STATE OF NEW YORK

8167

2019-2020 Regular Sessions

IN ASSEMBLY

June 4, 2019

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, in relation to regulation and sale of alcoholic beverages at certain tribal casinos

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section 1340 of the racing, pari-mutuel wagering and breeding law, as added by chapter 174 and subdivision 6 as amended by chapter 175 of the laws of 2013, is amended to read as follows:

§ 1340. Alcoholic beverages. 1. Notwithstanding any law to the contrary, the authority to grant any license or permit for, or to permit or prohibit the presence of, alcoholic beverages in, on, or about any premises licensed **by the commission** as part of a gaming facility**, or in, on, or about any Indian gaming facility,** shall exclusively be vested in the commission. **As used in this section, the term "Indian gaming facility" shall mean a premises duly authorized by a tribal gaming authority to conduct class II gaming, class III gaming, or both, as such terms are defined in 25 USC 2703, pursuant to the Indian Gaming Regulatory Act of 1988, which includes a gaming area or areas, and any other non-gaming structure related to the gaming area as an amenity, including but not limited to hotels, restaurants, golf courses, golf clubhouses and other amenities, where such premises is licensed and regulated by an Indian tribe that has elected commission oversight pursuant to subdivision one-a of this section. This section shall not be construed to apply to any provision of New York law other than this section, to any Indian gaming facility that would not otherwise apply to the Indian gaming facility absent this section, or to apply to this section to any premises licensed and regulated by an Indian tribe that has not elected to be treated as an Indian gaming facility for purposes of this section pursuant to subdivision one-a of this section.**

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

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1-a. An Indian tribe may elect for the state to treat all premises authorized by such tribe's tribal gaming authority to conduct class II gaming, class III gaming, or both, as an Indian gaming facility for the purposes of licensure and regulation under this section, by notifying the commission and the state liquor authority, in writing, within sixty days of the effective date of this subdivision, that it elects commission oversight pursuant to the provisions of this section. Upon receipt of notice by the commission that a tribe has made such an election under this subdivision, any premises authorized by such tribe's tribal gaming authority to conduct class II gaming, class III gaming, or both, shall be considered an Indian gaming facility, as defined in subdivision one of this section, for purposes of this section, and the commission shall assume jurisdiction over all alcoholic beverage licenses and permits previously issued with respect to any Indian gaming facility licensed and regulated by that tribe pursuant to subdivision eleven of this section. As a condition of electing commission oversight pursuant to this section, an Indian gaming facility shall expressly commit in writing to follow the requirements imposed under this section, to adhere to the regulations promulgated by the commission pursuant to this section, and to submit to the commission's enforcement of this section and regulations promulgated thereunder including by waiving tribal sovereign immunity for the sole and limited purpose of such enforcement of this section. An Indian gaming facility that does not elect commission oversight in accordance with the requirements of this section shall remain subject to any other applicable state law governing the licensure and regulation of alcoholic beverages in, on, or about the Indian gaming facility.

2. Unless otherwise stated, and except where inconsistent with the purpose or intent of this article or the common understanding of usage thereof, definitions contained in the alcoholic beverage control law shall apply to this section. Any definition contained therein shall apply to the same word in any form.

3. Notwithstanding any provision of the alcoholic beverage control law to the contrary, the commission shall have the functions, powers and duties of the state liquor authority but only with respect to the issuance, renewal, transfer, suspension and revocation of licenses and permits for the sale of alcoholic beverages at retail for on-premise consumption by any holder of a gaming facility license issued by the commission**, or for on-premises consumption at any Indian gaming facility,** including, without limitation, the power to fine or penalize a casino **or Indian gaming facility** alcoholic beverage licensee or permittee; to enforce all statutes, laws, rulings, or regulations relating to such license or permit; and to collect license and permit fees and establish application standards therefor.

4. Except as otherwise provided in this section, the provisions of the alcoholic beverage control law and the rules, regulations, bulletins, orders, and advisories promulgated by the state liquor authority shall apply to any gaming facility **or Indian gaming facility** holding a license or permit to sell alcoholic beverages under this section.

5. Notwithstanding any provision to the contrary, the commission may promulgate any regulations and special rulings and findings as may be necessary for the proper enforcement, regulation, and control of alcoholic beverages in gaming facilities **and Indian gaming facilities** when the commission finds that the uniqueness of gaming facility **and Indian gaming facility** operations and the public interest require that such regulations, rulings, and findings are appropriate.

6. Notwithstanding any provision of law to the contrary, any manufacturer or wholesaler licensed under the alcoholic beverage control law may, as authorized under the alcoholic beverage control law, sell alcoholic beverages to a gaming facility **or Indian gaming facility** holding a retail license or permit to sell alcoholic beverages for consumption on the premises issued under this section, and any gaming facility **or Indian gaming facility** holding a retail license or permit to sell alcoholic beverages for consumption on the premises issued under this section may, as authorized under the alcoholic beverage control law, purchase alcoholic beverages from a manufacturer or wholesaler licensed under the alcoholic beverage control law.

7. It shall be unlawful for any person, including any gaming facility **or Indian gaming facility** licensee**,** or any of [~~its~~] **their** lessees, agents or employees, to expose for sale, solicit or promote the sale of, possess with intent to sell, sell, give, dispense, or otherwise transfer or dispose of alcoholic beverages in, on**,** or about any portion of the premises of a gaming facility **or Indian gaming facility**, unless said person possesses a license or permit issued under this section.

8. It shall be unlawful for any person holding a license or permit to sell alcoholic beverages under this section to expose, possess, sell, give, dispense, transfer, or otherwise dispose of alcoholic beverages, other than within the terms and conditions of such license or permit, the provisions of the alcoholic beverage control law, the rules and regulations promulgated by the state liquor authority, and, when applicable, the regulations promulgated pursuant to this article. Notwithstanding any other provision of law to the contrary the holder of a license or permit issued under this section may be authorized to provide complimentary alcoholic beverages under regulations issued by the commission.

9. In issuing a casino **or Indian gaming facility** alcoholic beverage license or permit, the commission shall describe the scope of the particular license or permit, and the restrictions and limitations thereon as it deems necessary and reasonable. The commission may, in a single casino **or Indian gaming facility** alcoholic beverage license, permit the holder of such a license or permit to perform any or all of the following activities, subject to applicable laws, rules and regulations:

(a) To sell any alcoholic beverage by the glass or other open receptacle including, but not limited to, an original container, for on-premise consumption within a facility; provided, however, that no alcoholic beverage shall be sold or given for consumption; delivered or otherwise brought to a patron; or consumed at a gaming table unless so requested by the patron.

(b) To sell any alcoholic beverage by the glass or other open receptacle for on-premise consumption within a gaming facility **or Indian gaming facility**.

(c) To sell any alcoholic beverage by the glass or other open receptacle or in original containers from a room service location within an enclosed room not in a gaming facility **or Indian gaming facility**; provided, however, that any sale of alcoholic beverages is delivered only to a guest room or to any other room in the gaming facility **or Indian gaming facility** authorized by the commission.

(d) To possess or to store alcoholic beverages in original containers intended but not actually exposed for sale at a fixed location on a gaming facility **or Indian gaming facility** premises, not in a gaming facility **or Indian gaming facility**; and to transfer or deliver such

alcoholic beverages only to a location approved pursuant to this section; provided, however, that no access to or from a storage location shall be permitted except during the normal course of business by employees or agents of the licensee, or by licensed employees or agents of wholesalers or distributors licensed pursuant to the alcoholic beverage control law and any applicable rules and regulations; and provided further, however, that no provision of this section shall be construed to prohibit a casino **or Indian gaming facility** alcoholic beverage licensee from obtaining an off-site storage license from the state liquor authority.

10. The commission may revoke, suspend, refuse to renew or refuse to transfer any casino **or Indian gaming facility** alcoholic beverage license or permit, and may fine or penalize the holder of any alcoholic beverage license or permit issued under this section for violations of any provision of the alcoholic beverage control law, the rules and regulations promulgated by the state liquor authority, and the regulations promulgated by the commission.

11. Jurisdiction over all alcoholic beverage licenses and permits previously issued with respect to the gaming facility **or Indian gaming facility** is hereby vested in the commission, which in its discretion [~~may~~] **shall** by regulation**, rule, or policy promptly** provide for the conversion thereof into a casino **or Indian gaming facility** alcoholic beverage license or permit as provided in this section. **This section shall not be construed to affect the validity of any existing licenses and permits previously issued to an Indian gaming facility by the state liquor authority, or the continuation of any administrative actions or proceedings commenced by the state liquor authority prior to the effective date of the chapter of the laws of 2019 that amended this section. Any such license or permit previously issued to an Indian gaming facility by the state liquor authority shall remain valid until the date that such license or permit is duly converted pursuant to this subdivision into a license or permit issued by the commission, and the commission shall assume exclusive jurisdiction over any such previously issued license or permit, and over any such previously commenced administrative actions or proceedings.**

12. (a) Prior to issuing any license under this section, the commission, or its designee, shall consult with the state liquor authority, or its designee, to confirm that such application and such gaming facility **or Indian gaming facility** conforms with all applicable provisions of the alcoholic beverage control law, and all applicable rules, regulations, bulletins, orders and advisories promulgated by the state liquor authority;

(b) Prior to commencing enforcement actions against any gaming facility **or Indian gaming facility** licensed under this section, the commission, or its designee, shall consult with the state liquor authority, or its designee, with respect to the application of the applicable provisions of the alcoholic beverage control law, and all applicable rules, regulations, bulletins, orders and advisories promulgated by the state liquor authority on the alleged conduct of such licensee; and

(c) The commission, or its designee, shall consult with the state liquor authority, or its designee, on a regular basis, but no less than once every three months, regarding any pending applications and enforcement matters.

§ 2. This act shall take effect immediately.