

Pennsylvania's latest hope for regulated in-state i-gaming

HB 2150 is the latest draft legislation to raise hopes of an i-gaming expansion in Pennsylvania; it was passed by the State House of Representatives in June 2016. HB 2150 covers both internet gambling and online fantasy contests, as Anthony R. Holtzman, Partner at K&L Gates, explains.

As Pennsylvania eyes up potential methods for reducing its nearly \$2 billion budget deficit, the prospect of authorising and taxing i-gaming activities has been a hot topic. During the 2015-2016 legislative session, its General Assembly has considered several authorisation bills. HB 2150 was passed by the House on 28 June 2016 and sent to the Senate for consideration. HB 2150 would facilitate an expansion of land-based gambling activities and authorise, regulate, and tax the operation of online fantasy contests and i-gaming websites.

Online fantasy contests

HB 2150 defines a 'fantasy contest' as an 'online fantasy or simulated game' that has an entry fee and a prize and for which all winning outcomes 'are determined by accumulated statistical results of the performance of individuals, including athletes in the case of sports events' and no winning outcome is 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 HB 2150, the Pennsylvania Gaming Control Board ('Board') would be charged with regulating fantasy contests in Pennsylvania. The Board would issue regulations and licences to operate fantasy contest websites. It would enforce

the fantasy contest provisions in HB 2150 and the regulations and licences that it issued by, for example, imposing administrative sanctions for violations of those authorities.

Under HB 2150, an entity would be eligible for a licence to offer fantasy contests in Pennsylvania regardless of whether it held any other gaming authorisation. To acquire the licence, the entity would need to demonstrate that, among other things, it possessed the 'financial stability, integrity and responsibility to comply with [HB 2150] and regulations established by the Board.' The licence term would be five years.

HB 2150 would establish requirements for enabling fantasy contest participants to set up, fund, and make payments from online 'fantasy contest accounts.' Licensed operators would need to implement procedures and controls that meet a number of consumer protection and other criteria. Certain people would be restricted from participating in fantasy contests, including people under the age of 18, and a 'licensed operator's employees and relatives living in the same household of an employee[.]' Fantasy contests could not be based on collegiate or high school athletic events or players.

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

Under HB 2150, each entity that received a licence to offer fantasy contests would need to 'pay to the Board a license fee of \$50,000 or an amount equivalent to 7.5% of the applicant's fantasy contest adjusted revenues for the previous calendar year, whichever is less,' unless it

held a Pennsylvania casino licence, in which case, in every instance, it would need to 'pay to the Board a license fee of \$50,000.' The fee for renewing the licence (after its five-year term) would be \$5,000.

On a quarterly basis, a licensed operator would need to pay 'a tax of 5% of its quarterly fantasy contest adjusted revenues.' It would also need to pay an 'assessment,' set 'for each licensed operator' as 'a percentage assessed on the [...] operator's fantasy contest adjusted revenues.' The assessments would be used to help offset the costs of administering the fantasy contest provisions in HB 2150.

Internet gaming

HB 2150 would vest the Board with the exclusive authority to regulate i-gaming activities in Pennsylvania. The Board would be required to issue a wide variety of i-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 would also issue licences to operate gaming websites and licences (or other authorisations) for people to be employed by operators of gaming sites or supply them with certain i-gaming related goods and services. And the Board would enforce the i-gaming provisions in HB 2150 and the regulations and licences that it issued by, for example, imposing administrative sanctions for violations of those authorities.

Under HB 2150, only entities that were licensed to operate casinos in Pennsylvania would be eligible for licences to operate gaming websites. As a condition for

licensure a casino would need to agree that ‘the number of slot machines and table games in operation at its [casino] facility [...] will not be reduced as a result of the authorization and commencement of interactive gaming.’ The term of the licence would be five years.

With the Board’s approval, a casino that received an i-gaming licence could, by contract, authorise an i-gaming company to operate its gaming site for it. It could also, under an arrangement with a ‘qualified airport,’ provide for i-gaming to be conducted through ‘multi-use computing devices’ that were located in ‘gaming areas’ at the airport or, by contract, authorise an i-gaming company to undertake that task on its behalf.

HB 2150, in addition, would establish requirements for enabling wagerers to set up, fund, and make payments from i-gaming accounts. These would include standards for collecting and confirming age, identity, residency, address, contact, and password information. Those aged under 21 would not be permitted to participate in i-gaming.

The Board would need to approve all of the online games that a casino was licensed to offer on its gaming site. The Board would be empowered to approve poker and casino games, among others. It would be 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

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program reliability and security against tampering and threats[.]’

Under HB 2150, each casino that received an i-gaming licence would need to ‘pay a one-time nonrefundable authorization fee in the amount of \$8,000,000.’ The fee for renewing the licence (after its five year term) would be \$250,000. Separately, each i-gaming company that was authorised to conduct i-gaming on a casino’s behalf would need to pay ‘a one-time nonrefundable authorization fee in the amount of \$2,000,000.’ The licence renewal fee, in that case, would be \$100,000.

Also, as a licensed operator of a gaming website, a casino would need to pay a general ‘tax of 14% of its daily gross interactive gaming revenue[.]’ In addition, it would be required to pay a ‘local share assessment,’ in the amount of 2% of its daily gross interactive gaming revenue, ‘to be used exclusively for grants to all counties in this Commonwealth, to economic development authorities or redevelopment authorities within each county, for grants for economic development projects, community improvement projects and other projects in the public interest.’

Apart from these requirements, each casino with an i-gaming licence would need to ‘pay a one-time, nonrefundable fee of \$1,000,000 upon [its] authorization,’ if any, ‘to conduct interactive gaming at a qualified airport through the use of multi-use computing devices[.]’ Similarly, each i-gaming company that was authorised to provide for ‘the conduct of interactive gaming on

behalf of [the casino] at a qualified airport’ would need to ‘pay a one-time nonrefundable authorization fee in the amount of \$1,000,000.’ The casino would likewise need to pay a general ‘tax of 14% of its daily gross interactive gaming revenue generated from multi-use computing devices at the qualified airport,’ along with a ‘local share assessment’ in the amount of 20% of that revenue, which would be used to support qualified airport facilities or, in Philadelphia, pre-kindergarten programmes.

Conclusion

Before HB 2150, neither chamber of the Pennsylvania General Assembly had passed a bill that would authorise the operation of online fantasy contests or i-gaming websites (let alone both). HB 2150 is therefore significant. Without question, an increasing number of Pennsylvania legislators believe that authorising fantasy sports and i-gaming activities will generate substantial revenue to reduce the State’s budget deficit and, at the same time, protect consumers from unscrupulous offshore suppliers of online wagering opportunities.

That said, in order for HB 2150 to become a law, the Senate would need to pass it - and would have the opportunity to make amendments, which the House would need to approve - and then the Governor would need to sign it. It is not possible to predict, at this point, whether HB 2150 will make it through that process.

Anthony R. Holtzman Partner
K&L Gates, Harrisburg
anthony.holtzman@klgates.com

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