

Act 42 of 2017 authorises online gambling in Pennsylvania

By enacting Act 42 of 2017 at the end of October this year, Pennsylvania joined the small group of US states to have authorised online gambling. As well as facilitating an expansion of the State's land-based sector, Act 42 authorises, regulates and taxes online fantasy sports contests, internet gaming websites and sports wagering activities, with the latter only effective in the event that US federal law changes to allow states to regulate sports wagering. Anthony R. Holtzman and Robert A. Lawton of K&L Gates examine in detail the provisions of Pennsylvania's i-gaming statute, and comment on reactions to the Act so far.

After entertaining the idea for more than five years, Pennsylvania, on 30 October 2017, enacted legislation that authorises and taxes internet gaming activities. With the enactment of Act 42 of 2017 ('Act 42'), Pennsylvania joined New Jersey, Nevada, and Delaware as the only US states that have authorised an online wagering program. As Pennsylvania strives to close its \$2.2 billion budget deficit, it estimates that Act 42 will generate more than \$200 million in tax-and-fee revenue during the 2017-2018 fiscal year.

Act 42 is a multifaceted gaming bill that not only facilitates an expansion of land-based gambling activities in Pennsylvania, but also authorises, regulates, and taxes the operation of online fantasy contests, internet gaming websites, and online lottery games.

Act 42, in addition, authorises, regulates, and taxes the operation of land-based and internet sports wagering activities. This authorisation, however, is not effective unless and until US federal law changes so as to permit states to regulate those activities.

Online fantasy contests

Act 42 establishes a comprehensive regulatory regime for online fantasy contests in Pennsylvania.

The statute defines a 'fantasy contest' as an 'online fantasy or simulated game or contest' that has an entry fee and a prize and in which, among other things, all winning outcomes 'reflect

the relative knowledge and skill of participants' and 'are determined by accumulated statistical results of the performance of individuals, including athletes in the case of sports events.' No winning outcome, moreover, may be based on the score, point spread, or performance of 'a single actual team or combination of teams or solely on a single performance of an individual athlete or player in a single actual event.'

Under Act 42, the Pennsylvania Gaming Control Board ('Board') is charged with regulating fantasy contests in Pennsylvania. The Board is empowered to issue fantasy contest regulations and licences to operate fantasy contest websites. It is also authorised to enforce the fantasy contest provisions in Act 42 and the regulations and licences that it issues by, for example, imposing administrative sanctions for violations of those authorities.

Under Act 42, an entity is eligible for a licence to offer fantasy contests in Pennsylvania regardless of whether it holds any other gaming authorisation. To acquire the licence, the entity must demonstrate that, among other things, it possesses the 'financial stability, integrity and responsibility to comply with [the statute] and regulations established by the Board.' The term of the licence is five years.

Act 42 establishes requirements for enabling fantasy contest participants to set up, fund, and make payments from online 'fantasy contest accounts.'

Licensed operators must implement procedures and controls that meet a number of consumer protection and other criteria. They must, for example, develop and offer certain fantasy contests that are limited to beginners and others 'in which highly experienced players cannot, either directly or through another person as a proxy, participate.' Certain people are restricted from participating in fantasy contests, including corporations and other entities, people under the age of 18, and a 'licensed operator's principals, employees and relatives living in the same household of an employee or principal[.]' A licensed operator must also verify a person's age, location, and identity before allowing him/her to make a deposit into a fantasy contest account. Fantasy contests, in addition, cannot be based on collegiate or high school athletic events or players.

Any licensed operator that holds a Pennsylvania casino licence is permitted to operate not only a fantasy contest website, but also 'fantasy contest terminals' within the casino facility. The terminals are land-based devices that allow individuals to participate in fantasy contests.

Under Act 42, each entity that receives a licence to offer fantasy contests must 'pay to the Board a license fee of \$50,000.' The fee for renewing the licence (after its five year term) is \$10,000.

Each month, moreover, a licensed operator must pay 'a tax of 15% of

Act 42 has been met with mixed reviews. Although the gaming industry has generally applauded the statute, some of its members have criticised the 52% tax on internet slot machine revenues as being oppressively high.



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its monthly fantasy contest adjusted revenues.' It also needs to pay an 'assessment,' which is set 'for each licensed operator' as 'a percentage assessed on the licensed operator's fantasy contest adjusted revenues.' The assessments are used to help offset the costs of administering the fantasy contest provisions in Act 42.

Internet gaming websites

As with the regulation of fantasy contests, Act 42 vests the Board with the exclusive authority to regulate internet gaming activities in Pennsylvania.

Under Act 42, the Board is required to issue a wide variety of internet gaming regulations, including standards for testing and receiving approval for online gambling games and devices, setting wagering limits and payouts, calculating revenues, allowing wagerers to create and use online gaming accounts, conducting age, location, and identity verification activities, and collecting, reporting, and paying taxes and fees.

The Board is also responsible for issuing licences to offer online gambling games and licences (or other authorisations) for people to be employed by the operators of the games or to supply them with certain internet gaming-related goods and services. And the Board is empowered to enforce the internet gaming provisions in Act 42 and the regulations and licences that it issues by, for example, imposing administrative sanctions for violations of those authorities.

Under Act 42, each entity that is licensed to operate a casino in Pennsylvania is eligible for a licence to offer online 'peer-to-peer interactive games,' like poker ('peer-to-peer games'), a licence to offer 'non-peer-to-peer interactive games which simulate table games' ('table games'), and a licence to offer 'non-peer-to-peer interactive games which simulate slot machines' ('slot machine games'). If, within a specified timeframe, the casino chooses not to apply for any one of these licences, a 'qualified gaming entity' may apply for it. The statute defines a 'qualified gaming entity' as 'a gaming entity licensed in any jurisdiction which has satisfied the requirements of this chapter and any other criteria established by the Board, including financial and character suitability requirements.' The term of each licence is five years.

With the Board's approval, an internet gaming licensee can, by contract, authorise another online gaming operator to operate its gaming website for it - in accordance with a Board-issued licence that has a five year term. The internet gaming licensee can also, under an arrangement with a 'qualified airport,' provide for internet gaming to be conducted through 'multi-use computing devices' that are located in 'gaming areas' at the airport or, if applicable, authorise the other online gaming operator to undertake that task on its behalf.

Act 42, in addition, establishes requirements for enabling wagerers to set up, fund, and make payments from online gaming accounts. Those

requirements include standards for collecting and confirming age, identity, residency, address, contact, and password information. People under the age of 21 are not permitted to participate in internet gaming. The Board is required to approve all of the online games that each internet gaming licensee offers. The Board must categorise each game that it approves as a peer-to-peer game, a table game, or a slot machine game. And it is obligated to 'establish, by regulation, technical standards for approval of interactive games and interactive gaming devices and associated equipment, including standards to govern mechanical, electrical or program reliability and security against tampering and threats[.]'

Under Act 42, each casino must pay an authorisation fee of \$10,000,000, within a set timeframe, to receive licences to offer all three categories of online gambling games (peer-to-peer, table, and slot machine games) or \$4,000,000, within a subsequent timeframe, to receive a licence to offer any one of the individual categories of games. To the extent that, within the latter timeframe, the casino does not apply for one of the three licences and a 'qualified gaming entity' applies for it instead, the qualified gaming entity must pay an authorisation fee of \$4,000,000 to receive the licence. The fee for renewing each of these licences (after its five year term) is \$250,000.

Separately, an online gaming operator that receives a licence to operate a gaming site on an internet

Act 42 is a massive, complex, and historic gambling expansion statute, one that places Pennsylvania into a small group of states that have authorised an online wagering program and gives it the broadest program among those states.

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gaming licensee's behalf must pay an authorisation fee of \$1,000,000. The fee for renewing that licence (after its five year term) is \$100,000.

Each internet gaming licensee, moreover, must pay a tax of 14% of its daily gross revenue from peer-to-peer games, 14% of its daily gross revenue from table games, and 52% of its daily gross revenue from slot machine games. It is likewise required to pay a 'local share assessment' in the amount of 2% of its overall daily gross interactive gaming revenue. This assessment will be used largely to support public interest projects.

Apart from these requirements, each internet gaming licensee must pay a special fee 'upon [its] authorization,' if any, 'to conduct interactive gaming at a qualified airport through the use of multi-use computing devices[.]' The fee ranges from \$125,000 to \$2,500,000, depending on the population size of the county where the airport is located and whether the airport is designated as an international one. The internet gaming licensee must also pay the following taxes on the revenue that it generates from the multi-use computing devices at the airport: 14% of its daily gross revenue from peer-to-peer games, 14% of its daily gross revenue from table games, and 52% of its daily gross revenue from slot machine games. And it must pay a 'local share assessment' equal to 2% of the overall daily gross interactive gaming revenue that it generates from the multi-use computing devices at the airport.

Online lottery games

As another component of Act 42's online wagering regime, the statute authorises the Pennsylvania Department of Revenue ('Department') to operate 'iLottery games.' The statute defines those games as 'internet instant games,'

as well as traditional lottery tickets, that are 'offered through iLottery.' 'iLottery,' in turn, is defined as a system that 'provides for the distribution of lottery products' through various online channels that allow 'players to interface through a portal for the purpose of obtaining lottery products and ancillary services[.]'

While Act 42, as a general matter, gives the Department broad authority to offer online lottery games, it precludes the agency from offering online games that simulate poker or casino-style games. Under the statute, moreover, an iLottery player 'must be at least 18 years of age to establish an account with the Department and must be physically located within the geographical boundaries of this Commonwealth to play iLottery games.'

Sports wagering

Act 42 also establishes a comprehensive regulatory regime for sports wagering, including internet-based sports wagering, that will go into effect if, and when, 'federal law is enacted or repealed or a federal court decision is filed that permits a state to regulate sports wagering.'

The statute defines 'sports wagering' as 'accepting wagers on sporting events or on the individual performance statistics of athletes in a sporting event or combination of sporting events by any system or method of wagering, including over the internet through websites and mobile applications.' Sports wagering methods include exchange wagering, parlays, over-under, pools, and straight bets.

Act 42 empowers the Board to provide licensed casino operators with certificates that allow them to offer sports wagering at their licensed casino facilities, at temporary facilities, or over the internet through websites and mobile applications. People

under the age of 21 are not permitted to participate in sports wagering. The one-time fee for a sports wagering certificate is \$10,000,000 and the renewal fee (due every five years) is \$250,000. A sports wagering certificate holder must pay a tax of 35% of its daily gross sports wagering revenue. It must also pay a 'local share assessment' equal to 2% of its daily gross sports wagering revenue.

Conclusion

Act 42 is a massive, complex, and historic gambling expansion statute, one that places Pennsylvania into a small group of states that have authorised an online wagering program and gives it the broadest program among those states. By giving the go-ahead to online fantasy sports, internet gaming websites, and online lottery games, Pennsylvania expects to generate substantial revenue to reduce its budget deficit and, at the same time, protect consumers from unscrupulous offshore suppliers of online wagering opportunities.

That said, Act 42 has been met with mixed reviews. Although the gaming industry has generally applauded the statute, some of its members have criticised the 52% tax on internet slot machine revenues as being oppressively high. Other stakeholders have criticised Act 42 for being passed by the Pennsylvania legislature too quickly (within 18 hours after being introduced), channeling tax revenues into certain lawmakers' 'pet projects,' and unduly favouring casinos.

Overall, though, most economic and industry analysts see Act 42 as a win for Pennsylvania and its coffers. The State is mobilising to implement the statute as quickly and effectively as possible.