. THE LEGISLATURE FURTHER FINDS THAT AS THE INTERNET HAS BECOME AN
26 INTEGRAL PART OF SOCIETY, AND INTERNET POKER A MAJOR FORM OF ENTER-
27 TAINMENT FOR MANY CONSUMERS, ANY INTERACTIVE GAMING ENFORCEMENT AND
28 REGULATORY STRUCTURE MUST BEGIN FROM THE BEDROCK PREMISE THAT PARTIC-
29 IPATION IN A LAWFUL AND LICENSED GAMING INDUSTRY IS A PRIVILEGE AND NOT
30 A RIGHT, AND THAT REGULATORY OVERSIGHT IS INTENDED TO SAFEGUARD THE
31 INTEGRITY OF THE GAMES AND PARTICIPANTS AND TO ENSURE ACCOUNTABILITY AND
32 THE PUBLIC TRUST; AND

33 7. WITH THE PASSAGE OF THE UNLAWFUL INTERNET GAMBLING ENFORCEMENT ACT
34 OF 2006, ISSUES CONCERNING THE SCOPE AND INTERPRETATION OF STATE LAW,
35 INCLUDING THE IMPORTANCE OF THE LOCATION OF THE WAGER, WAGERING ACTIVITY
36 AND WEBSITE, WERE CLARIFIED. THOSE PERSONS THAT PROVIDED GOODS OR
37 SERVICES RELATED TO INTERNET GAMBLING INVOLVING NEW YORK CITIZENS PRIOR
38 TO THE ENACTMENT OF THAT STATUTE, INCLUDING, AT THE TIME, POKER, WHICH
39 WAS UNTIL THE ADOPTION OF THIS ACT UNLAWFUL, BUT EXITED IN AN EXPE-
40 DITIONOUS FASHION AFTER ITS ENACTMENT SHOULD BE REGARDED DIFFERENTLY FROM
41 THOSE THAT CONTINUED TO FLOUT U.S. FEDERAL AND NEW YORK LAW THEREAFTER
42 FOR PURPOSES OF SUITABILITY FOR LICENSING UNDER THIS ARTICLE. GRANTING
43 THOSE PERSONS LICENSING PRIVILEGES OR ALLOWING THE USE OF THE ASSETS OF
44 SUCH PERSONS IN CONNECTION WITH INTERACTIVE GAMING IN THIS STATE, IF
45 THOSE ASSETS WERE USED UNLAWFULLY, WOULD REWARD UNLAWFUL GAMING ACTIV-
46 ITY, WOULD PERMIT MANIFESTLY UNSUITABLE PERSONS TO PROFIT FROM THEIR
47 UNLAWFUL GAMING ACTIVITY AND WOULD CREATE UNFAIR COMPETITION WITH LICEN-
48 SEES THAT RESPECTED FEDERAL AND STATE LAW.

49 S 1401. DEFINITIONS. AS USED IN THIS ARTICLE, THE FOLLOWING TERMS
50 SHALL HAVE THE FOLLOWING MEANINGS:

51 1. "AUTHORIZED GAME" MEANS OMAHA HOLD'EM AND TEXAS HOLD'EM POKER, AS
52 WELL AS ANY OTHER POKER GAME THAT THE COMMISSION DETERMINES IS THE MATE-
53 RIAL EQUIVALENT OF EITHER OF THOSE, WHETHER IN A CASH GAME OR TOURNA-
54 MENT.

55 2. "AUTHORIZED PARTICIPANTS" MEANS PERSONS WHO ARE EITHER PHYSICALLY
56 PRESENT IN THIS STATE WHEN PLACING A WAGER OR WHO OTHERWISE ARE PERMIT-

1 TED BY APPLICABLE LAW, AS DETERMINED BY THE COMMISSION, TO PLACE A
2 WAGER. THE INTERMEDIATE ROUTING OF ELECTRONIC DATA IN CONNECTION WITH
3 INTERACTIVE GAMING SHALL NOT DETERMINE THE LOCATION OR LOCATIONS IN
4 WHICH A WAGER IS INITIATED, RECEIVED OR OTHERWISE MADE.

5 3. "CORE FUNCTION" MEANS ANY OF THE FOLLOWING: (A) THE MANAGEMENT,
6 ADMINISTRATION OR CONTROL OF WAGERS ON INTERACTIVE GAMING; (B) THE
7 MANAGEMENT, ADMINISTRATION OR CONTROL OF THE GAMES WITH WHICH THOSE
8 WAGERS ARE ASSOCIATED; OR (C) THE DEVELOPMENT, MAINTENANCE, PROVISION OR
9 OPERATION OF AN INTERACTIVE GAMING PLATFORM.

10 4. "COVERED ASSET" MEANS ANY OF THE FOLLOWING CATEGORIES OF ASSET IF
11 USED IN CONNECTION WITH THE KNOWING AND WILLFUL ACCEPTANCE OF ANY WAGER
12 FROM PERSONS LOCATED IN THE UNITED STATES OF ANY FORM OF INTERACTIVE
13 GAMING (INCLUDING BUT NOT LIMITED TO POKER) AFTER DECEMBER THIRTY-FIRST,
14 TWO THOUSAND SIX, THAT HAS NOT BEEN AFFIRMATIVELY AUTHORIZED BY LAW OF
15 THE UNITED STATES OR OF EACH STATE IN WHICH PERSONS MAKING SUCH WAGER
16 WERE LOCATED: (A) ANY TRADEMARK, TRADE NAME, SERVICE MARK OR SIMILAR
17 INTELLECTUAL PROPERTY THAT WAS USED TO IDENTIFY ANY ASPECT OF THE INTER-
18 NET WEBSITE OR OF THE OPERATOR OFFERING THE WAGERS OR GAMES TO ITS
19 PATRONS; (B) ANY DATABASE OR CUSTOMER LIST OF INDIVIDUALS RESIDING IN
20 THE UNITED STATES WHO PLACED SUCH WAGERS; (C) ANY DERIVATIVE OF A DATA-
21 BASE OR CUSTOMER LIST DESCRIBED IN PARAGRAPH (B) OF THIS SUBDIVISION; OR
22 (D) AN ASSET USED TO PROVIDE A CORE FUNCTION.

23 5. "COMMISSION" MEANS THE NEW YORK STATE GAMING COMMISSION.

24 6. "DIVISION" MEANS THE DIVISION OF GAMING, ESTABLISHED UNDER PARA-
25 GRAPH (C) OF SUBDIVISION TWO OF SECTION ONE HUNDRED THREE OF THIS CHAP-
26 TER.

27 7. "INTERACTIVE GAMING" MEANS THE CONDUCT OF GAMES THROUGH THE USE OF
28 THE INTERNET OR OTHER COMMUNICATIONS TECHNOLOGY THAT ALLOWS A PERSON,
29 UTILIZING MONEY, CHECKS, ELECTRONIC CHECKS, ELECTRONIC TRANSFERS OF
30 MONEY, CREDIT CARDS, DEBIT CARDS OR ANY OTHER INSTRUMENTALITY, TO TRANS-
31 MIT TO A COMPUTER INFORMATION TO ASSIST IN THE PLACING OF A WAGER AND
32 CORRESPONDING INFORMATION RELATED TO THE DISPLAY OF THE GAME, GAME
33 OUTCOMES OR OTHER SIMILAR INFORMATION. THE TERM DOES NOT INCLUDE THE
34 CONDUCT OF (A) NON-GAMBLING GAMES THAT DO NOT OTHERWISE REQUIRE A
35 LICENSE UNDER STATE OR FEDERAL LAW; OR (B) GAMES THAT OCCUR ENTIRELY
36 AMONG PARTICIPANTS WHO ARE LOCATED ON A LICENSED CASINO PREMISES. FOR
37 PURPOSES OF THIS PROVISION, "COMMUNICATIONS TECHNOLOGY" MEANS ANY METHOD
38 USED AND THE COMPONENTS EMPLOYED BY AN ESTABLISHMENT TO FACILITATE THE
39 TRANSMISSION OF INFORMATION, INCLUDING, WITHOUT LIMITATION, TRANSMISSION
40 AND RECEPTION BY SYSTEMS BASED ON WIRE, CABLE, RADIO, MICROWAVE, LIGHT,
41 OPTICS OR COMPUTER DATA NETWORKS, INCLUDING, WITHOUT LIMITATION, THE
42 INTERNET AND INTRANETS.

43 8. "INTERACTIVE GAMING GROSS REVENUE" MEANS THE TOTAL OF ALL SUMS PAID
44 TO A LICENSEE FROM INTERACTIVE GAMING INVOLVING AUTHORIZED PARTICIPANTS,
45 LESS ONLY THE TOTAL OF ALL SUMS PAID OUT AS WINNINGS TO PATRONS AND
46 PROMOTIONAL GAMING CREDITS; PROVIDED, HOWEVER, THAT THE CASH EQUIVALENT
47 VALUE OF ANY MERCHANDISE OR OTHER NON-CASH THING OF VALUE INCLUDED IN A
48 CONTEST OR TOURNAMENT SHALL NOT BE INCLUDED IN THE TOTAL OF ALL SUMS
49 PAID OUT AS WINNINGS TO PLAYERS FOR PURPOSES OF DETERMINING INTERACTIVE
50 GAMING GROSS REVENUE.

51 (A) NEITHER AMOUNTS DEPOSITED WITH A LICENSEE FOR PURPOSES OF INTERAC-
52 TIVE GAMING NOR AMOUNTS TAKEN IN FRAUDULENT ACTS PERPETRATED AGAINST A
53 LICENSEE FOR WHICH THE LICENSEE IS NOT REIMBURSED SHALL BE CONSIDERED TO
54 HAVE BEEN "PAID" TO THE LICENSEE FOR PURPOSES OF CALCULATING INTERACTIVE
55 GAMING GROSS REVENUE.

(B) "PROMOTIONAL GAMING CREDIT" INCLUDES BONUSES, PROMOTIONS AND ANY AMOUNT RECEIVED BY A LICENSEE FROM A PATRON FOR WHICH THE LICENSEE CAN DEMONSTRATE THAT IT OR ITS AFFILIATE HAS NOT RECEIVED CASH.

9. "INTERACTIVE GAMING PLATFORM" MEANS THE COMBINATION OF HARDWARE, SOFTWARE AND DATA NETWORKS USED TO MANAGE, ADMINISTER OR CONTROL WAGERS ON INTERACTIVE GAMING OR THE GAMES WITH WHICH THOSE WAGERS ARE ASSOCIATED.

10. "INTERNET" MEANS A COMPUTER NETWORK OF INTEROPERABLE PACKET-SWITCHED DATA NETWORKS.

11. "LICENSEE" MEANS A PERSON WHO IS LICENSED BY THE COMMISSION TO OFFER INTERACTIVE GAMING, USING AN INTERACTIVE GAMING PLATFORM TO AUTHORIZED PARTICIPANTS. A LICENSEE MAY UTILIZE MULTIPLE INTERACTIVE GAMING PLATFORMS PROVIDED THAT EACH PLATFORM IS APPROVED BY THE COMMISSION.

12. "OMAHA HOLD'EM POKER" MEANS THE POKER GAME MARKETING AS OMAHA HOLD'EM POKER OR OMAHA POKER IN WHICH EACH PLAYER IS DEALT FOUR CARDS AND MUST MAKE HIS OR HER BEST HAND USING EXACTLY TWO OF THEM, PLUS EXACTLY THREE OF THE FIVE COMMUNITY CARDS.

13. "SIGNIFICANT VENDOR" MEANS ANY PERSON WHO OFFERS OR WHO PROPOSES TO OFFER ANY OF THE FOLLOWING SERVICES WITH RESPECT TO INTERACTIVE GAMING: (A) A CORE FUNCTION; (B) SALE, LICENSING OR OTHER RECEIPT OF COMPENSATION FOR SELLING OR LICENSING A DATABASE OR CUSTOMER LIST OF INDIVIDUALS RESIDING IN THE UNITED STATES SELECTED IN WHOLE OR IN PART BECAUSE THEY PLACED WAGERS OR PARTICIPATED IN GAMBLING GAMES WITH OR THROUGH AN INTERNET WEBSITE OR OPERATOR (OR ANY DERIVATIVE OF SUCH A DATABASE OR CUSTOMER LIST); (C) PROVISION OF ANY TRADEMARK, TRADENAME, SERVICE MARK OR SIMILAR INTELLECTUAL PROPERTY UNDER WHICH A LICENSEE OR SIGNIFICANT VENDOR IDENTIFIES INTERACTIVE GAMES TO CUSTOMERS; OR (D) PROVISION OF ANY PRODUCT, SERVICE OR ASSET TO A LICENSEE OR SIGNIFICANT VENDOR IN RETURN FOR A PERCENTAGE OF INTERACTIVE GAMING REVENUE (NOT INCLUDING FEES TO FINANCIAL INSTITUTIONS AND PAYMENT PROVIDERS FOR FACILITATING A DEPOSIT OR WITHDRAWAL BY AN AUTHORIZED PARTICIPANT). THE TERM "SIGNIFICANT VENDOR" SHALL NOT INCLUDE A PROVIDER OF GOODS OR SERVICES TO A LICENSEE THAT ARE NOT SPECIFICALLY DESIGNED FOR USE AND NOT PRINCIPALLY USED IN CONNECTION WITH INTERACTIVE GAMING.

14. "TEXAS HOLD'EM POKER" MEANS THE TYPE OF POKER MARKETING AS TEXAS HOLD'EM POKER THAT INVOLVES TWO CARDS BEING DEALT FACE DOWN TO EACH PLAYER AND THEN FIVE COMMUNITY CARDS BEING PLACED FACE-UP BY THE DEALER, A SERIES OF THREE THEN TWO ADDITIONAL SINGLE CARDS, WITH PLAYERS HAVING THE OPTION TO CHECK, BET, RAISE OR FOLD AFTER EACH DEAL.

S 1402. AUTHORIZATION. 1. THE COMMISSION SHALL, WITHIN ONE HUNDRED EIGHTY DAYS OF THE DATE THIS ARTICLE BECOMES LAW, PROMULGATE REGULATIONS TO IMPLEMENT INTERACTIVE GAMING IN THIS STATE AND SHALL AUTHORIZE UP TO TEN LICENSES TO OPERATE INTERACTIVE GAMING INVOLVING AUTHORIZED PARTICIPANTS, SUBJECT TO THE PROVISIONS OF THIS ARTICLE AND OTHER APPLICABLE PROVISIONS OF LAW.

2. THE COMMISSION SHALL, TO THE EXTENT PRACTICABLE, ISSUE LICENSES TO MULTIPLE APPLICANTS NO SOONER THAN ONE HUNDRED EIGHTY DAYS AFTER THE PROMULGATION OF REGULATIONS IN ORDER TO ENSURE A ROBUST AND COMPETITIVE MARKET FOR CONSUMERS AND TO PREVENT EARLY LICENSEES FROM GAINING AN UNFAIR COMPETITIVE ADVANTAGE.

3. NO PERSON MAY OPERATE, MANAGE OR MAKE AVAILABLE AN INTERACTIVE GAMING PLATFORM OR ACT AS A SIGNIFICANT VENDOR WITH RESPECT TO INTERACTIVE GAMING THAT IS OFFERED TO PERSONS LOCATED IN THIS STATE UNLESS LICENSED BY THE COMMISSION PURSUANT TO THIS ARTICLE AND ONLY THOSE GAMES AUTHORIZED BY THE COMMISSION SHALL BE PERMITTED.

1 4. ANY PERSON FOUND SUITABLE BY THE COMMISSION MAY BE ISSUED A LICENSE
2 AS AN OPERATOR OR SIGNIFICANT VENDOR PURSUANT TO THIS ARTICLE. IN DETER-
3 MINING SUITABILITY, THE COMMISSION SHALL CONSIDER THOSE FACTORS IT DEEMS
4 RELEVANT IN ITS DISCRETION, INCLUDING BUT NOT LIMITED TO:

5 (A) WHETHER THE APPLICANT IS A PERSON OF GOOD CHARACTER, HONESTY AND
6 INTEGRITY;

7 (B) WHETHER THE APPLICANT IS PERSON WHOSE PRIOR ACTIVITIES, CRIMINAL
8 RECORD, IF ANY, REPUTATION, HABITS AND ASSOCIATIONS DO NOT:

9 (I) POSE A THREAT TO THE PUBLIC INTEREST OR TO THE EFFECTIVE REGU-
10 LATION AND CONTROL OF INTERACTIVE GAMING; OR

11 (II) CREATE OR ENHANCE THE DANGERS OF UNSUITABLE, UNFAIR OR ILLEGAL
12 PRACTICES, METHODS AND ACTIVITIES IN THE CONDUCT OF INTERACTIVE GAMING
13 OR IN THE CARRYING ON OF THE BUSINESS AND FINANCIAL ARRANGEMENTS INCI-
14 DENTAL TO SUCH GAMING;

15 (C) WHETHER THE APPLICANT IS CAPABLE OF AND LIKELY TO CONDUCT THE
16 ACTIVITIES FOR WHICH THE APPLICANT IS LICENSED IN ACCORDANCE WITH THE
17 PROVISIONS OF THIS ARTICLE, ANY REGULATIONS PRESCRIBED UNDER THIS ARTI-
18 CLE AND ALL OTHER APPLICABLE LAWS;

19 (D) WHETHER THE APPLICANT HAS OR GUARANTEES ACQUISITION OF ADEQUATE
20 BUSINESS COMPETENCE AND EXPERIENCE IN THE OPERATION OF LICENSED GAMING
21 OR OF INTERACTIVE GAMING IN THIS STATE OR IN A STATE WITH COMPARABLE
22 LICENSING REQUIREMENTS;

23 (E) WHETHER THE APPLICANT HAS OR WILL OBTAIN SUFFICIENT FINANCING FOR
24 THE NATURE OF THE PROPOSED OPERATION AND FROM A SUITABLE SOURCE; AND

25 (F) WHETHER THE APPLICANT HAS DISCLOSED TO THE COMMISSION ALL KNOWN
26 AFFILIATIONS OR RELATIONSHIPS, WHETHER DIRECT OR INDIRECT, WITH PERSONS
27 AND ASSETS OF PERSONS DESCRIBED BY SUBDIVISION THREE OF SECTION FOURTEEN
28 HUNDRED FOUR OF THIS ARTICLE.

29 5. THE COMMISSION FURTHER SHALL DEVELOP STANDARDS BY WHICH TO EVALUATE
30 AND APPROVE INTERACTIVE GAMING PLATFORMS FOR USE WITH INTERACTIVE
31 GAMING. INTERACTIVE GAMING PLATFORMS MUST BE APPROVED BY THE COMMISSION
32 BEFORE BEING USED BY A LICENSEE OR SIGNIFICANT VENDOR TO CONDUCT INTER-
33 ACTIVE GAMING IN THIS STATE.

34 6. THE COMMISSION SHALL REQUIRE ALL LICENSEES TO PAY ONE-TIME FEE OF
35 TEN MILLION DOLLARS.

36 7. LICENSES ISSUED BY THE COMMISSION SHALL REMAIN IN EFFECT FOR TEN
37 YEARS.

38 8. THE COMMISSION, BY REGULATION, MAY AUTHORIZE AND PROMULGATE ANY
39 RULES NECESSARY TO IMPLEMENT AGREEMENTS WITH OTHER STATES, OR AUTHORIZED
40 AGENCIES THEREOF (A) TO ENABLE PATRONS IN THOSE STATES TO PARTICIPATE IN
41 INTERACTIVE GAMING OFFERED BY LICENSEES UNDER THIS ARTICLE OR (B) TO
42 ENABLE PATRONS IN THIS STATE TO PARTICIPATE IN INTERACTIVE GAMING
43 OFFERED BY LICENSEES UNDER THE LAWS OF THOSE OTHER STATES, PROVIDED THAT
44 SUCH OTHER STATE OR AUTHORIZED AGENCY APPLIES SUITABILITY STANDARDS AND
45 REVIEW MATERIALLY CONSISTENT WITH THE PROVISIONS OF THIS ARTICLE,
46 INCLUDING BUT NOT LIMITED TO THE REQUIREMENTS SET OUT IN SUBDIVISION
47 THREE OF SECTION FOURTEEN HUNDRED FOUR OF THIS ARTICLE.

48 9. ANY REGULATIONS ADOPTED PURSUANT TO SUBDIVISION EIGHT OF THIS
49 SECTION MUST SET FORTH PROVISIONS THAT ADDRESS:

50 (A) ANY ARRANGEMENTS TO SHARE REVENUE BETWEEN NEW YORK AND ANY OTHER
51 STATE OR AGENCY WITHIN ANOTHER STATE; AND

52 (B) ARRANGEMENTS TO ENSURE THE INTEGRITY OF INTERACTIVE GAMING OFFERED
53 PURSUANT TO ANY SUCH AGREEMENT AND THE PROTECTION OF PATRONS LOCATED IN
54 THIS STATE.

55 10. THE COMMISSION MAY DELEGATE ITS RESPONSIBILITIES TO ADMINISTER THE
56 PROVISIONS OF THIS ARTICLE TO THE DIVISION, AS IT SEES FIT, EXCEPT FOR

1 ITS RESPONSIBILITIES TO APPROVE LICENSES AND TO CONDUCT THE PROCEEDINGS
2 REQUIRED UNDER SUBDIVISION FOUR OF SECTION FOURTEEN HUNDRED FOUR OF THIS
3 ARTICLE.

4 S 1403. REQUIRED SAFEGUARDS/MINIMUM STANDARDS. 1. THE COMMISSION
5 SHALL REQUIRE LICENSEES TO IMPLEMENT MEASURES TO MEET THE STANDARDS SET
6 OUT IN THIS SECTION, ALONG WITH SUCH OTHER STANDARDS THAT THE COMMISSION
7 IN ITS DISCRETION MAY CHOOSE TO REQUIRE.

8 (A) APPROPRIATE SAFEGUARDS TO ENSURE, TO A REASONABLE DEGREE OF
9 CERTAINTY, THAT PARTICIPANTS IN INTERACTIVE GAMING ARE NOT YOUNGER THAN
10 TWENTY-ONE YEARS OF AGE.

11 (B) APPROPRIATE SAFEGUARDS TO ENSURE, TO A REASONABLE DEGREE OF
12 CERTAINTY, THAT PARTICIPANTS IN INTERACTIVE GAMING ARE PHYSICALLY
13 LOCATED WITHIN THE STATE OR SUCH OTHER JURISDICTION THAT THE COMMISSION
14 HAS DETERMINED TO BE PERMISSIBLE.

15 (C) APPROPRIATE SAFEGUARDS TO PROTECT, TO A REASONABLE DEGREE OF
16 CERTAINTY, THE PRIVACY AND ONLINE SECURITY OF PARTICIPANTS IN INTERAC-
17 TIVE GAMING.

18 (D) APPROPRIATE SAFEGUARDS TO ENSURE, TO A REASONABLE DEGREE OF
19 CERTAINTY, THAT THE INTERACTIVE GAMING IS FAIR AND HONEST AND THAT
20 APPROPRIATE MEASURES ARE IN PLACE TO DETER, DETECT AND, TO THE EXTENT
21 REASONABLY POSSIBLE, TO PREVENT CHEATING, INCLUDING COLLUSION, AND USE
22 OF CHEATING DEVICES, INCLUDING USE OF SOFTWARE PROGRAMS (SOMETIMES
23 REFERRED TO AS "BOTS") THAT MAKE BETS OR WAGERS ACCORDING TO ALGORITHMS.

24 (E) APPROPRIATE SAFEGUARDS TO MINIMIZE COMPULSIVE GAMING AND TO
25 PROVIDE NOTICE TO PARTICIPANTS OF RESOURCES TO HELP PROBLEM GAMBLERS.

26 (F) APPROPRIATE SAFEGUARDS TO ENSURE PARTICIPANTS' FUNDS ARE HELD IN
27 ACCOUNTS SEGREGATED FROM THE FUNDS OF LICENSEES AND OTHERWISE ARE
28 PROTECTED FROM CORPORATE INSOLVENCY, FINANCIAL RISK OR CRIMINAL OR CIVIL
29 ACTIONS AGAINST THE LICENSEE.

30 S 1404. SCOPE OF LICENSING REVIEW. 1. IN CONNECTION WITH ANY LICENSE
31 ISSUED PURSUANT TO THIS ARTICLE, THE LICENSEE, SIGNIFICANT VENDOR OR
32 APPLICANT SHALL IDENTIFY AND THE COMMISSION SHALL REVIEW THE SUITABILITY
33 OF SUCH LICENSEE'S, SIGNIFICANT VENDOR'S OR APPLICANT'S OWNER, CHIEF
34 EXECUTIVE OFFICER, CHIEF FINANCIAL OFFICER AND ANY OTHER OFFICER OR
35 EMPLOYEE WHO THE COMMISSION DEEMS IS SIGNIFICANTLY INVOLVED IN THE
36 MANAGEMENT OR CONTROL OF THE LICENSEE, SIGNIFICANT VENDOR OR APPLICANT
37 OR OF THE INTERACTIVE GAMING PLATFORM. "OWNER" FOR PURPOSES OF THIS
38 PROVISION MEANS ANY PERSON WHO DIRECTLY OR INDIRECTLY HOLDS ANY BENEFI-
39 CIAL OR OWNERSHIP INTEREST IN THE APPLICANT OF FIVE PERCENT OR GREATER
40 OR ANY AMOUNT OF OWNERSHIP THAT THE COMMISSION DETERMINES TO BE SIGNIF-
41 ICANT OWNERSHIP OF THE LICENSEE, SIGNIFICANT VENDOR, OR APPLICANT.

42 2. INSTITUTIONAL INVESTORS ARE SUBJECT TO THE PROVISIONS SET OUT IN
43 THIS SECTION.

44 (A) AN INSTITUTIONAL INVESTOR HOLDING UNDER TWENTY-FIVE PERCENT OF THE
45 EQUITY SECURITIES OF A LICENSEE'S OR SIGNIFICANT VENDOR'S (OR APPLI-
46 CANT'S) HOLDING OR INTERMEDIARY COMPANIES, SHALL BE GRANTED A WAIVER OF
47 ANY INVESTIGATION OF SUITABILITY OR OTHER REQUIREMENT IF SUCH SECURITIES
48 ARE THOSE OF A CORPORATION, WHETHER PUBLICLY TRADED OR PRIVATELY HELD,
49 AND ITS HOLDINGS OF SUCH SECURITIES WERE PURCHASED FOR INVESTMENT
50 PURPOSES ONLY AND IT FILES A CERTIFIED STATEMENT TO THE EFFECT THAT IT
51 HAS NO INTENTION OF INFLUENCING OR AFFECTING THE AFFAIRS OF THE ISSUER,
52 THE LICENSEE (OR SIGNIFICANT VENDOR OR APPLICANT, AS APPLICABLE) OR ITS
53 HOLDING OR INTERMEDIARY COMPANIES; PROVIDED, HOWEVER, THAT IT SHALL BE
54 PERMITTED TO VOTE ON MATTERS PUT TO THE VOTE OF THE OUTSTANDING SECURITY
55 HOLDERS. THE COMMISSION MAY GRANT SUCH A WAIVER TO AN INSTITUTIONAL
56 INVESTOR HOLDING A HIGHER PERCENTAGE OF SUCH SECURITIES UPON A SHOWING

1 OF GOOD CAUSE AND IF THE CONDITIONS SPECIFIED ABOVE ARE MET. ANY INSTI-
2 TUTIONAL INVESTOR GRANTED A WAIVER UNDER THIS PARAGRAPH WHICH SUBSE-
3 QUENTLY DETERMINES TO INFLUENCE OR AFFECT THE AFFAIRS OF THE ISSUER
4 SHALL PROVIDE NOT LESS THAN THIRTY DAYS' NOTICE OF SUCH INTENT AND SHALL
5 FILE WITH THE COMMISSION A REQUEST FOR DETERMINATION OF SUITABILITY
6 BEFORE TAKING ANY ACTION THAT MAY INFLUENCE OR AFFECT THE AFFAIRS OF THE
7 ISSUER; PROVIDED, HOWEVER, THAT IT SHALL BE PERMITTED TO VOTE ON MATTERS
8 PUT TO THE VOTE OF THE OUTSTANDING SECURITY HOLDERS. IF AN INSTITUTIONAL
9 INVESTOR CHANGES ITS INVESTMENT INTENT, OR IF THE COMMISSION FINDS
10 REASONABLE CAUSE TO BELIEVE THAT THE INSTITUTIONAL INVESTOR MAY BE FOUND
11 UNSUITABLE, NO ACTION OTHER THAN DIVESTITURE SHALL BE TAKEN BY SUCH
12 INVESTOR WITH RESPECT TO ITS SECURITY HOLDINGS UNTIL THERE HAS BEEN
13 COMPLIANCE WITH ANY REQUIREMENTS ESTABLISHED BY THE COMMISSION, WHICH
14 MAY INCLUDE THE EXECUTION OF A TRUST AGREEMENT. THE LICENSEE (OR SIGNIF-
15 ICANT VENDOR OR APPLICANT, AS APPLICABLE) AND ITS RELEVANT HOLDING,
16 INTERMEDIARY OR SUBSIDIARY COMPANY SHALL NOTIFY THE COMMISSION IMME-
17 DIATELY OF ANY INFORMATION ABOUT, OR ACTIONS OF, AN INSTITUTIONAL INVE-
18 STOR HOLDING ITS EQUITY SECURITIES WHERE SUCH INFORMATION OR ACTION MAY
19 IMPACT UPON THE ELIGIBILITY OF SUCH INSTITUTIONAL INVESTOR FOR A WAIVER
20 PURSUANT TO THIS PARAGRAPH.

21 (B) IF AT ANY TIME THE COMMISSION FINDS THAT AN INSTITUTIONAL INVESTOR
22 HOLDING ANY SECURITY OF A HOLDING OR INTERMEDIARY COMPANY OF A LICENSEE
23 OR SIGNIFICANT VENDOR OR APPLICANT, OR, WHERE RELEVANT, OF ANOTHER
24 SUBSIDIARY COMPANY OF A HOLDING OR INTERMEDIARY COMPANY OF A LICENSEE OR
25 SIGNIFICANT VENDOR OR APPLICANT WHICH IS RELATED IN ANY WAY TO THE
26 FINANCING OF THE LICENSEE OR SIGNIFICANT VENDOR OR APPLICANT, FAILS TO
27 COMPLY WITH THE TERMS OF PARAGRAPH (A) OF THIS SECTION, OR IF AT ANY
28 TIME THE COMMISSION FINDS THAT, BY REASON OF THE EXTENT OR NATURE OF ITS
29 HOLDINGS, AN INSTITUTIONAL INVESTOR IS IN A POSITION TO EXERCISE SUCH A
30 SUBSTANTIAL IMPACT UPON THE CONTROLLING INTERESTS OF A LICENSEE OR
31 SIGNIFICANT VENDOR OR APPLICANT THAT INVESTIGATION AND DETERMINATION OF
32 SUITABILITY OF THE INSTITUTIONAL INVESTOR IS NECESSARY TO PROTECT THE
33 PUBLIC INTEREST, THE COMMISSION MAY TAKE ANY NECESSARY ACTION OTHERWISE
34 AUTHORIZED UNDER THIS ARTICLE TO PROTECT THE PUBLIC INTEREST.

35 (C) FOR PURPOSES OF THIS SECTION, AN "INSTITUTIONAL INVESTOR" SHALL
36 MEAN ANY RETIREMENT FUND ADMINISTERED BY A PUBLIC AGENCY FOR THE EXCLU-
37 SIVE BENEFIT OF FEDERAL, STATE, OR LOCAL PUBLIC EMPLOYEES; INVESTMENT
38 COMPANY REGISTERED UNDER THE INVESTMENT COMPANY ACT OF 1940 (15 U.S.C. S
39 80A-1 ET SEQ.); COLLECTIVE INVESTMENT TRUST ORGANIZED BY BANKS UNDER
40 PART NINE OF THE RULES OF THE COMPTROLLER OF THE CURRENCY; CLOSED END
41 INVESTMENT TRUST; CHARTERED OR LICENSED LIFE INSURANCE COMPANY OR PROP-
42 erty AND CASUALTY INSURANCE COMPANY; BANKING AND OTHER CHARTERED OR
43 LICENSED LENDING INSTITUTION; INVESTMENT ADVISOR REGISTERED UNDER THE
44 INVESTMENT ADVISORS ACT OF 1940 (15 U.S.C. S 80B-1 ET SEQ.); AND SUCH
45 OTHER PERSONS AS THE COMMISSION MAY DETERMINE FOR REASONS CONSISTENT
46 WITH THE PUBLIC INTEREST.

47 3. THE COMMISSION SHALL NOT ISSUE A LICENSE TO OR OTHERWISE FIND SUIT-
48 ABLE ANY PROSPECTIVE LICENSEE OR SIGNIFICANT VENDOR WHO:

49 (A) HAS AT ANY TIME, EITHER DIRECTLY, OR THROUGH ANOTHER PERSON WHOM
50 IT OWNED, IN WHOLE OR IN SIGNIFICANT PART, OR CONTROLLED:

51 (I) KNOWINGLY AND WILLFULLY ACCEPTED OR MADE AVAILABLE WAGERS ON
52 INTERACTIVE GAMING (INCLUDING POKER) FROM PERSONS LOCATED IN THE UNITED
53 STATES AFTER DECEMBER THIRTY-FIRST, TWO THOUSAND SIX, UNLESS SUCH WAGERS
54 WERE AFFIRMATIVELY AUTHORIZED BY LAW OF THE UNITED STATES OR OF EACH
55 STATE IN WHICH PERSONS MAKING SUCH WAGERS WERE LOCATED; OR

(II) KNOWINGLY FACILITATED OR OTHERWISE PROVIDED SERVICES WITH RESPECT TO INTERACTIVE GAMING (INCLUDING POKER) INVOLVING PERSONS LOCATED IN THE UNITED STATES FOR A PERSON DESCRIBED IN SUBPARAGRAPH (I) OF THIS PARAGRAPH AND ACTED WITH KNOWLEDGE OF THE FACT THAT SUCH WAGERS OR INTERACTIVE GAMING INVOLVED PERSONS LOCATED IN THE UNITED STATES.

(B) HAS PURCHASED OR ACQUIRED, DIRECTLY OR INDIRECTLY, IN WHOLE OR IN SIGNIFICANT PART, A PERSON DESCRIBED IN PARAGRAPH (A) OF THIS SUBDIVISION OR WILL USE THAT PERSON OR A COVERED ASSET IN CONNECTION WITH INTERACTIVE GAMING LICENSED PURSUANT TO THIS ARTICLE.

4. A PROSPECTIVE LICENSEE OR SIGNIFICANT VENDOR MAY APPEAL A DETERMINATION BY THE COMMISSION THAT IT IS WITHIN THE SCOPE OF SUBDIVISION THREE OF THIS SECTION ONLY IN ACCORDANCE WITH THE PROCEDURES SPECIFIED IN THIS SUBDIVISION.

(A) THE COMMISSION SHALL AFFORD THE PROSPECTIVE LICENSEE OR SIGNIFICANT VENDOR A HEARING AT WHICH SUCH PERSON MAY PROVIDE EVIDENCE TO SUPPORT THE BASIS ON WHICH IT SEEKS RELIEF. THE COMMISSION SHALL WAIVE THE PROHIBITION IF THE PROSPECTIVE LICENSEE OR SIGNIFICANT VENDOR DEMONSTRATES BY CLEAR AND CONVINCING EVIDENCE THAT ITS CONDUCT IN CONNECTION WITH INTERACTIVE GAMING AND WAGERS INVOLVING PERSONS LOCATED IN THE UNITED STATES WAS NOT UNLAWFUL AND, IF APPLICABLE, THAT THE COVERED ASSETS TO BE USED OR THAT ARE BEING USED BY SUCH PERSON IN CONNECTION WITH INTERACTIVE GAMING LICENSED PURSUANT TO THIS ARTICLE WERE NOT USED IN A MANNER THAT WAS UNLAWFUL. THE DETERMINATION OF THE COMMISSION SHALL BE MADE WITHOUT REGARD TO WHETHER THE PERSON HAS BEEN PROSECUTED UNDER THE CRIMINAL LAWS OF ANY STATE, THE UNITED STATES OR OTHER JURISDICTION AND THE PROCEEDING TERMINATED IN A MANNER OTHER THAN WITH A CONVICTION. IF THE PROHIBITION IS WAIVED, THE PROSPECTIVE LICENSEE OR SIGNIFICANT VENDOR STILL MUST SATISFY ALL OTHERWISE APPLICABLE LICENSE AND SUITABILITY REQUIREMENTS.

(B) THE COMMISSION SHALL PRESIDE OVER THE HEARING AND SHALL ACT AS FINDER OF FACT ENTITLED TO EVALUATE THE CREDIBILITY OF THE WITNESSES AND PERSUASIVENESS OF THE EVIDENCE, PURSUANT TO WHATEVER PROCEDURES THE COMMISSION DETERMINES TO BE APPROPRIATE.

S 1405. STATE TAX. LICENSEES ENGAGED IN THE BUSINESS OF CONDUCTING INTERACTIVE GAMING PURSUANT TO THIS ARTICLE SHALL PAY A PRIVILEGE TAX BASED ON THE LICENSEE'S INTERACTIVE GAMING GROSS REVENUE AT A FIFTEEN PERCENT RATE.

S 2. Subdivision 1 of section 225.00 of the penal law is amended to read as follows:

1. "Contest of chance" means any contest, game, gaming scheme or gaming device in which the outcome depends [in a material degree] PREDOMINANTLY upon an element of chance, notwithstanding that skill of the contestants may also be a factor therein.

S 3. The penal law is amended by adding a new section 225.36 to read as follows:

S 225.36 INTERACTIVE GAMING OFFENSES AND EXCEPTIONS.

1. THE KNOWING AND WILLFUL OFFERING OF UNLICENSED INTERACTIVE GAMING TO PERSONS IN THIS STATE, OR THE KNOWING AND WILLFUL PROVISION OF SERVICES WITH RESPECT THERETO, SHALL CONSTITUTE A GAMBLING OFFENSE UNDER THIS ARTICLE.

2. LICENSED INTERACTIVE GAMING ACTIVITIES UNDER SECTION FOURTEEN HUNDRED TWO OF THE RACING, PARI-MUTUEL WAGERING AND BREEDING LAW SHALL NOT BE A GAMBLING OFFENSE UNDER THIS ARTICLE.

3. A PERSON OFFERING UNLICENSED INTERACTIVE GAMING TO PERSONS IN THIS STATE SHALL BE LIABLE FOR ALL TAXES SET FORTH IN SECTION FOURTEEN HUNDRED FIVE OF THE RACING, PARI-MUTUEL WAGERING AND BREEDING LAW IN THE

1 SAME MANNER AND AMOUNTS AS IF SUCH PERSON WERE A LICENSEE. TIMELY
2 PAYMENT OF SUCH TAXES SHALL NOT CONSTITUTE A DEFENSE TO ANY PROSECUTION
3 OR OTHER PROCEEDING IN CONNECTION WITH THE INTERACTIVE GAMING EXCEPT FOR
4 A PROSECUTION OR PROCEEDING ALLEGING FAILURE TO MAKE SUCH PAYMENT.
5 S 4. This act shall take effect immediately.