STATE OF NEW YORK

3666

2023-2024 Regular Sessions

IN ASSEMBLY

February 3, 2023

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 the definition of wager and the licensing of mobile sports wagering operators

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

Section 1. Paragraph (w) of subdivision 1 of section 1367 of the racing, pari-mutuel wagering and breeding law, as amended by section 3 of part Y of chapter 59 of the laws of 2021, is amended to read as follows:

(w) "Sports wager" means cash [~~or~~], cash equivalent **or thing of value** that is paid by an authorized sports bettor to a casino or a mobile sports wagering licensee to participate in sports wagering offered by such casino or mobile sports wagering licensee;

§ 2. Paragraph (y) of subdivision 1 of section 1367 of the racing, pari-mutuel wagering and breeding law, as amended by section 3 of part Y of chapter 59 of the laws of 2021, is amended to read as follows:

(y) "Sports wagering gross revenue" means: [~~(i)~~] the amount equal to the total of all sports wagers not attributable to prohibited sports events that a **casino or** mobile sports wagering licensee collects from all sports bettors, **excluding wagers placed with promotional wagering credits or other things of value,** less the total of all sums not attributable to prohibited sports events paid out as winnings to all sports bettors, however, that the total of all sums paid out as winnings to sports bettors shall not include the cash equivalent value of any merchandise or thing of value awarded as a prize**, and less all excise taxes on sports wagers not attributable to prohibited sports events paid pursuant to federal law**;

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

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§ 3. Subdivision 7 of section 1367 of the racing, pari-mutuel wagering and breeding law, as added by section 3 of part Y of chapter 59 of the laws of 2021, is amended to read as follows:

7. For the privilege of conducting sports wagering in the state, casinos shall pay a tax equivalent to ten percent of their sports wagering gross gaming revenue, excluding sports wagering gross gaming revenue attributed to mobile sports wagering offered pursuant to section thirteen hundred sixty-seven-a of this title. Platform providers shall pay a tax constituting a certain percentage of the sports wagering gross gaming revenue attributed to mobile sports wagering offered through such platform provider's platform pursuant to section thirteen hundred sixty-seven-a of this title; provided however, that such percentage shall be determined [~~pursuant to a competitive bidding process conducted by the commission~~] as outlined in subdivision seven of section thirteen hundred sixty-seven-a of this title; and provided further, that such percentage shall be no lower than twelve percent. [~~When awarding a license pursuant to section thirteen hundred sixty-seven-a of this title, the commission may set graduated tax rates; provided however, that any such tax rates may not be lower than the minimum rate established in this subdivision.~~] **This tax shall be in lieu of all other state and local taxes and fees imposed on the operation of, or the proceeds from, the operation of sports wagering, except as provided in this section and section thirteen hundred sixty-seven-a of this title.**

§ 4. Subdivision 8 of section 1367 of the racing, pari-mutuel wagering and breeding law, as added by section 3 of part Y of chapter 59 of the laws of 2021, is amended to read as follows:

8. Notwithstanding section thirteen hundred fifty-one of this article, mobile sports wagering gross gaming revenue and tax revenue shall be excluded from sports wagering gross gaming revenue and tax revenue. Mobile sports wagering tax revenue shall be separately maintained and returned to the state for deposit into the state lottery fund for education aid except as otherwise provided in this subdivision. Any interest and penalties imposed by the commission relating to those taxes, all penalties levied and collected by the commission, and the appropriate funds, cash or prizes forfeited from sports wagering shall be deposited into the state lottery fund for education. In the first fiscal year in which mobile sports wagering licensees commence operations and accept mobile sports wagers pursuant to this section, the commission shall pay into the commercial gaming fund one percent of the state tax imposed on mobile sports wagering by this section to be distributed for problem gambling education and treatment purposes pursuant to paragraph a of subdivision four of section ninety-seven-nnnn of the state finance law; provided however, that such amount shall be equal to six million dollars for each fiscal year thereafter. In the first fiscal year in which mobile sports wagering licensees commence operations and accept mobile sports wagers pursuant to this section, the commission shall pay one percent of the state tax imposed on mobile sports wagering by this section to the general fund, a program to be administered by the office of children and family services for a statewide youth sports activities and education grant program for the purpose of providing annual awards to sports programs for underserved youth under the age of eighteen years; provided however, that such amount shall be equal to five million dollars for each fiscal year thereafter. The commission shall require at least monthly deposits by a platform provider of any payments pursuant to subdivision seven of this section, at such times, under such conditions, and in such depositories as shall be prescribed by the state

comptroller. **In a month when the amount of sports wagering gross revenue for a platform provider is a negative number, such platform provider may carry over the negative amount to the return filed for the subsequent month. However, no amount shall be carried over for a period of more than twelve months after the month in which the amount carried over was originally due.** The deposits shall be deposited to the credit of the state commercial gaming revenue fund. The commission shall require a monthly report and reconciliation statement to be filed with it on or before the tenth day of each month, with respect to gross revenues and deposits received and made, respectively, during the preceding month.

§ 5. Subdivision 7 of section 1367-a of the racing, pari-mutuel wagering and breeding law, as added by section 4 of part Y of chapter 59 of the laws of 2021, is amended and two new subdivisions 8 and 9 are added to read as follows:

7. A platform provider may be licensed by the commission only after having been selected for potential licensure by the commission following a competitive bidding process in which the commission shall issue a request for applications no later than July first, two thousand twenty-one; provided however, that the deadline for submission of applications shall be no later than thirty days after the date upon which the commission issues such request for applications.

(a) The commission shall select platform providers based upon the criteria set forth in this section no later than one hundred fifty days, to the extent practicable, after the final application is received. The commission may disqualify applicants from licensure consideration if the applicant or the mobile sports wagering operator or operators included in their bid have not satisfied provision of required application information, fail to meet any platform provider and mobile sports wagering operator eligibility criteria established pursuant to the request for applications, or are deemed by the commission to have not satisfied the criteria pursuant to subdivision five of this section.

(a-1) The commission shall publish on its website the criteria that will be used to score applications based upon the criteria set forth in paragraph (c) of this subdivision; provided however, that such scoring methodology shall award additional points to an applicant that has entered into an agreement that includes revenue sharing related to such mobile sports wagering with compacted Native American tribe(s) or nation(s).

(b) The commission shall determine the form of application for bidders, which shall require, at a minimum, the following information:

(i) Different scenarios for the number of platform providers and number of mobile sports wagering operators licensed by the commission. For each scenario, this shall include estimates of mobile sports wagering gross gaming revenue and the bases for such estimates[~~, the percentage of gross revenue from mobile sports wagering the applicant will pay to the state for the privilege of licensure if chosen~~], and the percentage of overall mobile sports wagering gross gaming revenue estimated to be generated;

(ii) The number of mobile sports wagering operators the applicant will host on its mobile sports wagering platform, if the applicant is licensed as a platform provider;

(iii) A description of how the applicant will use technology to ensure all bettors are physically within approved locations within the state, that any wager is accepted through equipment physically located at a licensed gaming facility and that necessary safeguards against abuses and addictions are in place;

(iv) The applicant and any associated operators such applicant proposes in its application possess the qualifications, capabilities and experience to provide a mobile sports wagering platform;

(v) A list of all jurisdictions where the applicant and parent company, and mobile sports wagering operator or operators and parent company or companies have been licensed or otherwise authorized by contract or otherwise to conduct sports wagering operations. This shall include the applicant and its mobile sports wagering operator or operators' experience in such other markets;

(vi) Player acquisition model, advertising and affiliate programs and marketing budget, including details on how the applicant and its mobile sports wagering operator or operators will convert customers from wagering through illegal channels to wagering legally in the state;

(vii) Timeframe to implement mobile sports wagering from award of license;

(viii) The applicant and mobile sports wagering operator or operators' capacity to bring authorized sports bettors into their mobile sports wagering platform; and

(ix) Integrity monitoring and reporting including any current affiliations related to integrity monitoring.

(c) In determining whether an applicant shall be eligible for a platform provider license, the commission shall evaluate how each applicant proposes to maximize sustainable, long-term revenue for the state by evaluating the following factors:

(i) A market analysis detailing the benefits of the applicant's bid as it relates to maximizing revenue to the state;

(ii) Estimates of mobile sports wagering gross gaming revenue generated by the applicant under different scenarios;

(iii) The percentage of mobile sports wagering gross gaming revenue to be paid to the state under different scenarios **pursuant to paragraph (d) of this subdivision**;

(iv) The potential market share of the mobile sports wagering operator or operators under different scenarios;

(v) Advertising and promotional plans of the mobile sports wagering operator or operators;

(vi) Past experience and expertise in the market of the applicant and any mobile sports wagering operator or operators which are part of such applicant's application;

(vii) The applicant's capacity to rapidly and effectively bring authorized sports bettors into its platform;

(viii) A demonstration of how and to what degree the applicant fosters racial, ethnic, and gender diversity in its workforce;

(ix) Timeframe to implement mobile sports wagering from award of license;

(x) Any other factors that could impact the integrity, sustainability or safety of the mobile sports wagering system; and

(xi) Any other factors that could impact revenue to the state.

(d) The commission shall award a license to [~~each of the two~~] **the** highest scoring platform providers that submit applications; provided however, that such awards shall require that [~~both~~] winning platform providers pay the same tax rate; and provided further, that the commission shall require that no less than [~~four~~] **fourteen** mobile sports wagering operators will be operating in the state **by January thirty-first, two thousand twenty-four and sixteen by January thirty-first, two thousand twenty-five. In the event that the commission fails to approve the required number of operators by these deadlines, it shall not inter-**

fere with the ability of previously licensed platforms or operators from continuing to operate in the state. The commission may award additional licenses if it determines that such additional awards are in the best interests of the state[~~; provided however, that any additional platform providers awarded licenses must also agree to pay the same tax rate as those platform providers that were initially awarded licenses by the commission~~]. The award of any such license shall require each applicant to remit the [~~highest~~] percentage of gross gaming revenue from mobile sports wagering [~~contained in an applicant's bid selected by the commission considered for licensure. A qualified applicant shall be afforded the ability to revise its bid in any such manner in order for such bid to meet the percentage of gross gaming revenue from mobile sports wagering as required by the commission for license award, provided that the bid does not incorporate any additional operators not already included in the bid; and provided however that it is not determined by the commission that the revised bid no longer meets all requirements and criteria established pursuant to this section and the request for applications. Any applicant that does not revise its bid to meet the percentage of gross gaming revenue from mobile sports wagering required by the commission for license award shall not be awarded a license.~~] based on the number of licensed mobile sports wagering operators as listed below:

4-5 operators.....sixty-four percent (64%)
6 operators.....sixty-two percent (62%)
7 operators.....sixty percent (60%)
8 operators.....fifty-eight percent (58%)
9 operators.....fifty-one percent (51%)
10-12 operators.....fifty percent (50%)
13-14 operators.....thirty-five percent (35%)
15 or more operators.....twenty-five percent (25%)

8. Pursuant to subdivision seven of this section, the commission shall award no fewer than fourteen mobile sports wagering licenses by January thirty-first, two thousand twenty-four and no fewer than sixteen by January thirty-first, two thousand twenty-five.

(a) The commission shall accept applications for mobile sports wagering licenses issued pursuant to this subdivision at the earlier of thirty days after all mobile sports wagering licensees awarded a license pursuant to subdivision seven of this section commence operations or September first, two thousand twenty-two.

(b) Applicants that participated in the request for proposal issued pursuant to subdivision seven of this section and not awarded a mobile sports wagering license shall automatically be eligible to reapply for consideration pursuant to this subdivision. The commission shall only accept such applications electronically and will give priority to the review and scoring of reapplying applicants.

(i) Nothing herein shall prohibit a platform provider that did not previously respond to the request for application from applying. New applicants shall submit applications demonstrating the criteria outlined in paragraphs (a-1), (b), and (c) of subdivision seven of this section.

(ii) Any applicant for a mobile sports wagering license pursuant to this subdivision shall satisfy any requirements in the request for application concerning possessing qualifications, capabilities and experience to provide a mobile sports wagering platform, pursuant to subparagraphs (iv) and (v) of paragraph (b) and subparagraph (vi) of paragraph (c) of subdivision seven of this section, if there is an entity comprised of no more than six individuals qualified as members of a minority group as defined by subdivision eight of section three hundred

ten of the executive law with a direct or indirect economic interest of at least five percent in the applicant. The commission shall advance for licensure at least two applicants having such qualified minority investment.

(c) The commission shall make determinations to award a license or disqualify the applicant on a rolling basis to expedite issuance of additional licenses and maximize revenue to the state.

(d) As a condition of licensure pursuant to this subdivision, the commission shall require that each platform provider authorized to conduct mobile sports wagering pay a one-time fee of twenty-five million dollars and each operator authorized to conduct mobile sports wagering on a platform licensed pursuant to subdivision seven of this section shall pay a fee of fifty million dollars. Such fee shall be paid within thirty days of commission approval prior to license issuance and deposited into the state lottery fund for education aid.

9. (a) An authorized sports bettor may make use of promotional wagering credits for purposes of placing a sports wager. Promotional wagering credit may include, but is not limited to, free plays, deposit matches and any other bonus that a mobile sports wagering operator offers or gives to a patron as an incentive.

(b) A mobile sports wagering operator may exclude sports wagers that were placed using promotional wagering credit from its sports wagering gross revenue.

§ 6. This act shall take effect immediately.