STATE OF NEW YORK

3634

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 authorizing interactive gaming

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

Section 1. The racing, pari-mutuel wagering and breeding law is 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.

§ 1500. Legislative intent and findings. Section nine of article one of the New York state constitution was recently amended and provides "casino gambling at no more than seven facilities as authorized and prescribed by the legislature shall hereafter be authorized or allowed within this state." It has been, and continues to be, the sense of the legislature that this provision is not contravened by a statute that authorizes the acceptance of a wager by an individual who is betting by virtual or electronic means and the wager is accepted through equipment located within a licensed gaming facility; provided that any such wager meets other safeguards ensuring that the plain text of this provision is honored in such structure. Interactive gaming is now legal online in seven states, including the bordering states of New Jersey, Pennsylvania and Connecticut, while it is permitted only in person in New York at four upstate commercial gaming facilities and Native American class III gaming facilities. The legislature hereby finds and declares that an interactive gaming wager that is made through virtual or electronic

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

LBD06580-02-3

means from a location within New York state and is transmitted to and accepted by electronic equipment located at a licensed gaming facility, including without limitation, a computer server located at such licensed gaming facility, is a wager made at such licensed gaming facility, notwithstanding any provisions of the penal law to the contrary.

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

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

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

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

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

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

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

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

8. "Operator" means a casino or an Indian tribe that has entered into a tribal-state gaming compact in accordance with the Indian Gaming Regulatory Act that is in effect and has been ratified by the state of New York, and has entered into an interactive gaming wagering agreement with the commission pursuant to section one thousand five hundred two of this article.

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

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

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

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

(e) The commission shall prescribe the form and manner of the application for registration, which shall contain all information deemed necessary and relevant by the commission to determine whether an applicant should be authorized to conduct interactive gaming wagering.

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

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

(i) to follow the requirements imposed on casinos and operators under this section with respect to such Indian tribe's mobile interactive gaming wagering, to adhere to the regulations promulgated by the commission pursuant to this section with respect to mobile interactive gaming wagering, 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;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) if an operator becomes or is made aware that a minor has created an account, or accessed the account of another, such operator shall promptly, within no more than two business days, refund any deposit received from the minor, whether or not the minor has engaged in or

attempted to engage in interactive gaming wagering, provided however, that any refund may be offset by any prizes already awarded;

(ii) each operator shall provide parental control procedures to allow parents or guardians to exclude minors from access to any interactive gaming wagering or platform. Such procedures shall include a toll-free number to call for help in establishing such parental controls; and

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

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

(e) enable authorized participants to exclude themselves from interactive gaming wagering and take reasonable steps to prevent such bettors from engaging in wagering from which they have excluded themselves;

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

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

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

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

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

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

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

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

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

(o) submit annually a problem gaming plan to the commission that includes: (i) the objectives of and timetables for implementing such plan; (ii) identification of the persons responsible for implementing and maintaining such plan; (iii) procedures for identifying users with suspected or known problem gaming behavior; (iv) procedures for providing information to users concerning problem gaming identification and resources; (v) procedures to prevent gaming by minors and self-excluded persons; and (vi) such other problem gaming information as the commission may require by rule.

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

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

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

§ 2. This act shall take effect immediately.