



# Market focus: New Jersey

What key lessons can other US states and jurisdictions learn from how the Garden State's regulated egaming industry has bloomed over the past five years?

Words by | **Robert Simmons**

**N**ew Jersey has a long history of gambling through the presence of the north-eastern hub of Atlantic City, with its boardwalk empires and coastline dominating the US market during the early part of the 20th century. In 1978, state legislators amended the New Jersey constitution to include the first Casino Control Act, which limited land-based gambling to Atlantic City.

However, the decline of the city's industry during the financial crash forced many casinos to close, putting a strain on state finances. In the absence of these tax revenues, the state had to look elsewhere, prompting an inexorable drive towards the legalisation of online casino and poker, and later sports betting.

For Jeremy Kleiman, counsel for law firm Saiber LLC, much of the credit for this goes to political leaders and regulators, who had "the vision and courage to revitalise the market by authorising online casino gambling and understood that egaming was an enhancement and not a threat to land-based casinos".

Kleiman continues: "They also had the vision and strength to challenge the federal prohibition on authorising sports betting, which paid off after many years. Ironically, a struggling economy was the catalyst for a transformative approach to gaming in New Jersey."

The New Jersey legislature first legalised online gambling by amending the Casino Control Act in February 2013. To

ensure that the state constitution did not need to be changed to incorporate online gambling, the amendment established a requirement that servers are located in Atlantic City and, thus, gambling would be hosted there.

Although this requirement may have ultimately sped up legalisation of online gaming, for Kleiman the need to preserve the constitution might ultimately create its own problems for operators as "the restriction requires online operators to invest heavily in infrastructure in Atlantic City, which increases costs".

The Casino Control Act defines online gaming as: "The placing of wagers with a casino licensee at a casino located in Atlantic City using a computer network of both federal and non-federal interoperable packet switched data networks through which the casino licensee may offer authorised games to individuals who have established a wagering account with the casino licensee and who are physically present in this state, as authorised by the rules established by the division."

## Regulatory oversight

There are two principal bodies in charge of regulating the gambling industry: the Casino Control Commission (CCC) and the Division of Gaming Enforcement (DGE). Enjoying a largely symbiotic relationship, the CCC issues licences to land-based casino operators based

on the recommendations of the DGE, which has full investigatory, regulatory and monitoring powers. However, in the online sphere, the relationship is slightly different, with the DGE being solely responsible for issuing licences.

The DGE conducts investigations of all licence applicants and reports back to the CCC. Under the state constitution, the CCC can deny a licence to an applicant if it finds that the individual or business does not meet certain criteria set out at state level. All current licensees are subject to regular scrutiny by DGE regulators to ensure their operations do not contravene existing laws. Should this prove to be the case, the department has full authority to prosecute offenders under state law.

As part of its mandate, the DGE is also responsible for the review, testing and approval of all online games offered by licensed operators in New Jersey prior to launch, with testing taking place at the DGE's technical services bureau. For Kleiman, this is one area where regulation hampers operation, because of the requirement to have new software approved prior to launch. "It often delays innovation and change to a segment of the industry that is actually an e-commerce business. Operators need to have flexibility to use their business judgement to make changes in real time."

Advertising of online gambling is permitted in New Jersey, however as part of regulations, all content be reviewed by the DGE prior to airing. In addition, all TV adverts must display the "Bet With Your Head Not Over It", together with relevant problem gambling messages and helplines. Stephen Schrier, partner at Blank Rome LLP, believes these efforts are making the right impact on responsible gambling issues. "There is always an argument that more money could be spent, or other limitation should be imposed, but what is in place does significantly address responsible gaming."

## Finding the right partner

Businesses wishing to conduct online gambling in New Jersey must first partner with a local land-based operator that has obtained a DGE-issued permit to do so. Upon completion of the agreement between the two entities, the land-based operator must obtain a casino service

industry licence (CSIE) from the DGE, at a cost of between \$2,000 and \$5,000.

Licensed online gambling operators can offer any game which has first been tested and approved by the DGE. Current games that can be offered include slots, table games, video poker, peer-to-peer poker, bingo and, most recently, sports betting. There is no current limitation on interactive licences, meaning there is potentially an infinite number of online gambling licences available to land-based operators that can find partners. However, online operators are limited to five sites per licence.

The application process for a CSIE licence takes on average between one to two years to complete, primarily due to the fact that personal interviews of referees are required. In the interim period between an application being submitted and a licence being issued, operators can receive a 'transactional waiver', allowing them to conduct business. CSIE licences do not expire, but application documentation is required to be re-submitted every five years, with operators that do not resubmit having licences revoked.

Online operators are taxed on GGR at a rate of 15% per annum. The 8% tax rate, traditionally imposed with land-based operations in Atlantic City, does not apply to online operators. There is, however, an additional 2.5% investment alternative tax levied on GGR. Addressing this tax framework, Schrier believes that the tax rate is aiding the development of the New Jersey market: "New Jersey's tax rate is one of the lowest rates so far. The market has grown each month, and does not appear to be slowing. The relatively low tax rate has encouraged new games and new online companies to compete in New Jersey," Schrier adds.

Following the repeal of PASPA earlier this year, addendums to the Casino Control Act legalising sports betting in the state came into force. The first licences for operators have already been issued, with those operators commencing operations earlier this year. The regulations for these are similar to those being used in online gaming, requiring sports betting operators to partner with licensed casino operators, but imposing a three-site limit per licence rather than five. Sports betting is taxed at 8.5% for in-person bets and 13% for online wagers.



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■ Jeremy Kleiman, Saiber LLC

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#### A maturing market

New Jersey remains the most evolved egaming market in the US thanks to a combination of effective regulations and good governance. Although early movers into this market are best positioned to capture market share, for Kleiman there

is still an opportunity for late entrants who "can benefit from trial and error of the early entrants".

As evidenced by recent moves in the New Jersey market, the biggest opportunities are in multi-jurisdictional partnerships between operators, suppliers and land-based partners. Kleiman believes the key to success in New Jersey is "ensuring market access through partnerships as additional states authorise egaming and sports betting".

For many operators, New Jersey serves as a gateway to expanding operations stateside and, as the industry grows and expands to include sports betting, this trend looks set to continue. The issue for a later date is what the state does once the market hits full bloom. ●