

Comments on Interactive Gaming; Temporary Regulations

[48 Pa.B. 21]

PENNSYLVANIA GAMING CONTROL BOARD

Dear Board Members,

Thank you for the opportunity to submit comments on Pennsylvania's Temporary Regulations on Interactive Gaming, 48 Pa.B. 21, issued pursuant to 4 Pa.C.S. § 1202(b)(30), 1203, and § 13B02. The following comments are submitted on behalf of [The iDevelopment and Economic Association](#) ("iDEA"). iDEA is an unincorporated association seeking to grow jobs and expand online gaming entertainment business in the United States through advocacy and education. iDEA's members represent all sectors involved in the growing industry of internet gaming and entertainment, including technology, marketing, payment processing, law, operations, and development. Its members include both U.S.-based and international organizations. iDEA's members share the goal of expanding American consumers' access to secure and regulated online gaming. As part of its mission, iDEA studies the effects of online gaming in jurisdictions that have permitted or expanded it.

Below please find our recommendations to improve the temporary regulations, and the legislative and empirical support for these recommendations.

Recommendations to Improve the Temporary Regulations

Because the statute and regulations are silent on the subject, it is possible that an interactive gaming licensee could operate through any number of brands or skins. If so, a licensee's right to operate multiple skins should be clarified. It is possible, however, that the statute and regulations contemplate that operators be limited to a single skin per license. The regulations should clarify the number of skins available to each licensee. In any case, operators should not be limited to a single skin.

Experience has shown that online gaming operators will self-regulate to an efficient market size that maximizes operator and state revenue. To do so, however, requires licensees to have the flexibility to partner with other game providers and to operate under multiple skins.

iDEA submits that the temporary regulations should clarify either that:

1. there is no limit on the number of skins that may be operated by each licensee, or
2. adopt New Jersey's five skin limit per license.

Lawmakers were aware of the issue of skins and, if they had intended to limit their use, the legislature could have done so easily. In fact, earlier drafts of the legislation did include specific

limits on skins. The issue of skins also was addressed at hearings and in discussions with industry participants, including iDEA.

Therefore, the absence of a limit suggests lawmakers concluded that allowing multiple skins would be beneficial to Pennsylvania’s market. The legislature was aware of skins, considered a limit, and then consciously chose not to insert one. Regulations should follow that cue.

Background

Pennsylvania’s Interactive Gaming law and the temporary regulations limit interactive gaming operator licenses/certificates to one per Pennsylvania casino, meaning there currently is a hard cap of 13 licenses. It is unclear, however, how many brands or “skins” such licensee may operate.

The statute defines “Interactive gaming skin or skins” as “The portal or portals to an interactive gaming platform or interactive gaming website through which authorized interactive games are made available by an interactive gaming certificate holder or interactive gaming operator to registered players in this Commonwealth or registered players in any other state or jurisdiction which has entered into an interactive gaming reciprocal agreement.”

4 Pa. C.S. § 13B02(a)(15) provides that the Gaming Control Board may issue regulations requiring each interactive gaming certificate holder to: “(i) Provide written information on its interactive gaming skin or interactive gaming website, which explains the rules for each authorized interactive game, payoffs or winning wagers and other information as the board may require.”

The Board is empowered to allow a qualified gaming entity to “deploy interactive gaming skins or interactive gaming websites to facilitate the conduct of interactive gaming activities.” 4 Pa. Code § 13B11(a)(2). *See also* 4 Pa. Code § 13B11(a.1)(2) (authorizing the same for slot machine licensees).

Despite these provisions, the statute is silent on the issue of how many skins a licensee may maintain.

A. Experience Has Shown the Benefits of Multiple Skins

Now in its fifth year, interactive gaming in New Jersey produces ten percent of casino revenue and has introduced new customers that were not reachable through brick and mortar casinos. Although during initial rollout, New Jersey permitted operators to use only one platform provider “to facilitate the completion of all the required licensing and technical reviews,” it swiftly expanded that limit to allow each licensee to operate five “skins.” *See* [David Rebeck](#),

[Letter Re: New Jersey Internet Gaming One Year Anniversary, Jan. 2, 2015.](#) That model has proven its worth, resulting in increasing revenues and market innovation.

New Jersey currently has five online gambling licensees operating through 17 skins, including casino and third-party brands, including:

- Borgata Casino and Borgata Poker
- PartyPoker
- Pala Casino, Pala Poker and Pala Bingo
- PlayMGM Casino and playMGM poker
- Caesars
- Harrah's
- WSOP NJ
- 888 Casino and 888 Poker
- Golden Nugget
- Betfair Casino
- Sugarhouse
- Resorts
- Mohegan Sun
- PokerStars
- Tropicana
- Virgin

Each time a new brand or skin has launched, it has expanded the market. Online casinos in New Jersey now generate in excess of \$20 million in revenue each month. While there may be an outside limit where additional brands or skins operate only to take market share from some other brand, that limit has not been reached in New Jersey. Through competition, operators have established a functioning market that meets casino and consumer needs.

Competition in New Jersey also has led to innovation. For example, two New Jersey casinos now offer live, interactive dealer games. Other operators have added DFS style games.

B. Restricting Skins is Anti-Competitive

Limiting operators to a single skin would act as a limit on competition. Limiting skins would effectively pick winners and losers in the Pennsylvania market and hand the market to the state's largest land-based casino operators (that are willing to enter the market). Because each license is extraordinarily expensive (up to \$10 million plus taxes), smaller operators may only be able to afford interactive gaming operations if they subsidize some of the license expense and high tax rates through revenue sharing skin agreements.

Even if they could justify the up-front licensing cost, smaller casinos will find themselves at a significant disadvantage when it comes to marketing budgets, which constitutes a much more significant cost for interactive gaming than it does for traditional, land-based casinos.

C. Multiple Skins Encourages Innovation

By allowing multiple skins per license, Pennsylvania will encourage robust competition among operators. That competition will result in increased content for consumers and would incentivize operators to produce and provide new and innovative games. For example, to compete with larger casinos, smaller casino operators might partner with both poker and table game operators under separate skins to provide innovative products under larger brand names. Without the availability of multiple skins, they would be unable to do so. That competition and innovation will result in higher revenue for the state and greater satisfaction for players.

Conclusion

Online gaming operators can self-regulate to an efficient market size that maximizes operator and state revenue when they are allowed to partner with other game providers and to operate under multiple skins. The experience of New Jersey of allowing multiple skins has resulted in competition, innovation and growing revenue. Pennsylvania should emulate that model by clarifying its regulations so that there is either no limit on the number of skins that may be operated by each licensee, or by adopting New Jersey's five skin limit per license.