STATE OF NEW YORK

4856

2023-2024 Regular Sessions

IN SENATE

February 15, 2023

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, in relation to interactive gaming

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

Section 1. Section 1367-a of the racing, pari-mutuel wagering and breeding law is amended by adding a new subdivision 8 to read as follows:

8. No additional mobile sports wagering licenses shall be issued pursuant to this section subsequent to the conversion of any mobile sports wagering platform provider license to an interactive gaming license, as set forth in subdivision two of section fifteen hundred three of this chapter.

§ 2. 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. Eligibility to conduct interactive gaming.
1503. Entity licensing.
1504. Individual, enterprise and vendor licensing.
1505. Requirements for conduct and operation of interactive gaming.
1506. Taxation and fees.
1507. Responsible gaming requirements.

§ 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

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

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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 located in New York state 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 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 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. For the purposes of this article, the following terms shall have the following meanings:

1. "Authorized casino game" means any gambling game as set forth in subdivision four, nineteen, thirty-eight, thirty-nine or forty-one of section thirteen hundred one of this chapter and associated regulations. An authorized casino 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. "Gaming facility" means the premises approved under a gaming license which includes a gaming area and any other non-gaming structure related to the gaming area and may include, but shall not be limited to, hotels, restaurants or other amenities.

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 licensee" means a qualifying entity that has been authorized by the New York state gaming commission to conduct interactive gaming.

7. "Interactive gross gaming revenue" means the amount equal to the total of all interactive gaming wagers that an interactive gaming licensee collects from all authorized participants, less the total of all

sums paid out as winnings to all authorized participants, provided, however, that the total of all sums paid out as winnings to authorized participants shall not include the following: (a) the cash equivalent value of any merchandise or thing of value awarded as a prize; and (b) the value of all bonuses or promotions provided to authorized participants as an incentive to place or as a result of their having placed interactive gaming wagers, not to exceed 1.75 percent of the total amount of all interactive gaming wagers placed with the interactive gaming licensee each month after the first twelve months of interactive gaming wagering.

8. "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.

9. "Live dealer games" means authorized casino games conducted by live studio dealers or other physical gaming equipment, such as automated roulette wheels, ball blowers or gaming devices, or both, in a live game environment in which the authorized participants have the ability to participate in game play and communicate game decisions through an authorized interactive gaming wagering platform. Live dealer games include, but are not limited to, live card games, live table games and other live authorized casino games.

10. "Live gaming studio" means a physical location in New York state that utilizes live video streaming technology to provide authorized casino games to a player's interactive gaming device or multi-use computing device.

11. "Live studio dealer" means natural persons, that lead table games, including blackjack, craps, keno, poker, roulette and other authorized casino games while assisting authorized participants with game-related needs, that distribute cards, dice and other equipment to authorized participants according to the table and other authorized games, and that monitor game pace and play.

12. "Prohibited participant" means: (a) any officer or employee of the commission; (b) any principal or key employee of a casino, interactive gaming licensee, and its affiliates, except as may be permitted by the commission; (c) any casino gaming or non-gaming employee at the casino that employs such person and any gaming or non-gaming employee of the interactive gaming licensee that employs such person; (d) any contractor, subcontractor, or consultant, or officer or employee of a contractor, subcontractor, or consultant, of a casino or an interactive gaming licensee if such person is directly involved in the operation or observation of interactive gaming, or the processing of interactive gaming claims or payments; (e) any person subject to a contract with the commission if such contract contains a provision prohibiting such person from participating in interactive gaming; (f) any spouse, child, sibling or parent residing in the principal place of abode of any of the foregoing persons at the same casino or interactive gaming licensee where the foregoing person is prohibited from participating in interactive gaming; (g) any individual placing a wager as an agent or proxy for another person known to be a prohibited participant; or (h) any minor.

13. "Qualifying entity" means (a) a destination resort casino licensed under article thirteen of this chapter; (b) a video lottery terminal

facility authorized under paragraphs one and two of subdivision a of section sixteen hundred seventeen-a of the tax law, when such video lottery terminal facility conducts racing, as defined in subdivision three of section three hundred one of this chapter, or authorized under paragraph five of subdivision a of section sixteen hundred seventeen-a of the tax law; (c) a federally recognized 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; or (d) a mobile sports wagering platform provider, inclusive of the sports wagering operators the platform utilizes, selected by the commission to conduct mobile sports wagering pursuant to subdivision seven of section thirteen hundred sixty-seven-a of this chapter and section fifteen hundred three of this article. An unlicensed entity offering games or contests that require a license or temporary permit issued by the commission under article thirteen or fourteen of this chapter within the previous three years of the effective date of this article shall be ineligible to receive an interactive gaming license.

§ 1502. Eligibility to conduct interactive gaming. 1. Only a qualifying entity in good standing with the commission or, if the qualifying entity is an Indian tribe, those executive agencies with which it otherwise interacts, shall be eligible to conduct interactive gaming in the state.

2. No qualifying entity shall administer, manage, or otherwise make available an interactive gaming platform to persons located in New York state unless it has provided notice of intent to offer interactive gaming to the commission pursuant to this section. Additionally, no entity shall advertise or promote an unlicensed interactive gaming platform to persons located in the state of New York.

3. (a) Prior to the commission approving an interactive gaming licensee under section fifteen hundred three of this article to commence operations, the commission shall conduct a comprehensive investigation of the applicant to determine whether the applicant or any of its affiliates, including entities under common control, is knowingly (i) accepting revenue, directly or indirectly, derived from any jurisdiction sanctioned by the office of foreign assets control (OFAC) of the United States treasury department, or (ii) accepting or assisting, directly or indirectly, in the acceptance of online wagers or consideration related to online wagering from any country in which such online gambling is prohibited or illegal.

(b) The commission shall not approve an interactive gaming licensee to commence operations if the commission determines that the applicant or any of its affiliates, including entities under common control, is knowingly (i) accepting revenue, directly or indirectly, derived from any jurisdiction sanctioned by the OFAC of the United States treasury department, or (ii) accepting or assisting, directly or indirectly, in the acceptance of online wagers or other consideration related to online wagering from any country in which such online gambling is prohibited or illegal.

(c) If at any time during licensure the commission determines that the licensee or any of its affiliates, including entities under common control, is knowingly accepting revenue, directly or indirectly, derived from any jurisdiction sanctioned by the OFAC of the United States treasury department, or accepting or assisting, directly or indirectly, in the acceptance of online wagers or other consideration related to online wagering from any country in which such online gambling is prohibited or illegal, the commission shall impose a penalty of license revocation if

the commission determines, after notice and an opportunity for hearing, that it would further the public interest to discontinue such operations of the interactive gaming licensee.

4. Licenses authorized under this article shall remain in effect for ten years from the date issued. The commission shall establish a process for renewal.

5. The commission shall publish a list of all licensees authorized to offer interactive gaming in New York state pursuant to this section on the commission's website for public use.

6. Each interactive gaming licensee shall offer no more than one individually branded skin.

7. Notices of intent to offer interactive gaming sent to the commission by a qualified entity shall be acted upon by the commission promptly, with authorization to commence operations being issued no more than thirty days of receipt of the petition.

8. To meet the definition of a qualifying entity, an Indian Tribe shall enter into an agreement with the commission with respect to interactive gaming:

(a) to follow the requirements imposed on interactive gaming licensees under this section and section thirteen hundred sixty-seven-a of this chapter with respect to the Indian Tribe's interactive gaming; to adhere to the regulations promulgated by the commission pursuant to this section with respect to interactive gaming, and to submit to the commission's enforcement of this section and section thirteen hundred sixty-seven-a of this chapter and regulations promulgated thereunder with respect to interactive gaming, including by waiving tribal sovereign immunity for the sole and limited purpose of such enforcement. Nothing herein shall be construed as requiring an Indian Tribe's agreement to adhere to the requirements of section thirteen hundred sixty-seven of this chapter for gaming conducted on tribal lands as a condition of offering interactive gaming under this section;

(b) to waive the Indian Tribe's exclusive geographic right to offer and conduct interactive gaming, but not otherwise;

(c) to remit payment to the state equal to tax on interactive gaming revenue imposed under section fifteen hundred six of this article with respect to interactive gaming;

(d) not to offer or to conduct mobile gaming other than interactive gaming pursuant to this section unless such mobile gaming is otherwise authorized by state or federal law; and

(e) to locate the server or other equipment used by the Indian Tribe or its agent to accept interactive gaming at a casino that has applied for and is eligible to register as an interactive gaming licensee and to pay the actual cost of hosting the server or other equipment as determined by the commission.

9. No interactive gaming may be conducted within an Indian Tribe's exclusive geographic area unless such Indian Tribe with exclusive geographic right to that area is registered as an interactive gaming licensee. Interactive gaming licensees shall use geo-location and geo-fencing technology to ensure that interactive gaming 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 interactive gaming licensee under this section.

§ 1503. Entity licensing. 1. A qualifying entity shall receive an interactive gaming license upon the effective date of this article. An interactive gaming licensee shall not commence interactive gaming until

such time that the commission has promulgated a regulatory scheme and provided approval to commence operations. Such regulations shall be promulgated, and approval issued in a timely manner, but no later than one hundred twenty days following the effective date of this article.

2. A qualifying entity shall not incur any additional licensing or administrative fees, or additional expenses outside of those set forth in this section.

3. (a) Up to three interactive wagering licenses shall be awarded by a competitive bidding process conducted by the commission. Eligible applicants for the competitive bidding process must have at least five percent in the applicant owned, through either a direct or indirect economic interest, by members of a minority group as defined in subdivision eight of section three hundred ten of the executive law.

(b) The commission shall issue a request for applications no later than July first, two thousand twenty-three, 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.

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

(d) The commission shall determine the form of application and scoring criteria and make both available on its website.

(e) Mobile sports wagering licensees awarded a license by the process set forth in paragraphs (a) through (d) of this subdivision may apply for an interactive gaming licensee upon selection by the commission, allowing such licensees to offer both mobile sports wagering and interactive gaming.

4. As a condition of licensing, 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.

§ 1504. Individual, enterprise and vendor licensing. Each interactive gaming licensee may contract with an entity to conduct interactive gaming, in accordance with the regulations of the commission. Such entity shall obtain a license as a casino vendor enterprise prior to execution of any such contract, and such license shall be issued pursuant to the provisions of section thirteen hundred twenty-seven of this chapter and in accordance with the regulations promulgated by the commission.

§ 1505. Requirements for conduct and operation of interactive gaming. 1. The live gaming studio used to conduct live dealer games shall not be required to be located within the premises of a gaming facility, as defined in subdivision twenty-three of section thirteen hundred one of this chapter, but must be located within the state of New York.

2. An applicant for an interactive gaming license that has not yet entered into a labor peace agreement shall produce an affidavit stating it shall enter into a labor peace agreement with labor organizations that are actively engaged in representing or attempting to represent gaming or hospitality industry workers in the state as a mandatory component of its application for an interactive gaming license. In order for the commission to issue an interactive gaming license and for any operations involving live studio dealers to commence, the applicant for

an interactive gaming license must produce documentation that it has entered into a labor peace agreement with each labor organization that is actively engaged in representing and attempting to represent gaming and hospitality industry workers in the state. The commission shall make the maintenance of such a labor peace agreement an ongoing material condition of licensure as long as the interactive gaming licensee makes use of live studio dealers. A license holder shall, as a condition of its license, ensure that operations at a live gaming studio that involve gaming or hospitality industry employees or are conducted by contractors, subcontractors, licensees, assignees, tenants or subtenants shall be done under a labor peace agreement containing the same provisions as specified in this subdivision.

3. Advertisements for contests and prizes offered by an interactive gaming licensee shall not target prohibited participants, minors, or self-excluded persons.

4. Interactive gaming licensees shall develop and prominently display procedures on the main page of such interactive gaming licensee's platform for the filing of a complaint by an authorized participant against such interactive gaming licensee. An initial response shall be given by such interactive gaming licensee to such authorized participant filing the complaint within forty-eight hours of receipt. A complete response shall be given by such interactive gaming licensee to such authorized participant filing the complaint within ten business days of receipt. An authorized participant may file a complaint alleging a violation of the provisions of this article with the commission.

5. Interactive gaming licensees shall maintain records of all accounts belonging to authorized participants and retain such records of all transactions in such accounts for the preceding five years, provided, however, that such records belonging to an authorized participant shall be readily accessible and downloadable, without cost, by such authorized participant.

6. The server or other equipment which is used by an interactive gaming licensee to accept interactive gaming shall be physically located in the licensed gaming facility and be limited to interactive gaming related activities in accordance with regulations promulgated by the commission.

7. All interactive gaming initiated in this state shall be deemed to take place at the licensed gaming facility where the server or other equipment used by an interactive gaming licensee to accept interactive gaming is located, regardless of the authorized participant's physical location within this state.

8. Subject to regulations promulgated by the commission, an interactive gaming licensee may allow for authorized participants to sign up to create and fund accounts on its interactive gaming platform. An interactive gaming licensee shall adopt reasonable procedures to ensure that authorized participants have no more than one interactive gaming account with the interactive gaming licensee. However, nothing in this article shall prohibit the use of a single account for a mobile sports wagering account under section thirteen hundred sixty-seven of this chapter and an interactive gaming account set forth pursuant to this article.

9. Authorized participants may deposit and withdraw funds to and from their account on an interactive gaming platform through electronically recognized payment methods, including but not limited to credit cards and debit cards, or via any other means approved by the commission, provided, however, that in the case of credit card payments, each authorized participant's account per licensee shall be limited to a

credit card spending amount of two thousand five hundred dollars per year. Provided further, such limitation shall not apply to other payment methods or to debit cards. No interactive gaming licensee shall be authorized to provide a line of credit to any authorized participant.

§ 1506. Taxation and fees. 1. For the privilege of conducting interactive gaming in the state, interactive gaming licensees shall pay a tax equivalent to thirty and one-half percent of base taxable gross gaming revenue derived from interactive gaming. Interactive gaming tax revenue shall be separately maintained and returned to the state for deposit into the state lottery fund for education aid.

2. From the state tax collected, 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.

§ 1507. Responsible gaming requirements. As a condition of licensure, each operator shall implement the following measures:

1. 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;

2. 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;

3. prohibit minors from participating in any mobile interactive gaming wagering;

4. 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;

5. 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;

6. implement measures to protect the privacy and online security of authorized participants and their accounts;

7. 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;

8. 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;

9. 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 an authorized participant may place wagers. Such responsible play page shall include (a) a statement of the interactive gaming licensee's policy and commitment to responsible gaming, information regarding, or links to information regarding, the risks associated with gambling and the potential signs of problem gaming; (b) the availability of self-imposed responsible gaming limits; (c) a link to a problem gaming webpage maintained by the office of addiction services and supports; and (d) such other information or statements as the commission may require by rule;

10. submit annually a responsible gaming plan to the commission. The commission shall publish the requirements for the plan;

11. ensure no wagering shall be based on game types not approved by the commission;

12. when an account holder's lifetime deposits exceed two thousand five hundred dollars, the interactive gaming licensee shall prevent any wagering until the patron immediately acknowledges that the account holder has met the deposit threshold and may elect to establish responsible gaming limits or close the account, and the account holder has received disclosures from the mobile sports wagering operator concerning problem gambling resources. Once a patron has reached their lifetime deposit, such patron shall annually make the acknowledgement required by this subdivision; and

13. submit annually a problem gaming plan that was approved by the commission in consultation with the office of addiction services and supports that includes (a) the objectives of and timetables for implementing such plan; (b) identification of the persons responsible for implementing and maintaining such plan; (c) procedures for identifying users with suspected or known problem gaming behavior; (d) procedures for providing information to users concerning problem gaming identification and resources; (e) procedures to prevent gaming by minors and self-excluded persons; and (f) such other problem gaming information as the commission may require by rule.

§ 3. This act shall take effect immediately.