

Comments of the Independent Regulatory Review Commission

on

Pennsylvania Gaming Control Board Regulation #125-72 (IRRC #2646)

General Provisions; and Applications

December 26, 2007

We submit for your consideration the following comments on the proposed rulemaking published in the October 27, 2007 *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.

Section 421a.6. Advertising. – Implementation procedures; Clarity.

Subsection (a)

This subsection will require certain licensees of the Board to discontinue particular advertisements or promotions “as expeditiously as possible” if the Board determines that the advertisements or promotions are not “within the spirit or intent of the act.” Both of the quoted phrases lack clarity and do not provide licensees with a definitive standard to follow. We recommend that the phrase “expeditiously as possible” be replaced with a specific time period. We also recommend that the Board list the criteria that specify what it considers to be outside of the “spirit or intent of the act.”

Subsection (b)

The term “advertisement” is defined in this section. We have two questions. First, would an email from a licensee to a customer or a potential customer be considered advertising? Second, is a “promotion” different than an “advertisement”? If so, we recommend that a definition of “promotion” be added to the final-form rulemaking.

Subsection (d)

This subsection pertains to mandatory language regarding problem gambling that must appear in advertisements. It requires Board approval of the text and type size to be used in the advertisements. We have a suggestion and a question.

First, a commentator has suggested that the regulation be amended to include the specific requirements for the mandatory language. They note that this would eliminate the need for review and approval by the Board which, in turn, would facilitate marketing initiatives and help avoid time delays. We agree with this suggestion and recommend the Board include more

specific requirements pertaining to text and type size in the final-form regulation and eliminate the requirement for Board approval of advertisements.

Second, do the requirements of this subsection apply to promotions?

Subsection (e)

Under this subsection, slot machine licensees are prohibited from using an individual or “a virtual facsimile thereof” at a licensed facility to induce a person to gamble. A commentator has questioned what is meant by the term “virtual facsimile.” We agree that this term is unclear and ask the Board to define it in the final-form regulation.