An Overview of HB 2150, Preliminarily Approving Expanded Gaming in Pennsylvania

Action Item: The Pennsylvania legislature is poised to expand gaming significantly to include interactive gaming and fantasy sports, among other major changes. Be prepared for these developments which will create opportunities both for existing operators to generate new sources of revenue, and afford new participants a chance to enter the Pennsylvania market.

On June 22, 2016, the Pennsylvania House of Representatives preliminarily approved HB 2150, amending the Pennsylvania Race Horse Development and Gaming Act, 4 Pa. C.S.A. § 1101 et seq. (the “Gaming Act”), and providing for a substantial expansion of gaming in the Commonwealth.

If the bill receives final approval from the House, it will then go to the Senate, and then ultimately to the Governor for approval.

The bill would expand gaming in the Commonwealth in numerous ways, including:

- Fantasy Contests
- Airport Gaming—Multi-Use Computing Devices and Slot Machines
- Interactive Gaming
- Casino Simulcasting
- Skill Slot Machines
- 250 Additional Slot Machines for Category 3 Licensees
- Private Testing and Certification Facilities
- Slot Machines at Non-Primary Locations
- Sports Wagering

Fantasy Contests. The bill provides that fantasy sports contests may not be conducted in Pennsylvania without a license issued by the Pennsylvania Gaming Control Board (“Board”). While a licensed gaming entity may hold a fantasy contest license, any natural person or corporate entity which satisfies the eligibility criteria could be a licensed operator of fantasy sports contests in Pennsylvania. Fantasy contests—apparently including daily contests—may be conducted both online and at terminals located in licensed gaming facilities. Fantasy sports terminals in licensed gaming facilities would not be considered slot machines or table games under the Gaming Act. Licensed operators would pay a tax of 5% of quarterly fantasy contest adjusted revenues. An application fee of the lesser of $50,000 or 7.5% of the applicant’s fantasy contest adjusted revenues for the previous calendar year would be assessed. Licenses would be valid for five years, and a $5,000 renewal fee would be charged.
Airport Gaming—Multi-Use Computing Devices. HB 2150 also provides for two forms of gaming in the Commonwealth’s airports. First, Pennsylvania’s slot machine licensees would be able to, in conjunction with internet gaming affiliates, the relevant municipal authority, and concession operators, offer online gaming to patrons through multi-use computing devices. A license to offer online gaming through multi-use computing devices would require payment of a one-time, nonrefundable authorization fee of $1,000,000, and would be subject to a 14% tax rate, coupled with a local share assessment.

Airport Gaming – Slot Machines. In addition, the bill also provides for slot machines to be located in Pennsylvania’s international airports. Slot machine licensees would need to apply for an airport gaming operation certificate allowing them to operate slot machines in designated areas within the airport. The Board would need to approve the number of machines permitted as well as the physical space where the machines would be located. The license fees for an airport gaming operation certificate would be $5,000,000 in a city of the first class, $2,500,000 in a city of the second class, and $1,000,000 for any other qualified airport. The tax rate will be 34% of airport gaming revenue, along with a local share assessment.

Interactive Gaming. Slot machine licensees would be authorized to offer interactive gaming, including contests and tournaments to persons physically located within the Commonwealth of Pennsylvania or in any jurisdiction in which the Board has entered into a multi-state compact. Slot machine licensees would be required to petition for an interactive gaming certificate. The petition will require applicants to establish by clear and convincing evidence their plans for the establishment and implementation of interactive gaming, including the identity of affiliates, principals, and key employees; evidence of financial stability, integrity and responsibility; experience and ability to conduct a successful interactive gaming business; and detailed plans for ensuring that the games are only accessible to patrons who are of age and who are physically present within the Commonwealth. Slot machine licensees would be able to contract with interactive gaming operators who would be responsible for operation of the interactive gaming system on behalf of the interactive gaming certificate holder.

Interactive gaming certificate holders would be required to pay a one-time nonrefundable authorization fee of $8,000,000. Interactive gaming operators would similarly be faced with a one-time nonrefundable authorization fee of $2,000,000. Renewal fees would be $250,000 and $100,000, respectively.

Casino Simulcasting. Licensed gaming entities would be able to conduct simulcasting or enter into an agreement with a licensed racing entity for the conduct of casino simulcasting.

Skill Slot Machines. HB 2150 would amend the Gaming Act to allow for “skill slot machines” in which the skill of the player, rather than the elements of chance, is the predominant factor in affecting the outcome of the game, along with hybrid slot machines, to be located in licensed gaming facilities, subject to Board approval.

Additional Slot Machines for Category 3 Licensees. The bill also would permit Category 3 slot machine licensees to petition the Board for authorization to add up to another 250 slot machines in their facilities. If approved, the licensee would be required to pay an additional one-time fee of $2,500,000 to be deposited in the Commonwealth’s General Fund.
Private Testing and Certification Facilities. The proposed amendment to the Gaming Act would allow for slot machines to be tested and certified by a private testing and certification facility that has registered with the Board. Privately tested and certified slot machines would be subject to an abbreviated certification process by the Board, and would be approved or denied within 30 days of submission. If enacted, the Board would have one year to promulgate regulations providing for registration of private testing and certification facilities. Applicants would be required to undergo background investigations at their expense, as well as incur registration fees.

Slot Machines at Non-Primary Locations. Category 1 slot machine licensees; i.e., gaming licensees that are also licensed to conduct thoroughbred or harness racing and pari-mutuel wagering, would also be permitted to apply for a permit authorizing them to make up to 250 slot machines available at four “nonprimary locations” under the bill. The Board would have general and regulatory authority over the placement and operation of slot machines at nonprimary locations, and would promulgate regulations in consultation with the State Horse Racing Commission and Harness Racing Commission. Applicants would be required to show that the establishment of nonprimary locations would benefit economic development, employment, tourism, and the race horse industry, and result in enhanced revenues to the Commonwealth and the host municipality. Slot machines may not be sited within the primary market area—within 50 linear miles—of another licensed racing entity, licensed gaming facility, or another nonprimary location. The permit fee for each nonprimary location at which slot machines will be located is $5,000,000, also to be deposited into the Commonwealth’s General Fund.

Sports Wagering. In anticipation that federal laws restricting sports wagering will be relaxed, the bill also empowers the Board to promulgate regulations establishing the standards and procedures for the conduct and implementation of sports wagering by slot machine licensees within licensed facilities and at nonprimary locations. In the event of federal authorization of sports wagering, the bill directs the Secretary of State of the Commonwealth to publish a notice in the Pennsylvania Bulletin certifying the enactment of federal legislation or a federal court decision affirming the authorization of the state to regulate sports wagering. Once a petition for authorization to offer sports wagering has been filed, the Board is required to render a decision within 90 days. The fee to a slot machine licensee for a sports wagering certificate is $5,000,000, with renewals requiring payment of a $250,000 fee. Sports wagering will be taxed at a rate of 16%, plus a 2% local share assessment. All fees and taxes received from sports wagering will go to the General Fund. The bill also reaffirms that unauthorized sports wagering is unlawful.

HB 2150 is also notable for what it did not include, namely a provision authorizing video gaming terminals (“VGTs”) at taverns and restaurants, or a tax on promotional play, both of which were opposed by Pennsylvania’s gaming industry as being detrimental to long-term competitiveness.— © 2016 BLANK ROME LLP

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