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NEW YORK INTRODUCES BILL THAT WOULD AUTHORIZE ONLINE POKER

By Nicholas Casiello, Jr. and Tyler J. Trout

Following an unsuccessful attempt last year, New York State Senator John J. Bonacic, Chairman of the Racing, Gaming and Wagering Committee, on May 13, 2015, introduced another bill that would authorize online poker within the State of New York. Bill S5302, which has been referred to the Racing, Gaming and Wagering Committee, would amend both the gaming and criminal laws and allow Internet gambling on poker to be offered to New York's 20 million residents.

The newly proposed bill would allow for up to 10 licenses to be issued by the New York State Gaming Commission, each being issued for a 10-year period and having a one-time licensing fee of \$10 million. If the bill is passed, the commission would have 180 days to promulgate regulations and an additional 180 days to issue licenses to applicants. Operators and significant vendors would both require licensing by the commission. Unlike the Internet gaming laws of Nevada and New Jersey, which limit operators to existing casinos, anyone could apply for a license to operate Internet poker in New York.

The bill specifically authorizes the games Omaha Hold'em and Texas Hold'em, and other poker games the commission determines are the material equivalent.

Unlike last year's bill, S5302 has no specific bad actor provision, but does establish that the

commission's suitability determination can be based on whether the applicant is a person whose prior activities and criminal record create or enhance the dangers of unsuitable, unfair or illegal practices.

Finally, the bill would allow the commission to enter into agreements with other states to allow patrons to participate in interactive gaming offered by licensees under the laws of those other states, so long as the other state applies suitability standards consistent with the New York bill. The bill requires that if the commission enters into such an agreement, there must be safeguards for revenue sharing between the states, as well as patron protections. Operators would be taxed at a 15 percent tax rate based upon the licensee's interactive gaming gross revenue.

Although the bill's outcome is uncertain, especially after Assemblyman Gary Pretlow's January comment that "online poker will not happen within the year," New York may not want to delay consideration of the bill in order to stay competitive with surrounding states.

New York would become the fourth state in the U.S. to offer online poker, following Nevada, New Jersey and Delaware. California (AB 431) and Pennsylvania (HB 649) are currently debating the possibility of online interactive gaming.

The bill also amends the criminal law to redefine a “contest of chance” as one in which the outcome depends predominantly upon an element of chance, rather than the current definition which only requires that the outcome depend to a material degree upon an element of chance.

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