

9509

I N A S S E M B L Y

May 5, 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:

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

ARTICLE 14

CERTAIN INTERACTIVE GAMING

SECTION 1400. LEGISLATIVE FINDINGS AND PURPOSE.

1401. DEFINITIONS.

1402. AUTHORIZATION.

1403. REQUIRED SAFEGUARDS/MINIMUM STANDARDS.

1404. SCOPE OF LICENSING REVIEW.

1405. STATE TAX.

S 1400. LEGISLATIVE FINDINGS AND PURPOSE. THE LEGISLATURE HEREBY FINDS AND DECLARES THAT:

1. UNDER THE PENAL LAW A PERSON ENGAGES IN GAMBLING WHEN HE OR SHE STAKES OR RISKS SOMETHING OF VALUE UPON THE OUTCOME OF A CONTEST OF CHANCE OR A FUTURE CONTINGENT EVENT NOT UNDER HIS OR HER CONTROL OR INFLUENCE, UPON AN AGREEMENT OR UNDERSTANDING THAT HE OR SHE WILL RECEIVE SOMETHING OF VALUE IN THE EVENT OF A CERTAIN OUTCOME. A CONTEST OF CHANCE IS DEFINED AS ANY CONTEST, GAME, GAMING SCHEME OR GAMING DEVICE IN WHICH THE OUTCOME DEPENDS IN A MATERIAL DEGREE UPON AN ELEMENT OF CHANCE, NOTWITHSTANDING THAT SKILL OF THE CONTESTANTS MAY ALSO BE A FACTOR THEREIN;

2. A CONTEST OF CHANCE IS DEFINED AS ANY CONTEST, GAME, GAMING SCHEME OR GAMING DEVICE IN WHICH THE OUTCOME DEPENDS IN A MATERIAL DEGREE UPON AN ELEMENT OF CHANCE, NOTWITHSTANDING THAT SKILL OF THE CONTESTANTS MAY ALSO BE A FACTOR THEREIN. PL S 225.00(1). THUS, GAMES OF CHANCE MAY INVOLVE SOME SKILL, BUT IN THOSE GAMES THE LEVEL OF SKILL DOES NOT DETERMINE THE OUTCOME REGARDLESS OF THE DEGREE OF SKILL EMPLOYED. SEE PEOPLE V. TURNER, 165 MISC. 2D 222, 224, 629 N.Y.S.2D 661, 662 (CRIM.

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

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1 CT. 1995). ON THE OTHER HAND, WHERE A CONTEST PITS THE SKILL LEVELS OF
2 THE PLAYERS AGAINST EACH OTHER, NEW YORK COURTS HAVE FOUND A GAME TO BE
3 ONE OF SKILL RATHER THAN CHANCE. SEE PEOPLE V. HUNT, 162 MISC. 2D 70,
4 72, 616 N.Y.S.2D 168, 170 (CRIM. CT. 1994) ("PLAYED FAIRLY, STILL RATH-
5 ER THAN CHANCE IS THE MATERIAL COMPONENT OF THREE-CARD MONTE.");

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

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

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

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

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

53 S 1401. DEFINITIONS. AS USED IN THIS ARTICLE:

54 1. "AUTHORIZED GAME" MEANS OMAHA HOLD'EM AND TEXAS HOLD'EM POKER, AS
55 WELL AS ANY OTHER POKER GAME THAT THE COMMISSION DETERMINES IS THE MATE-

1 RIAL EQUIVALENT OF EITHER OF THOSE, WHETHER IN A CASH GAME OR TOURNA-
2 MENT.

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

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

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

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

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

31 7. "INTERACTIVE GAMING" MEANS THE CONDUCT OF GAMES THROUGH THE USE OF
32 THE INTERNET OR OTHER COMMUNICATIONS TECHNOLOGY THAT ALLOWS A PERSON,
33 UTILIZING MONEY, CHECKS, ELECTRONIC CHECKS, ELECTRONIC TRANSFERS OF
34 MONEY, CREDIT CARDS, DEBIT CARDS OR ANY OTHER INSTRUMENTALITY, TO TRANS-
35 MIT TO A COMPUTER INFORMATION TO ASSIST IN THE PLACING OF A WAGER AND
36 CORRESPONDING INFORMATION RELATED TO THE DISPLAY OF THE GAME, GAME
37 OUTCOMES OR OTHER SIMILAR INFORMATION. THE TERM DOES NOT INCLUDE THE
38 CONDUCT OF (A) NON-GAMBLING GAMES THAT DO NOT OTHERWISE REQUIRE A
39 LICENSE UNDER STATE OR FEDERAL LAW; OR (B) GAMES THAT OCCUR ENTIRELY
40 AMONG PARTICIPANTS WHO ARE LOCATED ON A LICENSED CASINO PREMISES.

41 8. "COMMUNICATIONS TECHNOLOGY" MEANS ANY METHOD USED AND THE COMPO-
42 NENTS EMPLOYED BY AN ESTABLISHMENT TO FACILITATE THE TRANSMISSION OF
43 INFORMATION, INCLUDING, WITHOUT LIMITATION, TRANSMISSION AND RECEPTION
44 BY SYSTEMS BASED ON WIRE, CABLE, RADIO, MICROWAVE, LIGHT, OPTICS OR
45 COMPUTER DATA NETWORKS, INCLUDING, WITHOUT LIMITATION, THE INTERNET AND
46 INTRANETS.

47 9. "INTERACTIVE GAMING GROSS REVENUE" SHALL MEAN THE TOTAL OF ALL SUMS
48 PAID TO A LICENSEE FROM INTERACTIVE GAMING INVOLVING AUTHORIZED PARTIC-
49 IPANTS, LESS ONLY THE TOTAL OF ALL SUMS PAID OUT AS WINNINGS TO PATRONS
50 AND PROMOTIONAL GAMING CREDITS; PROVIDED, HOWEVER, THAT THE CASH EQUIV-
51 ALENT VALUE OF ANY MERCHANDISE OR OTHER NON-CASH THING OF VALUE INCLUDED
52 IN A CONTEST OR TOURNAMENT SHALL NOT BE INCLUDED IN THE TOTAL OF ALL
53 SUMS PAID OUT AS WINNINGS TO PLAYERS FOR PURPOSES OF DETERMINING INTER-
54 ACTIVE GAMING GROSS REVENUE.

55 (A) NEITHER AMOUNTS DEPOSITED WITH A LICENSEE FOR PURPOSES OF INTERAC-
56 TIVE GAMING NOR AMOUNTS TAKEN IN FRAUDULENT ACTS PERPETRATED AGAINST A

LICENSEE FOR WHICH THE LICENSEE IS NOT REIMBURSED SHALL BE CONSIDERED TO HAVE BEEN "PAID" TO THE LICENSEE FOR PURPOSES OF CALCULATING INTERACTIVE 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.

10. "INTERACTIVE GAMING PLATFORM" SHALL MEAN 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.

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

12. "LICENSEE" SHALL MEAN 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.

13. "OMAHA HOLD'EM POKER" SHALL MEAN 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.

14. "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 DATA BASE 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.

15. "TEXAS HOLD'EM POKER" SHALL MEAN 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 EFFECTIVE DATE OF THIS ARTICLE, 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 INTERAC-

1 TIVE GAMING THAT IS OFFERED TO PERSONS LOCATED IN THIS STATE UNLESS
2 LICENSED BY THE COMMISSION PURSUANT TO THIS ARTICLE AND ONLY THOSE GAMES
3 AUTHORIZED BY THE COMMISSION SHALL BE PERMITTED.

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

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

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

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

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

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

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

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

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

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

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

39 7. LICENSES ISSUED BY THE COMMISSION SHALL REMAIN IN EFFECT FOR TEN
40 YEARS.

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

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

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

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

10. THE COMMISSION MAY DELEGATE ITS RESPONSIBILITIES TO ADMINISTER THE PROVISIONS OF THIS ARTICLE TO THE DIVISION, AS IT SEES FIT, EXCEPT FOR ITS RESPONSIBILITIES TO APPROVE LICENSES AND TO CONDUCT THE PROCEEDINGS REQUIRED UNDER SUBDIVISION FOUR OF SECTION FOURTEEN HUNDRED FOUR OF THIS ARTICLE.

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

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

2. APPROPRIATE SAFEGUARDS TO ENSURE, TO A REASONABLE DEGREE OF CERTAINTY, THAT PARTICIPANTS IN INTERACTIVE GAMING ARE PHYSICALLY LOCATED WITHIN THE STATE OR SUCH OTHER JURISDICTION THAT THE COMMISSION HAS DETERMINED TO BE PERMISSIBLE.

3. APPROPRIATE SAFEGUARDS TO PROTECT, TO A REASONABLE DEGREE OF CERTAINTY, THE PRIVACY AND ONLINE SECURITY OF PARTICIPANTS IN INTERACTIVE GAMING.

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

5. APPROPRIATE SAFEGUARDS TO MINIMIZE COMPULSIVE GAMING AND TO PROVIDE NOTICE TO PARTICIPANTS OF RESOURCES TO HELP PROBLEM GAMBLERS.

6. APPROPRIATE SAFEGUARDS TO ENSURE PARTICIPANTS' FUNDS ARE HELD IN ACCOUNTS SEGREGATED FROM THE FUNDS OF LICENSEES AND OTHERWISE ARE PROTECTED FROM CORPORATE INSOLVENCY, FINANCIAL RISK OR CRIMINAL OR CIVIL ACTIONS AGAINST THE LICENSEE.

S 1404. SCOPE OF LICENSING REVIEW. 1. IN CONNECTION WITH ANY LICENSE ISSUED PURSUANT TO THIS ARTICLE, THE LICENSEE, SIGNIFICANT VENDOR OR APPLICANT SHALL IDENTIFY AND THE COMMISSION SHALL REVIEW THE SUITABILITY OF SUCH LICENSEE'S, SIGNIFICANT VENDOR'S OR APPLICANT'S OWNER, CHIEF EXECUTIVE OFFICER, CHIEF FINANCIAL OFFICER AND ANY OTHER OFFICER OR EMPLOYEE WHO THE COMMISSION DEEMS IS SIGNIFICANTLY INVOLVED IN THE MANAGEMENT OR CONTROL OF THE LICENSEE, SIGNIFICANT VENDOR OR APPLICANT OR OF THE INTERACTIVE GAMING PLATFORM. "OWNER" FOR PURPOSES OF THIS ARTICLE MEANS ANY PERSON WHO DIRECTLY OR INDIRECTLY HOLDS ANY BENEFICIAL OR OWNERSHIP INTEREST IN THE APPLICANT OF FIVE PERCENT OR GREATER OR ANY AMOUNT OF OWNERSHIP THAT THE COMMISSION DETERMINES TO BE SIGNIFICANT OWNERSHIP OF THE LICENSEE, SIGNIFICANT VENDOR, OR APPLICANT.

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

(A) AN INSTITUTIONAL INVESTOR HOLDING UNDER TWENTY-FIVE PERCENT OF THE EQUITY SECURITIES OF A LICENSEE'S OR SIGNIFICANT VENDOR'S (OR APPLICANT'S) HOLDING OR INTERMEDIARY COMPANIES, SHALL BE GRANTED A WAIVER OF ANY INVESTIGATION OF SUITABILITY OR OTHER REQUIREMENT IF SUCH SECURITIES ARE THOSE OF A CORPORATION, WHETHER PUBLICLY TRADED OR PRIVATELY HELD, AND ITS HOLDINGS OF SUCH SECURITIES WERE PURCHASED FOR INVESTMENT PURPOSES ONLY AND IT FILES A CERTIFIED STATEMENT TO THE EFFECT THAT IT HAS NO INTENTION OF INFLUENCING OR AFFECTING THE AFFAIRS OF THE ISSUER,

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

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

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

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

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

(I) KNOWINGLY AND WILLFULLY ACCEPTED OR MADE AVAILABLE WAGERS ON INTERACTIVE GAMING (INCLUDING POKER) FROM PERSONS LOCATED IN THE UNITED STATES AFTER DECEMBER THIRTY-FIRST, TWO THOUSAND SIX, UNLESS SUCH WAGERS WERE AFFIRMATIVELY AUTHORIZED BY LAW OF THE UNITED STATES OR OF EACH STATE IN WHICH PERSONS MAKING SUCH WAGER 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 BASES 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 COMMISSIONER DETERMINES TO BE APPROPRIATE.

S 1405. STATE TAX. LICENSEES ENGAGED IN THE BUSINESS OF CONDUCTING INTERACTIVE GAMING PURSUANT TO ARTICLE THIRTEEN OF THIS CHAPTER 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. A PERSON IS GUILTY OF AN INTERACTIVE GAMING OFFENSE WHEN HE OR SHE KNOWINGLY AND WILLFULLY OFFERS UNLICENSED INTERACTIVE GAMING TO PERSONS IN THIS STATE, OR THE KNOWING AND WILLFUL PROVISION OF SERVICES WITH RESPECT THERETO.

1 2. LICENSED INTERACTIVE GAMING ACTIVITIES UNDER SECTION FOURTEEN
2 HUNDRED TWO OF THE RACING, PARI-MUTUEL WAGERING AND BREEDING LAW SHALL
3 NOT BE A GAMBLING OFFENSE UNDER THIS ARTICLE.
4 3. A PERSON OFFERING UNLICENSED INTERACTIVE GAMING TO PERSONS IN THIS
5 STATE SHALL BE LIABLE FOR ALL TAXES SET FORTH IN SECTION FOURTEEN
6 HUNDRED FIVE OF THE RACING, PARI-MUTUEL WAGERING AND BREEDING LAW IN THE
7 SAME MANNER AND AMOUNTS AS IF SUCH PERSON WERE A LICENSEE. TIMELY
8 PAYMENT OF SUCH TAXES SHALL NOT CONSTITUTE A DEFENSE TO ANY PROSECUTION
9 OR OTHER PROCEEDING IN CONNECTION WITH THE INTERACTIVE GAMING EXCEPT FOR
10 A PROSECUTION OR OTHER PROCEEDING ALLEGING FAILURE TO MAKE SUCH PAYMENT.
11 S 4. This act shall take effect immediately.