

SUMMARY OF PENNSYLVANIA'S NEW VIDEO GAMING LAW

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Pennsylvania's recent gaming expansion bill, HB 271 (the "Bill"), was signed into law by Governor Wolf on October 30, 2017 (the "Effective Date"). The Bill, which amends the Pennsylvania Race Horse Development and Gaming Act (the "Act"), includes several gaming measures, including satellite casinos, internet gaming, airport gaming tablets, and fantasy sports, also authorizes video gaming in Pennsylvania. Specifically, as amended, the Act allows up to 5 video gaming terminals ("VGTs") to be placed at establishments qualifying as truck stops. It outlines a video gaming industry that will be similar in concept to what has transpired under the Illinois Video Gaming Act, but with several distinct differences and certain improvements.

The Pennsylvania Gaming Control Board (the "PGCB") has jurisdiction over all video gaming operations. Accordingly, the PGCB has all powers necessary to fully and effectively carry out the provisions of the Act.

See page 6 of this summary for definitions.

Licensing

- ◆ **Three-Tier Licensing System:** Similar to Illinois' video gaming industry, the Act provides for a three-tier licensing system. Manufacturers will create the VGTs for use in the Pennsylvania market. They will provide those VGTs to Suppliers who will sell, lease or otherwise offer them to Terminal Operators. Manufacturers and Suppliers are considered to be the first tier of this system. Terminal Operators, the second tier and likely focus of the PGCB in regulating the industry, will own, service or maintain the VGTs. Finally, the VGTs will be placed and operated in Truck Stop Establishments, or the third tier of the system.
- ◆ **Required Licensing:** Each Manufacturer, Supplier, Terminal Operator, Truck Stop Establishment, Principal, and Key Employee must be licensed by the PGCB. Additionally, Gaming Service Providers and Gaming Employees must be granted the proper certification or an Occupation Permit, respectively.
- ◆ **License Restrictions:** Dual licensure is generally prohibited. While Manufacturers may also be licensed as Suppliers, they cannot be Terminal Operators or Truck Stop Establishments. Similarly, Terminal Operators and Truck Stop Establishments are prohibited from holding licenses in any tier other than their own.
- ◆ **Procurement Agents:** Procurement Agents are required to apply for and obtain a Principal License.
- ◆ **Felony/Gambling Convictions:** No person or entity may be licensed under the Act with a felony conviction or with a background (including prior activities, criminal record, reputation, habits or associations) that would pose a threat to the public interest or enhance the danger of unsuitable, unfair or illegal practices in the conduct of video gaming. In addition, an applicant for a Principal License, Key Employee License, Occupation Permit or Establishment License is ineligible for licensure if he or she has been convicted of a misdemeanor gambling offense within the 15-year period prior to application.
- ◆ **Transfer/Change of Control:** Licenses are generally non-transferrable. Any transfer of more than 5% of the ownership of a Terminal Operator applicant or licensee, or any entity which owns, directly or indirectly, at least 20% of the Terminal Operator, must be disclosed to the PGCB and approved prior to the change of ownership (with an exception for Institutional Investors). If a Terminal Operator licensee or applicant experiences a change in ownership or control, the Terminal Operator must independently qualify for a Terminal Operator license, including payment of a new license fee.

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- ◆ Opt Out: Counties that currently host a licensed casino facility may choose to opt out of the video gaming provisions of the Act before December 29, 2017.

Application Process

- ♥ Application Forms: All application forms are required to be released by the PGCB within 90 days of the Effective Date. Therefore, we believe applications should be available by January 28, 2018.
- ♥ Conditional Licensing: The PGCB may issue conditional licenses in each category of the three-tier system if the applicant satisfies certain criteria. Upon receipt of a request for conditional licensure, accompanied by a fee in addition to the normal applicable fee, the PGCB has 60 days to act upon the applicant's request. Conditional licenses are valid until the earlier to occur of (a) the date the PGCB approves or denies the applicant's application or (b) one year. Conditional licenses may be extended for a period of one year.
- ♥ Alternative Licensing: In addition to the standard application process for each license, the Act also provides for alternative licensing standards. The PGCB has discretion to issue licenses to applicants in an abbreviated process if the PGCB determines that the licensing standards of another U.S. jurisdiction in which an applicant or its affiliate holds a similar gaming license are comprehensive enough to provide similar adequate safeguards as those required by the Act. This abbreviated process involves a review of the information provided by the applicant to the other jurisdiction, supplemented by additional information the PGCB deems necessary. The PGCB may also determine to use a similar abbreviated process if the applicant holds a Pennsylvania gaming license.
- ♥ Term of License: All licenses are valid for a term of five years.

Application Fees

The following application fees must accompany each application:

- ◆ Manufacturer or Supplier: \$50,000
- ◆ Terminal Operator: \$25,000
- ◆ Establishment: \$1,000
- ◆ Key Employee or Principal: \$500
- ◆ Any other authorization or permit, including Gaming Service Providers and Gaming Employees: to be determined by the PGCB, but will not exceed \$100

In addition to the application fees listed above, the following fees must accompany a request for conditional licensure:

- ◆ Manufacturer or Supplier: \$1,000
- ◆ Terminal Operator: \$100
- ◆ Establishment: \$100
- ◆ Key Employee or Principal: \$100

Initial License and Renewal Fee

The following license fees are required upon issuance of the initial license, and must also be submitted with each application for license renewal:

- ♥ Manufacturer or Supplier: \$10,000
- ♥ Terminal Operator: \$5,000
- ♥ Establishment: \$250 per VGT installed (plus an additional \$250 for any VGTs installed subsequent to the Establishment's license renewal)
- ♥ Key Employee or Principal: \$500
- ♥ Any other authorization or permit, including Gaming Service Providers and Gaming Employees: to be determined by the PGCB, but will not exceed \$100

Additional Fees

- ◆ Regulatory Assessment: Terminal Operators are subject to a regulatory assessment in the form

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of a percentage assessed bi-monthly on gross terminal revenue.

- ◆ Compulsive & Problem Gambling Program: The PGCB will also assess a fee to cover the cost of a mandatory compulsive and problem gambling training program which management and certain employees of Establishment licensees who oversee the Video Gaming Area are required to complete.

Application Requirements

- ♥ Applicant's Burden: Each applicant has the burden of proving its qualifications to the PGCB by demonstrating suitability for licensure, submitting to a background investigation conducted by the Bureau of Investigations and Enforcement of the PGCB, and, for Manufacturer, Supplier, Terminal Operator and Establishment applicants, disclosing the identity of each Principal and Key Employee of the applicant.
- ♥ Place of Business: Terminal Operator and Supplier applicants and licensees are required to maintain a place of business in Pennsylvania to be eligible for licensure and subsequent license renewals.
- ♥ Truck Stop Establishments: To be eligible to apply for an Establishment License, a Truck Stop Establishment must meet certain criteria, including:
 - ♣ Be equipped with diesel islands;
 - ♣ Sell an average of 50,000 gallons of diesel or biodiesel each month for previous 12 months, or projected for the next 12 months;
 - ♣ Have at least 20 parking spaces dedicated to commercial motor vehicles;
 - ♣ Have a convenience store;
 - ♣ Be situated on a 3-acre parcel that the Truck Stop Establishment owns or leases;
 - ♣ Not be situated on any property owned by the Pennsylvania Turnpike; and
 - ♣ Be licensed as a Lottery Sales Agent under the Pennsylvania State Lottery Act.

Video Gaming Terminals

- ◆ Number: Licensed Truck Stop Establishments can host up to 5 VGTs.
- ◆ Max Bet & Max Jackpot: The maximum bet allowed under the Act is \$5, and the maximum prize per individual game is \$1,000. VGTs must have a theoretical payout of at least 85% of the amount wagered.
- ◆ Progressive Jackpots: Progressive payouts are permitted.
- ◆ Cash-out Process: VGTs will dispense redemption tickets, which can be exchanged for cash at a Redemption Terminal or re-inserted into another VGT at the same licensed Establishment.
- ◆ Independent Testing: VGTs will be subject to testing and certification prior to their use in the Pennsylvania market. The PGCB may rely on certifications provided by an independent private testing and certification facility. The Manufacturer will be responsible for any fee associated with the independent testing and certification.
- ◆ Central Control System: All VGTs and Redemption Terminals will be linked to a central control system, which will be operated by the Pennsylvania Department of Revenue.

Revenue Split

Gross Terminal Revenue must be split as follows:

- ♥ 42% state tax (which ultimately goes to the general fund);
- ♥ 10% local tax;
- ♥ 15% to the Truck Stop Establishment; and
- ♥ The remainder to the Terminal Operator (less the bi-monthly regulatory assessment imposed by the PGCB).

Denial of Application

An applicant or licensee may appeal a final order of the PGCB involving the approval, issuance,

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denial, revocation, non-renewal, conditioning or suspension of any license.

Prohibited Actions

- ◆ Incentives & Inducements: Establishments and Terminal Operators may not provide Incentives to players. Terminal Operators may not provide Inducements to Establishments to secure a Terminal Placement Agreement.
- ◆ Monitoring the Video Gaming Area: A licensed Establishment's Video Gaming Area must be monitored at all times, either directly or through live monitoring of video surveillance, by an employee of the Establishment who is at least 18 years of age and has completed the PGCB's mandatory compulsive and problem gambling training program.
- ◆ Ineligible Players: No minors or visibly intoxicated persons are permitted to play a VGT.
- ◆ Credit: Terminal Operators and Establishments are prohibited from extending credit to or accepting a credit card or debit card from a VGT player.
- ◆ Approval of Structural Changes: No structural changes to an Establishment's Video Gaming Area may be made without prior notice and approval by the PGCB.
- ◆ Moving VGTs/Redemption Terminals: Establishments and Terminal Operators may not move a VGT or Redemption Terminal without the PGCB's prior approval.

Terminal Placement Agreement

- ♥ Eligible Parties: VGTS must be placed pursuant to a Terminal Placement Agreement, which can only be between a licensed Terminal Operator or Terminal Operator applicant and a licensed Establishment or Establishment applicant, and must be approved by the PGCB to be effective.
- ♥ Void Agreements: Any agreement or promise to

sign an agreement for placement, operation, service or maintenance of VGTs, including an agreement for the right to enter into an agreement or match any offer made prior to the Effective Date is not valid or enforceable, and will not be recognized or approved by the PGCB.

- ♥ Required Provisions: In addition to any additional minimum standards for Terminal Placement Agreements that the PGCB determines to require, Terminal Placement Agreements must:
 - ♣ include a provision rendering the Agreement invalid if either party's license or application is denied, revoked, not renewed, withdrawn or surrendered;
 - ♣ provide the Establishment with exactly 15% of gross terminal revenue; and
 - ♣ identify the individual who solicited the agreement on behalf of a Terminal Operator.
- ♥ Minimum/Maximum Term: Terminal Placement Agreements must include a term of at least 5 years, but cannot exceed 10 years.
- ♥ Assignment: Terminal Placement Agreements can only be assigned by a Terminal Operator applicant or licensee to another Terminal Operator applicant or licensee.

Compulsive and Problem Gambling

- ◆ Signage: Establishment licensees are required to post problem gambling signage and make problem gambling informational materials available at its premises.
- ◆ Supervision of Video Gaming Area: At least one employee of an Establishment licensee who holds an Occupation Permit and has successfully completed the compulsive and problem gambling training developed by the PGCB's Office of Compulsive and Problem Gambling must supervise the Video Gaming Area at all times.

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Exclusion Program

- ♥ Self-Exclusion List: The PGCB must create a video gaming self-exclusion list. The PGCB must promulgate regulations providing for the placement on and removal from the list, as well as procedures for the transmittal of the list to Establishments and Terminal Operators. The list will not be made public.
- ♥ Entry Procedures: Establishments are required to establish procedures designed to prevent entry of a self-excluded person into the Establishment's Video Gaming Area.
- ♥ Removal Procedures: Terminal Operators are required to establish procedures designed to remove self-excluded persons from customer loyalty or reward card programs and targeted mailings or other forms of advertising.

PGCB

The PGCB consists of seven voting members, three of whom are appointed by the Governor of Pennsylvania and the remaining four by the Pennsylvania General Assembly. The current members of the PGCB are David M. Barasch (Chairman), Richard G. Jewell, Sean Logan, Kathy M. Manderino, Merritt C. Reitzel, William H. Ryan, Jr., and Dante Santoni, Jr. The executive staff includes, among others, Kevin F. O'Toole, Executive Director, Claire B. Yantis, Administrative Director, Cyrus Pitre, Chief Enforcement Counsel, and Susan Hensel, Director of Licensing. The PGCB typically meets on a monthly basis.

SELECTED DEFINITIONS

“Change of Ownership or Control.” The acquisition by a person or group of persons acting in concert of more than 20% of a Terminal Operator licensee’s securities or other ownership interests (with the exception of any ownership interest of the person that existed at the time of initial licensing and payment of the initial licensing fee), or more than 20% of the securities or other ownership interests of a corporation or other form of business entity that owns directly or indirectly at least 20% of the voting or other securities or other ownership interests of the licensee.

“Controlling Interest.” Any of the following (unless the applicable presumption is rebutted by clear and convincing evidence):

- For a publicly traded domestic or foreign corporation, a person has a controlling interest in an applicant or licensee if a person’s sole voting rights entitle the person to elect or appoint one or more of the members of the board of directors or other governing board, or the person holds an ownership or beneficial holding of 5% or more of the securities of the publicly traded corporation, partnership, limited liability company or other entity.
- For a privately held domestic or foreign legal entity, a person has a controlling interest in an applicant or licensee if the person holds any securities in the entity.

“Gaming Employee.” Any of the following:

- An employee of a Terminal Operator licensee, Establishment licensee or Supplier licensee that is not a Key Employee and is involved in the conduct of video gaming.
- An employee of a Supplier licensee whose duties are directly involved with the repair or distribution of VGTs or associated equipment sold or provided to a Terminal Operator licensee in Pennsylvania as determined by the PGCB.
- The term does not include non-gaming personnel as determined by the PGCB or an employee of an Establishment licensee.

“Gaming Service Provider.” A person that is not required to be a licensed as a Terminal Operator, Manufacturer, Supplier, or Establishment licensee and provides goods or services to a Terminal Operator licensee that directly relates to the operation and security of a VGT or redemption terminal. Gaming Service Provider does not include a person that supplies goods or services that, at the discretion of the PGCB, does not impact the integrity of video gaming, VGTs or the connection of VGTs to the central control computer system, including seating to accompany VGTs and structural or cosmetic renovations, improvements or other alterations to a video gaming area.

“Incentive.” Consideration, including a promotion or prize, provided to a player or potential player as an enticement to play a VGT.

“Inducement.” Any of the following:

- Consideration paid directly or indirectly, from a Manufacturer, Supplier, Terminal Operator, Procurement Agent, Gaming Employee, employee or another person on behalf of an applicant or licensee to a Truck Stop Establishment, Establishment licensee owner or an employee of the Establishment licensee, directly or indirectly as an enticement to solicit or maintain the Establishment licensee or Establishment licensee owner’s business.
- Cash, Incentive, marketing and advertising cost, gift, food, beverage, loan, prepayment of gross terminal revenue and other contribution or payment that offsets an Establishment licensee’s operational costs, or as otherwise determined by the PGCB.
- Inducement does not include costs paid by a Terminal Operator applicant or licensee related to making

SELECTED DEFINITIONS (CONT.)

VGTs operate at the premises of an Establishment licensee, including wiring and re-wiring, software updates, ongoing VGT maintenance, Redemption Terminals, network connections, site controllers and costs associated with communicating with the central control computer system.

“Key Employee.” An individual employed by a Manufacturer licensee, Supplier licensee, Terminal Operator licensee or Establishment licensee that is determined by the PGCB to be a director or department head, or otherwise empowered to make discretionary decisions that regulate the conduct of video gaming.

“Principal.” An officer, director, person who directly holds a beneficial interest in or ownership of the securities of an applicant or licensee, person who has a Controlling Interest in an applicant or licensee, or has the ability to elect a majority of the board of directors of a licensee or to otherwise control a licensee, Procurement Agent, lender or other licensed financial institution of an applicant or licensee (other than a bank or lending institution which makes a loan or holds a mortgage or other lien acquired in the ordinary course of business), underwriter of an applicant or licensee, or other person or employee deemed to be a Principal by the PGCB, including a Procurement Agent.

“Procurement Agent.” A person that shares in the Gross Terminal Revenue or is otherwise compensated for the purpose of soliciting or procuring a Terminal Placement Agreement.



Paul T. Jenson

111 East Wacker
Suite 2800
Chicago, IL 60601
pjenson@taftlaw.com
(312) 836-4046

Paul T. Jenson is an equity partner and co-chair of Taft’s Gaming practice. Chambers USA included Paul in its nationwide rankings of “Leaders in their Field.” He has extensive experience in counseling local, national and international casino owners, terminal operators, manufacturers, suppliers, lenders and institutional investors in all aspects of gaming regulatory law, mergers & acquisitions, financing transactions and corporate governance. Paul has represented some of the world’s largest gaming companies, as well as numerous domestic and foreign private equity funds, hedge funds, sovereign wealth funds, governmental entities and other gaming investors in many jurisdictions. In addition, Paul is widely recognized as one of the leading lawyers in Illinois’ video gaming industry and other emerging markets.



Erin Lynch Cordier

111 East Wacker
Suite 2800
Chicago, IL 60601
ecordier@taftlaw.com
(312) 840-4306

Erin Lynch Cordier is an associate in the firm’s business and finance department. She focuses her practice in the area of gaming where she has experience representing casinos, terminal operators, manufacturers, suppliers, distributors, and licensed establishments. Erin counsels publicly traded and private companies regarding mergers and acquisitions, financing transactions and corporate governance, as well as licensing, compliance, administrative proceedings, and other matters before the various regulatory bodies. Erin also has experience implementing sweepstakes and raffles in accordance with state and municipal requirements.