

5302

2015-2016 Regular Sessions

I N S E N A T E

May 13, 2015

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

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

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629 N.Y.S.2D 661, 662 (CRIM. CT. 1995). ON THE OTHER HAND, WHERE A CONTEST PITS THE SKILL LEVELS OF THE PLAYERS AGAINST EACH OTHER, NEW YORK COURTS HAVE FOUND A GAME TO BE ONE OF SKILL RATHER THAN CHANCE. SEE PEOPLE V. HUNT, 162 MISC. 2D 70, 72, 616 N.Y.S.2D 168, 170 (CRIM. CT. 1994) ("PLAYED FAIRLY, SKILL RATHER THAN CHANCE IS THE MATERIAL COMPONENT OF THREE-CARD MONTE.");

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

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

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

6. THE LEGISLATURE FURTHER FINDS THAT AS THE INTERNET HAS BECOME AN INTEGRAL PART OF SOCIETY, AND INTERNET POKER A MAJOR FORM OF ENTERTAINMENT FOR MANY CONSUMERS, ANY INTERACTIVE GAMING ENFORCEMENT AND REGULATORY STRUCTURE MUST BEGIN FROM THE BEDROCK PREMISE THAT PARTICIPATION IN A LAWFUL AND LICENSED GAMING INDUSTRY IS A PRIVILEGE AND NOT A RIGHT, AND THAT REGULATORY OVERSIGHT IS INTENDED TO SAFEGUARD THE INTEGRITY OF THE GAMES AND PARTICIPANTS AND TO ENSURE ACCOUNTABILITY AND THE PUBLIC TRUST.

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

1. "AUTHORIZED GAME" MEANS OMAHA HOLD'EM AND TEXAS HOLD'EM POKER, AS WELL AS ANY OTHER POKER GAME THAT THE COMMISSION DETERMINES IS THE MATERIAL EQUIVALENT OF EITHER OF THOSE, WHETHER IN A CASH GAME OR TOURNAMENT.

2. "AUTHORIZED PARTICIPANTS" MEANS PERSONS WHO ARE EITHER PHYSICALLY PRESENT IN THIS STATE WHEN PLACING A WAGER OR WHO OTHERWISE ARE PERMITTED BY APPLICABLE LAW, AS DETERMINED BY THE COMMISSION, TO PLACE A WAGER. THE INTERMEDIATE ROUTING OF ELECTRONIC DATA IN CONNECTION WITH INTERACTIVE GAMING SHALL NOT DETERMINE THE LOCATION OR LOCATIONS IN WHICH A WAGER IS INITIATED, RECEIVED OR OTHERWISE MADE.

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

4. "COMMISSION" MEANS THE NEW YORK STATE GAMING COMMISSION.

1 5. "DIVISION" MEANS THE DIVISION OF GAMING, ESTABLISHED UNDER PARA-
2 GRAPH (C) OF SUBDIVISION TWO OF SECTION ONE HUNDRED THREE OF THIS CHAP-
3 TER.

4 6. "INTERACTIVE GAMING" MEANS THE CONDUCT OF GAMES THROUGH THE USE OF
5 THE INTERNET OR OTHER COMMUNICATIONS TECHNOLOGY THAT ALLOWS A PERSON,
6 UTILIZING MONEY, CHECKS, ELECTRONIC CHECKS, ELECTRONIC TRANSFERS OF
7 MONEY, CREDIT CARDS, DEBIT CARDS OR ANY OTHER INSTRUMENTALITY, TO TRANS-
8 MIT TO A COMPUTER INFORMATION TO ASSIST IN THE PLACING OF A WAGER AND
9 CORRESPONDING INFORMATION RELATED TO THE DISPLAY OF THE GAME, GAME
10 OUTCOMES OR OTHER SIMILAR INFORMATION. THE TERM DOES NOT INCLUDE THE
11 CONDUCT OF (A) NON-GAMBLING GAMES THAT DO NOT OTHERWISE REQUIRE A
12 LICENSE UNDER STATE OR FEDERAL LAW; OR (B) GAMES THAT OCCUR ENTIRELY
13 AMONG PARTICIPANTS WHO ARE LOCATED ON A LICENSED CASINO PREMISES. FOR
14 PURPOSES OF THIS PROVISION, "COMMUNICATIONS TECHNOLOGY" MEANS ANY METHOD
15 USED AND THE COMPONENTS EMPLOYED BY AN ESTABLISHMENT TO FACILITATE THE
16 TRANSMISSION OF INFORMATION, INCLUDING, WITHOUT LIMITATION, TRANSMISSION
17 AND RECEPTION BY SYSTEMS BASED ON WIRE, CABLE, RADIO, MICROWAVE, LIGHT,
18 OPTICS OR COMPUTER DATA NETWORKS, INCLUDING, WITHOUT LIMITATION, THE
19 INTERNET AND INTRANETS.

20 7. "INTERACTIVE GAMING GROSS REVENUE" MEANS THE TOTAL OF ALL SUMS PAID
21 TO A LICENSEE FROM INTERACTIVE GAMING INVOLVING AUTHORIZED PARTICIPANTS,
22 LESS ONLY THE TOTAL OF ALL SUMS PAID OUT AS WINNINGS TO PATRONS AND
23 PROMOTIONAL GAMING CREDITS; PROVIDED, HOWEVER, THAT THE CASH EQUIVALENT
24 VALUE OF ANY MERCHANDISE OR OTHER NON-CASH THING OF VALUE INCLUDED IN A
25 CONTEST OR TOURNAMENT SHALL NOT BE INCLUDED IN THE TOTAL OF ALL SUMS
26 PAID OUT AS WINNINGS TO PLAYERS FOR PURPOSES OF DETERMINING INTERACTIVE
27 GAMING GROSS REVENUE.

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

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

36 8. "INTERACTIVE GAMING PLATFORM" MEANS THE COMBINATION OF HARDWARE,
37 SOFTWARE AND DATA NETWORKS USED TO MANAGE, ADMINISTER OR CONTROL WAGERS
38 ON INTERACTIVE GAMING OR THE GAMES WITH WHICH THOSE WAGERS ARE ASSOCI-
39 ATED.

40 9. "INTERNET" MEANS A COMPUTER NETWORK OF INTEROPERABLE
41 PACKET-SWITCHED DATA NETWORKS.

42 10. "LICENSEE" MEANS A PERSON WHO IS LICENSED BY THE COMMISSION TO
43 OFFER INTERACTIVE GAMING, USING AN INTERACTIVE GAMING PLATFORM TO
44 AUTHORIZED PARTICIPANTS. A LICENSEE MAY UTILIZE MULTIPLE INTERACTIVE
45 GAMING PLATFORMS PROVIDED THAT EACH PLATFORM IS APPROVED BY THE COMMIS-
46 SION.

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

51 12. "SIGNIFICANT VENDOR" MEANS ANY PERSON WHO OFFERS OR WHO PROPOSES
52 TO OFFER ANY OF THE FOLLOWING SERVICES WITH RESPECT TO INTERACTIVE
53 GAMING: (A) A CORE FUNCTION; (B) SALE, LICENSING OR OTHER RECEIPT OF
54 COMPENSATION FOR SELLING OR LICENSING A DATABASE OR CUSTOMER LIST OF
55 INDIVIDUALS RESIDING IN THE UNITED STATES SELECTED IN WHOLE OR IN PART
56 BECAUSE THEY PLACED WAGERS OR PARTICIPATED IN GAMBLING GAMES WITH OR

1 THROUGH AN INTERNET WEBSITE OR OPERATOR (OR ANY DERIVATIVE OF SUCH A
2 DATABASE OR CUSTOMER LIST); (C) PROVISION OF ANY TRADEMARK, TRADENAME,
3 SERVICE MARK OR SIMILAR INTELLECTUAL PROPERTY UNDER WHICH A LICENSEE OR
4 SIGNIFICANT VENDOR IDENTIFIES INTERACTIVE GAMES TO CUSTOMERS; OR (D)
5 PROVISION OF ANY PRODUCT, SERVICE OR ASSET TO A LICENSEE OR SIGNIFICANT
6 VENDOR IN RETURN FOR A PERCENTAGE OF INTERACTIVE GAMING REVENUE (NOT
7 INCLUDING FEES TO FINANCIAL INSTITUTIONS AND PAYMENT PROVIDERS FOR
8 FACILITATING A DEPOSIT OR WITHDRAWAL BY AN AUTHORIZED PARTICIPANT). THE
9 TERM "SIGNIFICANT VENDOR" SHALL NOT INCLUDE A PROVIDER OF GOODS OR
10 SERVICES TO A LICENSEE THAT ARE NOT SPECIFICALLY DESIGNED FOR USE AND
11 NOT PRINCIPALLY USED IN CONNECTION WITH INTERACTIVE GAMING.

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

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

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

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

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

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

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

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

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

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

51 (D) WHETHER THE APPLICANT HAS OR GUARANTEES ACQUISITION OF ADEQUATE
52 BUSINESS COMPETENCE AND EXPERIENCE IN THE OPERATION OF LICENSED GAMING
53 OR OF INTERACTIVE GAMING IN THIS STATE OR IN A STATE WITH COMPARABLE
54 LICENSING REQUIREMENTS; AND

55 (E) WHETHER THE APPLICANT HAS OR WILL OBTAIN SUFFICIENT FINANCING FOR
56 THE NATURE OF THE PROPOSED OPERATION AND FROM A SUITABLE SOURCE.

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

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

8 7. LICENSES ISSUED BY THE COMMISSION SHALL REMAIN IN EFFECT FOR TEN
9 YEARS.

10 8. THE COMMISSION, BY REGULATION, MAY AUTHORIZE AND PROMULGATE ANY
11 RULES NECESSARY TO IMPLEMENT AGREEMENTS WITH OTHER STATES, OR AUTHORIZED
12 AGENCIES THEREOF (A) TO ENABLE PATRONS IN THOSE STATES TO PARTICIPATE IN
13 INTERACTIVE GAMING OFFERED BY LICENSEES UNDER THIS ARTICLE OR (B) TO
14 ENABLE PATRONS IN THIS STATE TO PARTICIPATE IN INTERACTIVE GAMING
15 OFFERED BY LICENSEES UNDER THE LAWS OF THOSE OTHER STATES, PROVIDED THAT
16 SUCH OTHER STATE OR AUTHORIZED AGENCY APPLIES SUITABILITY STANDARDS AND
17 REVIEW MATERIALLY CONSISTENT WITH THE PROVISIONS OF THIS ARTICLE.

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

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

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

25 10. THE COMMISSION MAY DELEGATE ITS RESPONSIBILITIES TO ADMINISTER THE
26 PROVISIONS OF THIS ARTICLE TO THE DIVISION, AS IT SEES FIT, EXCEPT FOR
27 ITS RESPONSIBILITIES TO APPROVE LICENSES.

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

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

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

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

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

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

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

54 S 1404. SCOPE OF LICENSING REVIEW. 1. IN CONNECTION WITH ANY LICENSE
55 ISSUED PURSUANT TO THIS ARTICLE, THE LICENSEE, SIGNIFICANT VENDOR OR
56 APPLICANT SHALL IDENTIFY AND THE COMMISSION SHALL REVIEW THE SUITABILITY

1 OF SUCH LICENSEE'S, SIGNIFICANT VENDOR'S OR APPLICANT'S OWNER, CHIEF
2 EXECUTIVE OFFICER, CHIEF FINANCIAL OFFICER AND ANY OTHER OFFICER OR
3 EMPLOYEE WHO THE COMMISSION DEEMS IS SIGNIFICANTLY INVOLVED IN THE
4 MANAGEMENT OR CONTROL OF THE LICENSEE, SIGNIFICANT VENDOR OR APPLICANT
5 OR OF THE INTERACTIVE GAMING PLATFORM. "OWNER" FOR PURPOSES OF THIS
6 PROVISION MEANS ANY PERSON WHO DIRECTLY OR INDIRECTLY HOLDS ANY BENEFI-
7 CIAL OR OWNERSHIP INTEREST IN THE APPLICANT OF FIVE PERCENT OR GREATER
8 OR ANY AMOUNT OF OWNERSHIP THAT THE COMMISSION DETERMINES TO BE SIGNIF-
9 ICANT OWNERSHIP OF THE LICENSEE, SIGNIFICANT VENDOR, OR APPLICANT.

10 2. INSTITUTIONAL INVESTORS ARE SUBJECT TO THE PROVISIONS SET OUT IN
11 THIS SECTION.

12 (A) AN INSTITUTIONAL INVESTOR HOLDING UNDER TWENTY-FIVE PERCENT OF THE
13 EQUITY SECURITIES OF A LICENSEE'S OR SIGNIFICANT VENDOR'S (OR APPLI-
14 CANT'S) HOLDING OR INTERMEDIARY COMPANIES, SHALL BE GRANTED A WAIVER OF
15 ANY INVESTIGATION OF SUITABILITY OR OTHER REQUIREMENT IF SUCH SECURITIES
16 ARE THOSE OF A CORPORATION, WHETHER PUBLICLY TRADED OR PRIVATELY HELD,
17 AND ITS HOLDINGS OF SUCH SECURITIES WERE PURCHASED FOR INVESTMENT
18 PURPOSES ONLY AND IT FILES A CERTIFIED STATEMENT TO THE EFFECT THAT IT
19 HAS NO INTENTION OF INFLUENCING OR AFFECTING THE AFFAIRS OF THE ISSUER,
20 THE LICENSEE (OR SIGNIFICANT VENDOR OR APPLICANT, AS APPLICABLE) OR ITS
21 HOLDING OR INTERMEDIARY COMPANIES; PROVIDED, HOWEVER, THAT IT SHALL BE
22 PERMITTED TO VOTE ON MATTERS PUT TO THE VOTE OF THE OUTSTANDING SECURITY
23 HOLDERS. THE COMMISSION MAY GRANT SUCH A WAIVER TO AN INSTITUTIONAL
24 INVESTOR HOLDING A HIGHER PERCENTAGE OF SUCH SECURITIES UPON A SHOWING
25 OF GOOD CAUSE AND IF THE CONDITIONS SPECIFIED ABOVE ARE MET. ANY INSTI-
26 TUTIONAL INVESTOR GRANTED A WAIVER UNDER THIS PARAGRAPH WHICH SUBSE-
27 QUENTLY DETERMINES TO INFLUENCE OR AFFECT THE AFFAIRS OF THE ISSUER
28 SHALL PROVIDE NOT LESS THAN THIRTY DAYS' NOTICE OF SUCH INTENT AND SHALL
29 FILE WITH THE COMMISSION A REQUEST FOR DETERMINATION OF SUITABILITY
30 BEFORE TAKING ANY ACTION THAT MAY INFLUENCE OR AFFECT THE AFFAIRS OF THE
31 ISSUER; PROVIDED, HOWEVER, THAT IT SHALL BE PERMITTED TO VOTE ON MATTERS
32 PUT TO THE VOTE OF THE OUTSTANDING SECURITY HOLDERS. IF AN INSTITUTIONAL
33 INVESTOR CHANGES ITS INVESTMENT INTENT, OR IF THE COMMISSION FINDS
34 REASONABLE CAUSE TO BELIEVE THAT THE INSTITUTIONAL INVESTOR MAY BE FOUND
35 UNSUITABLE, NO ACTION OTHER THAN DIVESTITURE SHALL BE TAKEN BY SUCH
36 INVESTOR WITH RESPECT TO ITS SECURITY HOLDINGS UNTIL THERE HAS BEEN
37 COMPLIANCE WITH ANY REQUIREMENTS ESTABLISHED BY THE COMMISSION, WHICH
38 MAY INCLUDE THE EXECUTION OF A TRUST AGREEMENT. THE LICENSEE (OR SIGNIF-
39 ICANT VENDOR OR APPLICANT, AS APPLICABLE) AND ITS RELEVANT HOLDING,
40 INTERMEDIARY OR SUBSIDIARY COMPANY SHALL NOTIFY THE COMMISSION IMME-
41 DIATELY OF ANY INFORMATION ABOUT, OR ACTIONS OF, AN INSTITUTIONAL INVES-
42 TOR HOLDING ITS EQUITY SECURITIES WHERE SUCH INFORMATION OR ACTION MAY
43 IMPACT UPON THE ELIGIBILITY OF SUCH INSTITUTIONAL INVESTOR FOR A WAIVER
44 PURSUANT TO THIS PARAGRAPH.

45 (B) IF AT ANY TIME THE COMMISSION FINDS THAT AN INSTITUTIONAL INVESTOR
46 HOLDING ANY SECURITY OF A HOLDING OR INTERMEDIARY COMPANY OF A LICENSEE
47 OR SIGNIFICANT VENDOR OR APPLICANT, OR, WHERE RELEVANT, OF ANOTHER
48 SUBSIDIARY COMPANY OF A HOLDING OR INTERMEDIARY COMPANY OF A LICENSEE OR
49 SIGNIFICANT VENDOR OR APPLICANT WHICH IS RELATED IN ANY WAY TO THE
50 FINANCING OF THE LICENSEE OR SIGNIFICANT VENDOR OR APPLICANT, FAILS TO
51 COMPLY WITH THE TERMS OF PARAGRAPH (A) OF THIS SECTION, OR IF AT ANY
52 TIME THE COMMISSION FINDS THAT, BY REASON OF THE EXTENT OR NATURE OF ITS
53 HOLDINGS, AN INSTITUTIONAL INVESTOR IS IN A POSITION TO EXERCISE SUCH A
54 SUBSTANTIAL IMPACT UPON THE CONTROLLING INTERESTS OF A LICENSEE OR
55 SIGNIFICANT VENDOR OR APPLICANT THAT INVESTIGATION AND DETERMINATION OF
56 SUITABILITY OF THE INSTITUTIONAL INVESTOR IS NECESSARY TO PROTECT THE

1 PUBLIC INTEREST, THE COMMISSION MAY TAKE ANY NECESSARY ACTION OTHERWISE
2 AUTHORIZED UNDER THIS ARTICLE TO PROTECT THE PUBLIC INTEREST.

3 (C) FOR PURPOSES OF THIS SECTION, AN "INSTITUTIONAL INVESTOR" SHALL
4 MEAN ANY RETIREMENT FUND ADMINISTERED BY A PUBLIC AGENCY FOR THE EXCLU-
5 SIVE BENEFIT OF FEDERAL, STATE, OR LOCAL PUBLIC EMPLOYEES; INVESTMENT
6 COMPANY REGISTERED UNDER THE INVESTMENT COMPANY ACT OF 1940 (15 U.S.C. S
7 80A-1 ET SEQ.); COLLECTIVE INVESTMENT TRUST ORGANIZED BY BANKS UNDER
8 PART NINE OF THE RULES OF THE COMPTROLLER OF THE CURRENCY; CLOSED END
9 INVESTMENT TRUST; CHARTERED OR LICENSED LIFE INSURANCE COMPANY OR PROP-
10 ERTY AND CASUALTY INSURANCE COMPANY; BANKING AND OTHER CHARTERED OR
11 LICENSED LENDING INSTITUTION; INVESTMENT ADVISOR REGISTERED UNDER THE
12 INVESTMENT ADVISORS ACT OF 1940 (15 U.S.C. S 80B-1 ET SEQ.); AND SUCH
13 OTHER PERSONS AS THE COMMISSION MAY DETERMINE FOR REASONS CONSISTENT
14 WITH THE PUBLIC INTEREST.

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

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

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

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

27 S 225.36 INTERACTIVE GAMING OFFENSES AND EXCEPTIONS.

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

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

35 3. A PERSON OFFERING UNLICENSED INTERACTIVE GAMING TO PERSONS IN THIS
36 STATE SHALL BE LIABLE FOR ALL TAXES SET FORTH IN SECTION FOURTEEN
37 HUNDRED FIVE OF THE RACING, PARI-MUTUEL WAGERING AND BREEDING LAW IN THE
38 SAME MANNER AND AMOUNTS AS IF SUCH PERSON WERE A LICENSEE. TIMELY
39 PAYMENT OF SUCH TAXES SHALL NOT CONSTITUTE A DEFENSE TO ANY PROSECUTION
40 OR OTHER PROCEEDING IN CONNECTION WITH THE INTERACTIVE GAMING EXCEPT FOR
41 A PROSECUTION OR PROCEEDING ALLEGING FAILURE TO MAKE SUCH PAYMENT.

42 S 4. This act shall take effect on the one hundred eightieth day after
43 it shall have become a law.