S T A T E O F N E W Y O R K

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2013-2014 Regular Sessions

I N S E N A T E

April 16, 2013

Introduced by Sen. BONACIC -- (at request of the Division of the Lottery) -- 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 tax law, in relation to the operation of the gaming commission

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

Section 1. Subdivision 3 of section 107 of the racing, pari-mutuel wagering and breeding law, as added by section 1 of part A of chapter 60 of the laws of 2012, is amended to read as follows:

3. (A) No member, officer or employee of the commission OR THE OFFICE OF RACING PROMOTION AND DEVELOPMENT shall wager upon OR CLAIM A PRIZE IN gaming or horse racing activity conducted within the state.

(B) NO MEMBER, OFFICER OR EMPLOYEE OF ANY OTHER AGENCY, AS DEFINED IN SECTION ONE HUNDRED TWO OF THE STATE ADMINISTRATIVE PROCEDURE ACT, SHALL WAGER UPON OR CLAIM A PRIZE IN GAMING OR HORSE RACING ACTIVITY CONDUCTED WITHIN THE STATE IF THE DUTIES OF SUCH MEMBER, OFFICER OR EMPLOYEE DIRECTLY RELATE TO THE OPERATION OF ANY GAMING ACTIVITY CONDUCTED WITHIN THE STATE. FOR THE PURPOSES OF THIS PARAGRAPH, DUTIES DIRECTLY RELATE TO THE OPERATION OF ANY GAMING ACTIVITY IF SUCH DUTIES CONSIST OF (I) MAKING A DECISION, OR ADVISING OR RECOMMENDING A DECISION, ON THE MANNER OR METHOD OF OPERATING A GAMING ACTIVITY IN ORDER TO ASSURE THE ACCURACY, SAFETY, FAIRNESS, CREDIBILITY OR INTEGRITY OF SUCH GAMING ACTIVITY, OR (II) INVENTING, CREATING, DESIGNING, REVISING, REPLACING, REGULATING, OVERSEEING, LICENSING, PERMITTING, CERTIFYING, WITNESSING, JUDGING, OFFICIATING, SUPERVISING, MANAGING, CONDUCTING, OR ASSISTING IN GAMING ACTIVITY OR IN ANY PROCEDURE RELIED UPON TO DETERMINE THE OUTCOME OF ANY GAMING ACTIVITY ACCORDING TO THE MANNER OR METHOD PRESCRIBED THEREFOR.

(C) NO SPOUSE, CHILD, BROTHER, SISTER, PARENT OR OTHER PERSON RESIDING AS A MEMBER OF THE SAME HOUSEHOLD IN THE PRINCIPAL PLACE OF ABODE OF ANY OF THE PERSONS LISTED IN PARAGRAPH (A) OR (B) OF THIS SUBDIVISION SHALL

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

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WAGER UPON OR CLAIM A PRIZE IN GAMING OR HORSE RACING ACTIVITY CONDUCTED WITHIN THE STATE.

S 2. Section 1610 of the tax law, as added by chapter 92 of the laws of 1976, is amended to read as follows:

S 1610. Sales to certain persons prohibited. [a.] No ticket shall be sold to any person under the age of eighteen years, but this shall not be deemed to prohibit the purchase of a ticket for the purpose of making a gift by a person eighteen years of age or older to a person less than that age. Any licensee or the employee or agent of any licensee who sells or offers to sell a lottery ticket to any person under the age of eighteen shall be guilty of a misdemeanor.

[b. No ticket shall be sold to and no prize shall be paid to any of the following persons:

(i) any member, officer or employee of the division; or

(ii) any member, officer or employee of the department of taxation and finance whose duties directly relate to the operation of the state lottery; or

(iii) any spouse, child, brother, sister or parent residing as a member of the same household in the principal place of abode of any of the foregoing persons.]

S 3. Subdivision 14 of section 104 of the racing, pari-mutuel wagering and breeding law, as added by section 1 of part A of chapter 60 of the laws of 2012, is amended to read as follows:

14. (A) To [access the criminal history records of] TRANSMIT FINGERPRINTS AND THE APPLICABLE FEE IN THE FORM AND MANNER PRESCRIBED BY the division of criminal justice services, pursuant to subdivision eight-a of section eight hundred thirty-seven of the executive law, in connection with executing the responsibilities of the commission relating to the regulation, oversight, licensing, permitting or certification, including fingerprinting, criminal history record checks and background investigations, of (I) persons applying to engage in gaming activities, (II) ANY PERSONS APPLYING FOR EMPLOYMENT WITH THE COMMISSION, AND (III) ANY PERSONS APPLYING FOR EMPLOYMENT WITH THE COMMISSION WHO ARE NEW YORK STATE EMPLOYEES SEEKING TRANSFER TO THE COMMISSION OR WHO ARE ON A PREFERRED OR ELIGIBLE LIST, NOTWITHSTANDING ANY LIMITATIONS ON CONDUCTING CRIMINAL HISTORY RECORD CHECKS ON SUCH PERSONS CONTAINED IN SUBDIVISION FOUR OF SECTION FIFTY OF THE CIVIL SERVICE LAW AND SUBDIVISION EIGHT-A OF SECTION EIGHT HUNDRED THIRTY-SEVEN OF THE EXECUTIVE LAW. At the request of the commission, the division of criminal justice services shall submit [a fingerprint card] SUCH FINGERPRINTS, along with the subject's processing fee, to the federal bureau of investigation OR ANY OTHER STATE OR FEDERAL GOVERNMENT AGENCY HAVING FACILITIES FOR CHECKING FINGERPRINTS FOR PURPOSES OF DETERMINING WHETHER OR NOT CRIMINAL CHARGES ARE PENDING AGAINST THE APPLICANT OR WHETHER OR NOT THE APPLICANT HAD PREVIOUSLY BEEN CONVICTED OF A CRIME, for the purpose of conducting a NATIONAL criminal history search and returning a report thereon AND THE DIVISION OF CRIMINAL JUSTICE SERVICES SHALL PROMPTLY REPORT A FINDING OF SUCH CHARGES AND PREVIOUS CONVICTIONS, IF ANY, TO THE COMMISSION IN WRITING OR BY ELECTRONIC MEANS OR ANY OTHER METHOD AGREED UPON BY THE COMMISSION AND SUCH AGENCY. The commission shall also be entitled to request and receive, pursuant to a written memorandum of understanding filed with the department of state, any information in the possession of the state attorney general relating to the investigation of organized crime, gaming offenses, other revenue crimes or tax evasion. Provided however, the attorney general may withhold any information that (a) would identify a confidential source or disclose confi-

dential information relating to a criminal investigation, (b) would interfere with law enforcement investigations or judicial proceedings, (c) reveal criminal investigative techniques or procedures, that, if disclosed, could endanger the life or safety of any person, or (d) constitutes records received from other state, local or federal agencies that the attorney general is prohibited by law, regulation or agreement from disclosing.

(B) NOTWITHSTANDING THE PROVISIONS OF ARTICLE SIX OF THE PUBLIC OFFICERS LAW OR ANY OTHER LAW TO THE CONTRARY, THE COMMISSION MAY WITHHOLD FROM PUBLIC DISCLOSURE ANY CRIMINAL HISTORY INFORMATION.

(C) FOR PURPOSES OF THIS SUBDIVISION, A PERSON APPLYING TO ENGAGE IN GAMING ACTIVITIES MAY INCLUDE: ANY PERSON OR ENTITY THAT IS APPLYING FOR A LICENSE ISSUED PURSUANT TO THIS ARTICLE, INCLUDING BUT NOT LIMITED TO: A LOTTERY SALES AGENT; A VIDEO LOTTERY GAMING AGENT; A VENDOR; A VENDOR'S SUBCONTRACTOR; AN EMPLOYEE OF AN AGENT; VENDOR OR VENDOR'S SUBCONTRACTOR; AN OFFICER, DIRECTOR, PARTNER, TRUSTEE OR OWNER OF AN AGENT; VENDOR OR VENDOR'S SUBCONTRACTOR; A HORSE OWNER, WHICH INCLUDES PART OWNERS; LESSEES; TRAINERS; ASSISTANT TRAINERS; JOCKEYS; JOCKEY AGENTS; STABLE EMPLOYEES; DRIVERS; AND SUCH OTHER PARTICIPANTS IN HORSE RACING OR PARI-MUTUEL WAGERING ACTIVITIES AS THE COMMISSION SHALL PRESCRIBE BY RULE.

S 4. Subdivision e of section 1605 of the tax law, as amended by chapter 217 of the laws of 2011, is amended to read as follows:

e. The division is hereby authorized to obtain criminal background information on any applicant for, or holder of, a lottery license for the purpose of determining whether a license should be granted, suspended, or revoked. [The sources of such information include the license applicant or holder, the division of criminal justice services, and any licensing agency which is currently considering a licensing application or which has been granted a presently-held license to the same license applicant or holder. The division shall require each license applicant to submit identifying information which shall include fingerprints unless they are already on file with the division or other state agencies. The fingerprints so obtained shall be forthwith forwarded, and the applicable fee transmitted, to the division of criminal justice services or any other state or federal government agency having facilities for checking fingerprints for the purpose of determining whether or not criminal charges are pending against the applicant or whether or not the applicant had previously been convicted of a crime, and such agency shall promptly report a finding of such pending charges and previous convictions, if any, to the division in writing or by electronic means or any other method agreed upon by the division and such agency. Prior to or upon making a determination not to approve an application for a lottery license based upon an applicant's criminal history record, the division shall provide such applicant with a copy of article twenty-three-A of the correction law, and inform such applicant of his or her right to seek correction of any incorrect information contained in such record pursuant to regulations and procedures established by the division of criminal justice services. In its discretion, the division may decline to act on any application pending the disposition of any pending charges against the applicant. The division may, after providing notice and an opportunity for a hearing pursuant to the state administrative procedure act, deny a license to any person found to have committed a felony under the laws of the United States or under the laws of the state of New York or any other state or foreign jurisdiction or any crime relating to gaming activities or that is otherwise found to

have engaged in conduct which would be prejudicial to public confidence in the state lottery. All determinations to grant or deny a license pursuant to this section shall be in accordance with subdivision sixteen of section two hundred ninety-six of the executive law and article twenty-three-A of the correction law. Notwithstanding the provisions of article six of the public officers law or any other law to the contrary, the division may withhold from public disclosure any criminal history information except that criminal convictions may not be withheld under this provision.

For purposes of this article, a licensee may include: a lottery sales agent; a video lottery gaming agent; a vendor; a vendor's subcontractor; an employee of an agent, vendor or vendor's subcontractor; or an officer, director, partner, trustee or owner of an agent, vendor or vendor's subcontractor.]

S 5. This act shall take effect immediately; provided however that sections one and two of this act shall take effect on the thirtieth day after it shall have become a law and sections one and two of this act shall not apply to a prize claimed after such effective date if the wager upon which the prize was won was lawfully placed before such effective date.