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LESLIE A. LEWIS JOHNSON, CHIEF COUNSEL

PHONE: (717) 783-5417
FAX: (717) 783-2664
lrrc@lrrc.state.pa.us
<http://www.lrrc.state.pa.us>

INDEPENDENT REGULATORY REVIEW COMMISSION

333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

March 30, 2011

Kevin O'Toole, Executive Director
Pennsylvania Gaming Control Board
Strawberry Square
Verizon Tower, 5th Floor
Harrisburg, PA 17106-9060

Re: Regulation #125-138 (IRRC #2886)
Pennsylvania Gaming Control Board
Table Game Devices

Dear Mr. O'Toole:

Enclosed are the Commission's comments for consideration when you prepare the final version of this regulation. These comments are not a formal approval or disapproval of the regulation. However, they specify the regulatory review criteria that have not been met.

The comments will be available on our website at www.lrrc.state.pa.us. If you would like to discuss them, please contact me.

Sincerely,

Kim Kaufman
Executive Director
wbg
Enclosure

cc: Honorable Jane M. Earl, Majority Chairman, Senate Community, Economic and
Recreational Development Committee
Honorable Wayne D. Fontana, Minority Chairman, Senate Community, Economic and
Recreational Development Committee
Honorable Curt Schroder, Majority Chairman, House Gaming Oversight
Honorable Rosita C. Youngblood, Minority Chairman, House Gaming Oversight
Robert A. Mulle, Esq., Office of Attorney General
Andrew Clark, Esq., Office of General Counsel

Comments of the Independent Regulatory Review Commission



Pennsylvania Gaming Control Board Regulation #125-138 (IRRC #2886)

Table Game Devices

March 30, 2011

We submit for your consideration the following comments on the proposed rulemaking published in the January 29, 2011 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b). Section 5.1(a) of the Regulatory Review Act (71 P.S. § 745.5a(a)) directs the Pennsylvania Gaming Control Board (Board) to respond to all comments received from us or any other source.

1. Section 605a.2. Electronic wagering systems. – Implementation procedures; Clarity and lack of ambiguity.

Subsection (c)

This subsection states that all aspects of an electronic wagering system must be tested “and approved by the Bureau of Gaming Laboratory Operations prior to use at any licensed facility in this Commonwealth.” We are concerned that procedures for obtaining Bureau approval are not included in the proposed regulation. We suggest that the final-form regulation include the procedures or an appropriate cross-reference to where the procedures can be found. We have similar concerns with the following sections: §§ 605a.2(e); 605a.4(b); 605a.7(b); 605a.7(c); and 605.7(d)(3).

Subsection (d)

We have four concerns with this subsection. First, Subsection (d)(3)(ii) references “rake procedures established for the game.” Who establishes the “rake procedures” and where can they be found? This should be included in the final-form regulation.

Second, Subsection (d)(6) references “Poker revenue.” Is “Poker revenue” different than any other table game revenue? We believe that clarity could be improved if the term “Poker revenue” was defined.

Third, Subsection (d)(7) requires electronic wagering systems to generate reports that include 12 specific pieces of information. What happens to these reports? Are the reports supposed to be submitted to the Board? This should be clarified in the final-form regulation.

Fourth, Subsections (d)(7)(vii) and (viii) use the term "Poker rake time charges." What does this term mean? We recommend that it be defined in the final regulation.

2. Section 605a.4. Electronic gaming tables. – Reasonableness; Clarity and lack of ambiguity.

Subsection (g) states that electronic gaming tables that are not fully automated must be equipped with seven specific meters and "Other meters required by technical standards adopted by the Board." See § 605a.4(g)(8), pertaining to additional meters. We are concerned that Paragraph (g)(8) does not provide the regulated community with a clear standard that would allow them to comply with the regulation. We recommend that the final-form regulation include the information contained in the technical standard. In the alternative, we ask the Board to include a specific cross-reference to the technical standard that would need to be followed.

We have a similar concern with Section 605a.5(d)(12), relating to additional meters for fully automated table games.

3. Chapter 613a. Gaming Related Gaming Service Providers. – Clarity and lack of ambiguity.

Section 1103 of the Pennsylvania Race Horse Development and Gaming Act (4 Pa.C.S. §1103) defines the term "gaming service provider" as follows:

A person that is not required to be licensed as a manufacturer, supplier, management company or gaming junket enterprise and:

- (1) provides goods or services to a slot machine licensee or an applicant for a slot machine license for use in the operation of a licensed facility; or
- (2) provides goods or services at a licensed facility.

We ask the Board to explain why it has created the term "gaming related gaming service provider" instead of using the statutory term "gaming service provider." We believe clarity would be improved if the statutory term was used in the regulation.

If the Board believes that the use of the term "gaming related gaming service provider" is warranted, we ask the Board to define this term.

4. Section 613a.2. Gaming related gaming service provider certification applications. – Reasonableness; Implementation procedures; Clarity and lack of ambiguity.

Subsection (a) pertains to the application process that must be followed to obtain a gaming related gaming service provider certificate. We have two concerns. First, why must the table game certificate holder submit the documentation and fee for the gaming related gaming service provider that is seeking certification?

Second, Paragraph (a)(1) includes the phrase, "unless otherwise directed by the Board." This phrase is vague and does not establish a binding norm. Under what circumstances would there be a deviation from the application process? We recommend that it be deleted from the final-form regulation.

5. Section 613a.6. Gaming related gaming service provider list. – Reasonableness; Clarity and lack of ambiguity.

This subsection states that the Board will maintain a list of certified and approved gaming related gaming service providers, but it does not state where the list can be found. We suggest amending the final-form regulation to state that the list will be available on the Board's website.

6. Section 613a.7. Requirements for use of a gaming related gaming service provider. – Implementation procedures; Clarity and lack of ambiguity.

We have four concerns with this section. First, under Paragraph (1), what is a "gaming related service"? We recommend that the term be defined.

Second, under that same paragraph, the gaming related gaming service provider is required to submit its gaming related service to the Bureau of Gaming Laboratory Operations (Bureau). Will the Bureau review and approve the gaming related service? If so, similar to our first comment on Section 605a.2, we suggest that the procedures surrounding Bureau approval, or a cross-reference to the procedures, be included in the final-form regulation.

Third, Paragraph (3) includes a reference to Section 601a.4, relating to request to offer a new table game or new feature for an existing table game. This is a reference to a regulation that has not been published as a final rule. It is our understanding that the reference is to another Board table game regulation that will be published as a final rule in the near future. We are concerned that this rulemaking may be finalized before the other regulation is finalized. If this

occurs, it could lead to a confusing regulatory environment for those that must comply with the rulemaking. In the Preamble to the final-form version of this rulemaking, we ask the Board to explain its plan for promulgating these regulations in a manner that ensures all references are valid.

Fourth, Paragraph (4) references a certification fee that must be paid by the gaming related gaming service provider. Where can a gaming related gaming service provider find out what the fee is? Will the fee be posted to the Board's website? If so, we recommend that the final-form regulation be amended in a manner similar to the language found in Paragraph 613a.2(a)(2).

7. Section 613a.8. Permission to conduct business prior to certification. - Whether the regulation is consistent with the intent of the General Assembly.

This section allows the Board's Bureau of Licensing to authorize an applicant for gaming related gaming service provider certification to conduct business with a table game certificate holder if certain criteria are met. In the Preamble to the final-form regulation, we ask the Board to explain how this practice adequately protects the integrity of gaming in this Commonwealth.

In addition, if the Office of Enforcement Counsel denies an application for gaming related gaming service provider certification and that entity has provided a gaming related service to a table game certificate holder, can that gaming related service still be used by the table game certificate holder? If so, will the integrity of gaming in the Commonwealth be adequately protected?

We have similar concerns with § 615a.1, pertaining to table game devices and conditional licenses.

8. Section 615a.1. Table game devices; conditional licenses. - Clarity and lack of ambiguity.

In addition to the concern raised in the previous comment on Section 613a.8, we have two concerns. First, this section uses the term "table game devices." What is a "table game device"? We recommend that the term be defined.

Second, Paragraph (b)(5) requires the submittal of "full payment." Does this subsection pertain to the full payment of a particular fee? We ask the Board to clarify what must be paid, and if appropriate, include a reference to where the fee can be found.