

WILL PENNSYLVANIA PASS INTERNET GAMBLING LEGISLATION IN 2014?

Pennsylvania is a candidate to be one of the next states to pass iGaming legislation,¹ but a variety of competing factors make setting the odds for that outcome tricky business. This article considers some of the issues that impact that analysis.

Background

Pennsylvania is the sixth largest state in the US, with an estimated population in 2011 of 12,742,886. In 2011, the median age of the Pennsylvania population was 40, with 21.7 percent of the population under the age of 18 and 15.6 percent aged 65 or older; the fourth highest among all 50 states.²

Casino gambling in Pennsylvania quickly developed into big business after being authorized in 2004. Despite the fact that the first casino did not open until 2007, Pennsylvania, in 2012, took the number two position (out of 23 states) on the American Gaming Association's list of state-by-state consumer spending on commercial gambling. It did so with a total consumer spend of \$3.2 billion at the 11 land-based casinos then operating in the state.³ In 2013, although Pennsylvania maintained its number two spot, consumer spending on casino gambling dipped to \$3.1 billion, even with 12 casinos in operation.⁴ Casino gambling is a big contributor to Pennsylvania's general fund, and, therefore, to the state's economy. Slots are taxed at 55 percent of gross gaming revenues, with 34 percent going to the state's general fund;

table games are taxed at 16 percent of gross gaming revenues, with 14 percent going to the state's general fund.

The Pennsylvania Lottery, for fiscal year 2012/2013, set a new Pennsylvania record with sales of \$3.7 billion.⁵ For calendar year 2012, the North American Association of State and Provincial Lotteries showed the Pennsylvania Lottery as number eight of 43 state lotteries in total sales, with sales of \$3.48 billion.⁶ The Lottery is currently required to contribute 27 percent of its profit to fund programs benefitting older Pennsylvanians. The Lottery has asked the Pennsylvania Legislature to authorize it to offer keno and to reduce the required contribution to 24 percent, with the expectation that the additional amount of profit from keno will result in an increased overall contribution.⁷ Pennsylvania sells its lottery tickets, draw and instant, through licensed, land-based retailers.

In November 2013, the Pennsylvania Legislature passed and the Governor signed a bill that authorizes tavern games (Act No. 2013-90).⁸ The games – pull tabs, daily drawings, and raffles – will be available for play in bars and restaurants that obtain

the requisite license. The 60 percent tax imposed on net gaming proceeds will go to the state's general fund. The Governor's Office projected that if 2,000 of the 11,000 eligible premises obtain a license and offer the games, it will result in an additional \$156 million annually in tax revenue for the general fund.⁹ The bill passed in the House by a narrow margin of 102 to 96.

In December 2013, the Pennsylvania Senate adopted a resolution (SR 273),¹⁰ which directed the Legislative Budget and Finance Committee to: (1) study gaming in the state and other states; (2) make recommendations for "regulatory and legislative changes" that might help sustain and maximize gaming revenue and the positive economic impact of gaming in the state; (3) compare the state's tax structure and regulatory framework to that of other gaming states; and, most important in connection with this article, (4) "analyze the potential impact of online gaming on the gaming industry, including the impact online gaming may have on the [state's] tax revenues and employment at the [state's] casinos." The Committee must report "its findings and recommendations to the [Pennsylvania Legislature] no later than May 1, 2014." On February 14, 2014, Senator Michael Stack introduced a bill (SB 940)¹¹ that would prohibit Internet gambling from being regulated and make it a crime for any individual or entity to use the Internet to

¹ Pennsylvania is considered to be a state with sufficient population and other factors to make it a viable i-poker market. See, e.g., Which U.S. States Could Support Their Own Online Poker Room? by Chris Grove (<http://www.onlinepokerreport.com/5834/us-state-online-poker-liquidity/>).

² All demographic data can be found in Pennsylvania Facts 2013 on the Pennsylvania Data Center website. See http://pasdchbg.psu.edu/sdc/pasdc_files/pastats/PA_Facts_2013.pdf.

³ See http://www.americangaming.org/sites/default/files/uploads/docs/aga_sos2013_fnl.pdf

⁴ See January 16, 2014 press release from Pennsylvania Gaming Control Board, available at <http://gamingcontrolboard.pa.gov/?pr=557>.

⁵ Pennsylvania Lottery Profit Report for 2013, available at <http://www.palottery.state.pa.us/getattachment/About-PA-Lottery/Annual-Economic-Reports/Profit-Report-FY-12-13.pdf.aspx>.

⁶ See <http://www.naspl.org/index.cfm?fuseaction=content&menuid=17&pageid=1025>.

⁷ See id.; Charles Thompson, Pennsylvania Revenue Secretary touts Keno as part of Lottery's growth plan, The Patriot News (Jan. 29, 2014), available at http://www.pennlive.com/midstate/index.ssf/2014/01/pennsylvania_revenue_secretary.html.

⁸ Act 90 is available at <http://www.legis.state.pa.us/cfdocs/legis/li/uconsCheck.cfm?yr=2013&sessInd=0&act=90>.

conduct gambling. The bill was immediately referred to the Senate Committee for Community, Economic and Recreational Development.

In April 2013, Representative Tina Davis introduced a bill (HR 1235)¹² that would permit the Pennsylvania Gaming Control Board to authorize licensed casino operators to offer games over the Internet. The bill calls for a tax of 28 percent of daily Internet gambling gross revenue. In May 2013, Representative Paul Clymer introduced a bill (HR 1404)¹³ that would prohibit Internet gambling from being regulated and make it a crime for any individual or entity to use the Internet to conduct gambling. Both bills were referred to the House Gaming Oversight Committee; no hearings have been held on either bill. Representative Mario Scavella, on January 28, 2014, issued a co-sponsorship memorandum¹⁴ for a bill that would impose criminal penalties on persons who gamble online, as well as anyone offering gambling via the Internet.

Outlook for Internet gaming

Commercial casinos provide a sizeable contribution to Pennsylvania's general fund, and the Lottery is providing funding for programs that assist a growing segment of Pennsylvania's population. However, Pennsylvania needs new revenue to maintain the programs it currently funds. In December 2013, Pennsylvania's Budget Secretary predicted a shortfall for the 2013/2014 fiscal year of up to \$1.4 billion.¹⁵ Since the Pennsylvania Constitution requires a balanced budget,¹⁶ new revenue will be

needed to minimize or prevent budget cuts. Authorizing more gambling is something that states often consider when needing new revenue. As more states have authorized casino gambling, casinos in neighboring states have been impacted. For example, when new casinos opened in states sharing a border with Pennsylvania (Ohio and Maryland), Pennsylvania's casinos felt a pinch, as shown by the decrease in 2013 revenues. The authorization of tavern gambling in December 2013 is an example of Pennsylvania looking to gambling for new revenue. The projected revenue it will generate, however, will not cover the projected budget deficit and may impact spending at casinos or on the Lottery. Internet gambling is a new form of gambling that some commentators believe may help Pennsylvania's casinos. Support for this is found in the \$400 million in projected revenue for New Jersey casinos in 2014 from the first full year of Internet gambling, after its authorization in 2013.¹⁷

However, opposition to the authorization of Internet gambling can be expected in Pennsylvania. The tavern gaming bill was finally passed by a narrow margin in the Pennsylvania House. Members of the Pennsylvania Legislature have expressed a desire to not only ban Internet gambling but also to assess criminal penalties against those who engage in such gambling, as well as those who offer it. There is also the request from the Lottery to expand its offerings. In a year when all members of the Pennsylvania House will face re-election, will legislators be willing to authorize a new form of gambling?

The Pennsylvania Legislature is currently working on the budget for fiscal year 2013/2014. No later than May 1, 2014 (about 60 days before the new budget is to be in place), the Legislative Budget and Finance Committee will provide its report, with analysis and recommendations, to the Pennsylvania Legislature. That report, along with the continued, close monitoring of the New Jersey revenue experience, will likely have a major impact on whether authorization of Internet gambling will be part of Pennsylvania's budget solution for fiscal year 2013/14 or be put on the shelf for a later date.

As a result, setting the odds for the authorization of Internet gambling in Pennsylvania, at a minimum, must await the report of the Legislative Budget and Finance Committee.

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⁹ See Charles Thompson, Latest expansion of legal gambling passes Pennsylvania Senate, The Patriot News (Nov. 18, 2013), available at http://www.pennlive.com/midstate/index.ssf/2013/11/latest_expansion_of_legal_gamb.html.

¹⁰ Senate Resolution 273 is available at <http://www.legis.state.pa.us/cfdocs/legis/PN/Public/btCheck.cfm?txtType=HTM&sessYr=2013&sessInd=0&billBody=S&billType=R&billNbr=0273&pn=1622>.

¹¹ SB 940 is available at <http://www.legis.state.pa.us/cfdocs/billInfo/BillInfo.cfm?year=2013&sind=0&body=S&type=B&bn=940>.

¹² HR 1235 is available at <http://www.legis.state.pa.us/cfdocs/legis/PN/Public/btCheck.cfm?txtType=HTM&sessYr=2013&sessInd=0&billBody=H&billType=B&billNbr=1235&pn=1566>.

¹³ HR 1404 is available at <http://www.legis.state.pa.us/cfdocs/legis/PN/Public/btCheck.cfm?txtType=PDF&sessYr=2013&sessInd=0&billBody=H&billType=B&billNbr=1404&pn=1827>.

¹⁴ Representative Scavella's memorandum is available at <http://www.legis.state.pa.us/cfdocs/Legis/CSM/showMemoPublic.cfm?chamber=H&SPick=20130&cosponId=13985>.

¹⁵ Angela Coulombis, Pa. faces \$1.2B shortfall, budget secretary says, Philadelphia Inquirer (Dec. 20, 2013), available at http://articles.philly.com/2013-12-20/news/45381292_1_budget-forecast-budget-proposal-planned-tax-cut.

¹⁶ Pa. Const. art. VIII, §13.

¹⁷ See Mark Gruetzel, Pa. in line for Internet gambling, analyst says, Trib Live (Jan. 12, 2014), available at <http://triblive.com/aande/gambling/5389546-74/online-gambling-million#ixzz2Jkvoijw>.