

6913

I N S E N A T E

March 28, 2014

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,
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

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

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1 PEOPLE V. HUNT, 162 MISC. 2D 70, 72, 616 N.Y.S.2D 168, 170 (CRIM. CT.
2 1994) ("PLAYED FAIRLY, SKILL RATHER THAN CHANCE IS THE MATERIAL COMPO-
3 NENT OF THREE-CARD MONTE.");

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

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

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

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

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

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

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

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

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

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

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

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

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

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

53 (A) NEITHER AMOUNTS DEPOSITED WITH A LICENSEE FOR PURPOSES OF INTERAC-
54 TIVE GAMING NOR AMOUNTS TAKEN IN FRAUDULENT ACTS PERPETRATED AGAINST A
55 LICENSEE FOR WHICH THE LICENSEE IS NOT REIMBURSED SHALL BE CONSIDERED TO

1 HAVE BEEN "PAID" TO THE LICENSEE FOR PURPOSES OF CALCULATING INTERACTIVE
2 GAMING GROSS REVENUE.

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

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

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

12 11. "LICENSEE" MEANS A PERSON WHO IS LICENSED BY THE COMMISSION TO
13 OFFER INTERACTIVE GAMING, USING AN INTERACTIVE GAMING PLATFORM TO
14 AUTHORIZED PARTICIPANTS. A LICENSEE MAY UTILIZE MULTIPLE INTERACTIVE
15 GAMING PLATFORMS PROVIDED THAT EACH PLATFORM IS APPROVED BY THE COMMIS-
16 SION.

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

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

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

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

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

54 3. NO PERSON MAY OPERATE, MANAGE OR MAKE AVAILABLE AN INTERACTIVE
55 GAMING PLATFORM OR ACT AS A SIGNIFICANT VENDOR WITH RESPECT TO INTERAC-
56 TIVE GAMING THAT IS OFFERED TO PERSONS LOCATED IN THIS STATE UNLESS

1 LICENSED BY THE COMMISSION PURSUANT TO THIS ARTICLE AND ONLY THOSE GAMES
2 AUTHORIZED BY THE COMMISSION SHALL BE PERMITTED.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

53 (I) KNOWINGLY AND WILLFULLY ACCEPTED OR MADE AVAILABLE WAGERS ON
54 INTERACTIVE GAMING (INCLUDING POKER) FROM PERSONS LOCATED IN THE UNITED
55 STATES AFTER DECEMBER THIRTY-FIRST, TWO THOUSAND SIX, UNLESS SUCH WAGERS

1 WERE AFFIRMATIVELY AUTHORIZED BY LAW OF THE UNITED STATES OR OF EACH
2 STATE IN WHICH PERSONS MAKING SUCH WAGERS WERE LOCATED; OR

3 (II) KNOWINGLY FACILITATED OR OTHERWISE PROVIDED SERVICES WITH RESPECT
4 TO INTERACTIVE GAMING (INCLUDING POKER) INVOLVING PERSONS LOCATED IN THE
5 UNITED STATES FOR A PERSON DESCRIBED IN SUBPARAGRAPH (I) OF THIS PARA-
6 GRAPH AND ACTED WITH KNOWLEDGE OF THE FACT THAT SUCH WAGERS OR INTERAC-
7 TIVE GAMING INVOLVED PERSONS LOCATED IN THE UNITED STATES.

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

12 4. A PROSPECTIVE LICENSEE OR SIGNIFICANT VENDOR MAY APPEAL A DETERMI-
13 NATION BY THE COMMISSION THAT IT IS WITHIN THE SCOPE OF SUBDIVISION
14 THREE OF THIS SECTION ONLY IN ACCORDANCE WITH THE PROCEDURES SPECIFIED
15 IN THIS SUBDIVISION.

16 (A) THE COMMISSION SHALL AFFORD THE PROSPECTIVE LICENSEE OR SIGNIF-
17 ICANT VENDOR A HEARING AT WHICH SUCH PERSON MAY PROVIDE EVIDENCE TO
18 SUPPORT THE BASIS ON WHICH IT SEEKS RELIEF. THE COMMISSION SHALL WAIVE
19 THE PROHIBITION IF THE PROSPECTIVE LICENSEE OR SIGNIFICANT VENDOR DEMON-
20 STRATES BY CLEAR AND CONVINCING EVIDENCE THAT ITS CONDUCT IN CONNECTION
21 WITH INTERACTIVE GAMING AND WAGERS INVOLVING PERSONS LOCATED IN THE
22 UNITED STATES WAS NOT UNLAWFUL AND, IF APPLICABLE, THAT THE COVERED
23 ASSETS TO BE USED OR THAT ARE BEING USED BY SUCH PERSON IN CONNECTION
24 WITH INTERACTIVE GAMING LICENSED PURSUANT TO THIS ARTICLE WERE NOT USED
25 IN A MANNER THAT WAS UNLAWFUL. THE DETERMINATION OF THE COMMISSION SHALL
26 BE MADE WITHOUT REGARD TO WHETHER THE PERSON HAS BEEN PROSECUTED UNDER
27 THE CRIMINAL LAWS OF ANY STATE, THE UNITED STATES OR OTHER JURISDICTION
28 AND THE PROCEEDING TERMINATED IN A MANNER OTHER THAN WITH A CONVICTION.
29 IF THE PROHIBITION IS WAIVED, THE PROSPECTIVE LICENSEE OR SIGNIFICANT
30 VENDOR STILL MUST SATISFY ALL OTHERWISE APPLICABLE LICENSE AND SUITABIL-
31 ITY REQUIREMENTS.

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

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

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

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

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

48 S 225.36 INTERACTIVE GAMING OFFENSES AND EXCEPTIONS.

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

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

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

8 S 4. This act shall take effect immediately.