



March 19, 2018

**VIA HAND DELIVERY**

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Attn: Regulation #125-211 Public Comment

Gentlemen:

Commonwealth Gaming LLC ("Commonwealth") respectfully submits the following comments with respect to the Pennsylvania Gaming Control Board's (the "Board's") Proposed Rulemaking – Regulation #125-211 (the "Temporary Regulations"). The proposed Temporary Regulations were approved at the Board's February 7, 2018 public meeting.

Commonwealth's principals, key employees, and affiliates have extensive video gaming experience, in jurisdictions including Illinois, Oklahoma, Louisiana, and more general gaming experience in several other jurisdictions. From Commonwealth's perspective, the Temporary Regulations which the Board has promulgated for truck stop video gaming in the Commonwealth of Pennsylvania are comprehensive and clear. With the exceptions noted below, Commonwealth believes that these Regulations would fairly implement the Pennsylvania Video Gaming Legislation. Commonwealth, on its own behalf and in furtherance of the interest of its potential customers, takes this opportunity to address two (2) specific proposed Regulations which we respectfully maintain are not consistent with the letter or intent of the Video Gaming Legislation. If implemented as currently drafted, the Regulations addressed herein would 1) drastically and impermissibly limit the number of truck stops which would qualify for licensure; and 2) significantly limit the number of truck stops which would choose to seek licensure.



**Commercial Motor Vehicle Parking – Temporary Regulation Sections 1101.1 and 1103(b)(2)**

The Temporary Regulations, as currently drafted, add two very limiting criteria to the statutory qualifying requirements for Truck Stops, specifically a minimum weight limit for Commercial Motor Vehicles, and a minimum length requirement for Commercial Motor Vehicles. Both of these additional “qualifiers” are far beyond the statutory mandate, and could potentially have a devastating and unintended impact on the implementation of video gaming in Pennsylvania.

As House Appropriations Committee Chairman Saylor stated in his recent comments to the Board, at least half of the truck stops which should qualify for licensure as intended by the relevant statute would be eliminated by these additional limitations contained in Temporary Regulations Sections 1101.1 and 1103(b)(2).

As Chairman Saylor succinctly stated:

“I feel the Temporary Regulations are not within the legislative intent.”

(A transcript of Chairman Saylor’s comments is attached for your reference.)

The starting point for determining legislative intent is, of course, the plain language of the statute itself. Section 3102 of Act 42 of 2017-the Pennsylvania Truck Stop Video Gaming Act (the “Video Gaming Act” or “Act 42”), sets forth definitions. The definition of “Truck Stop Establishment” simply contains the following requirement:

(3) HAS AT LEAST 20 PARKING SPACES DEDICATED FOR COMMERCIAL MOTOR VEHICLES.

The term “Commercial Motor Vehicles” is not separately defined in the Video Gaming Act.

Section 1101.1 of the Temporary Regulations defines Commercial Motor Vehicle as follows:

Commercial Motor Vehicle – As defined in Section 1603 of the Vehicle Code, 75 Pa.C.S. §1603.

Section 1603 of the Pennsylvania Vehicle Code (in contrast to Section 3102 of the Video Gaming Act) is a very limiting and restrictive definition. It provides, in pertinent part, as follows:

**“Commercial motor vehicle.”** A motor vehicle or combination designed or used to transport passengers or property:

(1) if the vehicle has a gross vehicle weight rating or gross vehicle weight of 26,001 or more pounds or such lesser rating as the department shall adopt under the provisions of section 6103(c) (relating to promulgation of rules and regulations by department), as determined by Federal regulation and published by the department as a notice in the Pennsylvania Bulletin;



(1.1) if the vehicle has a gross combination weight rating or gross combination weight of 26,001 pounds or more, whichever is greater, inclusive of a towed unit with a gross vehicle weight rating or gross vehicle weight of more than 10,000 pounds, whichever is greater;

(2) if the vehicle is designed to transport 16 or more passengers, including the driver;

(3) if the vehicle is a school bus; or

(4) if the vehicle is transporting hazardous materials and is required to be placarded in accordance with department regulations.

The term does not include an antique or classic motor vehicle, or an implement of husbandry, or any motor home or recreational trailer operated solely for personal use, or motorized construction equipment, including, but not limited to, motorscrapers, backhoes, motorgraders, compactors, excavators, tractors, trenchers and bulldozers.

Moreover, Section 1103(b)(2) of the Temporary Regulations goes even further, providing as follows:

For purposes of this chapter, “parking spaces dedicated for commercial motor vehicles” must be of sufficient size to accommodate vehicles *which are eight (8) feet in width and fifty-three (53) feet in length or otherwise which have a gross combination weight rating or gross combination weight of 26,000 pounds inclusive of a tow unit with a gross vehicle weight rating or gross vehicle weight of more than 10,000 pounds, whichever is greater.*

Section 1603 of the Pennsylvania Vehicle Code contains just one of many definitions of “Commercial Motor Vehicle” utilized in the Pennsylvania statutes. (See, e.g., 67 Pa.C.S. §231.8 for another substantially different example.) The limited purpose of that statutory provision was to implement the provisions of the Federal Commercial Motor Vehicle Safety Act. (75 Pa. C.S. §1601). It is not a “general purpose” definition of the term for all Pennsylvania statutes.

Pennsylvania has frequently used a much more encompassing definition of Commercial Motor Vehicle in its statutes and publications. For example, the Pennsylvania Department of Transportation (“PENNDOT”) uses a much broader definition of Commercial Motor Vehicle. PENNDOT’s own Fact Sheet leads off as follows:

### **Commercial Vehicles Registration Requirements**

#### **OVERVIEW**

**A commercial vehicle is any type of motor vehicle used for transporting goods or passengers for compensation. Commercial vehicle operations are categorized as either intrastate or interstate operations.**



In that same publication, PENNDOT states as follows:

Intrastate Operations - Intrastate operations occur when **commercial vehicles** transport goods or passengers from one point to another point within Pennsylvania.

**Vehicles primarily conducting intrastate operations are issued registration plates labeled as; “Bus,” “Limousine,” “Taxi,” or “Truck” at the bottom.**

In choosing the definition 75 PA C.S. §1603, the Board is essentially using the limited purpose Interstate Commercial Motor Vehicle definition. Respectfully, that is clearly not what the statute says, and certainly is not consistent with legislative intent. If the legislature intended to limit the definition to Interstate Commercial Motor Vehicles, it could have easily done so. Statutory interpretation maxims clearly support the position that the definition is not so limited.

An owner of a vehicle in Pennsylvania **MUST** register (and pay to register) all vehicles used for compensation as Commercial Motor Vehicles in Pennsylvania. This includes delivery vans, limousines, taxis, etc. It is anomalous

to require a vehicle to be regulated as a Commercial Motor Vehicle for registration and other regulatory purposes, but not for Truck Stop video gaming purposes.

Moreover, a commercial driver’s License is required for operating some, but not all, Commercial Motor Vehicles. Again, the following passage from a PENNDOT official publication is instructive:

Act of 1986, Pennsylvania established a Commercial Driver Licensing Program. ....The program requires you to have a CDL if you operate or plan to operate **any of the following Commercial motor vehicles** (Cmvs): a) A combination of vehicles with a gross combination weight rating (GCWR) of 26,001 pounds or more, provided the vehicle being towed is in excess of 10,000 pounds. b) A single vehicle with a gross vehicle weight rating (GvWR) of 26,001 or more pounds. c) A vehicle designed to transport 16 or more persons, including the driver. d) A school bus designed to carry 11 passengers or more, including the driver. e) Any size vehicle, which transports hazardous materials and is required to be placarded in accordance with federal regulations. f) Any size vehicle used in the transportation of any material that requires hazardous materials placards or any quantity of a material listed as a select agent or toxin in 42 CFR 73. (Emphasis added.)

The use of the phrase “any of the following Commercial motor vehicles” is clear evidence that the Board’s definition is inconsistent with other Pennsylvania law, as there are clearly categories of Commercial Motor Vehicles for which no Commercial Driver’s License (CDL) is required, and these are much smaller than the ones which require the CDL. Notably, Board’s definition even excludes some commercial vehicles for which a CDL is required.

The following excerpt from a PENNDOT Truckers’ Handbook provides conclusive evidence that Commercial Motor Vehicle is not such a limited term:



\* Drivers of **commercial motor vehicles over 10,000 pounds in interstate commerce or 17,000 pounds in intrastate commerce** must also possess a valid medical examiners certificate.

The term Commercial Motor Vehicle as used in the Video Gaming Act is simply a designation that is applicable to vehicles which are used to carry goods or passengers for compensation. Different Commercial Motor Vehicles are classified and regulated differently. Certainly, by regulating Commercial Vehicles over 10,000 pounds in a certain way, Pennsylvania law is recognizing that there are Commercial Motor Vehicles **under 10,000 pounds**.

We fully understand that the Board has a very legitimate interest in assuring that only legitimate truck stops are allowed to receive Establishment Licenses. We sympathize with the Board's desire to prevent abuses of the statute. However, the 50,000 gallon monthly diesel sale requirement (in contrast to the Illinois gallonage requirement of 10,000), and the three (3) acre rule, should prevent such abuse.

It is respectfully submitted that: 1) the definition of Commercial Motor Vehicle in the Video Gaming Act should be utilized in lieu of the Temporary Regulation Definition in Section 1101.1 of the Temporary Regulations; 2) that Section 1103(b)(2) of the Temporary Regulations should be replaced with the verbatim language of the statute; and 3) that the definition of Commercial Motor Vehicle utilized by PENNDOT, as that forth above (i.e., "A commercial vehicle is any type of motor vehicle used for transporting goods or passengers for compensation") should be adopted as the definition of Commercial Motor Vehicle for purposes of the Temporary Regulations.

### **Terminal Operator Licensure Restrictions – Temporary Regulation §1116.7**

Subsection (f) of Section 1116.7 of the Temporary Regulations provides details regarding what a Terminal Operator can do regarding "making the video gaming area and associated areas available for the conduct of video gaming." This subsection includes the following language:

For purposes of this section, an "inducement" shall not include payment by a terminal operator licensee for the actual costs of renovating an existing area of the footprint of the truck stop establishment for the purpose of making the video gaming area and associated areas available for the conduct of video gaming. The term, as used herein, shall not include making the area operate at the premises including wiring, and rewiring, software updates, ongoing video gaming terminal maintenance, redemption terminals, network connections, site controllers and costs associated with communicating with the central control computer system, as well as renovations to include flooring, lighting and barriers.

Because of the relatively low percentage of Gaming Revenue that the Truck Stop Establishments will receive (i.e., 15% of Gross Terminal Revenue), the Truck Stops will have relatively minimal incentive to create gaming venues designed to optimally prevent underage gambling and to provide the best customer service. Many existing truck stops lack the floor space to accommodate an optimal gaming area. This would particularly be the case in light of the requirements contained in Temporary Regulation §1112.7(r), which prescribes a minimum aisle width of 48". That requirement has a fairly



dramatic impact on the overall floor space which a truck stop must devote to video gaming. For a large variety of reasons, the Commonwealth of Pennsylvania, the truck stops, their patrons, and the other participants in the video gaming industry have a clear interest in making sure that video gaming is conducted in a responsible manner. A clearly delineated VGT area, built to monitor and control access, while at the same time providing a comfortable experience to customers, is a responsible business method that also optimizes revenue opportunities. In many cases, the only way to accomplish that goal will be to construct additions to existing truck stop buildings.

Temporary Regulation §1116.7(f) appears to limit Terminal Operator contributions to video gaming “buildout” to existing areas and structures, and not to building additions. This limitation is not found in the statutory language. If Terminal Operators are not allowed to contribute towards the construction and/or improvement of dedicated VGT building additions, many truck stops may opt to “squeeze” video gaming into “cramped quarters” within existing structures. Such deployments are not optimal for age control and player comfort.

A wider separation of video gaming from other components of a Truck Stops’ operation is desirable, and consistent with regulatory purposes. Those purposes would be hampered if substantial buildout of additions is not allowed. Some Truck Stops which would be eligible for licensure may decide not to proceed with video gaming at all.

Under the foregoing scenarios, projected tax revenue would not be achieved, and the type of truck stop gaming which develops will be far from optimal. Commonwealth, as a prospective Terminal Operator, is committed to providing as much funding as will be allowed in order to create optimal, responsible video gaming venues, instead of substandard facilities. No valid purpose will be served by preventing such expenditures.

### **Conclusion**

We are truly appreciative of your diligent efforts to create comprehensive Temporary Regulations which will implement the Video Gaming Act in order to promptly and efficiently allow this new segment of the gaming industry to develop and prosper in Pennsylvania, consistent with the legislative intent. Again, subject to the two (2) exceptions noted above, we believe that the Temporary Regulations will fairly and effectively allow for such implementation. We are working with Rutter’s, Inc. and several other reputable truck stop operators, all of which are firmly supportive of our views, and Chairman Saylor’s views, regarding the need to fully implement and honor the legislative intent of Act 42. We request that the Board implement the statute in a manner which assures that all legitimate, bona fide truck stops are eligible for Establishment Licenses. This will assure that all anticipated tax dollars are received by the Commonwealth of Pennsylvania, and that all truck stops which were intended to be benefitted by this legislation receive those benefits. We respectfully join Chairman Saylor in his request that you re-examine the Temporary Regulations addressed herein, and conform them to the legislative intent. As Chairman Saylor commented:

“So I just ask the Board to re-look at that and fit it within the legislative intent that was created by the Legislature and that was for all truck stops basically to qualify in that area.”



We truly thank you for your conscientious consideration of our comments. Please let us know if we can provide any additional information or perspective regarding these matters.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Miller", with a long horizontal flourish extending to the right.

Robert H. Miller

cc: Mr. Scott Hartman  
Honorable Thomas Wolf, Governor  
House Appropriations Committee Chairman Saylor  
Republican Caucus Leaders  
Democratic Caucus Leaders