



ICLG

The International Comparative Legal Guide to:

Gambling 2019

5th Edition

A practical cross-border insight into gambling law

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USA – New York

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1 Relevant Authorities and Legislation

1.1 Which entities regulate what type of gambling and social/skill gaming activity in your jurisdiction?

Relevant Product		Who regulates it in digital form?	Who regulates it in land-based form?
Gaming	Casino gaming (including slots and casino table games such as roulette & blackjack)	Does not apply.	New York State Gaming Commission.
	Poker		
	Bingo		
Betting	Betting	Does not apply.	Does not apply.
	Sports/horse race betting (if regulated separately to other forms of betting)	Does not apply.	New York State Gaming Commission.
	Fantasy betting (payment to back a 'league' or 'portfolio' selection over a period of time, for example in relation to sport or shares)	New York State Gaming Commission.	Does not apply.
Lotteries	Lotteries	Does not apply.	New York Lottery.
Social/Skill arrangements	"Social" gaming with no prize in money or money's worth	Does not apply.	Does not apply.
	Skill games and competitions with no element of chance		

1.2 Specify: (i) the law and regulation that applies to the Relevant Products in your jurisdiction; and (ii) – in broad terms – whether it permits or prohibits the offer of Relevant Products to persons located in your jurisdiction.

The New York Constitution prohibits gambling, with the exception of:

- State-run lotteries.
- *Pari-mutuel* betting on horse races.
- Up to seven commercial casinos.
- Certain bingo and lottery games to raise funds for charitable, religious, or not-for-profit organisations.

The New York Penal Law governs the criminal offences associated with gambling. It does not differentiate between land-based or online gambling, but prohibits several specific categories of behaviour, including the following:

- Promoting gambling (such as bookmaking or running a lottery).
- Possessing gambling records (such as lotteries, bookmaking information or easily destructible forms of paper relating to gambling).
- Possessing a gambling device (such as slot machines or other gambling devices).
- Gaming fraud (including defrauding a casino or any other type of fraud in relation to a bet or wager).
- Using counterfeit or unlawful gaming instruments.
- Using or possessing unlawful gaming property (such as false or fraudulent gaming materials), manipulating gaming outcomes, and the manufacturing, selling or modifying of any equipment or devices in violation of gambling laws.

Gamblers are not criminalised by the New York Penal Law.

The New York Racing, Pari-Mutuel Wagering and Breeding Law primarily contains provisions relating to horse racing and regulates the horse-racing industry, including the creation and regulation of off-track betting facilities and licensing. It also contains provisions for destination/resort casinos, which relate specifically to land-based gaming, and for interactive fantasy sports, which relate specifically to online gambling.

The following additional provisions relate to gambling:

- Article 34 of the New York Tax Law, which governs the state-run lottery, other lotteries and the establishment of video lottery terminals at limited locations throughout the state.
- Article 19B of the New York Executive Law and Article 14H of the New York General Municipal Law, which govern charitable bingo games.
- Article 9A of the General Municipal Law, which governs charitable games of chance.

There also are several Indian casinos in New York that operate through tribal-state compacts under the Indian Gaming Regulatory Act. These compacts are not part of the New York Consolidated Laws (that is, the codification of the permanent laws of a general nature of New York enacted by the New York Legislature).

2 Application for a Licence and Licence Restrictions

2.1 What regulatory licences, permits, authorisations or other official approvals (collectively, “Licences”) are required for the lawful offer of the Relevant Products to persons located in your jurisdiction?

The New York Gaming Commission oversees all licensing and regulatory matters for commercial gaming, including horse racing, casino gaming, state and charitable lotteries, and video lottery terminals, in New York.

The law provides for licensing of: (i) gaming facilities; (ii) casino and video lottery key employees; (iii) vendors for gaming facilities and video lottery; and (iv) bingo.

2.2 Where Licences are available, please outline the structure of the relevant licensing regime.

The New York Constitution provides for up to seven commercial casinos in the state, but currently the state legislature has only approved four commercial casino sites. Each of these commercial casinos is currently operating. Employee and vendor licensing remain available as necessary for the commercial casinos and racetracks.

The state’s tribes are authorised to establish casinos on tribal territory, and the tribal gaming commissions oversee the licensing process in those jurisdictions.

2.3 What is the process of applying for a Licence for a Relevant Product?

The New York Racing, Pari-Mutuel Wagering, and Breeding Law provides the standards for gaming facility licences (including racetracks), including the minimum capital investment, the land ownership requirements, and the ability to construct the casino within a designated time frame. To secure a commercial casino licence, the applicant must undergo a due diligence investigation that includes providing information on the date and formation of the applicant, a description of the intended business, compensation and stock structure, background on shareholders and board members, details on past and current legal proceedings (if any), financial statements, audits, tax documents, along with other information at the Commission’s discretion.

The Commission also handles licensing for key employees and vendors for gaming facilities. Key employee and vendor applicants must undergo a suitability determination that includes investigation of their personal history, residential history, education and employment history, and a civil and criminal background check.

Bingo licence applicants must provide information about the proposed premises and intended use for the proceeds of the game.

Interactive fantasy sports operators must register with the Commission and have contests approved. The Commission is due to adopt formal regulations for the application process, and current operators are currently operating under temporary permits.

Application forms for currently available licences are accessible on the Commission’s website.

2.4 Are any restrictions placed upon licensees in your jurisdiction?

The New York Constitution limits the state to seven commercial casinos, with sites for those casinos to be approved by the state legislature. So far, the legislature has approved four sites and those commercial casinos are operating. There are no immediate plans to consider additional sites at this time.

The lottery is exclusively administered by the state lottery.

2.5 Please give a summary of the following features of any Licences: (i) duration; (ii) vulnerability to review, suspension or revocation.

The gaming facility licence carries a \$1 million fee, with potential additional funds for cost of processing. There is an annual licence fee of between \$25 million and \$75 million, depending on the location, along with an annual licence fee of \$500 per slot machine or table game. Initial licences are for a term of 10 years.

Casino key employee and vendor licences are valid for five years and renewable.

Video lottery employee and vendor licences are valid until revoked, suspended, or terminated.

Bingo licences are for single-event use and costs \$18.75.

Licences are a privilege and are held based on the continued compliance and good conduct of the licence holder. They can be revoked by the Commission for a number of reasons, but licence holders are entitled to due process prior to any suspension or revocation action being taken.

2.6 By Relevant Product, what are the key limits on providing services to customers? Please include in this answer any material promotion and advertising restrictions.

Gaming is limited to players 21 years of age or older. There are no specific advertising restrictions; however, advertising must generally comply with fair advertising laws, including those against deceptive advertising or advertising to minors.

The New York Attorney General has previously brought consumer protection and false advertising claims against online daily fantasy sports providers, and that case has since been settled.

2.7 What are the tax and other compulsory levies?

Casinos are taxed at a rate of 10% on all gross gaming revenue from all sources other than slot machines. Slot machines are taxed between 37% and 45% depending on the location of the casino.

Interactive fantasy sports are taxed at 15% of their gross revenue in New York plus an additional tax of the lesser of 5% of gross revenue or \$50,000.

2.8 What are the broad social responsibility requirements?

New York has a broad self-exclusion programme that applies to casinos, horse racing, off-track betting, video lottery terminals, and interactive fantasy sports. The exclusion period can be for one year, three years, five years, or lifetime. The self-exclusion form is available on the Gaming Commission’s website.

2.9 How do any AML, financial services regulations or payment restrictions restrict or impact on entities supplying gambling? Does your jurisdiction permit virtual currencies to be used for gambling and are they separately regulated?

New York does not have any state-level AML, financial services regulations, or payment restrictions specific to the gaming industry. The state's gaming facilities and tribal casino operators are obligated to adhere to federal AML, financial services, and payment restrictions.

At this time, New York does not permit virtual currencies for gambling as there is no online gambling in the state. Further, there are no separate regulations specific to the use of virtual currencies at land-based casinos in New York. However, to accept virtual currencies, casinos may need to adhere to the state's new financial laws and regulations on virtual currencies, specifically the licensing and regulatory requirements for financial institutions that serve as exchanges for virtual currency. Exchanging virtual currency in New York requires a money transmitter licence and a "BitLicense" (a cryptocurrency-specific money transmitter licence) prior to operation.

3 Online/Mobile/Digital/Electronic Media

3.1 How does local law/regulation affect the provision of the Relevant Products in online/mobile/digital/electronic form, both from: (i) operators located inside your jurisdiction; and (ii) operators located outside your jurisdiction?

Online, real-money gaming is not legal in New York. Operators that offer real-money gaming in New York are subject to state and federal criminal laws, which make such activity punishable with fines and imprisonment.

Free-to-play social gaming and skill-based gaming are permitted in the state and are not regulated.

3.2 What other restrictions have an impact on Relevant Products supplied via online/mobile/digital/electronic means?

As online gaming is not permitted in New York, there are no applicable regulations.

3.3 What terminal/machine-based gaming is permitted and where?

The only terminal-based gaming that is permitted are video lottery terminals. Those terminals are restricted to the "racinos" at the state's horse-racing tracks.

4 Enforcement and Liability

4.1 Who is liable under local law/regulation?

Licence holders are liable under local laws and regulations for violations of New York law. The laws are set forth in the New York Penal Code.

4.2 What form does enforcement action take in your jurisdiction?

While the Gaming Commission handles licensing and civil enforcement, local law enforcement and the state attorney general handle criminal prosecution. The Gaming Commission can refer matters to state and local law enforcement for investigation.

4.3 Do other non-national laws impact upon liability and enforcement?

No other non-national laws impact upon liability and enforcement.

4.4 Are gambling debts enforceable in your jurisdiction?

Gambling debts are not enforced in New York.

5 Anticipated Reforms

5.1 What (if any) intended changes to the gambling law/regulations are being discussed currently?

The most eagerly anticipated reform to gaming in New York is the potential legalisation of sports betting in the state. In 2013, the state legislature passed a law that would allow for sports betting in the state's commercial casinos. Now that the federal ban on sports betting has removed, the Gaming Commission merely needs to promulgate regulations to allow sports betting to begin in the state. No definitive timeline for such regulations has been issued, but regulations are expected in the near future. Once the Commission does issue such rules, under the tribal-state compacts and applicable federal law, the New York tribal casinos may also begin offering sports betting.

Online and mobile sports betting would require new legislation in addition to the 2013 sports betting law. The legislature has indicated an interest in taking up such legislation early in 2019. Draft bills have been circulated and are currently being revised in anticipation of introduction early in the legislative session that begins in January 2019.

Over the past several years, the New York legislature has also considered an online gaming expansion. In 2017, the state specifically considered an online poker bill, but it failed to advance in the state Assembly. Further, online gaming expansion would require an amendment to the state constitution.

Finally, the state is still finalising regulations for interactive fantasy sports. The underlying law went into effect in 2016, but final implementing regulations are still pending.

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Considered one of the world's foremost attorneys in online gaming law, Jeff Ifrah is nationally ranked by *Chambers USA*, which states he "is noted for his sophisticated gaming and licensing practice that emphasises novel areas of the sector [like] cryptocurrency issues, internet sports betting and social media integration". His firm Ifrah Law has been at the centre of most of the important prosecutions and lawsuits in the iGaming industry.

Jeff leverages his decades of experience in betting and wagering law to counsel established gaming companies and startups throughout the business cycle, focusing on compliance with state and federal legislation and avoiding future litigation. He has also gained a strong reputation in other related internet-based industries such as payment processing and money transmission. Jeff is a founding member of iDevelopment and Economic Association (iDEA), a non-profit association seeking to grow jobs and expand online interactive entertainment business through advocacy and education.

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A rising star in the area of online gaming law, Jessica Feil of Ifrah Law works with all sectors of the industry from sports books to online marketing agencies to platform providers. She advises online gaming companies on the sports betting and online gaming licensing process, and counsels international gaming companies on requirements for money transmitter licensing and compliance with federal and state laws in relation to cryptocurrency.

Jessica is frequently asked to present at industry events around the country and has published extensively on the blog, *Ifrah on iGaming*, on cutting-edge topics like initial coin offerings (ICOs) and skin betting. She is a member of the Video Game Bar Association and the Esports Bar Association.



Ifrah Law has represented online gaming clients since the inception of the industry, and now represents many of the largest iGaming companies and industry associations around the world. The firm was instrumental in the creation of the legislative and regulatory frameworks in three U.S. states which currently permit online gaming.

Ifrah Law advises online casino operators, poker and fantasy sports sites, and payment processors on class action lawsuits, mergers and acquisitions, vendor and supplier issues, government investigations and criminal matters. Its attorneys are known for representing clients in cases involving progressive areas of the gaming industry, such as sports betting, social gaming, skins betting, iGaming, online sweepstakes and lotteries, peer-to-peer betting and mobile gaming.

Ifrah Law publishes the blog, *Ifrah on iGaming*. The firm also submitted an *amicus* brief to the Supreme Court in the ground-breaking case which finally led to legalisation of sports betting across the U.S.

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