

# 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:

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

6 § 1501. Definitions. As used in this article, the following terms  
7 shall have the following meanings:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

41 § 1503. Required safeguards. 1. As a condition of registration, each  
42 operator shall implement the following measures:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

40 § 2. This act shall take effect immediately.