

ASSEMBLY, No. 3894

STATE OF NEW JERSEY 216th LEGISLATURE

INTRODUCED DECEMBER 4, 2014

Sponsored by:

Assemblyman RALPH R. CAPUTO

District 28 (Essex)

Assemblywoman ELIANA PINTOR MARIN

District 29 (Essex)

Assemblywoman ANGELICA M. JIMENEZ

District 32 (Bergen and Hudson)

Co-Sponsored by:

**Assemblyman Eustace, Assemblywoman Tucker, Assemblymen Danielsen,
Cryan, Mazzeo and Assemblywoman Vainieri Huttle**

SYNOPSIS

Requires Internet gaming affiliates to be licensed as casinos; prohibits waiver of licensing requirements.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning the licensing of Internet gaming affiliates,
2 amending P.L.2013, c.27, and amending and supplementing
3 P.L.1977, c.110.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. (New section) An Internet gaming affiliate shall be required
9 to be licensed as a casino in accordance with the provisions of
10 section 82 of P.L.1977, c.110 (C.5:12-82). Within 30 days of the
11 effective date of this act, P.L. , c. (C.) (pending before the
12 Legislature as this bill), the commission and the division shall
13 notify each Internet gaming affiliate operating in this State of the
14 licensing requirements. Any Internet gaming affiliate which is not
15 in compliance with the licensing requirements on the effective date
16 of this act shall be licensed within one year of that effective date.
17 Following the expiration of that one-year period, an Internet gaming
18 affiliate which has failed to be licensed shall not be eligible to
19 continue operating in this State.

20
21 2. Section 82 of P.L.1977, c.110 (C.5:12-82) is amended to
22 read as follows:

23 82. a. No casino shall operate unless all necessary licenses and
24 approvals therefor have been obtained in accordance with law.

25 b. Only the following persons shall be eligible to hold a casino
26 license; and, unless otherwise determined by the commission with
27 the concurrence of the Attorney General which may not be
28 unreasonably withheld in accordance with subsection c. of this
29 section, each of the following persons shall be required to hold a
30 casino license prior to the operation of a casino in the casino hotel
31 with respect to which the casino license has been applied for:

32 (1) Any person who either owns an approved casino hotel or
33 owns or has a contract to purchase or construct a casino hotel which
34 in the judgment of the commission can become an approved casino
35 hotel within 30 months or within such additional time period as the
36 commission may, upon a showing of good cause therefor, establish;

37 (2) Any person who, whether as lessor or lessee, either leases an
38 approved casino hotel or leases or has an agreement to lease a
39 casino hotel which in the judgment of the commission can become
40 an approved casino hotel within 30 months or within such
41 additional time period as the commission may, upon a showing of
42 good cause therefor, establish;

43 (3) Any person who has a written agreement with a casino
44 licensee or with an eligible applicant for a casino license for the

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 complete management of a casino and, if applicable, any authorized
2 games in a casino simulcasting facility;

3 (4) Any other person who has control over either an approved
4 casino hotel or the land thereunder or the operation of a casino; and

5 (5) Any person who is an Internet gaming affiliate of an owner
6 or operator of a licensed casino, and such person is to own or
7 operate an Internet gaming system for such licensed casino.
8 Notwithstanding any provision of this section, and any other law,
9 rule, or regulation to the contrary, an Internet gaming affiliate shall
10 be required to obtain a casino license, and such requirement shall
11 not be subject to waiver under any provision of P.L.1977, c.110
12 (C.5:12-1 et seq.), as amended and supplemented, or any rule or
13 regulation promulgated thereunder.

14 c. Prior to the operation of a casino and, if applicable, a casino
15 simulcasting facility, every agreement to lease an approved casino
16 hotel or the land thereunder and every agreement for the
17 management of the casino and, if applicable, any authorized games
18 in a casino simulcasting facility, shall be in writing and filed with
19 the commission and the division. No such agreement shall be
20 effective unless expressly approved by the commission. The
21 commission may require that any such agreement include within its
22 terms any provision reasonably necessary to best accomplish the
23 policies of this act. Consistent with the policies of this act:

24 (1) The commission, with the concurrence of the Attorney
25 General which may not be unreasonably withheld, may determine
26 that any person who does not have the ability to exercise any
27 significant control over either the approved casino hotel or the
28 operation of the casino contained therein shall not be eligible to
29 hold or required to hold a casino license;

30 (2) The commission, with the concurrence of the Attorney
31 General which may not be unreasonably withheld, may determine
32 that any owner, lessor or lessee of an approved casino hotel or the
33 land thereunder who does not own or lease a significant portion of
34 an approved casino hotel shall not be eligible to hold or required to
35 hold a casino license;

36 (3) The commission shall require that any person or persons
37 eligible to apply for a casino license organize itself or themselves
38 into such form or forms of business association as the commission
39 shall deem necessary or desirable in the circumstances to carry out
40 the policies of this act;

41 (4) The commission may issue separate casino licenses to any
42 persons eligible to apply therefor;

43 (5) As to agreements to lease an approved casino hotel or the
44 land thereunder, unless it expressly and by formal vote for good
45 cause determines otherwise, the commission shall require that each
46 party thereto hold either a casino license or casino service industry
47 enterprise license and that such an agreement shall include within
48 its terms a buy-out provision conferring upon the casino licensee-

1 lessee who controls the operation of the approved casino hotel the
2 absolute right to purchase for an expressly set forth fixed sum the
3 entire interest of the lessor or any person associated with the lessor
4 in the approved casino hotel or the land thereunder in the event that
5 said lessor or said person associated with the lessor is found by the
6 commission or director, as the case may be, to be unsuitable to be
7 associated with a casino enterprise;

8 (6) The commission shall not permit an agreement for the
9 leasing of an approved casino hotel or the land thereunder to
10 provide for the payment of an interest, percentage or share of
11 money gambled at the casino or derived from casino gaming
12 activity or of revenues or profits of the casino unless the party
13 receiving payment of such interest, percentage or share is a party to
14 the approved lease agreement; unless each party to the lease
15 agreement holds either a casino license or casino service industry
16 enterprise license, and includes within its terms a buy-out provision
17 conforming to that described in paragraph (5) above;

18 (7) As to agreements for the management of a casino and, if
19 applicable, the authorized games in a casino simulcasting facility,
20 the commission shall require that each party thereto hold a casino
21 license or a casino service industry enterprise license pursuant to
22 subsection a. of section 92 of P.L.1977, c.110 (C.5:12-92), that the
23 party thereto who is to manage the casino gaming operations own at
24 least 10% of all outstanding equity securities of any casino licensee
25 or of any eligible applicant for a casino license if the said licensee
26 or applicant is a corporation and the ownership of an equivalent
27 interest in any casino licensee or in any eligible applicant for a
28 casino license if same is not a corporation, and that such an
29 agreement be for the complete management of all casino space in
30 the casino hotel and, if applicable, all authorized games in a casino
31 simulcasting facility, provide for the sole and unrestricted power to
32 direct the casino gaming operations of the casino hotel which is the
33 subject of the agreement, and be for such a durational term as to
34 assure reasonable continuity, stability and independence in the
35 management of the casino gaming operations, provided that the
36 provisions of this paragraph shall not apply to a slot system
37 agreement between a group of casino licensees and a casino service
38 industry enterprise licensed pursuant to subsection a. of section 92
39 of P.L.1977, c.110 (C.5:12-92), or an eligible applicant for such
40 license, and that, with regard to such agreements, the casino service
41 industry enterprise licensee or applicant may operate and administer
42 the multi-casino progressive slot machine system, including, but not
43 limited to, the operation of a monitor room or the payment of
44 progressive, including annuity, jackpots, or both, and further
45 provided that the obligation to pay a progressive jackpot or
46 establish an annuity jackpot guarantee shall be the sole
47 responsibility of the casino licensee or casino service industry
48 enterprise licensee or applicant designated in the slot system

1 agreement and that no other party shall be jointly or severally liable
2 for the payment or funding of such jackpots or guarantees unless
3 such liability is specifically established in the slot system
4 agreement;

5 (8) The commission may permit an agreement for the
6 management of a casino and, if applicable, the authorized games in
7 a casino simulcasting facility to provide for the payment to the
8 managing party of an interest, percentage or share of money
9 gambled at all authorized games or derived from casino gaming
10 activity or of revenues or profits of casino gaming operations;

11 (9) Notwithstanding any other provision of P.L.1977, c.110
12 (C.5:12-1 et seq.) to the contrary, the commission may permit an
13 agreement between a casino licensee and a casino service industry
14 enterprise licensed pursuant to the provisions of subsection a. of
15 section 92 of P.L.1977, c.110 (C.5:12-92) for the conduct of casino
16 simulcasting in a simulcasting facility or for the operation of a
17 multi-casino progressive slot machine system, to provide for the
18 payment to the casino service industry enterprise of an interest,
19 percentage or share of the money derived from the casino licensee's
20 share of proceeds from simulcast wagering activity or the operation
21 of a multi-casino progressive slot machine system; and

22 (10) As to agreements to lease an approved casino hotel or the
23 land thereunder, agreements to jointly own an approved casino hotel
24 or the land thereunder and agreements for the management of
25 casino gaming operations or for the conduct of casino simulcasting
26 in a simulcasting facility, the commission shall require that each
27 party thereto, except for a banking or other chartered or licensed
28 lending institution or any subsidiary thereof, or any chartered or
29 licensed life insurance company or property and casualty insurance
30 company, or the State of New Jersey or any political subdivision
31 thereof or any agency or instrumentality of the State or any political
32 subdivision thereof, shall be jointly and severally liable for all acts,
33 omissions and violations of this act by any party thereto regardless
34 of actual knowledge of such act, omission or violation and
35 notwithstanding any provision in such agreement to the contrary.
36 Notwithstanding the foregoing, nothing in this paragraph shall
37 require a casino licensee to be jointly and severally liable for any
38 acts, omissions or violations of this act, P.L.1977, c.110 (C.5:12-1
39 et seq.), committed by any casino service industry enterprise
40 licensee or applicant performing as a slot system operator pursuant
41 to a slot system agreement.

42 d. No corporation shall be eligible to apply for a casino license
43 unless:

44 (1) The corporation shall be incorporated in the State of New
45 Jersey, although such corporation may be a wholly or partially
46 owned subsidiary of a corporation which is organized pursuant to
47 the laws of another state of the United States or of a foreign
48 country;

- 1 (2) The corporation shall maintain an office of the corporation
2 in the casino hotel licensed or to be licensed;
- 3 (3) The corporation shall comply with all the requirements of
4 the laws of the State of New Jersey pertaining to corporations;
- 5 (4) The corporation shall maintain a ledger in the principal
6 office of the corporation in New Jersey which shall at all times
7 reflect the current ownership of every class of security issued by the
8 corporation and shall be available for inspection by the commission
9 or the division and authorized agents of the commission and the
10 division at all reasonable times without notice;
- 11 (5) The corporation shall maintain all operating accounts
12 required by the commission in a bank in New Jersey, except that a
13 casino licensee may establish deposit-only accounts in any
14 jurisdiction in order to obtain payment of any check described in
15 section 101 of P.L.1977, c.110 (C.5:12-101);
- 16 (6) The corporation shall include among the purposes stated in
17 its certificate of incorporation the conduct of casino gaming and
18 provide that the certificate of incorporation includes all provisions
19 required by this act;
- 20 (7) The corporation, if it is not a publicly traded corporation,
21 shall file with the division and the commission such adopted
22 corporate charter provisions as may be necessary to establish the
23 right of the commission pursuant to subsection a. of section 105 of
24 P.L.1977, c.110 (C.5:12-105) to disapprove transfers of securities,
25 shares, and other interests in the applicant corporation; and, if it is a
26 publicly traded corporation, provide in its corporate charter that any
27 securities of such corporation are held subject to the condition that
28 if a holder thereof is found to be disqualified pursuant to the
29 provisions of this act, such holder shall dispose of his interest in the
30 corporation; provided, however, that, notwithstanding the
31 provisions of N.J.S.14A:7-12 and N.J.S.12A:8-101 et seq., nothing
32 herein shall be deemed to require that any security of such
33 corporation bear any legend to this effect;
- 34 (8) The corporation, if it is not a publicly traded corporation,
35 shall establish to the satisfaction of the division that appropriate
36 charter provisions create the absolute right of such non-publicly
37 traded corporations and companies to repurchase at the market price
38 or the purchase price, whichever is the lesser, any security, share or
39 other interest in the corporation in the event that the commission
40 disapproves a transfer in accordance with the provisions of this act;
- 41 (9) Any publicly traded holding, intermediary, or subsidiary
42 company of the corporation, whether the corporation is publicly
43 traded or not, shall contain in its corporate charter the same
44 provisions required under paragraph (7) for a publicly traded
45 corporation to be eligible to apply for a casino license; and
- 46 (10) Any non-publicly traded holding, intermediary or
47 subsidiary company of the corporation, whether the corporation is
48 publicly traded or not, shall establish to the satisfaction of the

1 commission that its charter provisions are the same as those
2 required under paragraphs (7) and (8) for a non-publicly traded
3 corporation to be eligible to apply for a casino license.

4 The provisions of this subsection shall apply with the same force
5 and effect with regard to casino license applicants and casino
6 licensees which have a legal existence that is other than corporate to
7 the extent which is appropriate.

8 e. No person shall be issued or be the holder of a casino license
9 if the issuance or the holding results in undue economic
10 concentration in Atlantic City casino operations by that person. For
11 the purpose of this subsection, "undue economic concentration"
12 means that a person would have such actual or potential domination
13 of the casino gaming market in Atlantic City as to substantially
14 impede or suppress competition among casino licensees or
15 adversely impact the economic stability of the casino industry in
16 Atlantic City. In determining whether the issuance or holding of a
17 casino license by a person will result in undue economic
18 concentration, the commission shall consider the following criteria:

19 (1) The percentage share of the market presently controlled by
20 the person in each of the following categories:

- 21 The total number of licensed casinos in this State;
- 22 Total casino and casino simulcasting facility square footage;
- 23 Number of guest rooms;
- 24 Number of slot machines;
- 25 Number of table games;
- 26 Net revenue;
- 27 Table game win;
- 28 Slot machine win;
- 29 Table game drop;
- 30 Slot machine drop; and
- 31 Number of persons employed by the casino hotel;

32 (2) The estimated increase in the market shares in the categories
33 in (1) above if the person is issued or permitted to hold the casino
34 license;

35 (3) The relative position of other persons who hold casino
36 licenses, as evidenced by the market shares of each such person in
37 the categories in (1) above;

38 (4) The current and projected financial condition of the casino
39 industry;

40 (5) Current market conditions, including level of competition,
41 consumer demand, market concentration, any consolidation trends
42 in the industry and any other relevant characteristics of the market;

43 (6) Whether the licensed casinos held or to be held by the
44 person have separate organizational structures or other independent
45 obligations;

46 (7) The potential impact of licensure on the projected future
47 growth and development of the casino industry and Atlantic City;

1 (8) The barriers to entry into the casino industry, including the
2 licensure requirements of this act, P.L.1977, c.110 (C.5:12-1 et
3 seq.), and whether the issuance or holding of a casino license by the
4 person will operate as a barrier to new companies and individuals
5 desiring to enter the market;

6 (9) Whether the issuance or holding of the license by the person
7 will adversely impact on consumer interests, or whether such
8 issuance or holding is likely to result in enhancing the quality and
9 customer appeal of products and services offered by casino
10 licensees in order to maintain or increase their respective market
11 shares;

12 (10) Whether a restriction on the issuance or holding of an
13 additional license by the person is necessary in order to encourage
14 and preserve competition and to prevent undue economic
15 concentration in casino operations; and

16 (11) Any other evidence deemed relevant by the commission.

17 The commission shall, after conducting public hearings thereon,
18 promulgate rules and regulations in accordance with the
19 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
20 seq.) defining any additional criteria the commission will use in
21 determining what constitutes undue economic concentration.

22 For the purpose of this subsection a person shall be considered
23 the holder of a casino license if such license is issued to such person
24 or if such license is held by any holding, intermediary or subsidiary
25 company thereof, or by any person required to be qualified in
26 conjunction with such casino license.

27 (cf: P.L.2013, c.27, s.32)

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29 3. Section 19 of P.L.2013, c.27 (C.5:12-95.21) is amended to
30 read as follows:

31 19. a. No Internet gaming shall be opened to the public, and no
32 gaming, except for test purposes, may be conducted therein, until a
33 casino licensee with a valid operation certificate, or an Internet
34 gaming affiliate thereof that is licensed pursuant to paragraph (5) of
35 subsection b. of section 82 of P.L.1977, c.110 (C.5:12-82), receives
36 from the division a permit to conduct Internet gaming. Such permit,
37 valid for one year, shall be issued by the division upon a finding
38 that the Internet gaming complies in all respects with the
39 requirements of this act, P.L.2013, c.27 and regulations
40 promulgated by the division. Notwithstanding the provisions of any
41 law, rule, or regulation to the contrary, a permit issued under this
42 section shall not be issued to an Internet gaming affiliate unless that
43 affiliate has obtained a casino license as required under section 82
44 of P.L.1977, c.110 (C.5:12-82).

45 (cf: P.L.2013, c.27, s.19)

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47 4. This act shall take effect immediately.

STATEMENT

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This bill requires each Internet gaming affiliate conducting Internet gaming in partnership with an Atlantic City casino to be licensed as a casino. This bill also prohibits the issuance of a waiver from these licensing requirements.

Under the bill, an Internet gaming affiliate will be required to be licensed as a casino in accordance with the casino licensing requirements of the "Casino Control Act." The bill provides that, within 30 days of its effective date, the Casino Control Commission and the Division of Gaming Enforcement must notify each Internet gaming affiliate operating in this State of the licensing requirements. Any Internet gaming affiliate which is not in compliance with the licensing requirements on the bill's effective date would be required to be licensed within one year. Following the expiration of that one-year period, an Internet gaming affiliate which has failed to be licensed would not be eligible to continue operating in this State.