

CHAPTER 15

AN ACT concerning the placement of wagers on the results of horse races, amending P.L.2002, c.89, and supplementing chapter 5 of Title 5 of the Revised Statutes.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

C.5:5-168 Short title.

1. This act shall be known and may be cited as the “Exchange Wagering Act.”

C.5:5-169 Findings, declarations relative to exchange wagers.

2. The Legislature finds and declares that:

- a. The horse racing industry is economically important to this State, and the general welfare of the people of the State will be promoted by the advancement of horse racing and related projects and facilities in the State.

- b. It is the intent of the Legislature, by authorizing exchange wagering in this State, to promote the economic future of the horse racing industry in this State, to foster the potential for increased commerce, employment and recreational opportunities in this State and to preserve the State's open spaces.

- c. It is the further intent of the Legislature that exchange wagers may be taken in person, by direct telephone call, or by communication through other electronic media from residents of this State on horse races conducted within and outside of this State and may be matched and pooled on an exchange.

- d. The Legislature has determined that the New Jersey Racing Commission is best suited to oversee, license and regulate exchange wagering in the State.

C.5:5-170 Definitions relative to exchange wagers.

3. As used in this act:

“Authority” means the New Jersey Sports and Exposition Authority created by section 4 of P.L.1971, c.137 (C.5:10-4).

“Back” means to wager on a selected outcome occurring in a given market.

“Commission” means the New Jersey Racing Commission created by section 1 of P.L.1940, c.17 (C.5:5-22).

“Corrective wager” means an exchange wager placed by the exchange wagering licensee in a given market, under circumstances approved by the commission, in order to address the impact on that market of the cancellation or voiding of a given matched wager or given part of a matched wager.

“Exchange” means a system operated by the exchange wagering licensee in which the exchange wagering licensee maintains one or more markets in which persons may back or lay a selected outcome.

“Exchange revenues” means all charges and fees of any kind assessed or collected by the exchange wagering licensee in connection with the submission of any exchange wagers to the exchange wagering licensee by residents of this State.

“Exchange wagers” means wagers submitted to the exchange wagering licensee to be posted in a market on an exchange.

“Exchange wagering” means a form of parimutuel wagering in which two or more persons place identically opposing wagers in a given market.

“Exchange wagering account” means the account established with the exchange wagering licensee by a person participating in exchange wagering and may include an account

wagering account established with the exchange wagering licensee pursuant to applicable law.

“Exchange wagering licensee” means the authority, provided that the commission has granted its approval for the authority to establish an exchange as provided for in this act.

“Exchange wagering system” means a system through which exchange wagers are processed.

“Identically opposing wagers” means wagers in which one or more persons offer to lay a selected outcome at the same price at which one or more persons offer to back that same outcome, with the amount subject to the lay being proportionately commensurate to the amount subject to the back.

“Interstate Exchange Pool” means an exchange wagering system established within this State or in another state or foreign nation within which is combined unmatched wagers on one or more horse races in order to form identically opposing wagers.

“Lay” means to wager on a selected outcome not occurring in a given market.

“Market” means, in relation to a given horse race or a given set of horse races, a particular outcome that is subject to exchange wagering as determined by the exchange wagering licensee.

“Matched wager” means the wager that is formed when two or more persons are confirmed by the exchange operator as having placed identically opposing wagers in a given market on the exchange.

“Net winnings” means the aggregate amounts payable to a person as a result of that person’s winning matched wagers in a pool less the aggregate amount paid by that person as a result of that person’s losing matched wagers in that pool.

“Parimutuel” means any system whereby wagers with respect to the outcome of a horse race are placed with, or in, a wagering pool conducted by an authorized person, and in which the participants are wagering with each other and not against the person conducting the wagering pool.

“Pool” means the total of all matched wagers in a given market.

“Price” means the odds for a given exchange wager.

“State” means the State of New Jersey.

“Unmatched Wager” means a wager or portion of a wager placed in a given market within an exchange that does not become part of a matched wager because there are not one or more available exchange wagers in that market with which to form one or more identically opposing wagers.

C.5:5-171 Exchange wagering permitted; conditions.

4. Notwithstanding any law, rule, or regulation to the contrary, exchange wagering by residents of this State on the results of horse races conducted in this State or jurisdictions outside of this State shall be lawful provided that:

a. exchange wagering shall only be conducted by the exchange wagering licensee pursuant to a valid exchange wagering license issued by the commission as provided for in this act;

b. exchange wagering shall be conducted pursuant to and in compliance with the provisions of the Interstate Horse Racing Act of 1978, 15 U.S.C. §§ 3001 – 3007, as amended, this act, and rules and regulations promulgated by the commission pursuant to this act;

c. the commission has approved a contract or agreement, if any, with a person or entity to conduct or operate the exchange and to act as the agent for the authority in all exchange

wagering matters approved by the commission, pursuant to section 5 of this act, P.L.2011, c.15 (C.5:5-172), including but not limited to the portion of exchange revenues payable to such person or entity conducting or operating the exchange;

d. exchange wagers are submitted to and accepted by the exchange wagering licensee in person, by direct telephone call, or by communication through other electronic media; and

e. exchange wagers are placed through the exchange wagering system authorized in accordance with the provisions of this act, P.L.2011, c.15 (C.5:5-168 et al.), and in accordance with commission rules, regulations, and conditions established therefor.

C.5:5-172 Issuance of license authorized.

5. The commission is hereby authorized to issue a license to the authority to establish an exchange in accordance with the provisions of this act, P.L.2011, c.15 (C.5:5-168 et al.). The licensing process shall include the filing by the authority of an exchange wagering license application developed by the commission.

At the time of filing an application for licensure under this section, the authority shall submit to the commission a nonrefundable filing fee in an amount established by regulation by the commission, and a certification in a form prescribed by the commission which specifies, but is not limited to, information about the operation of the exchange and the authority's participation therein.

Within 14 days of receipt of a completed application, certification and applicable fees, the commission's executive director shall determine whether the same is in due form and meets the requirements of law in all respects. No later than 60 days following the receipt of the application, the commission shall make a final determination on the application. The commission shall approve the application if it determines that the authority has demonstrated by clear and convincing evidence that wagers placed through the proposed exchange wagering system will be accurately processed and that there will be sufficient safeguards to maintain the integrity of the horse racing industry in this State.

The commission's determination shall be submitted to the Attorney General for review and approval. The determination of the commission shall be deemed approved by the Attorney General if affirmatively approved or not disapproved by the Attorney General within 14 days of the date of submission. The decision of the Attorney General shall be deemed a final decision. Upon approval by the Attorney General, the commission shall issue to the authority a license to establish the exchange. The exchange wagering license shall be valid for a term of one year, and shall be subject to renewal annually, unless a different timeframe is otherwise prescribed by regulation of the commission.

With the approval of the commission, the authority may enter into a contract or agreement with a person or entity to conduct or operate the exchange and to act as the agent of the authority in all exchange wagering matters approved by the commission. The exchange wagering license may not be transferred or assigned to a successor in interest without the approval of the commission and the Attorney General, which approval may not be unreasonably withheld.

C.5:5-173 Powers of commission.

6. a. The commission shall have full power to prescribe rules, regulations, and conditions under which exchange wagering may be conducted in this State, consistent with this act, P.L.2011, c.15 (C.5:5-168 et al.), including the manner in which exchange wagers may be accepted, the requirements for any person to participate in exchange wagering, and the

reasonable approval of any and all agreements made pursuant to subsections b. and c. of section 4 of this act, P.L.2011, c.15 (C.5:5-171).

b. The commission shall have full power to prescribe rules, regulations and conditions under which the exchange wagering license is issued or renewed in this State, including requiring an annual audit of the exchange wagering licensee's books and records pertaining to exchange wagering, and to revoke, suspend or refuse to renew the license if in the opinion of the commission the revocation of, suspension of or refusal to renew such license is in the public interest; provided, however, that such rules, regulations and conditions shall be uniform in their application.

c. The commission shall have no right or power to determine who shall be officers, directors or employees of any exchange wagering licensee, or the salaries thereof; provided, however, that the commission may compel the discharge of any official or employee of the exchange wagering licensee or the exchange who: (1) fails or refuses for any reason to comply with the rules or regulations of the commission; (2) fails or refuses for any reason to comply with any of the provisions of this act; (3) fails to establish by clear and convincing evidence in the opinion of the commission good character, honesty, competency and integrity; or (4) has been convicted of a crime involving fraud, dishonesty or moral turpitude.

C.5:5-174 Compliance with law required for exchange wagering.

7. a. A person within this State shall not be permitted to open an exchange wagering account, or place an exchange wager through the exchange wagering system, except in accordance with federal law and this act, and through the exchange wagering licensee, and no entity, other than the exchange wagering licensee, shall accept an exchange wager from a person within this State. A person may not place an exchange wager unless the person has established an exchange wagering account with the exchange wagering licensee. To establish an exchange wagering account, a person shall be at least 18 years of age, and a resident of this State, except that any person on the self-exclusion list established pursuant to section 1 of P.L.2002, c.89 (C.5:5-65.1) shall be prohibited from establishing an exchange wagering account.

b. The exchange wagering account shall be in the name of a natural person and may not be in the name of any beneficiary, custodian, joint trust, corporation, partnership or other organization or entity.

c. An exchange wagering account may be established in person, by mail, telephone, or other electronic media, by a person completing an application form approved by the commission. The form shall include the address of the principal residence of the prospective exchange wagering account holder and a statement that a false statement made in regard to an application may subject the applicant to prosecution. The exchange wagering licensee must verify the identification, residence, and age of the exchange wagering account holder using methods and technologies approved by the commission.

d. The prospective exchange wagering account holder shall submit the completed application in person, by mail, telephone, or other electronic media, including the Internet and wireless devices, to the exchange wagering licensee or such other person or entity as may be approved by the commission. The exchange wagering licensee may accept or reject an application after receipt and review of the application and certification, or other proof, of age and residency for compliance with this act.

e. Any prospective exchange wagering account holder who provides false or misleading information on the application is subject to rejection of the application or cancellation of the exchange wagering account by the exchange wagering licensee without notice.

f. The exchange wagering licensee shall have the right to suspend or close any exchange wagering account at its discretion.

g. Any person not in good standing with the commission shall not be entitled to maintain an exchange wagering account.

h. The address provided by the applicant in the application shall be deemed the proper address for the purposes of mailing checks, exchange wagering account withdrawals, notices and other materials.

i. An exchange wagering account shall not be assignable or otherwise transferable.

j. The exchange wagering licensee may cancel or allow to be cancelled, any unmatched wagers, without cause, at any time. Except as otherwise provided in this act or in regulations which the commission may adopt hereunder, all matched wagers shall be final and no wager shall be canceled by the exchange wagering account holder at any time after the wager has been matched by the exchange wagering licensee.

k. The commission may prescribe rules governing when an exchange wagering licensee may cancel or void a matched wager or part of a matched wager, and the actions which an exchange wagering licensee may take when all or part of a matched wager is cancelled or voided. Such rules may include, but are not limited to, permitting the exchange wagering licensee to place corrective wagers under circumstances approved in the rules adopted by the commission.

l. The exchange wagering licensee may at any time declare the exchange wagering system closed for receiving any wagers on any race or closed for all exchange wagering.

C.5:5-175 Credits to exchange wagering accounts.

8. a. Credits to an exchange wagering account shall be made as follows:

(1) The exchange wagering account holder's deposits to the exchange wagering account shall be submitted by the exchange wagering account holder to the exchange wagering licensee and shall be in the form of one of the following:

(a) cash given to the exchange wagering licensee;

(b) check, money order, negotiable order of withdrawal, or wire or electronic transfer, payable and remitted to the exchange wagering licensee; or

(c) charges made to an exchange wagering account holder's debit or credit card upon the exchange wagering account holder's direct and personal instruction, which instruction may be given by telephone communication or other electronic means to the exchange wagering licensee or its agent by the exchange wagering account holder if the use of the card has been approved by the exchange wagering licensee.

(2) Credit for winnings from wagers placed with funds in an exchange wagering account shall be posted to the exchange wagering account by the exchange wagering licensee.

(3) The exchange wagering licensee shall have the right to refuse for any reason all or part of any exchange wager or deposit to the exchange wagering account.

(4) Funds deposited in the exchange wagering account shall not bear interest to the exchange wagering account holder.

b. Debits to an exchange wagering account shall be made as follows:

(1) Upon receipt by the exchange wagering licensee of an exchange wager properly placed pursuant to section 9 of this act, P.L.2011, c.15 (C.5:5-176), the exchange wagering licensee shall determine whether there are sufficient funds in the exchange wagering account holder's exchange wagering account to cover the total liability resulting from the exchange wager, taking into consideration other exchange wagers made by the exchange wagering account holder in the same market, and any additional applicable transaction or other fees

due to the exchange wagering licensee under the commission's rules and regulations, and deduct such amounts from the exchange wagering account holder's exchange wagering account. Following the matching of the exchange wager to an identically opposing wager or wagers, and determination of the outcome of the horse race or races on which the exchange wagers were placed by two or more exchange wagering account holders, the amounts due shall be paid accordingly to the exchange wagering account of the exchange wagering account holder who won the wager, and any applicable transaction or other fees on the exchange wagering accounts shall be additionally deducted and retained by the exchange wagering licensee for use and distribution pursuant to the commission's rules and regulations.

(2) The exchange wagering licensee may authorize a withdrawal from an exchange wagering account when the exchange wagering account holder submits to the exchange wagering licensee, the exchange wagering licensee's agent, or such other entity as may be approved by the commission, his or her exchange wagering account number and proper means of identification pursuant to procedures approved by the commission. Exchange wagering account holders may request a withdrawal in person, by mail, by telephone, or by other electronic means. If there are sufficient funds in the exchange wagering account to cover the withdrawal, after taking into consideration any existing exchange wagers made by the exchange wagering account holder, the exchange wagering licensee shall make payment within three business days of receipt of the exchange wagering account holder's withdrawal request. Notwithstanding the foregoing, the exchange wagering licensee may decline or delay fulfilling a withdrawal request if the exchange wagering licensee reasonably suspects: (a) fraud; (b) that the exchange wagering account holder was ineligible to make one or more of the exchange wagers made from the exchange wagering account; or (c) any other conditions which the commission may prescribe or approve. At the discretion of the exchange wagering licensee, withdrawals may be payable in cash, by a check sent to the exchange wagering account holder's verified residence address, by wire transfer, or by other electronic transfer. Withdrawals shall be made payable only to the holder of the exchange wagering account and in no more than the amount of the requested withdrawal.

C.5:5-176 Acceptance of exchange wagers, conditions.

9. The exchange wagering licensee may accept exchange wagers from residents of this State only in accordance with this act, federal law, and as follows:

a. A wager to back or lay a particular outcome in a given market, specifying the price of the wager, shall be placed directly with the exchange wagering licensee by the holder of the exchange wagering account.

b. The exchange wagering account holder placing the wager shall provide the exchange wagering licensee with the correct personal identification number of the holder of the exchange wagering account.

c. An exchange wagering licensee may not accept an exchange wager, or series of exchange wagers, where the results of which would create a liability for the exchange wagering account holder in excess of funds on deposit in the exchange wagering account of that holder.

d. Only the holder of an exchange wagering account shall place a wager. Unless otherwise approved by the commission, no person, corporation or other entity shall directly or indirectly act as an intermediary, transmitter or agent in the placing of wagers for a holder of an exchange wagering account; provided, however, that the use of credit or debit cards specifically approved by the exchange wagering licensee or the use of checks, money orders

or negotiable orders of withdrawal or the use of telephonic, computer or electronic means by the exchange wagering account holder to place such wagers shall not be prohibited.

e. The exchange wagering account holder may place a wager in person, by direct telephone call or by communication through other electronic media.

C.5:5-177 Posting of exchange wagers in interstate exchange pool.

10. Subject to federal law and notwithstanding any law, rule, or regulation of this State to the contrary, the exchange wagering licensee shall be permitted to post exchange wagers submitted by residents of this State in an interstate exchange pool in order to form identically opposing wagers, and to treat any resulting matched wagers as part of one or more common pools with any other matched wagers in the interstate exchange pool.

C.5:5-178 Permitted actions of exchange wagering licensee.

11. Notwithstanding any other law, rule or regulation to the contrary, the exchange wagering licensee shall not be required to include any pools of exchange wagers in the wagering pools at the track conducting the races, nor shall the exchange wagering licensee be required to retain, withhold, or take out any amounts from any exchange wagers.

C.5:5-179 Collection of exchange revenue.

12. Subject to the approval of the commission, the exchange wagering licensee shall be permitted to collect exchange revenues in the manner and amounts determined by the exchange wagering licensee, including but not limited to assessing a surcharge on any person's net winnings.

C.5:5-180 Requirements of exchange wagering licensees.

13. Notwithstanding any other law, rule or regulation to the contrary, the commission shall require each exchange wagering licensee to:

a. pay such portions of the exchange wagering licensee's exchange revenues as may be required pursuant to subsections b. and c. of section 4 of this act, P.L.2011, c.15 (C.5:5-171);

b. pay to overnight purses in this State 50% of exchange revenues retained by the exchange wagering licensee after the payments required pursuant to subsection a. of this section are made, and after deducting all reasonable and necessary expenses incurred by the licensee in administering, marketing and operating the exchange wagering system; and

c. reach a business agreement with all permit holders within this State, within one year from the date when the exchange wagering system becomes operational, for the distribution of the net exchange wagering revenues remaining after the payments are made pursuant to subsections a. and b. of this section and after the payment of operating expenses, pursuant to approval by the commission; provided that, if an agreement is not reached within that time frame, the commission shall distribute the exchange wagering revenues among the exchange wagering licensees and the permit holders in this State as it deems appropriate.

C.5:5-181 Payment of moneys derived from exchange wagering.

14. Of the monies distributed to overnight purses pursuant to subsection b. of section 13 of this act, P.L.2011, c.15 (C.5:5-180), all moneys derived from exchange wagering on thoroughbred races shall be paid to overnight purses for thoroughbred races and all monies derived from exchange wagering on standardbred races shall be paid to overnight purses for standardbred races. On or after January 1, 2014, the formula for allocating overnight purse monies from exchange wagering to overnight purses set forth in this section may be modified

by the mutual agreement of the Standardbred Breeders and Owners Association of New Jersey and the New Jersey Thoroughbred Horsemen's Association. Nothing contained in this section shall be construed as a precedent for establishing the division of overnight purse amounts between standardbred races and thoroughbred races.

C.5:5-182 Distribution of remaining amounts.

15. All amounts remaining in exchange wagering accounts inactive or dormant for such period and under such conditions as established by regulation shall be distributed in accordance with the commission's rules and regulations.

C.5:5-183 License, registration required.

16. All persons engaged in conducting wagering-related activities through the exchange, whether employed directly by the exchange wagering licensee or by a person or entity conducting or operating the exchange pursuant to a contract or agreement with the exchange wagering licensee, shall be licensed or registered in accordance with such regulations as may be promulgated by the commission hereunder. All other employees of the exchange shall be licensed or registered in accordance with regulations of the commission. The commission shall have full power to prescribe rules, regulations and conditions under which all such licenses are issued, or registrations made, in this State and to revoke or refuse to issue a license, or revoke or refuse to accept a registration, if in the opinion of the commission the revocation or refusal is in the public interest, provided, however, that such rules, regulations and conditions shall be uniform in their application, and further provided that no fee shall be in excess of \$50 for each license so granted or registration accepted.

C.5:5-184 Severability.

17. The provisions of this act shall be deemed to be severable, and if any phrase, clause, sentence or provision of this act is declared to be unconstitutional or the applicability thereof to any person is held invalid, the remainder of this act shall not thereby be deemed to be unconstitutional or invalid.

C.5:5-185 Rules, regulations.

18. The commission shall promulgate rules and regulations pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), to effectuate the purposes of this act, P.L.2011, c.15 (C.5:5-168 et al.).

19. Section 1 of P.L.2002, c.89 (C.5:5-65.1) is amended to read as follows:

C.5:5-65.1 List of persons voluntarily excluded from certain racetracks, off-track wagering facilities, account wagering, or exchange wagering.

1. a. The commission shall provide by regulation for the establishment of a list of persons who voluntarily seek to be excluded from entry into permitted racetracks and licensed off-track wagering facilities located in this State and from opening or maintaining a wagering account with the account wagering system or with the exchange wagering system established in this State. A person may request placement on the self-exclusion list by acknowledging in a manner to be established by the commission that the person is a problem gambler and by agreeing that, during a period of voluntary exclusion, the person may not collect winnings or recover losses resulting from wagering at a racetrack or off-track wagering facility or from account wagering or exchange wagering.

b. The commission shall promulgate regulations to: (1) establish procedures for placements on, and removals from, the list of self-excluded persons; (2) establish procedures for the transmittal to the permitted racetracks, licensed off-track wagering facilities, the account wagering system, and the exchange wagering licensee of identifying information concerning persons on the self-exclusion list; and (3) require permitted racetracks, licensed off-track wagering facilities, the account wagering system, and the exchange wagering licensee to establish procedures designed, at a minimum, to remove persons on the self-exclusion list from targeted mailings or other forms of advertising or promotions and deny such persons access to credit, complimentaries, check cashing privileges, club programs, and other similar benefits.

c. The commission, a permitted racetrack, a licensed off-track wagering facility, the account wagering system, the exchange wagering licensee, or an employee thereof shall not be liable to a person on the self-exclusion list or to another party in a judicial proceeding for harm, monetary or otherwise, which may arise as a result of:

(1) the failure of a permitted racetrack, licensed off-track wagering facility or the account wagering system or the exchange wagering licensee to withhold wagering privileges from, or restore wagering privileges to, a person on the self-exclusion list; or

(2) permitting a person on the self-exclusion list to engage in wagering activity at a permitted racetrack or licensed off-track wagering facility, or through the account wagering system, or through the exchange wagering system.

d. Notwithstanding the provisions of section 8 of P.L.1940, c.17 (C.5:5-28), the commission's self-exclusion list shall be privileged and confidential and shall not be accessible to the public pursuant to P.L.1963, c.73 (C.47:1A-1 et seq.), as amended and supplemented.

e. The commission, a permitted racetrack, a licensed off-track wagering facility, the account wagering system, the exchange wagering licensee, or an employee thereof shall not be liable to a person on the self-exclusion list or to another party in a judicial proceeding for harm, monetary or otherwise, which may arise as a result of disclosure or publication, other than a willfully unlawful disclosure or publication, of the identity of a self-excluded person.

20. Section 2 of P.L.2002, c.89 (C.5:5-65.2) is amended to read as follows:

C.5:5-65.2 Regulations applicable to persons on self-exclusion list; enforcement; sanctions.

2. a. A person on the self-exclusion list established pursuant to section 1 of P.L.2002, c.89 (C.5:5-65.1), shall not collect, in any manner or proceeding, winnings or recover losses arising as a result of wagering activity at a permitted racetrack or licensed off-track wagering facility, or through the account wagering system, or through the exchange wagering system.

b. Money or a thing of value which has been obtained by, or is owed to, a person on the self-exclusion list from a permitted racetrack, licensed off-track wagering facility or account wagering system or exchange wagering system as a result of wagers made by that person shall be subject to forfeiture by order of the executive director of the commission, following notice to the person on the self-exclusion list and opportunity to be heard.

Money or a thing of value forfeited shall be deposited into the State General Fund for appropriation by the Legislature to the Department of Human Services to provide funds for compulsive gambling treatment and prevention programs in the State.

c. In a proceeding brought by the commission against a live racing permit holder, the off-track wagering licensee, the account wagering licensee, or the exchange wagering licensee for a willful violation of the commission's self-exclusion regulations, the

commission may order in addition to a permit or license suspension, a fine not to exceed \$5,000 per wagering incident, the forfeiture of money or a thing of value obtained by the permit holder, off-track wagering licensee, account wagering licensee, or exchange wagering licensee from a person on the self-exclusion list and other remedial conditions the commission deems appropriate. Money or a thing of value so forfeited shall be disposed of in the same manner as money or a thing of value forfeited pursuant to subsection b. of this section.

21. This act shall take effect immediately.

Approved January 28, 2011.