



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

Pennsylvania: latest efforts to legalise i-gaming in the Keystone State

Although only three US states are currently able to offer regulated i-gaming, there have been attempts to legalise forms of online gambling in a number of other states over the past few years. One such state is Pennsylvania, where an expansion of gambling is anticipated in the state budget but has yet to materialise. A number of bills have been introduced in Pennsylvania's current legislative session in regard to legalised i-gaming; here, Anthony R. Holtzman, Partner at K&L Gates, reviews one such bill announced by Democrat Jay Costa, the Minority Leader of the Pennsylvania Senate, at the start of this year.

Pennsylvania's 2016-2017 budget is running at a projected \$700 million deficit. The State's revenue sources, according to its Independent Fiscal Office, are not growing fast enough to match its expenditures. And one revenue source has yet to materialise at all - an anticipated expansion of legalised gambling in the State, which is built into the budget as a source of \$100 million in revenue. Against this backdrop, and with the 2017-2018 legislative session recently underway, one prominent Pennsylvania Senator has proposed for the State to authorise internet gaming activities and impose fees and taxes in connection with those activities.

On 2 January 2017, Democrat Jay Costa, the Minority Leader of the Pennsylvania Senate, issued a memorandum explaining that he plans to introduce a multifaceted gaming expansion bill. The Bill would authorise licensed operators of land-based casinos to acquire licences to operate internet gaming websites. Any casino that received an i-gaming licence could, by contract, authorise an online gaming company to operate its gaming site for it. The online gaming company would likewise be subject to licensure. The licence fee for the casino would be \$10 million, while the licence fee for the online gaming company would be \$5 million.

Under Senator Costa's Bill, a casino with an i-gaming licence would be eligible to offer slots and table games on its gaming site. Wagerers could sign up to play the games online or in-person at the casino. All internet gaming revenues

would be taxed at a rate of 25%. The Bill, in addition, would authorise gaming entities to acquire licences to offer online daily fantasy sports contests. The licence fee would be \$2.5 million. And, as with internet gaming revenues, daily fantasy sports revenues would be taxed at a rate of 25%.

Senator Costa's Bill would also allow the Pennsylvania State Lottery to sell its lottery tickets over the internet - bringing it in line with the lotteries of a small number of other states (like Illinois and Georgia) that have gone the same route. Senator Costa says that his bill would "generate an estimated \$137 million in revenue for the FY 16-17 budget."

An increasing number of Pennsylvania legislators agree with Senator Costa that, in order for the state to meet its budgetary commitment to expand legalised gambling and associated revenues, it should authorise and tax internet gaming activities¹. But Senator Costa's Bill is not a sure shot. Like a typical Pennsylvania bill, it will not become law unless it gains the support of a majority of the State's legislators and its Governor, Tom Wolf. The details of the Bill, moreover, are not yet known. The legislators and Governor will not likely support it unless they are convinced that it won't undercut the state's land-based casino industry or create a surge in underage gambling activities or gambling addiction. They would also need to agree on the all-important fiscal aspects of the Bill - including the licence fees and tax rates that it would impose and allocations

of revenue that it would establish. With those factors in mind, Senator Costa has been quoted as saying that his bill will be a "starting point" for negotiations to come. Once the Bill is introduced, citizens and other stakeholders in Pennsylvania and beyond will keep a close eye on it as it moves through the legislative process.

1. On 1 February 2017, for example, Pennsylvania Republican Senators Thomas McGarrigle, Thomas Killion, and Guy Reschenthaler issued a memorandum stating that they will soon release a gaming bill that would, among other things, (i) require 'all internet gaming to be conducted under the current [casino] gaming licensees,' (ii) set 'an iGaming licensing fee of \$10 million per license,' (iii) set 'an iGaming vendor fee of \$5 million per vendor,' (iv) tax 'all gross interactive gaming revenue at 15% of which 13% [would go] to the General Fund and 2% to Local Share Assessment,' and (v) '[t]ax all fantasy contests at 12% of its quarterly fantasy contest adjusted revenues.' In addition, on 8 February 2017, several members of the Pennsylvania House of Representatives, led by Republican George Dunbar and Democrat Rosita Youngblood, introduced a gaming bill that would not only facilitate an expansion of land-based gambling activities in Pennsylvania, but also authorise, regulate, and tax the operation of online fantasy sports contests and internet gaming websites. The Bill, HB 392, was referred to the House Gaming Oversight Committee. Among its other features, the Bill would (i) authorise gaming entities to acquire licences to offer online fantasy sports contests, (ii) require a licensed fantasy sports operator to pay 'a tax of 12% of its quarterly fantasy contest adjusted revenues,' (iii) authorise licensed land-based casino operators to acquire licences to operate internet gaming websites, (iv) require a casino that received an i-gaming licence to 'pay a one-time nonrefundable authorisation fee in the amount of \$8,000,000' and a 'tax of 14% of its daily gross interactive gaming revenue,' (v) allow a casino that received an i-gaming licence to contractually authorise an online gaming company to operate its gaming site for it, and (vi) require each online gaming company that received authorisation to operate a gaming site to 'pay a one-time nonrefundable authorization fee in the amount of \$2,000,000.'