

STATE OF NEW YORK

9436

IN ASSEMBLY

March 7, 2022

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 authorizing interactive gaming

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 15 to read as follows:

ARTICLE 15

INTERACTIVE GAMING

Section 1500. Legislative intent and findings.

1501. Definitions.

1502. Authorization.

1503. Required safeguards.

1504. State taxes.

3 § 1500. Legislative intent and findings. Section nine of article one
4 of the New York state constitution was recently amended and provides
5 "casino gambling at no more than seven facilities as authorized and
6 prescribed by the legislature shall hereafter be authorized or allowed
7 within this state." It has been, and continues to be, the sense of the
8 legislature that this provision is not contravened by a statute that
9 authorizes the acceptance of a wager by an individual who is betting by
10 virtual or electronic means and the wager is accepted through equipment
11 located within a licensed gaming facility; provided that any such wager
12 meets other safeguards ensuring that the plain text of this provision is
13 honored in such structure. Interactive gaming is now legal online in
14 seven states, including the bordering states of New Jersey, Pennsylvania
15 and Connecticut, while it is permitted only in person in New York at
16 four upstate commercial gaming facilities and Native American class III
17 gaming facilities. The legislature hereby finds and declares that an
18 interactive gaming wager that is made through virtual or electronic
19 means from a location within New York state and is transmitted to and
20 accepted by electronic equipment located at a licensed gaming facility,
21 including without limitation, a computer server located at such licensed
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EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

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1 gaming facility, is a wager made at such licensed gaming facility,
2 notwithstanding any provisions of the penal law to the contrary.

3 § 1501. Definitions. As used in this article, the following terms
4 shall have the following meanings:

5 1. "Authorized game" means any casino slot or table game determined by
6 the commission to be compatible with the public interest and to be suit-
7 able for online use after an appropriate test or experimental period as
8 the commission may deem appropriate. An authorized game may include
9 gaming tournaments in which players compete against one another in one
10 or more of the games authorized herein or by the commission or in
11 approved variations or composites thereof if such tournaments are
12 authorized.

13 2. "Authorized participant" means an individual who is physically
14 present in the state of New York when placing an interactive gaming
15 wager, who is authorized to participate in gaming pursuant to article
16 thirteen of this chapter, and who participates in interactive gaming
17 offered by a casino or operator. All interactive gaming wagers placed in
18 accordance with this article shall be considered placed or otherwise
19 made when received by the casino or operator at the licensed gaming
20 facility, regardless of the authorized participant's physical location
21 at the time such wager is initiated. The intermediate routing of elec-
22 tronic data in connection with mobile wagering shall not determine the
23 location or locations in which a wager is initiated, received or other-
24 wise made.

25 3. "Commission" means the New York state gaming commission.

26 4. "Interactive gaming wager" means cash or cash equivalent that is
27 paid by an authorized sports bettor to a casino or operator to partic-
28 ipate in interactive gaming offered by such casino or operator. Any
29 wager through electronic communication shall be deemed to take place at
30 the physical location of the server or other equipment used by a casino
31 or operator to accept interactive gaming wagering, regardless of the
32 authorized participant's physical location within the state at the time
33 such wager is initiated.

34 5. "Interactive gaming" means wagering on authorized casino games
35 online by any system or method of wagering, including, but not limited
36 to, in-person communication and electronic communication through inter-
37 net websites accessed via a mobile device or computer, and mobile device
38 applications.

39 6. "Interactive gaming gross revenue" means the amount equal to the
40 total of all interactive gaming wagers that a casino or operator
41 collects from all authorized participants less the total of all sums
42 paid out as winnings to all participants, provided however, that the
43 total of all sums paid out as winnings shall not include the cash equiv-
44 alent value of any merchandise or thing of value awarded as a prize. The
45 issuance to or wagering by authorized participants of any promotional
46 gaming credit shall not be taxable for the purposes of determining
47 interactive gaming gross revenue.

48 7. "Interactive gaming wagering platform" means the combination of
49 hardware, software, and data networks used to manage, administer, or
50 control interactive gaming wagering and any associated wagers accessible
51 by any electronic means, including mobile applications and internet
52 websites accessed via a mobile device or computer.

53 8. "Operator" means a casino or an Indian tribe that has entered into
54 a tribal-state gaming compact in accordance with the Indian Gaming Regu-
55 latory Act that is in effect and has been ratified by the state of New
56 York, and has entered into an interactive gaming wagering agreement with

1 the commission pursuant to section one thousand five hundred two of this
2 article.

3 § 1502. Authorization. 1. (a) No casino or operator shall administer,
4 manage or otherwise make available an interactive gaming wagering plat-
5 form to persons located in New York state unless authorized by and
6 registered with the commission pursuant to this section. A casino or
7 operator may use up to two mobile interactive gaming wagering platforms
8 and brands for authorized games, provided that such platform and brands
9 have been reviewed and approved by the commission. A casino or operator
10 may contract with up to two independent contractors to provide its
11 mobile interactive gaming wagering platforms. An independent contractor
12 may display its brand on the platform in addition to the casino or oper-
13 ator brand.

14 (b) As a condition of registration, the commission shall require that
15 each casino or operator authorized to conduct mobile interactive gaming
16 wagering pay a one-time fee of two million dollars. As a condition of
17 approval of any independent contractor to provide an operator's mobile
18 interactive gaming waging platform and display its brand, the commission
19 shall require that such independent contractor pay a one-time fee of ten
20 million dollars.

21 (c) Registrations issued by the commission shall remain in effect for
22 ten years. The commission shall establish and implement a process for
23 renewal.

24 (d) The commission shall publish a list of all casinos and operators
25 registered to offer mobile interactive gaming wagering in New York state
26 pursuant to this section on the commission's website for public use.

27 (e) The commission shall prescribe the form and manner of the applica-
28 tion for registration, which shall contain all information deemed neces-
29 sary and relevant by the commission to determine whether an applicant
30 should be authorized to conduct interactive gaming wagering.

31 2. (a) As a condition of registration as an operator, each casino
32 shall agree, upon request of an Indian tribe that has not entered into
33 an agreement for mobile interactive gaming wagering with another casino,
34 to provide a site for a mobile interactive gaming wagering server and
35 related equipment for such Indian tribe as directed by the commission,
36 at no cost to such Indian tribe except the direct and actual cost of
37 hosting the server or other equipment used by such Indian tribe, as
38 determined by the commission.

39 (b) As a condition of registration as an operator in New York state,
40 an Indian tribe shall enter into an agreement with the commission with
41 respect to mobile interactive gaming wagering:

42 (i) to follow the requirements imposed on casinos and operators under
43 this section with respect to such Indian tribe's mobile interactive
44 gaming wagering, to adhere to the regulations promulgated by the commis-
45 sion pursuant to this section with respect to mobile interactive gaming
46 wagering, and to submit to the commission's enforcement of this section
47 and regulations promulgated thereunder, including by waiving tribal
48 sovereign immunity for the sole and limited purpose of such enforcement;

49 (ii) to waiver such Indian tribe's exclusive geographic right to offer
50 and conduct mobile interactive gaming wagering, but not otherwise;

51 (iii) to remit payment to the state equal to tax on interactive gaming
52 wagering revenue imposed pursuant to section one thousand five hundred
53 four of this article;

54 (iv) not to offer or to conduct any other mobile gaming unless such
55 mobile gaming is otherwise authorized by state or federal law; and

1 (v) to locate the server or other equipment used by such Indian tribe
2 to accept mobile interactive gaming wagering at a casino that has
3 applied for and is eligible to register as an operator of interactive
4 gaming wagering pursuant to this section and to pay the actual cost of
5 hosting the server or other equipment as determined by the commission.

6 (c) All agreements entered into by casinos and Indian tribes with
7 respect to hosting mobile interactive gaming wagering platforms for an
8 Indian tribe:

9 (i) shall be approved by the commission prior to taking effect and
10 before registration of such casino or Indian tribe as an operator pursu-
11 ant to this section;

12 (ii) shall provide that the Indian tribe may, at its sole discretion,
13 terminate such agreement with six months' notice, unless otherwise
14 agreed to in writing with such casino, and all commitments, undertakings
15 and waivers made by such Indian tribe thereunder, except that such Indi-
16 an tribe's waiver of its exclusive geographic right to offer and conduct
17 mobile interactive gaming wagering shall survive the termination of such
18 agreement;

19 (iii) shall be limited in applicability solely to such Indian tribe's
20 operation of mobile interactive gaming wagering and shall not extend to
21 any other operation or activity of such Indian tribe; and

22 (iv) shall not create any rights or privileges to any third party who
23 is not a party to such agreement, except that the commission shall have
24 the power to enforce such agreement, including by revoking or suspending
25 the registration of a party that fails to comply with its obligations
26 under such agreement.

27 (d) No mobile interactive gaming wagering may be conducted within an
28 Indian tribe's exclusive geographic area unless such Indian tribe with
29 exclusive geographic right to such area is registered as an operator
30 pursuant to this section. Operators shall use geo-location and geo-fenc-
31 ing technology to ensure that mobile interactive gaming wagering is not
32 available to persons who are physically located in an Indian tribe's
33 exclusive geographic area, unless such Indian tribe with exclusive
34 geographic right to that area is registered as an operator pursuant to
35 this section.

36 § 1503. Required safeguards. 1. As a condition of registration, each
37 operator shall implement the following measures:

38 (a) limit each authorized participant to one active and continuously
39 used account on their platform, and prevent anyone they know, or should
40 have known to be a prohibited bettor from maintaining accounts or
41 participating in any interactive gaming wagering offered by such opera-
42 tor;

43 (b) adopt appropriate safeguards to ensure, to a reasonable degree of
44 certainty, that authorized participants are physically located within
45 the state when engaging in mobile interactive gaming wagering;

46 (c) prohibit minors from participating in any mobile interactive
47 gaming wagering, which includes:

48 (i) if an operator becomes or is made aware that a minor has created
49 an account, or accessed the account of another, such operator shall
50 promptly, within no more than two business days, refund any deposit
51 received from the minor, whether or not the minor has engaged in or
52 attempted to engage in interactive gaming wagering, provided however,
53 that any refund may be offset by any prizes already awarded;

54 (ii) each operator shall provide parental control procedures to allow
55 parents or guardians to exclude minors from access to any interactive

1 gaming wagering or platform. Such procedures shall include a toll-free
2 number to call for help in establishing such parental controls; and

3 (iii) each operator shall take appropriate steps to confirm that an
4 individual opening an account is not a minor;

5 (d) when referencing the chances or likelihood of winning in adver-
6 tisements or upon placement of an interactive gaming wager, make clear
7 and conspicuous statements that are not inaccurate or misleading
8 concerning the chances of winning and the number of winners;

9 (e) enable authorized participants to exclude themselves from interac-
10 tive gaming wagering and take reasonable steps to prevent such bettors
11 from engaging in wagering from which they have excluded themselves;

12 (f) permit any authorized participant to permanently close an account
13 registered to such bettor, on any and all platforms supported by such
14 operator, at any time and for any reason;

15 (g) offer introductory procedures for authorized participants that
16 explain interactive gaming wagering, which shall be prominently
17 displayed on the main page of such operator platform;

18 (h) implement measures to protect the privacy and online security of
19 authorized participants and their accounts;

20 (i) offer all authorized participants access to his or her account
21 history and account details;

22 (j) ensure authorized participants' funds are protected upon deposit
23 and segregated from the operating funds of such operator and otherwise
24 protected from corporate insolvency, financial risk, or criminal or
25 civil actions against such operator;

26 (k) list on each website, in a prominent place, information concerning
27 assistance for compulsive play in New York state, including a toll-free
28 number directing callers to reputable resources containing further
29 information, which shall be free of charge;

30 (l) permit account holders to establish self-exclusion gaming limits
31 on a daily, weekly, and monthly basis that enable the account holder to
32 identify the maximum amount of money an account holder may deposit
33 during such period of time;

34 (m) when an account holder's lifetime deposits exceed two thousand
35 five hundred dollars, the operator shall prevent any wagering until such
36 account holder immediately acknowledges, and acknowledges each year
37 thereafter, that he or she has met the deposit threshold and may elect
38 to establish responsible gaming limits or close the account, and such
39 account holder has received disclosures from the operator concerning
40 problem gambling resources;

41 (n) maintain a publicly accessible internet page dedicated to respon-
42 sible play, a link to which shall appear on the operator's website and
43 in any mobile application or electronic platform on which a bettor may
44 place wagers. The responsible play page shall include (i) a statement of
45 the operator's policy and commitment to responsible gaming; (ii) infor-
46 mation regarding, or links to information regarding, the risks associ-
47 ated with gambling and the potential signs of problem gaming; (iii) the
48 availability of self-imposed gaming limits; (iv) a link to a problem
49 gaming webpage maintained by the office of addiction services and
50 supports; and (v) such other information or statements as the commission
51 may require by rule; and

52 (o) submit annually a problem gaming plan to the commission that
53 includes: (i) the objectives of and timetables for implementing such
54 plan; (ii) identification of the persons responsible for implementing
55 and maintaining such plan; (iii) procedures for identifying users with
56 suspected or known problem gaming behavior; (iv) procedures for provid-

1 ing information to users concerning problem gaming identification and
2 resources; (v) procedures to prevent gaming by minors and self-excluded
3 persons; and (vi) such other problem gaming information as the commis-
4 sion may require by rule.

5 2. The commission shall annually require a report to be prepared and
6 distributed to the governor and the legislature on the impact of mobile
7 interactive gaming wagering on problem gamblers in New York state. Such
8 report shall include an assessment of problem gaming among persons under
9 the age of thirty. Such report shall be prepared by a non-governmental
10 organization or entity with expertise in serving the needs of persons
11 with gambling addictions. Such report shall be prepared and distributed
12 under the supervision of and in coordination with the commission. The
13 costs associated with the preparation and distribution of such report
14 shall be borne by operators and the commission shall be authorized to
15 assess a fee against operators for such purposes. The commission shall
16 also report periodically to the governor and legislature on the effec-
17 tiveness of the statutory and regulatory controls in place to ensure the
18 integrity of mobile interactive gaming operations.

19 § 1504. State taxes. 1. For the privilege of conducting mobile inter-
20 active gaming wagering in the state, casinos and operators shall pay a
21 tax equivalent to twenty-five percent of interactive gaming gross reven-
22 ue attributed to interactive gaming wagering pursuant to section one
23 thousand five hundred two of this article. Mobile interactive gaming tax
24 revenue shall be separately maintained and returned to the state for
25 deposit into the state lottery fund for education aid, except as
26 provided for in subdivision two of this section. Any interest and penal-
27 ties imposed by the commission relating to such taxes, all penalties
28 levied and collected by the commission, and the appropriate funds, cash
29 or prizes forfeited from interactive gaming wagering shall be deposited
30 into the state lottery fund for education.

31 2. From the state tax collected pursuant to subdivision one of this
32 section, the commission shall distribute, in conjunction with the office
33 of addiction services and supports, eleven million dollars annually for
34 problem gambling education and treatment purposes.

35 § 2. This act shall take effect immediately.