

PENNSYLVANIA: THE NEW BILLS

Linda Shorey and **Anthony Holtzman** of K&L Gates LLP run the rule over the two new iGaming bills introduced in Pennsylvania, widely seen as the US state most likely to pass enabling legislation in 2015.

Early in Pennsylvania's new 2015-16 legislative session, two members of the Pennsylvania House of Representatives each introduced bills which would legalize some form of interactive gambling. This article will look at these bills and some of the factors that could influence whether one of them will be enacted.

House Bill 649

Representative John Payne introduced HB 649 on February 26, 2015, and it was referred to the Committee on Gaming Oversight. Rep. Payne, a Republican, is the Chair of that Committee. As of 17 March, 19 House members had joined Rep. Payne in sponsoring HB 649. Of the 20 co-sponsors, 10 are Republicans and 10 are Democrats, which suggests bipartisan support for the measure. Co-sponsors include the Minority Chair and six other members of the Committee.

HB 649 would legalize all forms of interactive casino gaming that the Gaming Control Board ("Board") approved. Only licensed casinos or their affiliates would be eligible to apply to the Board for an interactive gaming license. The license fee would be \$5 million. Significant vendors would also need to apply. Five categories of significant vendors are identified. They are

those who would offer:

(1) management, administration or control of wagers or of the interactive games themselves; (2) development, maintenance, provision of operation of an interactive gaming platform or any discrete component thereof; (3) sale, licensing or other receipt of compensation for selling or licensing a database or customer list of individuals residing in the United States selected, in whole or in part, because they placed wagers or participated in gambling games with or through an Internet website or operator or any derivative of such a database or customer list; (4) provision of any product, service or asset to a licensee or significant vendor in return for a percentage of interactive gaming revenue ...; or (5) provision of any trademark, trade name, service mark or similar intellectual property under which a licensee or significant vendor identifies to customers the authorized games, the website or equivalent hosting the authorized games, any interactive gaming skin or the interactive gaming platform.

The fee for a significant vendor license would be \$1 million dollars.

HB 649 would provide for a 14% tax on gross interactive gaming revenue, to be applied daily and on a weekly basis, with

both licensed and illegal operators required to pay. The bill would delegate to the Board the authority to enter into interactive gaming agreements with other states, territories, and possessions of the United States.

House Bill 695

Representative Nick Miccarelli introduced HB 695 on March 3, 2015, and it was referred to the Committee on Gaming Oversight. As of March 17, four House members had joined Rep. Miccarelli in sponsoring HB 695. Of the five co-sponsors, three are Republicans and two are Democrats. Interestingly, four of the co-sponsors, including Rep. Miccarelli, are also co-sponsors of HB 649.

While HB 695 is in many respects identical to HB 649, there are some notable differences. First HB 695 would legalize only interactive poker. Second, under HB 695, the fee associated with a significant vendor license would be \$50,000, as opposed to \$1 million. Third, unlike HB 649, HB 695 would impose a prohibition on interactive gaming websites or portals being "identified by a brand or name that is not owned or controlled by the licensee or an affiliate of the licensee." In other words, unlike in New Jersey, significant vendors would not be able to offer authorized interactive poker on websites labeled solely with their own brands.

The fourth, and perhaps key, difference is that, unlike HB 649, HB 695 includes a

strong “bad actor” prohibition. The Board would be prohibited from finding a person “suitable” for an interactive gaming license, significant vendor license, or key interactive gaming employee license if that person:

(1) At any time, either directly or through a third party whom it controlled or owned in whole or in significant part, knowingly or willfully:

(i) accepted or made available wagers on interactive games using the Internet from persons located in the United States after December 31, 2006, unless licensed by a Federal or State authority to engage in such activity; or

(ii) facilitated or otherwise provided services with respect to wagers or interactive games using the Internet involving persons located in the United States for a person described in subparagraph (i), if such activities or services would cause such person to be considered a significant vendor if those activities or services were provided with respect to interactive games pursuant to this chapter, and if such person acted with knowledge of the fact that such wagers or interactive games involved persons located in the United States.

(2) Purchased or acquired, directly or indirectly, in whole or in significant part, a third party described in paragraph (1) or will use that third party or a covered asset in connection with interactive gaming.

In the bill, “covered asset” is broadly defined. It includes the following categories “if specifically designed for use and knowingly and willfully used in connection with wagers or gambling games, using the Internet and involving customers located in the United States after December 31, 2006, unless licensed by a Federal or State authority to engage in such activities:”

(1) any trademark, trade name, service mark or similar intellectual property that is used to identify any aspect of the Internet website or the operator offering the wagers or interactive games to its customers;

(2) any database or customer list of individuals residing in the United States who placed wagers or participated in interactive games with or through an Internet website or operator not licensed by a Federal or State authority to engage in such activity;

(3) any derivative of a database or customer list described in paragraph (2); or

(4) software, including any derivative, update or customization of such software, or hardware relating to the management, administration, development, testing or control of the Internet website, the interactive games or wagers offered through the website or the operator.

Factors weighing on legalization

The factor that weighs perhaps most heavily in favor of legalizing iGaming in Pennsylvania is the budget deficit the Commonwealth once again faces. As of March 17, estimates of Pennsylvania’s expected budget deficit ranged from \$1.5 million to over \$2.0 million. Given that the Pennsylvania Constitution requires the passage of a balanced budget, legislators are looking for new tax revenue, and Internet gambling offers that possibility. A 2014 report of the Pennsylvania Legislative Budget and Finance Committee indicated that, should Pennsylvania authorize and tax Internet gambling, it could expect, as a result, to generate tax revenue of \$184 million in the first year and \$307 million in following years. The report concluded this would be new revenue and not a result of cannibalization of spending at land-based casinos. The report,

in fact, indicated that if Internet gambling were conducted through Pennsylvania’s licensed casinos, there would be positive synergies for the land-based operations, resulting in increased revenue.

Perhaps the weightiest factor against legalization is the well-publicized lobbying effort that Sheldon Adelson, CEO of the Las Vegas Sands Corporation, is undertaking to have all forms of casino Internet gambling banned, taking place on both the federal and state levels.¹ The Adelson-funded Coalition to Stop Internet Gambling has a number of Pennsylvania members,² so it is probable that those and other like-minded individuals will make efforts to thwart any bill that would legalize interactive gambling in Pennsylvania.

The House Committee on Gaming Oversight, where both of the Pennsylvania bills that would legalize interactive gaming were referred, has scheduled a hearing on Internet and mobile gaming for April 16, 2015. That hearing will likely provide insight on additional potential inducements and hurdles to the enactment of one of these bills in 2015.

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¹ See, e.g. <http://time.com/3695948/sheldon-adelson-online-gambling/#3695948/sheldon-adelson-online-gambling/>.

² See <http://stopinternetgambling.com/about-coalition-to-stop-internet-gambling/our-coalition-members/>.