

STATE OF NEW YORK

9226

IN SENATE

May 7, 2024

Introduced by Sen. ADDABBO -- 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 15 to read as follows:

ARTICLE 15

INTERACTIVE POKER

Section 1500. Legislative findings and purpose.

1501. Definitions.

1502. Authorization.

1503. Required safeguards/minimum standards.

1504. Scope of licensing review.

1505. Taxation and fees.

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11 § 1500. 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.

LBD15453-01-4

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 ment 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 decision-
23 making and which pit the skill levels of the players against each other.
24 As games of skill, these forms of poker do not fall under the definition
25 of gambling as prohibited by the penal law; and

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.

34 § 1501. Definitions. As used in this article, the following terms
35 shall have the following meanings:

36 1. "Authorized game" means Omaha Hold'em and Texas Hold'em poker, as
37 well as any other poker game that the commission determines is the mate-
38 rial equivalent of either of those, whether in a cash game or tourna-
39 ment.

40 2. "Authorized participants" means persons who are either physically
41 present in this state when placing a wager or who otherwise are permit-
42 ted by applicable law, as determined by the commission, to place a
43 wager, and who is at least twenty-one years of age.

44 3. "Core function" means any of the following: (a) the management,
45 administration or control of wagers on interactive poker; (b) the
46 management, administration or control of the games with which those
47 wagers are associated; or (c) the development, maintenance, provision or
48 operation of an interactive poker platform.

49 4. "Commission" means the New York state gaming commission.

50 5. "Division" means the division of gaming, established under para-
51 graph (c) of subdivision two of section one hundred three of this chap-
52 ter.

53 6. "Interactive poker" means the conduct of games through the use of
54 the internet or other communications technology that allows a person,
55 utilizing money, checks, electronic checks, electronic transfers of
56 money, credit cards, debit cards or any other instrumentality, to trans-

mit to a computer information to assist in the placing of a wager and corresponding information related to the display of the game, game outcomes or other similar information. The term does not include the conduct of (a) non-gambling games that do not otherwise require a license under state or federal law; or (b) games that occur entirely among participants who are located on a licensed casino premises. For purposes of this provision, "communications technology" means any method used and the components employed by an establishment to facilitate the transmission of information, including, without limitation, transmission and reception by systems based on wire, cable, radio, microwave, light, optics or computer data networks, including, without limitation, the internet and intranets.

7. "Interactive poker gross revenue" means the total of all sums paid to a licensee from interactive poker involving authorized participants, less only the total of all sums paid out as winnings to patrons and promotional gaming credits; provided, however, that the cash equivalent value of any merchandise or other non-cash thing of value included in a contest or tournament shall not be included in the total of all sums paid out as winnings to players for purposes of determining interactive poker gross revenue.

(a) Neither amounts deposited with a licensee for purposes of interactive poker nor amounts taken in fraudulent acts perpetrated against a licensee for which the licensee is not reimbursed shall be considered to have been "paid" to the licensee for purposes of calculating interactive poker gross revenue.

(b) "Promotional gaming credit" includes bonuses, promotions and any amount received by a licensee from a patron for which the licensee can demonstrate that it or its affiliate has not received cash.

8. "Interactive poker platform" means the combination of hardware, software and data networks used to manage, administer or control wagers on interactive poker or the games with which those wagers are associated.

9. "Internet" means a computer network of interoperable packet-switched data networks.

10. "Licensee" means a person who is licensed by the commission to offer interactive poker, using an interactive poker platform to authorized participants. A licensee may utilize multiple interactive poker platforms provided that each platform is approved by the commission.

11. "Omaha Hold'em poker" means the poker game marketed as Omaha Hold'em poker or Omaha poker in which each player is dealt four cards and must make such player's best hand using exactly two of them, plus exactly three of the five community cards.

12. "Significant vendor" means any person who offers or who proposes to offer any of the following services with respect to interactive poker: (a) a core function; (b) sale, licensing or other receipt of compensation for selling or licensing a database or customer list of individuals residing in the United States selected in whole or in part because they placed wagers or participated in gambling games with or through an internet website or operator (or any derivative of such a database or customer list); (c) provision of any trademark, tradename, service mark or similar intellectual property under which a licensee or significant vendor identifies interactive games to customers; or (d) provision of any product, service or asset to a licensee or significant vendor in return for a percentage of interactive poker revenue (not including fees to financial institutions and payment providers for facilitating a deposit or withdrawal by an authorized participant). The

1 term "significant vendor" shall not include a provider of goods or
2 services to a licensee that are not specifically designed for use and
3 not principally used in connection with interactive poker.

4 13. "Texas Hold'em poker" means the type of poker marketed as Texas
5 Hold'em poker that involves two cards being dealt face down to each
6 player and then five community cards being placed face-up by the dealer,
7 a series of three then two additional single cards, with players having
8 the option to check, bet, raise or fold after each deal.

9 § 1502. Authorization. 1. The commission shall, within one hundred
10 twenty days of the date this article becomes law, promulgate regulations
11 to implement interactive poker in this state and shall authorize up to
12 ten licenses to operate interactive poker involving authorized partic-
13 ipants, subject to the provisions of this article and other applicable
14 provisions of law.

15 2. Applicants eligible to apply for a license pursuant to this article
16 shall be those entities licensed by the state to operate a class III
17 gaming facility pursuant to article thirteen of this chapter and has
18 experience in the operation of interactive poker by being licensed in a
19 state with comparable licensing requirements or guarantees acquisition
20 of adequate business competence and experience in the operation of
21 interactive poker.

22 3. The commission shall, to the extent practicable, issue licenses to
23 multiple applicants no sooner than one hundred sixty days after the
24 promulgation of regulations in order to ensure a robust and competitive
25 market for consumers and to prevent early licensees from gaining an
26 unfair competitive advantage.

27 4. No person may operate, manage or make available an interactive
28 poker platform or act as a significant vendor with respect to interac-
29 tive poker that is offered to persons located in this state unless
30 licensed by the commission pursuant to this article and only those games
31 authorized by the commission shall be permitted.

32 5. License applicants may form a partnership, joint venture or other
33 contractual arrangement in order to facilitate the purposes of this
34 article.

35 6. Any person found suitable by the commission may be issued a license
36 as an operator or significant vendor pursuant to this article. In deter-
37 mining suitability, the commission shall consider those factors it deems
38 relevant in its discretion, including but not limited to:

39 (a) Whether the applicant is a person of good character, honesty and
40 integrity;

41 (b) Whether the applicant is person whose prior activities, criminal
42 record, if any, reputation, habits and associations do not:

43 (i) pose a threat to the public interest or to the effective regu-
44 lation and control of interactive poker; or

45 (ii) create or enhance the dangers of unsuitable, unfair or illegal
46 practices, methods and activities in the conduct of interactive poker or
47 in the carrying on of the business and financial arrangements incidental
48 to such gaming;

49 (c) Whether the applicant is capable of and likely to conduct the
50 activities for which the applicant is licensed in accordance with the
51 provisions of this article, any regulations prescribed under this arti-
52 cle and all other applicable laws;

53 (d) Whether the applicant has or guarantees acquisition of adequate
54 business competence and experience in the operation of licensed gaming
55 or of interactive poker in this state or in a state with comparable
56 licensing requirements; and

1 (e) Whether the applicant has or will obtain sufficient financing for
2 the nature of the proposed operation and from a suitable source.

3 7. The commission further shall develop standards by which to evaluate
4 and approve interactive poker platforms for use with interactive poker.
5 Interactive poker platforms must be approved by the commission before
6 being used by a licensee or significant vendor to conduct interactive
7 poker in this state.

8 8. As a condition of licensing, the commission shall require each
9 licensee authorized to conduct interactive poker pay a one-time fee of
10 ten million dollars. Such fee paid by each licensee shall be applied to
11 satisfy, in whole or in part, as applicable, that licensee's tax obli-
12 gation pursuant to section fifteen hundred five of this article in sixty
13 equal monthly installments, allocated to each of the first sixty months
14 of tax owed after the licensee has begun operating interactive poker
15 pursuant to this article. No amounts not required to be used to satisfy
16 such tax obligation during that period shall be allocated to payment of
17 such tax obligation after that period.

18 9. Licenses issued by the commission shall remain in effect for ten
19 years.

20 10. The commission, by regulation, may authorize and promulgate any
21 rules necessary to implement agreements with other states, or authorized
22 agencies thereof (a) to enable patrons in those states to participate in
23 interactive poker offered by licensees under this article or (b) to
24 enable patrons in this state to participate in interactive poker offered
25 by licensees under the laws of those other states, provided that such
26 other state or authorized agency applies suitability standards and
27 review materially consistent with the provisions of this article.

28 11. Any regulations adopted pursuant to subdivision ten of this
29 section must set forth provisions that address:

30 (a) Any arrangements to share revenue between New York and any other
31 state or agency within another state; and

32 (b) Arrangements to ensure the integrity of interactive poker offered
33 pursuant to any such agreement and the protection of patrons located in
34 this state.

35 12. The commission may delegate its responsibilities to administer the
36 provisions of this article to the division, as it sees fit, except for
37 its responsibilities to approve licenses.

38 § 1503. Required safeguards/minimum standards. The commission shall
39 require licensees to implement measures to meet the standards set out in
40 this section, along with such other standards that the commission in its
41 discretion may choose to require.

42 1. Appropriate safeguards to ensure, to a reasonable degree of
43 certainty, that participants in interactive poker are not younger than
44 twenty-one years of age.

45 2. Appropriate safeguards to ensure, to a reasonable degree of
46 certainty, that participants in interactive poker are physically located
47 within the state or such other jurisdiction that the commission has
48 determined to be permissible.

49 3. Appropriate safeguards to protect, to a reasonable degree of
50 certainty, the privacy and online security of participants in interac-
51 tive poker.

52 4. Appropriate safeguards to ensure, to a reasonable degree of
53 certainty, that the interactive poker is fair and honest and that appro-
54 priate measures are in place to deter, detect and, to the extent reason-
55 ably possible, to prevent cheating, including collusion, and use of

cheating devices, including use of software programs (sometimes referred to as "bots") that make bets or wagers according to algorithms.

5. Appropriate safeguards to minimize compulsive gaming and to provide notice to participants of resources to help problem gamblers.

6. Appropriate safeguards to ensure participants' funds are held in accounts segregated from the funds of licensees and otherwise are protected from corporate insolvency, financial risk or criminal or civil actions against the licensee.

§ 1504. Scope of licensing review. 1. In connection with any license issued pursuant to this article, the licensee, significant vendor or applicant shall identify and the commission shall review the suitability of such licensee's, significant vendor's or applicant's owner, chief executive officer, chief financial officer and any other officer or employee who the commission deems is significantly involved in the management or control of the licensee, significant vendor or applicant or of the interactive poker platform. "Owner" for purposes of this provision means any person who directly or indirectly holds any beneficial or ownership interest in the applicant of five percent or greater or any amount of ownership that the commission determines to be significant ownership of the licensee, significant vendor, or applicant.

2. Institutional investors are subject to the provisions set out in this section.

(a) An institutional investor holding under twenty-five percent of the equity securities of a licensee's or significant vendor's (or applicant's) holding or intermediary companies, shall be granted a waiver of any investigation of suitability or other requirement if such securities are those of a corporation, whether publicly traded or privately held, and its holdings of such securities were purchased for investment purposes only and it files a certified statement to the effect that it has no intention of influencing or affecting the affairs of the issuer, the licensee (or significant vendor or applicant, as applicable) or its holding or intermediary companies; provided, however, that it shall be permitted to vote on matters put to the vote of the outstanding security holders. The commission may grant such a waiver to an institutional investor holding a higher percentage of such securities upon a showing of good cause and if the conditions specified above are met. Any institutional investor granted a waiver under this paragraph which subsequently determines to influence or affect the affairs of the issuer shall provide not less than thirty days' notice of such intent and shall file with the commission a request for determination of suitability before taking any action that may influence or affect the affairs of the issuer; provided, however, that it shall be permitted to vote on matters put to the vote of the outstanding security holders. If an institutional investor changes its investment intent, or if the commission finds reasonable cause to believe that the institutional investor may be found unsuitable, no action other than divestiture shall be taken by such investor with respect to its security holdings until there has been compliance with any requirements established by the commission, which may include the execution of a trust agreement. The licensee (or significant vendor or applicant, as applicable) and its relevant holding, intermediary or subsidiary company shall notify the commission immediately of any information about, or actions of, an institutional investor holding its equity securities where such information or action may impact upon the eligibility of such institutional investor for a waiver pursuant to this paragraph.

1 (b) If at any time the commission finds that an institutional investor
2 holding any security of a holding or intermediary company of a licensee
3 or significant vendor or applicant, or, where relevant, of another
4 subsidiary company of a holding or intermediary company of a licensee or
5 significant vendor or applicant which is related in any way to the
6 financing of the licensee or significant vendor or applicant, fails to
7 comply with the terms of paragraph (a) of this section, or if at any
8 time the commission finds that, by reason of the extent or nature of its
9 holdings, an institutional investor is in a position to exercise such a
10 substantial impact upon the controlling interests of a licensee or
11 significant vendor or applicant that investigation and determination of
12 suitability of the institutional investor is necessary to protect the
13 public interest, the commission may take any necessary action otherwise
14 authorized under this article to protect the public interest.

15 (c) For purposes of this section, an "institutional investor" shall
16 mean any retirement fund administered by a public agency for the exclu-
17 sive benefit of federal, state, or local public employees; investment
18 company registered under the Investment Company Act of 1940 (15 U.S.C. §
19 80a-1 et seq.); collective investment trust organized by banks under
20 Part Nine of the Rules of the Comptroller of the Currency; closed end
21 investment trust; chartered or licensed life insurance company or prop-
22 erty and casualty insurance company; banking and other chartered or
23 licensed lending institution; investment advisor registered under The
24 Investment Advisors Act of 1940 (15 U.S.C. § 80b-1 et seq.); and such
25 other persons as the commission may determine for reasons consistent
26 with the public interest.

27 § 1505. Taxation and fees. 1. Licensees engaged in the business of
28 conducting interactive poker pursuant to this article shall pay a privi-
29 lege tax based on the licensee's interactive poker gross revenue at a
30 fifteen percent rate.

31 2. From the state tax collected, the commission shall distribute, in
32 conjunction with the office of addiction services and supports, one
33 percent of the revenue for problem gambling education, treatment, and
34 prevention purposes.

35 3. The commission shall pay into the state commercial gaming fund all
36 taxes imposed by this article; any interest and penalties imposed by the
37 commission relating to those taxes; all penalties levied and collected
38 by the commission; and the appropriate funds, cash or prizes forfeited
39 from interactive poker.

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

48 § 225.36 Interactive poker offenses and exceptions.

49 1. The knowing and willful offering of unlicensed interactive poker to
50 persons in this state, or the knowing and willful provision of services
51 with respect thereto, shall constitute a gambling offense under this
52 article.

53 2. Licensed interactive poker activities under section fifteen hundred
54 two of the racing, pari-mutuel wagering and breeding law shall not be a
55 gambling offense under this article.

1 3. A person offering unlicensed interactive poker to persons in this
2 state shall be liable for all taxes set forth in section fifteen hundred
3 five of the racing, pari-mutuel wagering and breeding law in the same
4 manner and amounts as if such person were a licensee. Timely payment of
5 such taxes shall not constitute a defense to any prosecution or other
6 proceeding in connection with the interactive poker except for a prose-
7 cution or proceeding alleging failure to make such payment.

8 § 4. Severability clause. If any provision of this act or application
9 thereof shall for any reason be adjudged by any court of competent
10 jurisdiction to be invalid, such judgment shall not affect, impair, or
11 invalidate the remainder of the act, but shall be confined in its opera-
12 tion to the provision thereof directly involved in the controversy in
13 which the judgment shall have been rendered.

14 § 5. This act shall take effect on the one hundred eightieth day after
15 it shall have become a law.