

DRAFT REGULATIONS COMMENT FORM

PGCB GMS-11

RECEIVED

MAY 13 2005

Please complete all of the fields below before printing:

DATE 05/11/2005 ADDRESS 1
SECTION # OR SUBJECT Section F Minority and Women's Business E ADDRESS 2
FIRST NAME Bruce CITY
LAST NAME Canedy STATE
ORGANIZATION NAME Tresbri Development Corporation ZIP CODE
EMAIL ADDRESS COUNTY Allagheny
TELEPHONE

COMMENTS

Gaming will provide major economic growth throughout Pennsylvania. As stated by Governor Rendell, this industry will have the following impact:

- Horseracing Industry Jobs Retained 6800
- Total New Jobs Created 36,000
- Economic Impact \$4.9 billion
- Construction Jobs Created 2000

The planning and construction of these new facilities can amount to soft cost of as much as 30% of the actual construction cost. Soft cost include items such as engineering, architect, legal, construction management, appraisals, insurance, title and land transfer cost, etc. Section 481.1 (a) and (b) reflect the operational side of gaming business, not the construction (soft cost hard cost) activities required to construct the facilities. Construction activities should be identified as areas for Minority and Women's Business Enterprises participation.

Section 481.4.(a) Establishment of diversity plan required

This section defines the requirement for a Diversity Plan. In addition, the plan should describe the steps that a Minority and Women's Business Enterprises can take with the Licensee before filing a formal complaint with the Board.

DRAFT REGULATIONS COMMENT FORM

Please complete all of the fields below before printing:

PGCB GMS-12
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DATE 05/11/2005 ADDRESS 1
SECTION # OR ADDRESS 2
SUBJECT 401.4-Key Employee Qualifer
FIRST NAME Susan CITY
LAST NAME Walker STATE
ORGANIZATION Cyberview Technology ZIP CODE
NAME
EMAIL ADDRESS COUNTY Clark
TELEPHONE

MAY 13 2005

COMMENTS

"Key Employee Qualifier". This definition, which is not included in the Act, appears as a means to address those persons (other than Key employees defined in statute, which primarily address certain employees of slot machine licensees or racetrack facilities), who must submit to background investigations. While the Board must require background investigations of certain persons affiliated with prospective licensees under the Act, the "Key employer qualifier" definition is far too broad, which will result in the unnecessary filings of a large number of applications for review and action by the Board and, additionally, appreciable costs to licensee applicants. Persons included under the proposed definition required to submit to a background investigation are those holding a "management or supervisory" position, any beneficial interest in or ownership of the securities in, or an underwriter of a licensee. The proposed definition appears to be drawn from § 1311 (A) - Key Employee requirement qualifications under the Slot Machine License Application Business Entity Requirements- of the Act.

If the Board is desirous of obtaining background information on certain management and supervisory employees of slot machine licensees, we would recommend the Board expand certain positions under the definition of "Gaming Employees" or include these positions under the authority granted the Board under the Act in the definition of "Key Employee", which includes "[a]nd such other positions which the Pennsylvania Gaming Control Board shall determine, based on detailed analyses of job descriptions as provided in the internal controls of the licensee as approved by the Board."

The Board may wish to consider establishing a definition of a "Slot Machine Key Person Qualifier" and a "Manufacturer and Supplier Key Person Qualifier". The provisions of the Act detail a number of additional licensing and background requirements for persons associated with slot machine licensees, which are not required of manufacturer and supplier licensees. We would ask the Board to consider limiting the background investigation requirements for manufacturer and supplier licensees to those persons enumerated in § 1317 (B) (2) of the Act, which include officers, directors, owners, and those employees and persons who have significant control over the operations of the licensee as determined by the Board. Owners under this definition should be limited to persons determined by the Board to hold a "Controlling Interest" as defined in the Act and proposed regulations. This is consistent with § 1202 (B) (1) of the Act, which gives the Board the specific power and duty "To require background investigations on prospective or existing licensees, permittees or persons holding a controlling interest in any prospective or existing licensee or permittee under the jurisdiction of the board." (emphasis added). By not limiting the ownership requirement, every stockholder of a publicly or privately held corporation would be required to file the expansive Multi-jurisdictional Personal History Form.

Given the references in § 421.2, to both Key Employees and Key Employee Qualifier, we recommend the Board consider specifying that a person is only required to be approved as either a Key Employee or Key Employer Qualifier as determined by the Board.

DRAFT REGULATIONS COMMENT FORM

Please complete all of the fields below before printing:

DATE 05/05/2005 ADDRESS 1
SECTION # OR ADDRESS 2
SUBJECT 427.2 (4)(i)-Application Fees
FIRST NAME Susan CITY
LAST NAME Walker STATE
ORGANIZATION NAME Cyberview Technology ZIP CODE
EMAIL ADDRESS COUNTY Clark
TELEPHONE

COMMENTS

§ 427.2 (4)(i) The application fee is \$5,000 per application for each key employee qualifier, subject to additional charges based on the actual expenses incurred by the Board in conducting the background investigation. This fee is extremely high in comparison to application fees for key employees imposed by other gaming regulatory jurisdictions. For comparison purposes, key employee application fees are as follows in these states: Nevada- \$500; California- \$500; Colorado-\$250 and \$1,000 deposit. A number of states include Key Employee applications under the manufacturer license application fee and do not assess a separate fee for each person required to file a personal background disclosure form. The fee charged should be reasonable in relationship to the funds necessary to fund the Board's operations. The Board should also take into consideration the amount of the legislatively set fee for the various licenses when establishing the Key Employee Qualifier application fee in order to foster competition and the availability of licensed manufacturer's products in the Commonwealth of Pennsylvania. The Board is given express authority to assess the actual costs of the investigation to the licensee. The Board may wish to consider assessing a reasonable deposit (\$1,000) for the investigative costs of Key Employee Qualifier applicants and, in the event the deposit is insufficient to cover the actual costs, notify the applicant for an additional deposit to cover the actual costs. It is also important that investigations be conducted in a cost efficient manner. In establishing this fee, the Board should also take into consideration the reciprocity provision to approve such applicants holding licenses in other jurisdictions (which we commend) under this section.

DRAFT REGULATIONS COMMENT FORM

Please complete all of the fields below before printing:

DATE	05/11/2005	ADDRESS 1
SECTION # OR SUBJECT	427.2 (8)(b)	ADDRESS 2
FIRST NAME	Susan	CITY
LAST NAME	Walker	STATE
ORGANIZATION NAME	Cyberview Technology	ZIP CODE
EMAIL ADDRESS		COUNTY Clark
		TELEPHONE

COMMENTS

§ 427.2 (8)(b)(3) - In each application for a manufacturer's license, the application must provide books, records, documentation as to "the integrity of all financial backers, investors, bondholders, etc." This type of assurance is too difficult for a manufacturer to attest to as they do not perform background investigations on all investors. This should be limited to those investors holding a controlling interest of greater than 5% interest in the manufacturer, which do not otherwise fall within the definition of an institutional investor.

§ 427.2 (8)(b)(4). The manufacturer must demonstrate the suitability through a background investigation of all owners. The same comment as above applies to this subsection as well.

§ 427.2 (8)(b)(4) (ii) and (iii). The regulation should clarify that the tax clearance and unemployment compensation tax review performed by the Department only applies to applicants filing returns with or having employees in the Commonwealth .

DRAFT REGULATIONS COMMENT FORM

Please complete all of the fields below before printing:

DATE 05/05/2005 ADDRESS 1
SECTION # OR ADDRESS 2
SUBJECT 431.3 (b) & (d)
FIRST NAME Susan CITY
LAST NAME Walker STATE
ORGANIZATION Cyberview Technology ZIP CODE
NAME
EMAIL ADDRESS COUNTY Clark
TELEPHONE

COMMENTS

§ 431.1 Supplier license requirements.

§ 431.3(b) requires that licensed suppliers only employ technicians who have been approved by licensed manufacturers. How will such approval be established? It should be clarified that a manufacturer is not required to approve each and every technician employed by a Supplier. It should be the manufacturer's responsibility to provide initial training and subsequent training where necessary on the operation, service, and repair of its slot machines to the Supplier; however, the Supplier should be responsible for training new technician employees it hires. We would recommend that the manufacturer file a letter of record with the Board providing an overview of the service training provided and its Supplier(s) successful completion of the training and understanding in properly servicing the manufacturer's slot machine. For clarification purposes, the Board may wish to include "Slot Technicians" within the definition of Gaming Employee.

§ 431.1 (d). System Exclusion for Manufacturers. This provision excludes gaming related systems from the requirement that they be provided and repaired by a licensed supplier. We recommend that the Board clarify in the regulation that, under this exemption, a slot machine licensee can directly pay a licensed manufacturer for the purchase or lease of such systems. As the regulation allows manufacturer employees to repair these systems, will the Board exempt such employees from obtaining an occupational permit or gaming employee license? It is important that such systems be timely repaired with qualified individuals who are immediately available. It may be impractical to license a number of manufacturer employees in order to ensure a licensed employee's availability to timely respond to a service matter in the Commonwealth. We would recommend that the manufacturer supply the Board with a list of employees' name, address, and driver license that may perform service and repair on systems sold to slot machine licensees.

DRAFT REGULATIONS COMMENT FORM

Please complete all of the fields below before printing:

DATE	05/05/2005	ADDRESS 1
SECTION # OR SUBJECT	433.1	ADDRESS 2
FIRST NAME	Susan	CITY
LAST NAME	Walker	STATE
ORGANIZATION NAME	Cyberview Technology	ZIP CODE
EMAIL ADDRESS		COUNTY Clark
		TELEPHONE

COMMENTS

§ 433.1 Renewal of manufacturer and supplier license.

(a) A license must be renewed each year. If the Board has a limited renewal form that only requires the licensee to update changes from the previous application, this requirement is not burdensome. As a recommendation, we would ask that this be clarified in the regulation, so an entire new application is not required each year. Since updated applications can become unmanageable over time, the Board may wish to consider requiring the submission of a new, completed corporate application form every five years (but not key employee qualifiers).

DRAFT REGULATIONS COMMENT FORM

Please complete all of the fields below before printing:

DATE	05/05/2005	ADDRESS 1
SECTION # OR SUBJECT	435.1	ADDRESS 2
FIRST NAME	Susan	CITY
LAST NAME	Walker	STATE
ORGANIZATION NAME	Cyberview Technology	ZIP CODE
EMAIL ADDRESS		COUNTY Clark
		TELEPHONE

COMMENTS

§ 435.1 Employees- General provisions.

(f) This section states that an individual may not be employed by a manufacture licensee in any capacity unless he is a citizen of the US or can demonstrate that he holds a current and valid work authorization. By this requirement, is the Board suggesting that manufacturers with offices and employees located and working internationally must all have such work authorizations, notwithstanding such employee may not work in the United States? This requirement is too far reaching and should be limited to such employees regularly performing work on behalf of the manufacturer in the US who are required to have work visas. Additionally, not all employees employed by the manufacturer, who may be required to file as a key employee qualifier, will ever have reason to get a visa or work permit if they are not performing those duties in the US.

DRAFT REGULATIONS COMMENT FORM

Please complete all of the fields below before printing:

DATE	05/05/2005	ADDRESS 1
SECTION # OR SUBJECT	435.2	ADDRESS 2
FIRST NAME	Susan	CITY
LAST NAME	Walker	STATE
ORGANIZATION NAME	Cyberview Technology	ZIP CODE
EMAIL ADDRESS		COUNTY Clark
		TELEPHONE

COMMENTS

§ 435.2 Key employee qualifier license.

No where in this section does it state the length of time for which this license is issued. . There is no provision on renewal of employee licenses. Given that the licensee is required to timely notify the Board of any criminal offenses and material changes in his/her application on file, we would recommend no renewal of the key employee qualifier. Reference is made that a photograph from the Commonwealth Photo Imaging Network must be provided initially and every 2 years thereafter. Is this suggesting that the person get the photo taken in Pennsylvania? This will be an extremely difficult burden, since many key qualifier employees do not visit the Commonwealth or have any direct business dealings therein. Additionally, the regulation should specify that the tax clearances from the Commonwealth are only applicable to those filing tax returns in the State of Pennsylvania. Can you also clarify that fingerprint cards do not need to be administered in the Commonwealth, but must be administered through either a law enforcement agency or person holding the proper certification and credentials to administer fingerprints?

DRAFT REGULATIONS COMMENT FORM

Please complete all of the fields below before printing:

DATE 05/11/2005 ADDRESS 1
SECTION # OR ADDRESS 2
SUBJECT 461.1- Protocol requirements
FIRST NAME Susan CITY
LAST NAME Walker STATE
ORGANIZATION Cyberview Technology ZIP CODE
NAME
EMAIL ADDRESS COUNTY Clark
TELEPHONE

COMMENTS

461.1- Protocol requirements.

We recognize that under § 1324 of the Act the acquisition and operation of the central control computer and the protocol requirements for the slot machines to communicate with the central control computer are the responsibility of the Department of Revenue. However, § 1323 (a)(7) and (8) of the Act requires that the central control computer have the ability to meet all reporting and control requirements as prescribed by the Board and Department and any other capabilities as determined by the Department in consultation with the Board. As the Board has authority over the testing and approval of control monitoring systems to which every slot machine will be linked in each of the licensed facilities, we would ask that in your consultations with the Department to consider allowing the required information from the slot machines to be communicated through the control monitoring system in each licensed facility to the central control computer. The slot machine manufacturers have integrated the SAS gaming standard protocol to report all significant events from their slot machines to control monitoring systems certified by recognized independent and state testing labs. It would expedite implementation for the Commonwealth to perform the necessary protocol testing of a few control monitoring systems with the central control system to ensure the required information is being properly communicated rather than testing the protocol and reporting of each any every machine model with the central control system. Additionally, any hardware or software modification to a slot machine model would require testing with the central control computer that could result in slowing entry of new products into the Commonwealth.

DRAFT REGULATIONS COMMENT FORM

Please complete all of the fields below before printing:

DATE	05/05/2005	ADDRESS 1
SECTION # OR SUBJECT	461.2	ADDRESS 2
FIRST NAME	Susan	CITY
LAST NAME	Walker	STATE
ORGANIZATION NAME	Cyberview Technology	ZIP CODE
EMAIL ADDRESS		COUNTY Clark
		TELEPHONE

COMMENTS

CHAPTER 461. SLOT MACHINE TESTING AND CERTIFICATION REQUIREMENTS

A general comment is that there are no testing standards to ensure the secure or proper operation of the slot machines, systems as contemplated under the definition of associated equipment, or games. While it is not necessary to set out in detail such testing standards in the regulation, they should, however, be referenced in the regulation. We would ask that the Board consider amending the proposed regulations as follows:
§ 461.2. Testing and certification generally.

(a) In accordance with section 1320 of the Act (relating to Slot Machine Testing and Certification Standards), all slot machine models, games, and associated equipment designed specifically for and integral to gaming operations to be deployed in this Commonwealth shall be tested and certified prior to operation and use in a licensed facility in this Commonwealth.

(b) All slot machine models, games, and associated equipment designed specifically for and integral to gaming operations operated in this Commonwealth must be approved by the Board.

(c) The Board has the authority to...

(1) Accept other gaming jurisdiction certification under section 1320 of the Act.....pursuant to such gaming jurisdiction's current published testing and technical standards

(d) (2) Utilize the services of a slot machine testing and certification facility to conduct the testing pursuant to its current published testing and technical standards until a slot machine testing and certification facility is created by the Board.

DRAFT REGULATIONS COMMENT FORM

Please complete all of the fields below before printing:

DATE	05/05/2005	ADDRESS 1
SECTION # OR SUBJECT	Regional Suppliers	ADDRESS 2
FIRST NAME	Susan	CITY
LAST NAME	Walker	STATE
ORGANIZATION NAME	Cyberview Technology	ZIP CODE
EMAIL ADDRESS		COUNTY Clark
		TELEPHONE

COMMENTS

Regional Suppliers.
We understand that the Board has been presented with a proposed amendment requiring regional suppliers. This will force a supplier to get a license for all 5 regions, if it wants to cover the Commonwealth. It also requires manufacturers to sign up different suppliers (adding to its cost in training), if it is unable to contract with a supplier who is licensed in all regions. This is an unnecessary regulatory burden, which will end up costing the industry time and money with no real increase in jobs, for which the regulation appeared to be written.

FOX ♦ ROTHSCCHILD^{LLP}

ATTORNEYS AT LAW

PGCB GMS-13

RECEIVED

MAY 13 2005

DANIEL S. OJSERKIS
OFFICE MANAGING PARTNER

Marie Jiapello Jones

File No. 93676-00007

May 11, 2005

Pennsylvania Gaming Control Board
P.O. Box 69060
Harrisburg, PA 17106-9060
Attn: Public Comment

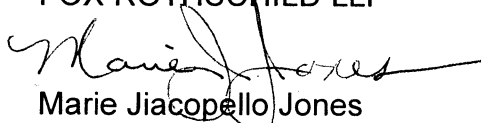
Re: Universal DeSarrolos Electronicos d/b/a Unidesa Gaming
& Systems - Comments to Proposed Regulations

Dear Chair and Board Members:

Please be advised that we represent Universal DeSarrolos Electronicos d/b/a Unidesa Gaming & Systems ("Unidesa"), a manufacturer of slot machines, with offices at On behalf of Unidesa, we submit the following comments to the proposed temporary regulations, Title 58. Recreation, Pennsylvania Gaming Control Board (the "Board") and the proposed regional supplier amendments.

Thank you for considering the comments of Unidesa to the proposed temporary regulations and the draft proposal regarding regional suppliers.

Respectfully submitted,
FOX ROTHSCCHILD LLP


Marie Jiapello Jones

MJJ/db
Enc.

cc: Gerry Michielsen, Area Manager
Nuria Gibert Canameras
Nicholas Casiello, Jr., Esquire

**COMMENTS OF FOX ROTHSCHILD LLP
ON BEHALF OF
UNIVERSAL DESARROLLOS ELECTRONICOS D/B/A
UNIDESA GAMING & SYSTEMS**

Chapter 401. Preliminary Provisions.

§ 401.4. Definitions.

- Institutional Investor. Page 14. The definition of an institutional investor mirrors the provision of the Pennsylvania Gaming Act. However, the proposal does not tie this definition into an exemption from any licensure requirement. We would suggest utilizing a waiver requirement similar to that found in the New Jersey Casino Control Commission (“NJCCC”) regulations. Please see N.J.A.C. 19:51-1.14, attached hereto and incorporated herein by reference.

- Key Employee Qualifier. Page 16. The definition includes individuals who hold a management or supervisory position or who control the operations of a manufacturer or supplier and includes officers, directors, persons who directly or indirectly hold any beneficial interest in or ownership of the securities of a licensee, and lenders (other than banks). This is a key provision regarding which individuals associated with a manufacturer and supplier must be licensed and we think it is too broad. We suggest that the Board limit the ownership interest to voting securities, thus eliminating debt securities and options and warrants (see definition of “Securities” in Pennsylvania Act). This would eliminate the need for filing for someone who does not hold a current voting interest in the entity. We also suggest that the Board have the authority to determine that someone listed in this definition does not have to be licensed if the licensee demonstrates that the person does not have the ability to control the licensee, similar to NJCCC regulations. Please see N.J.A.C. 19:51-1.14, attached

**COMMENTS OF FOX ROTHSCHILD LLP
ON BEHALF OF
UNIVERSAL DESARROLLOS ELECTRONICOS D/B/A
UNIDESA GAMING & SYSTEMS**

hereto and incorporated herein by reference. Many large entities have numerous divisions and officers that would not have any involvement in the gaming business of the company. A provision similar to New Jersey would permit the Board discretion in who has to file.

2. All correspondence concerning the realty, construction, maintenance, or business of a proposed or existing casino hotel or related facility;

3. Copies of all promotional material and advertising;

4. A personnel file on each employee of the licensee, including sales representatives;

5. Financial records of all transactions concerning the realty, construction, maintenance, or business of a proposed or existing casino hotel or related facility.

(b) The records listed in (a) above shall be held for at least five years.

Amended by R.1989 d.281, effective June 5, 1989.
See: 21 N.J.R. 705(a), 21 N.J.R. 1525(a).

Reduction of recordkeeping to transactions directly related to the casino hotel or related facility. Requirement deleted for maintenance of personnel file beyond five years and submission of files to Commission upon closing.

19:51-1.10 Causes for suspension, failure to renew or revocation of a license

(a) Any of the following shall be cause for suspension, refusal to renew or revocation of a casino service industry license, although suspension, refusal to renew or revocation may be made for sufficient cause other than those listed:

1. Violation of any provision of the Casino Control Act or these rules and regulations;

2. Conduct which would disqualify the applicant, or any other person required to be qualified, if such person were applying for original licensure;

3. Failure to comply with all applicable Federal, State and local statutes, ordinances and regulations;

4. A material departure from any representation made in the application for licensure.

19:51-1.11 Equal employment opportunity

The rules relating to equal employment opportunity and affirmative action program requirements for casino service industry enterprises are set forth in N.J.A.C. 19:53-1.3, 1.5, 1.6 and 1.7.

19:51-1.12 Fees

The general rules relating to the fees for the issuance and renewal of casino service industry and junket enterprise licenses are set forth in N.J.A.C. 19:41-9.8.

Amended by R.1992 d.412, effective October 19, 1992.
See: 24 N.J.R. 2695(b), 24 N.J.R. 3738(a).

Junket enterprise added.

Amended by R.1997 d.1, effective January 6, 1997.
See: 28 N.J.R. 4570(a), 29 N.J.R. 157(a).

Amended N.J.A.C. references and deleted reference to additional rules.

19:51-1.13 Exemption

(a) The general rules relating to exemption of persons or fields of commerce from licensure as casino service industries are set forth in N.J.S.A. 5:12-92(c).

(b) The Commission may, upon the written request of any person, or upon its own initiative, exempt any person or field of commerce, other than a junket enterprise, from the casino service industry licensure requirements of sections 92c and d of the Act, pursuant to the standards contained in N.J.S.A. 5:12-92(c).

Amended by R.1992 d.412, effective October 19, 1992.

See: 24 N.J.R. 2695(b), 24 N.J.R. 3738(a).

Exemption not allowed for junket enterprise.

19:51-1.14 Persons required to be qualified

(a) Except as otherwise provided in (b) below and N.J.A.C. 19:51-1.14B, no casino service industry license shall be issued or renewed unless the individual qualifications of each of the following persons shall have first been established in accordance with all provisions, including those cited, of the Act and the rules of the Commission. The Commission shall apply the following provisions to both corporate and non-corporate applicants or licensees or, if that is not possible, the Commission will in its discretion apply comparable standards to non-corporate applicants and licensees.

1. In the case of casino service industry licenses issued in accordance with subsections 92a and b of the Act:

i. The applicant or licensee;

ii. If the applicant or licensee is, or if it is to become a subsidiary, each holding company and each intermediary company;

iii. Each natural person who directly or indirectly holds any beneficial or ownership interest of five percent or more of the applicant or licensee;

iv. Each person who directly or indirectly holds any beneficial or ownership interest of five percent or more of a holding company or intermediary company of the applicant or licensee;

v. Each director of the applicant or licensee or of a holding or intermediary company thereof;

vi. Each officer of the applicant or licensee or of a holding or intermediary company thereof;

vii. The management employee supervising the regional or local office which employs the sales representative who will solicit business or deal directly with a casino licensee;

viii. Each employee who will act as a sales representative or otherwise regularly engage in the solicitation of business from casino licensees.

2. In the case of casino service industry or junket enterprise licenses issued in accordance with subsections 92c and d or section 102 of the Act:

- i. The applicant or licensee;
- ii. Each natural person who directly holds any beneficial or ownership interest of five percent or more or who indirectly holds any beneficial or ownership interest of 10 percent or more of the applicant or licensee;
- iii. Each holding company that directly holds any beneficial or ownership interest of five percent or more of the applicant or licensee.
- iv. Each inside director of the applicant or licensee;
- v. Each officer of the applicant or licensee;
- vi. The management employee supervising the regional or local office which employs the sales representative or junket representative soliciting business or dealing directly with a casino licensee;
- vii. Each employee who will act as a sales representative or otherwise regularly engage in the solicitation of business from casino licensees and each junket representative who will deal directly with casino licensees or their employees.

(b) Notwithstanding (a) above, any of the following persons may request in writing that the Commission waive their obligation to qualify as part of a casino service industry license issuance or renewal by making the appropriate showing required in (b)1 through 4 below:

1. If the person is required to qualify as an officer, the person shall be required to demonstrate that he or she is not significantly involved in and has no authority over the conduct of business with a casino licensee. Such request shall include, at a minimum, the following:

- i. A description of his or her title, duties and responsibilities with the applicant, licensee or with any affiliate thereof;
- ii. The terms of his or her compensation; and
- iii. A certification by the officer or, if the applicant or licensee is governed by N.J.S.A. 5:12-92c and d, by counsel for the applicant or licensee, stating that the officer is not significantly involved in and has no authority over the conduct of business with any casino licensee or applicant.

2. If the person is required to qualify as an outside director of a holding company of an applicant or licensee governed by N.J.S.A. 5:12-92a, the person shall be required to demonstrate that he or she is not significantly involved in the management or ownership of the applicant or licensee. Such request shall include, at a minimum, the following:

- i. A description of his or her title, duties and responsibilities with the applicant, licensee or with any affiliate thereof;
- ii. The terms of his or her compensation;
- iii. Any board committee memberships, including a description of the functions and responsibilities of any such committee;
- iv. His or her ownership interest; and
- v. A certification by the director stating that the director is not significantly involved in the management or ownership of the applicant or licensee.

3. If the person is required to qualify as an owner of the applicant or licensee or a holding or intermediary company thereof and requests a waiver as an institutional investor, the person shall be required to demonstrate compliance with the standards for institutional investor status set forth in N.J.S.A. 5:12-27.1 as well as the standards for waiver set forth in N.J.S.A. 5:12-85f, as applied to the casino service industry applicant or licensee, regardless of whether such applicant or licensee is publicly traded or privately held. Such request shall include, at a minimum, the following:

- i. The number of shares held and percent of ownership;
- ii. A copy of the most recent notice filed with the Securities and Exchange Commission;
- iii. A list of any direct or indirect owners;
- iv. An explanation as to why such investor should be considered an institutional investor pursuant to N.J.S.A. 5:12-27.1; and
- v. A certification by the investor stating that the investor has no present involvement in, and no intention of influencing the business activities of, the applicant or licensee or any holding or intermediary company thereof and will give the Commission 30 days notice if the investor determines to become involved in or influence such activities in the future.

4. If the person is required to qualify as an owner of the applicant or licensee or of a holding or intermediary company of the applicant or licensee, the person shall be required to demonstrate their inability to control such applicant, licensee or holding or intermediary company. For a publicly traded corporation, any person who owns or beneficially holds five percent or more of the equity securities of such corporation shall be presumed to have the ability to control such corporation, unless such presumption is rebutted by clear and convincing evidence.

(c) Notwithstanding (a) and (b) above, the Commission may require a casino service industry applicant or licensee to establish the qualifications of any person if the Commission determines that the qualification of such person would further the policies of the Act. In making such determination, the Commission shall consider, without limitation, the following:

1. Title, duties and responsibilities;
2. Terms of compensation;
3. Ownership interest;
4. Prior status as a qualifier;
5. Ability to appoint a member of the board of directors;
6. Commonality of interest with other owners of the applicant or licensee, or holding or intermediary company thereof;
7. Business relationship with the applicant or licensee;
8. Criminal conduct or associations; and
9. The recommendations of the Division.

(d) In addition to the persons required to qualify pursuant to (a) above, each applicant for a junket enterprise license may be required, upon directive from the Commission, to establish the qualifications of any junket representative employed by that junket enterprise, regardless of whether such junket representative deals directly with a casino licensee.

1. The Division may request the Commission to require a junket representative employed by a junket enterprise licensee or applicant to establish his or her qualifications at any time.

2. Any junket enterprise required to establish the qualifications of a junket representative pursuant to this subsection may be required, subject to the provisions of N.J.A.C. 19:41-8.6, to pursue a determination as to the qualifications of the junket representative regardless of whether the employment relationship with the junket representative has been terminated.

3. Any person required to establish his or her qualifications as a junket representative pursuant to this subsection may be required to pursue a determination as to his or her qualifications as a junket representative regardless of whether the employment relationship with the junket enterprise has been terminated.

R.1979 d.376, effective September 26, 1979.

See: 11 N.J.R. 265(a), 11 N.J.R. 599(b).

Amended by R.1989 d.281, effective June 5, 1989.

See: 21 N.J.R. 705(a), 21 N.J.R. 1525(a).

Technical changes.

Amended by R.1992 d.412, effective October 19, 1992.

See: 24 N.J.R. 2695(b), 24 N.J.R. 3738(a).

Junket enterprise added; open to review at any time.

Amended by R.1993 d.37, effective January 19, 1993.

See: 24 N.J.R. 3695(a), 25 N.J.R. 348(b).

Stylistic changes.

Amended by R.1997 d.1, effective January 6, 1997.

See: 28 N.J.R. 4570(a), 29 N.J.R. 157(a).

Amended section name.

Amended by R.1998 d.475, effective September 21, 1998.

See: 30 N.J.R. 2370(b), 30 N.J.R. 3515(a).

Rewrote (a); and added new (b) and (c).

Amended by R.2001 d.94, effective March 19, 2001.

See: 32 N.J.R. 3757(a), 33 N.J.R. 1019(b).

Rewrote section.

Amended by R.2001 d.359, effective October 1, 2001.

See: 33 N.J.R. 2258(a), 33 N.J.R. 3454(b).

In (a)2iv, inserted "inside" preceding "director"; rewrote (b)2 and (b)2v.

Amended by R.2002 d.78, effective March 18, 2002.

See: 33 N.J.R. 3723(a), 34 N.J.R. 1273(b).

In (a), substituted "Except as otherwise provided in (b) below and N.J.A.C. 19:51-1.14B, no" for "No" at the beginning of the introductory paragraph.

19:51-1.14A Notification of changes in qualifiers of gaming-related casino service industry licensees or applicants and holding companies

(a) Each casino service industry licensee or applicant required to be licensed in accordance with N.J.S.A. 5:12-92a and N.J.A.C. 19:51-1.2 shall notify the Commission and the Division, in writing, within five business days, of the following:

1. The appointment, nomination, election, resignation, termination, incapacitation or death of any natural person required to qualify pursuant to N.J.A.C. 19:51-1.14(a)1 or (c);

2. The identity of any person required to be qualified pursuant to N.J.A.C. 19:51-1.14(a)1iii or iv on the basis of a newly acquired ownership interest; or

3. The identity of any person whose obligation to qualify was waived pursuant to N.J.A.C. 19:51-1.14(b)3 or 4 if that person subsequently attains an ownership interest that is:

i. At least five percent greater than the interest held at the time the most recent waiver was granted; and

ii. At least 10 percent or more of the applicant, licensee or holding or intermediary company thereof.

(b) For each new qualifier identified pursuant to (a)1 or 2 above, the following forms, as applicable, shall be filed with the Commission within 30 days of the mailing of the required notice; provided, however, that the Commission may, upon written request from the licensee or applicant and for good cause shown, grant an additional 30 days within which to file the required forms:

1. A complete application for qualification as set forth in N.J.A.C. 19:41-7.1A for each new natural person qualifier, except that an outside director of a holding or intermediary company shall be permitted to file a Personal History Disclosure Form-2A (PHD-2A) as set forth in N.J.A.C. 19:41-5.4; or

2. A complete Business Entity Disclosure Form-Gaming (BED-Gaming) as set forth in N.J.A.C. 19:41-5.15 for each new entity qualifier.

(c) For each person identified pursuant to (a)3 above, a new petition for a waiver of qualification pursuant to N.J.A.C. 19:51-1.14(b)3 or 4 shall be filed with the Commission within 30 days of the mailing of the required notice.

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Chapter 407. Public Access to Board Records.

- 407.1. Case Files. Pages 25 – 26. This provision provides that the Board shall place records into confidential and non-confidential files and that the Board will determine if confidential information can be released to someone requesting same. The Board should provide notice and the opportunity to be heard to the person who filed the confidential information before confidential information is released.

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Chapter 423. Applications.

423.1. General Requirements.

- (i). Page 32. This section requires that an applicant who submits documents in a language other than English provide an English translation and include information regarding the translator and a verification from the translator of the truth and accuracy of the translation. Many manufacturers are either foreign based entities or transact business in foreign countries. The requirement that all documents not in English be translated and include certified translations is unnecessary and burdensome for the applicant. We would recommend that the Board adopt a more flexible standard, similar to the NJCCC regulations, that allows the Board to request translated copies of documents they deem necessary and permits summaries of same. Please see N.J.A.C. 19:41-7.14, attached hereto and incorporated herein by reference.

19:41-7.14 Duty to submit English translation of documents in foreign language

Any registrant, applicant, qualifier or licensee that submits a document which is in a language other than English to the Commission or the Division with an application or in response to a Commission or Division request for information shall, at the request of the Commissioner or Division, also submit an English translation of the non-English language document, except that the Commission or Division may permit the submission of an English summary in lieu of a complete translation. The translation or summary shall be printed or typed and shall include the signature, printed or typed name, address and telephone number of the person performing the translation or summary.

Amended by R.1978 d.175, effective May 25, 1978.

See: 10 N.J.R. 210(b), 10 N.J.R. 306(a).

Amended by R.1982 d.190, effective June 21, 1982.

See: 14 N.J.R. 380(b), 14 N.J.R. 664(b).

Deleted Personal History Disclosure Form 2 and replaced with new Form 2A.

Amended by R.1984 d.369, effective August 20, 1984 (operative January 1, 1985).

See: 16 N.J.R. 1336(a), 16 N.J.R. 2302(c).

Added new Personal History Disclosure Form 4A to replace Form 4.

Amended by R.1985 d.50, effective February 19, 1985 (operative May 1, 1985).

See: 16 N.J.R. 3302(a), 17 N.J.R. 480(b).

Vendor Registration Form amended.

Repealed by R.1993 d.429, effective September 7, 1993.

See: 25 N.J.R. 2655(a), 25 N.J.R. 4120(a).

Section was "Form of application".

New Rule, R.2001 d.400, effective November 5, 2001.

See: 33 N.J.R. 2257(b), 33 N.J.R. 3760(a).

Case Notes

Amendment to former application form sought on constitutional grounds. In re: Martin, 90 N.J. 295 (1982).

Disclosure of sealed juvenile adjudications. State v. W.J.A., 173 N.J. Super. 19 (Law.Div.1980).

19:41-7.15 Format of papers

All application papers submitted to the Commission or Division shall be on paper approximately 8½ by 11 inches in size of customary weight and quality and bound on the left margin or upper left corner in volumes not to exceed 150 sheets. Where larger sheets are required for exhibits, they shall be folded substantially to the size indicated. All such papers, unless printed, shall be typed in a type size of pica or larger and double-spaced with margins of at least one inch. Copies may be reproduced by any method capable of providing plainly legible copies.

19:41-7.16 Number of copies

(a) Unless otherwise specified by Commission rules, an applicant for any license or registration required by the Act shall file an original and one copy of each application and all papers submitted as a part thereof.

(b) Additional conformed copies of any such papers shall be supplied upon request of the Chairman or Division.

As amended, R.1979 d.357, effective September 11, 1979.

See: 11 N.J.R. 418(c), 11 N.J.R. 530(e).

Amended by R.1998 d.112, effective March 2, 1998.

See: 29 N.J.R. 4079(a), 30 N.J.R. 866(a).

Rewrote (a).

SUBCHAPTER 8. APPLICATION**19:41-8.1 Receipt**

All application papers, unless otherwise directed by the Chair, shall initially be submitted to and received by the Chair, or such members of the Commission staff as the Chair may designate, who shall cause to be endorsed thereon the date of such receipt.

Amended by R.1989 d.495, effective September 18, 1989.

See: 21 N.J.R. 1975(b), 21 N.J.R. 3022(b).

Referenced members designated by Chair.

19:41-8.2 Filing

(a) The Chair, or such members of the Commission staff as the Chair may designate, shall determine the date of filing as to each application received and shall cause to be endorsed thereon the date of such filing. No application shall be deemed filed until the applicant shall satisfy the Chair or his or her designee:

1. That all papers presented conform to all requirements relating to format, signature, oath or affirmation, attorney certification and copies;
2. That all appropriate application, registration, business enterprise disclosure and personal history disclosure forms have been properly completed and presented;
3. That all required consents, waivers, fingerprint impressions, photographs and handwriting exemplars have been properly presented;
4. That all other information, documentation, assurances and other materials required or requested at that preliminary stage pertaining to qualifications have been properly presented; and
5. That all required fees have been properly paid and all required bonds have been properly furnished.

Amended by R.1989 d.495, effective September 18, 1989.

See: 21 N.J.R. 1975(b), 21 N.J.R. 3022(b).

Reference to members designated by Chair added.

Case Notes

Rejection of application challenged on grounds of constitutionality of Casino Control Act and forms generated therefrom. In re: Martin, 90 N.J. 295 (1982).

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Chapter 427. Manufacturer Licenses.

427.2. Manufacturer licensing standards and application.

- An exception from the qualification of institutional investors should be added to this section. Also, we would recommend adding waiver provisions for certain officers and directors similar to the NJCCC regulatory provisions. Please see N.J.A.C. 19:51-1.14 attached hereto and incorporated herein by reference.

- (a)(3). Page 38. This section requires a plan of the diversity goals in ownership, participation and operation of licensed entities including manufacturer/supplier licensees. A plan of diversity goals in ownership is not possible in some situations. For example, a publicly traded company cannot place such restrictions and goals on its ownership and such goals and restrictions would be illegal under securities law. Further, the New Jersey Casino Control Act and regulations promulgated thereunder had requirements for diversity plans and goals. The United States District Court for the District of New Jersey found that the regulations of the NJCCC governing diversity goals and plans violated the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and permanently enjoined the NJCCC from enforcing a licensee's Equal Employment and Business Opportunity Plan. Rudolph v. Adamar of New Jersey, Inc., et al., 2001 WL 1335031 (D.N.J. 2001). In addition, manufacturers and suppliers are not subject to similar requirements in most other jurisdictions.

2. All correspondence concerning the realty, construction, maintenance, or business of a proposed or existing casino hotel or related facility;
3. Copies of all promotional material and advertising;
4. A personnel file on each employee of the licensee, including sales representatives;
5. Financial records of all transactions concerning the realty, construction, maintenance, or business of a proposed or existing casino hotel or related facility.

(b) The records listed in (a) above shall be held for at least five years.

Amended by R.1989 d.281, effective June 5, 1989.
See: 21 N.J.R. 705(a), 21 N.J.R. 1525(a).

Reduction of recordkeeping to transactions directly related to the casino hotel or related facility. Requirement deleted for maintenance of personnel file beyond five years and submission of files to Commission upon closing.

19:51-1.10 Causes for suspension, failure to renew or revocation of a license

(a) Any of the following shall be cause for suspension, refusal to renew or revocation of a casino service industry license, although suspension, refusal to renew or revocation may be made for sufficient cause other than those listed:

1. Violation of any provision of the Casino Control Act or these rules and regulations;
2. Conduct which would disqualify the applicant, or any other person required to be qualified, if such person were applying for original licensure;
3. Failure to comply with all applicable Federal, State and local statutes, ordinances and regulations;
4. A material departure from any representation made in the application for licensure.

19:51-1.11 Equal employment opportunity

The rules relating to equal employment opportunity and affirmative action program requirements for casino service industry enterprises are set forth in N.J.A.C. 19:53-1.3, 1.5, 1.6 and 1.7.

19:51-1.12 Fees

The general rules relating to the fees for the issuance and renewal of casino service industry and junket enterprise licenses are set forth in N.J.A.C. 19:41-9.8.

Amended by R.1992 d.412, effective October 19, 1992.
See: 24 N.J.R. 2695(b), 24 N.J.R. 3738(a).

Junket enterprise added.

Amended by R.1997 d.1, effective January 6, 1997.
See: 28 N.J.R. 4570(a), 29 N.J.R. 157(a).

Amended N.J.A.C. references and deleted reference to additional rules.

19:51-1.13 Exemption

(a) The general rules relating to exemption of persons or fields of commerce from licensure as casino service industries are set forth in N.J.S.A. 5:12-92(c).

(b) The Commission may, upon the written request of any person, or upon its own initiative, exempt any person or field of commerce, other than a junket enterprise, from the casino service industry licensure requirements of sections 92c and d of the Act, pursuant to the standards contained in N.J.S.A. 5:12-92(c).

Amended by R.1992 d.412, effective October 19, 1992.
See: 24 N.J.R. 2695(b), 24 N.J.R. 3738(a).

Exemption not allowed for junket enterprise.

19:51-1.14 Persons required to be qualified

(a) Except as otherwise provided in (b) below and N.J.A.C. 19:51-1.14B, no casino service industry license shall be issued or renewed unless the individual qualifications of each of the following persons shall have first been established in accordance with all provisions, including those cited, of the Act and the rules of the Commission. The Commission shall apply the following provisions to both corporate and non-corporate applicants or licensees or, if that is not possible, the Commission will in its discretion apply comparable standards to non-corporate applicants and licensees.

1. In the case of casino service industry licenses issued in accordance with subsections 92a and b of the Act:

- i. The applicant or licensee;
- ii. If the applicant or licensee is, or if it is to become a subsidiary, each holding company and each intermediary company;
- iii. Each natural person who directly or indirectly holds any beneficial or ownership interest of five percent or more of the applicant or licensee;
- iv. Each person who directly or indirectly holds any beneficial or ownership interest of five percent or more of a holding company or intermediary company of the applicant or licensee;
- v. Each director of the applicant or licensee or of a holding or intermediary company thereof;
- vi. Each officer of the applicant or licensee or of a holding or intermediary company thereof;
- vii. The management employee supervising the regional or local office which employs the sales representative who will solicit business or deal directly with a casino licensee;
- viii. Each employee who will act as a sales representative or otherwise regularly engage in the solicitation of business from casino licensees.

2. In the case of casino service industry or junket enterprise licenses issued in accordance with subsections 92c and d or section 102 of the Act:

- i. The applicant or licensee;
- ii. Each natural person who directly holds any beneficial or ownership interest of five percent or more or who indirectly holds any beneficial or ownership interest of 10 percent or more of the applicant or licensee;
- iii. Each holding company that directly holds any beneficial or ownership interest of five percent or more of the applicant or licensee.
- iv. Each inside director of the applicant or licensee;
- v. Each officer of the applicant or licensee;
- vi. The management employee supervising the regional or local office which employs the sales representative or junket representative soliciting business or dealing directly with a casino licensee;
- vii. Each employee who will act as a sales representative or otherwise regularly engage in the solicitation of business from casino licensees and each junket representative who will deal directly with casino licensees or their employees.

(b) Notwithstanding (a) above, any of the following persons may request in writing that the Commission waive their obligation to qualify as part of a casino service industry license issuance or renewal by making the appropriate showing required in (b)1 through 4 below:

1. If the person is required to qualify as an officer, the person shall be required to demonstrate that he or she is not significantly involved in and has no authority over the conduct of business with a casino licensee. Such request shall include, at a minimum, the following:

- i. A description of his or her title, duties and responsibilities with the applicant, licensee or with any affiliate thereof;
- ii. The terms of his or her compensation; and
- iii. A certification by the officer or, if the applicant or licensee is governed by N.J.S.A. 5:12-92c and d, by counsel for the applicant or licensee, stating that the officer is not significantly involved in and has no authority over the conduct of business with any casino licensee or applicant.

2. If the person is required to qualify as an outside director of a holding company of an applicant or licensee governed by N.J.S.A. 5:12-92a, the person shall be required to demonstrate that he or she is not significantly involved in the management or ownership of the applicant or licensee. Such request shall include, at a minimum, the following:

- i. A description of his or her title, duties and responsibilities with the applicant, licensee or with any affiliate thereof;
- ii. The terms of his or her compensation;
- iii. Any board committee memberships, including a description of the functions and responsibilities of any such committee;
- iv. His or her ownership interest; and
- v. A certification by the director stating that the director is not significantly involved in the management or ownership of the applicant or licensee.

3. If the person is required to qualify as an owner of the applicant or licensee or a holding or intermediary company thereof and requests a waiver as an institutional investor, the person shall be required to demonstrate compliance with the standards for institutional investor status set forth in N.J.S.A. 5:12-27.1 as well as the standards for waiver set forth in N.J.S.A. 5:12-85f, as applied to the casino service industry applicant or licensee, regardless of whether such applicant or licensee is publicly traded or privately held. Such request shall include, at a minimum, the following:

- i. The number of shares held and percent of ownership;
- ii. A copy of the most recent notice filed with the Securities and Exchange Commission;
- iii. A list of any direct or indirect owners;
- iv. An explanation as to why such investor should be considered an institutional investor pursuant to N.J.S.A. 5:12-27.1; and

v. A certification by the investor stating that the investor has no present involvement in, and no intention of influencing the business activities of, the applicant or licensee or any holding or intermediary company thereof and will give the Commission 30 days notice if the investor determines to become involved in or influence such activities in the future.

4. If the person is required to qualify as an owner of the applicant or licensee or of a holding or intermediary company of the applicant or licensee, the person shall be required to demonstrate their inability to control such applicant, licensee or holding or intermediary company. For a publicly traded corporation, any person who owns or beneficially holds five percent or more of the equity securities of such corporation shall be presumed to have the ability to control such corporation, unless such presumption is rebutted by clear and convincing evidence.

(c) Notwithstanding (a) and (b) above, the Commission may require a casino service industry applicant or licensee to establish the qualifications of any person if the Commission determines that the qualification of such person would further the policies of the Act. In making such determination, the Commission shall consider, without limitation, the following:

1. Title, duties and responsibilities;
2. Terms of compensation;
3. Ownership interest;
4. Prior status as a qualifier;
5. Ability to appoint a member of the board of directors;
6. Commonality of interest with other owners of the applicant or licensee, or holding or intermediary company thereof;
7. Business relationship with the applicant or licensee;
8. Criminal conduct or associations; and
9. The recommendations of the Division.

(d) In addition to the persons required to qualify pursuant to (a) above, each applicant for a junket enterprise license may be required, upon directive from the Commission, to establish the qualifications of any junket representative employed by that junket enterprise, regardless of whether such junket representative deals directly with a casino licensee.

1. The Division may request the Commission to require a junket representative employed by a junket enterprise licensee or applicant to establish his or her qualifications at any time.

2. Any junket enterprise required to establish the qualifications of a junket representative pursuant to this subsection may be required, subject to the provisions of N.J.A.C. 19:41-8.6, to pursue a determination as to the qualifications of the junket representative regardless of whether the employment relationship with the junket representative has been terminated.

3. Any person required to establish his or her qualifications as a junket representative pursuant to this subsection may be required to pursue a determination as to his or her qualifications as a junket representative regardless of whether the employment relationship with the junket enterprise has been terminated.

R.1979 d.376, effective September 26, 1979.

See: 11 N.J.R. 265(a), 11 N.J.R. 599(b).

Amended by R.1989 d.281, effective June 5, 1989.

See: 21 N.J.R. 705(a), 21 N.J.R. 1525(a).

Technical changes.

Amended by R.1992 d.412, effective October 19, 1992.

See: 24 N.J.R. 2695(b), 24 N.J.R. 3738(a).

Junket enterprise added; open to review at any time.

Amended by R.1993 d.37, effective January 19, 1993.

See: 24 N.J.R. 3695(a), 25 N.J.R. 348(b).

Stylistic changes.

Amended by R.1997 d.1, effective January 6, 1997.

See: 28 N.J.R. 4570(a), 29 N.J.R. 157(a).

Amended section name.

Amended by R.1998 d.475, effective September 21, 1998.

See: 30 N.J.R. 2370(b), 30 N.J.R. 3515(a).

Rewrote (a); and added new (b) and (c).

Amended by R.2001 d.94, effective March 19, 2001.

See: 32 N.J.R. 3757(a), 33 N.J.R. 1019(b).

Rewrote section.

Amended by R.2001 d.359, effective October 1, 2001.

See: 33 N.J.R. 2258(a), 33 N.J.R. 3454(b).

In (a)2iv, inserted "inside" preceding "director"; rewrote (b)2 and (b)2v.

Amended by R.2002 d.78, effective March 18, 2002.

See: 33 N.J.R. 3723(a), 34 N.J.R. 1273(b).

In (a), substituted "Except as otherwise provided in (b) below and N.J.A.C. 19:51-1.14B, no" for "No" at the beginning of the introductory paragraph.

19:51-1.14A Notification of changes in qualifiers of gaming-related casino service industry licensees or applicants and holding companies

(a) Each casino service industry licensee or applicant required to be licensed in accordance with N.J.S.A. 5:12-92a and N.J.A.C. 19:51-1.2 shall notify the Commission and the Division, in writing, within five business days, of the following:

1. The appointment, nomination, election, resignation, termination, incapacitation or death of any natural person required to qualify pursuant to N.J.A.C. 19:51-1.14(a)1 or (c);

2. The identity of any person required to be qualified pursuant to N.J.A.C. 19:51-1.14(a)1iii or iv on the basis of a newly acquired ownership interest; or

3. The identity of any person whose obligation to qualify was waived pursuant to N.J.A.C. 19:51-1.14(b)3 or 4 if that person subsequently attains an ownership interest that is:

i. At least five percent greater than the interest held at the time the most recent waiver was granted; and

ii. At least 10 percent or more of the applicant, licensee or holding or intermediary company thereof.

(b) For each new qualifier identified pursuant to (a)1 or 2 above, the following forms, as applicable, shall be filed with the Commission within 30 days of the mailing of the required notice; provided, however, that the Commission may, upon written request from the licensee or applicant and for good cause shown, grant an additional 30 days within which to file the required forms:

1. A complete application for qualification as set forth in N.J.A.C. 19:41-7.1A for each new natural person qualifier, except that an outside director of a holding or intermediary company shall be permitted to file a Personal History Disclosure Form—2A (PHD-2A) as set forth in N.J.A.C. 19:41-5.4; or

2. A complete Business Entity Disclosure Form—Gaming (BED-Gaming) as set forth in N.J.A.C. 19:41-5.15 for each new entity qualifier.

(c) For each person identified pursuant to (a)3 above, a new petition for a waiver of qualification pursuant to N.J.A.C. 19:51-1.14(b)3 or 4 shall be filed with the Commission within 30 days of the mailing of the required notice.

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- (a)(4)(i) and (ii). Pages 38 – 39. Key employee qualifiers must file multi-jurisdictional personal history disclosure forms and pay a non-refundable deposit of \$5,000 and additional charges based on actual expenses incurred by the Board, in addition to the manufacturer's license application fee of \$50,000. We believe the \$5,000 deposit is excessive and unnecessary. The Board pursuant to the Act must require a non-refundable deposit, but as the applicant must pay the cost of investigation, a lower deposit is appropriate.

(iii). Page 40. This section requires the applicant to prove the integrity of all financial backers, investors, mortgagees, bond holders and holders of indentures, notes or other indebtedness, either in effect or proposed, which bears any relationship to the applicant. This provision should reference an exclusion for institutional investors and banks exempt under the definition of Key Employee Qualifier.

(b)(4)(ii) and (iii). Page 41. This section requires the applicant to provide tax clearance certificates from Department of Revenue and Unemployment Compensation Department. This requirement is unnecessary and will delay the filing of the applications. Many applicants are not required to pay taxes in Pennsylvania or do not have employees within the Commonwealth. Further, these certificates can take up to six months to obtain from the departments. The Board during the investigation would have the ability to obtain this information, if necessary.

- (d). Page 41. This section provides that neither the applicant, nor a person directly related, may be a party in an ongoing civil proceeding to overturn or

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otherwise challenge a decision or order of the Board or Commissions pertaining to approval, denial or conditioning of license to conduct thoroughbred pari-mutual wagering or operate slot machines. Basically, this eliminates the right to appeal contained in section 12 of the Pennsylvania Gaming Act, and therefore, is beyond the powers authorized by the Act and likely unconstitutional.

Section 427.3. Alternative Manufacturers Licensing Standards.

- (a) (1). Page 42. The Board has to determine that the licensing standard of another jurisdiction is similar for the alternative licensing process. As the Board during the best practices analysis reviewed the licensing requirements of a number of jurisdictions, the Board has likely determined that certain licensing standards are similar. The regulation should state that licenses issued by Nevada, New Jersey, Mississippi and licenses or approvals from the Department of Revenue in connection with services to be provided pursuant to the Act are similar, as well as other licenses as determined by the Board.

- (a) (5) and (6). Page 42. This section provides that no administrative or enforcement actions and no investigations of possible material violations be pending in another jurisdiction. The Board should limit administrative or enforcement actions to those that are "material" as well.

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Chapter 431. Supplier Licenses.

- As the provisions for supplier licenses is similar to those of manufacturers, we have the same comments as referenced above.

431.3. Supplier requirements and prohibitions.

- (e). Page 50. Upon request of the Board, a supplier must submit the agreement with a licensed manufacturer or gaming entity and a detailed business plan. The Board's review may include review of the business experience of the supplier and financial independence. This provision is more acceptable than the provision in the proposed regional supplier regulations. This allows for the manufacturers and suppliers to determine the agreement that best fits their business situation and still permits the Board to review same to ensure that the Board has no issue with the agreement.

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Chapter 435. Employees.

435.1. General Provisions.

- (f). Page 53. An individual cannot be employed by a slot machine manufacturer or supplier in any capacity unless a citizen of the United States or is the holder of a current valid work authorization and is not restricted from working in the capacity for which employment is sought or held. For foreign manufacturers, or companies that have foreign parent or holding companies, the officers, directors and/or certain employees are often not United States citizens, nor are they individuals who are legally required to hold a valid work authorization or resident card. These are individuals who work outside of the United States, but either certain of the company's products are supplied to the United States or they have oversight with respect to United States operations. We suggest that language be added limiting this requirement to persons employed in the United States or that if the individual is not a United States citizen, that they provide documentation of compliance with United States laws regarding immigration, if applicable.

435.2. Key Employee Qualifier License.

- (b). Page 55. This section lists the contents of the application form and includes items contained in the multi-jurisdictional form. However, § 431.241 states that the individual must file the multi-jurisdictional form. This section should be clarified to

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indicate if the information in § 435.2 is for a supplemental form or is part of the multi-jurisdictional form.

- (b) (14). Page 56. Requires a photograph from the Commonwealth Photo Imaging Network. We are unclear as to why it is necessary for this to be from the Commonwealth Photo Imaging Network. Many of the individuals who will file on behalf of manufacturers and suppliers as key employee qualifiers reside outside the Commonwealth of Pennsylvania, if not out of the country. If the Board would like to have electronic access to the photographs, that could be provided via a digital photograph.

435.3. Key Employee License.

- (a). Page 58. Includes manufacturer and supplier employees. This provision includes an individual employed by a manufacturer or a supplier as a key employee as defined by the Pennsylvania Act. The definition of a key employee in the Act is an individual who is employed as a director or departmental head and is empowered to make discretionary decisions to regulate machine operations. This is directed to the slot operators and not to the manufacturers and suppliers. Individuals who have the capacity to make decisions at the manufacturer/supplier level would be key employee qualifiers. It is unclear as to who else, if any one, this would include from the manufacturers or suppliers and anyone that should file for qualification in connection with a manufacturer's or supplier's license would be a key employee qualifier.

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- (c). Pages 59 – 60. The Board may require letters of reference from law enforcement agencies. This requirement exists in other gaming jurisdictions, but is not followed because most law enforcement agencies will not provide a reference. As this is difficult or impossible to obtain, this provision should be eliminated.

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Chapter 461. Slot Machine Testing and Certification Requirements.

461.2. Testing and Certification.

- (c)(1). Page 64. The Board may accept slot machine approvals from other gaming jurisdictions. We suggest that the regulations indicate that the acceptable jurisdictions include, but not be limited to, Nevada, New Jersey and Mississippi.
- (c)(2). Pages 64 – 65. This section provides that the Board may utilize the services of a slot machine testing and certification facility. The proposal does not state which testing labs will be acceptable or establish a procedure for making that determination and implies that only one will be used. We suggest the regulations be amended to permit the Board to utilize the services of more than one slot machine testing and certification facility. This permits the Board to insure the quick testing of machines and prevent a backlog from using only one facility. With the number of slot machines anticipated, having the ability to utilize more than one testing labs is essential.

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Chapter 471. Filings Fees.

471.3. Schedule of Fees for Manufacturers and Suppliers.

- (a)(1). Page 67. Manufacturers and suppliers initial application fee is \$2,500, plus the \$5,000 non-refundable key employee. The license issuance fee is \$50,000 for the manufacturer and \$25,000 for the supplier. The annual renewals are \$25,00 and \$10,000 respectively, except for the non-refundable deposit for the key employee qualifiers, these are the fees set forth in the statute. See comments Section 427.2(a)(4)(i) and (ii).

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Chapter 481. Minority and Women Owned Businesses.

481.2. Definitions.

- Participation Plan. Pages 69 – 70. This section defines participation plan as a plan developed by a licensed entity, including manufacturers and suppliers, that requires the utilization of a minority or women owned business enterprise for a specific minimum percentage of the value of the contract. See comments to section 427.2(a)(3).

481.4. Establishment of diversity plan required.

- Pages 70 – 71. This section requires that all licensed entities or applicants establish a diversity plan. See comments to section 427.2(a)(3).

481.5. Report of Participation.

- Pages 71 – 73. Each licensee must file a report with the Board during its renewal concerning the performance of its diversity plan. See comments to section 427.2(a)(3).

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Proposed Regional Supplier Amendments

Addition to § 427.2. Page 1. This revision adds a preference for applicants for a manufacturer's license who demonstrate that they will establish a "bona fide place of business" in Pennsylvania within sixty days after issuance of the license. As the Act requires manufacturers of slot machines to utilize suppliers who must have offices in Pennsylvania, it would be inappropriate to add an additional preference for manufacturers who establish a Pennsylvania office. Pursuant to the requirements of the Act, the manufacturers are delegating authority for sales and distribution to the suppliers and would generally not need a Pennsylvania office. Further, it is unclear how the preference would assist the manufacturers and if it is constitutional.

Addition to § 431.3(e)(1). Pages 1 - 2. Supplier Licensing Standards. Under (h), the Board could establish five supplier regions. Under (i), each region would have to have at least five suppliers, but no more than ten. Under (k), a supplier could only operate within its region. The requirement of regional suppliers does not benefit the Commonwealth of Pennsylvania, nor the slot machine operators, manufacturers or suppliers. By permitting a supplier to sell for a manufacturer throughout the Commonwealth, it provides the supplier with the ability to grow a significant business in Pennsylvania and utilize more resources within the Commonwealth. By having multiple suppliers, there would be smaller entities that would not have the necessary expertise regarding the equipment, nor, as they would by smaller businesses, the necessity to

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utilize other services within the Commonwealth. Further, the license application fee for a supplier who will only be able to sell only in a certain region would be cost prohibitive, and there may not be sufficient suppliers per region.

By limiting the number of licenses per region, there is a restraint of free trade. If a supplier enters into an agreement with a manufacturer and meets the licensing standard, they should not be prohibited from supplying machines to the operators.

Addition § 431.3(m). Page 2. Requires that agreements entered into prior to Board approval of the manufacturer and supplier not be recognized by the Board. This provision has no benefit. If the Board has the ability to approve the agreements, it can review agreements that were entered prior to and in anticipation of the issuance of licenses. If the Board deems revisions necessary, it can make the appropriate ruling.

FOX ♦ ROTHSCHILD^{LLP}

ATTORNEYS AT LAW

DANIEL S. OJSERKIS
OFFICE MANAGING PARTNER

PGCB GMS-14

RECEIVED

MAY 13 2005

Marie Jiacopello Jones

File No. 69146-00002

May 11, 2005

Pennsylvania Gaming Control Board
P.O. Box 69060
Harrisburg, PA 17106-9060
Attn: Public Comment

Re: Patriot Gaming & Electronics, Inc.
Comments to Proposed Regulations

Dear Chair and Board Members:

Please be advised that we represent Patriot Gaming & Electronics, Inc. ("Patriot Gaming"), a supplier of slot machines, with offices at

On behalf of Patriot Gaming, we submit the following comments to the proposed temporary regulations, Title 58. Recreation, Pennsylvania Gaming Control Board (the "Board") and the proposed regional supplier amendments.

Thank you for considering the comments of Patriot Gaming to the proposed temporary regulations and the draft proposal regarding regional suppliers.

Respectfully submitted,

FOX ROTHSCHILD LLP


Marie Jiacopello Jones

MJJ/db

cc: Mark Komorowski, President, Patriot Gaming
Nicholas Casiello, Jr., Esquire

AC1 331154v1 05/10/05

GMS-14.1

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Chapter 401. Preliminary Provisions.

§ 401.4. Definitions.

- Institutional Investor. Page 14. The definition of an institutional investor mirrors the provision of the Pennsylvania Gaming Act. However, the proposal does not tie this definition into an exemption from any licensure requirement. We would suggest utilizing a waiver requirement similar to that found in the New Jersey Casino Control Commission (“NJCCC”) regulations. Please see N.J.A.C. 19:51-1.14, attached hereto and incorporated herein by reference.

- Key Employee Qualifier. Page 16. The definition includes individuals who hold a management or supervisory position or who control the operations of a manufacturer or supplier and includes officers, directors, persons who directly or indirectly hold any beneficial interest in or ownership of the securities of a licensee, and lenders (other than banks). This is a key provision regarding which individuals associated with a manufacturer and supplier must be licensed and we think it is too broad. We suggest that the Board limit the ownership interest to voting securities, thus eliminating debt securities and options and warrants (see definition of “Securities” in Pennsylvania Act). This would eliminate the need for filing for someone who does not hold a current voting interest in the entity. We also suggest that the Board have the authority to determine that someone listed in this definition does not have to be licensed if the licensee demonstrates that the person does not have the ability to control the licensee, similar to NJCCC regulations. Please see N.J.A.C. 19:51-1.14, attached

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hereto and incorporated herein by reference. Many large entities have numerous divisions and officers that would not have any involvement in the gaming business of the company. A provision similar to New Jersey would permit the Board discretion in who has to file.

2. All correspondence concerning the realty, construction, maintenance, or business of a proposed or existing casino hotel or related facility;
3. Copies of all promotional material and advertising;
4. A personnel file on each employee of the licensee, including sales representatives;
5. Financial records of all transactions concerning the realty, construction, maintenance, or business of a proposed or existing casino hotel or related facility.

(b) The records listed in (a) above shall be held for at least five years.

Amended by R.1989 d.281, effective June 5, 1989.
See: 21 N.J.R. 705(a), 21 N.J.R. 1525(a).

Reduction of recordkeeping to transactions directly related to the casino hotel or related facility. Requirement deleted for maintenance of personnel file beyond five years and submission of files to Commission upon closing.

19:51-1.10 Causes for suspension, failure to renew or revocation of a license

(a) Any of the following shall be cause for suspension, refusal to renew or revocation of a casino service industry license, although suspension, refusal to renew or revocation may be made for sufficient cause other than those listed:

1. Violation of any provision of the Casino Control Act or these rules and regulations;
2. Conduct which would disqualify the applicant, or any other person required to be qualified, if such person were applying for original licensure;
3. Failure to comply with all applicable Federal, State and local statutes, ordinances and regulations;
4. A material departure from any representation made in the application for licensure.

19:51-1.11 Equal employment opportunity

The rules relating to equal employment opportunity and affirmative action program requirements for casino service industry enterprises are set forth in N.J.A.C. 19:53-1.3, 1.5, 1.6 and 1.7.

19:51-1.12 Fees

The general rules relating to the fees for the issuance and renewal of casino service industry and junket enterprise licenses are set forth in N.J.A.C. 19:41-9.8.

Amended by R.1992 d.412, effective October 19, 1992.
See: 24 N.J.R. 2695(b), 24 N.J.R. 3738(a).
Junket enterprise added.

Amended by R.1997 d.1, effective January 6, 1997.
See: 28 N.J.R. 4570(a), 29 N.J.R. 157(a).

Amended N.J.A.C. references and deleted reference to additional rules.

19:51-1.13 Exemption

(a) The general rules relating to exemption of persons or fields of commerce from licensure as casino service industries are set forth in N.J.S.A. 5:12-92(c).

(b) The Commission may, upon the written request of any person, or upon its own initiative, exempt any person or field of commerce, other than a junket enterprise, from the casino service industry licensure requirements of sections 92c and d of the Act, pursuant to the standards contained in N.J.S.A. 5:12-92(c).

Amended by R.1992 d.412, effective October 19, 1992.

See: 24 N.J.R. 2695(b), 24 N.J.R. 3738(a).

Exemption not allowed for junket enterprise.

19:51-1.14 Persons required to be qualified

(a) Except as otherwise provided in (b) below and N.J.A.C. 19:51-1.14B, no casino service industry license shall be issued or renewed unless the individual qualifications of each of the following persons shall have first been established in accordance with all provisions, including those cited, of the Act and the rules of the Commission. The Commission shall apply the following provisions to both corporate and non-corporate applicants or licensees or, if that is not possible, the Commission will in its discretion apply comparable standards to non-corporate applicants and licensees.

1. In the case of casino service industry licenses issued in accordance with subsections 92a and b of the Act:

- i. The applicant or licensee;
- ii. If the applicant or licensee is, or if it is to become a subsidiary, each holding company and each intermediary company;
- iii. Each natural person who directly or indirectly holds any beneficial or ownership interest of five percent or more of the applicant or licensee;
- iv. Each person who directly or indirectly holds any beneficial or ownership interest of five percent or more of a holding company or intermediary company of the applicant or licensee;
- v. Each director of the applicant or licensee or of a holding or intermediary company thereof;
- vi. Each officer of the applicant or licensee or of a holding or intermediary company thereof;
- vii. The management employee supervising the regional or local office which employs the sales representative who will solicit business or deal directly with a casino licensee;
- viii. Each employee who will act as a sales representative or otherwise regularly engage in the solicitation of business from casino licensees.

2. In the case of casino service industry or junket enterprise licenses issued in accordance with subsections 92c and d or section 102 of the Act:

- i. The applicant or licensee;
- ii. Each natural person who directly holds any beneficial or ownership interest of five percent or more or who indirectly holds any beneficial or ownership interest of 10 percent or more of the applicant or licensee;
- iii. Each holding company that directly holds any beneficial or ownership interest of five percent or more of the applicant or licensee.
- iv. Each inside director of the applicant or licensee;
- v. Each officer of the applicant or licensee;
- vi. The management employee supervising the regional or local office which employs the sales representative or junket representative soliciting business or dealing directly with a casino licensee;
- vii. Each employee who will act as a sales representative or otherwise regularly engage in the solicitation of business from casino licensees and each junket representative who will deal directly with casino licensees or their employees.

(b) Notwithstanding (a) above, any of the following persons may request in writing that the Commission waive their obligation to qualify as part of a casino service industry license issuance or renewal by making the appropriate showing required in (b)1 through 4 below:

1. If the person is required to qualify as an officer, the person shall be required to demonstrate that he or she is not significantly involved in and has no authority over the conduct of business with a casino licensee. Such request shall include, at a minimum, the following:

- i. A description of his or her title, duties and responsibilities with the applicant, licensee or with any affiliate thereof;
- ii. The terms of his or her compensation; and
- iii. A certification by the officer or, if the applicant or licensee is governed by N.J.S.A. 5:12-92c and d, by counsel for the applicant or licensee, stating that the officer is not significantly involved in and has no authority over the conduct of business with any casino licensee or applicant.

2. If the person is required to qualify as an outside director of a holding company of an applicant or licensee governed by N.J.S.A. 5:12-92a, the person shall be required to demonstrate that he or she is not significantly involved in the management or ownership of the applicant or licensee. Such request shall include, at a minimum, the following:

- i. A description of his or her title, duties and responsibilities with the applicant, licensee or with any affiliate thereof;
- ii. The terms of his or her compensation;
- iii. Any board committee memberships, including a description of the functions and responsibilities of any such committee;
- iv. His or her ownership interest; and
- v. A certification by the director stating that the director is not significantly involved in the management or ownership of the applicant or licensee.

3. If the person is required to qualify as an owner of the applicant or licensee or a holding or intermediary company thereof and requests a waiver as an institutional investor, the person shall be required to demonstrate compliance with the standards for institutional investor status set forth in N.J.S.A. 5:12-27.1 as well as the standards for waiver set forth in N.J.S.A. 5:12-85f, as applied to the casino service industry applicant or licensee, regardless of whether such applicant or licensee is publicly traded or privately held. Such request shall include, at a minimum, the following:

- i. The number of shares held and percent of ownership;
- ii. A copy of the most recent notice filed with the Securities and Exchange Commission;
- iii. A list of any direct or indirect owners;
- iv. An explanation as to why such investor should be considered an institutional investor pursuant to N.J.S.A. 5:12-27.1; and
- v. A certification by the investor stating that the investor has no present involvement in, and no intention of influencing the business activities of, the applicant or licensee or any holding or intermediary company thereof and will give the Commission 30 days notice if the investor determines to become involved in or influence such activities in the future.

4. If the person is required to qualify as an owner of the applicant or licensee or of a holding or intermediary company of the applicant or licensee, the person shall be required to demonstrate their inability to control such applicant, licensee or holding or intermediary company. For a publicly traded corporation, any person who owns or beneficially holds five percent or more of the equity securities of such corporation shall be presumed to have the ability to control such corporation, unless such presumption is rebutted by clear and convincing evidence.

(c) Notwithstanding (a) and (b) above, the Commission may require a casino service industry applicant or licensee to establish the qualifications of any person if the Commission determines that the qualification of such person would further the policies of the Act. In making such determination, the Commission shall consider, without limitation, the following:

1. Title, duties and responsibilities;
2. Terms of compensation;
3. Ownership interest;
4. Prior status as a qualifier;
5. Ability to appoint a member of the board of directors;
6. Commonality of interest with other owners of the applicant or licensee, or holding or intermediary company thereof;
7. Business relationship with the applicant or licensee;
8. Criminal conduct or associations; and
9. The recommendations of the Division.

(d) In addition to the persons required to qualify pursuant to (a) above, each applicant for a junket enterprise license may be required, upon directive from the Commission, to establish the qualifications of any junket representative employed by that junket enterprise, regardless of whether such junket representative deals directly with a casino licensee.

1. The Division may request the Commission to require a junket representative employed by a junket enterprise licensee or applicant to establish his or her qualifications at any time.

2. Any junket enterprise required to establish the qualifications of a junket representative pursuant to this subsection may be required, subject to the provisions of N.J.A.C. 19:41-8.6, to pursue a determination as to the qualifications of the junket representative regardless of whether the employment relationship with the junket representative has been terminated.

3. Any person required to establish his or her qualifications as a junket representative pursuant to this subsection may be required to pursue a determination as to his or her qualifications as a junket representative regardless of whether the employment relationship with the junket enterprise has been terminated.

R. 1979 d.376, effective September 26, 1979.

See: 11 N.J.R. 265(a), 11 N.J.R. 599(b).

Amended by R.1989 d.281, effective June 5, 1989.

See: 21 N.J.R. 705(a), 21 N.J.R. 1525(a).

Technical changes.

Amended by R.1992 d.412, effective October 19, 1992.

See: 24 N.J.R. 2695(b), 24 N.J.R. 3738(a).

Junket enterprise added; open to review at any time.

Amended by R.1993 d.37, effective January 19, 1993.

See: 24 N.J.R. 3695(a), 25 N.J.R. 348(b).

Stylistic changes.

Amended by R.1997 d.1, effective January 6, 1997.

See: 28 N.J.R. 4570(a), 29 N.J.R. 157(a).

Amended section name.

Amended by R.1998 d.475, effective September 21, 1998.

See: 30 N.J.R. 2370(b), 30 N.J.R. 3515(a).

Rewrote (a); and added new (b) and (c).

Amended by R.2001 d.94, effective March 19, 2001.

See: 32 N.J.R. 3757(a), 33 N.J.R. 1019(b).

Rewrote section.

Amended by R.2001 d.359, effective October 1, 2001.

See: 33 N.J.R. 2258(a), 33 N.J.R. 3454(b).

In (a)2iv, inserted "inside" preceding "director"; rewrote (b)2 and (b)2v.

Amended by R.2002 d.78, effective March 18, 2002.

See: 33 N.J.R. 3723(a), 34 N.J.R. 1273(b).

In (a), substituted "Except as otherwise provided in (b) below and N.J.A.C. 19:51-1.14B, no" for "No" at the beginning of the introductory paragraph.

19:51-1.14A Notification of changes in qualifiers of gaming-related casino service industry licensees or applicants and holding companies

(a) Each casino service industry licensee or applicant required to be licensed in accordance with N.J.S.A. 5:12-92a and N.J.A.C. 19:51-1.2 shall notify the Commission and the Division, in writing, within five business days, of the following:

1. The appointment, nomination, election, resignation, termination, incapacitation or death of any natural person required to qualify pursuant to N.J.A.C. 19:51-1.14(a)1 or (c);

2. The identity of any person required to be qualified pursuant to N.J.A.C. 19:51-1.14(a)1iii or iv on the basis of a newly acquired ownership interest; or

3. The identity of any person whose obligation to qualify was waived pursuant to N.J.A.C. 19:51-1.14(b)3 or 4 if that person subsequently attains an ownership interest that is:

i. At least five percent greater than the interest held at the time the most recent waiver was granted; and

ii. At least 10 percent or more of the applicant, licensee or holding or intermediary company thereof.

(b) For each new qualifier identified pursuant to (a)1 or 2 above, the following forms, as applicable, shall be filed with the Commission within 30 days of the mailing of the required notice; provided, however, that the Commission may, upon written request from the licensee or applicant and for good cause shown, grant an additional 30 days within which to file the required forms:

1. A complete application for qualification as set forth in N.J.A.C. 19:41-7.1A for each new natural person qualifier, except that an outside director of a holding or intermediary company shall be permitted to file a Personal History Disclosure Form-2A (PHD-2A) as set forth in N.J.A.C. 19:41-5.4; or

2. A complete Business Entity Disclosure Form-Gaming (BED-Gaming) as set forth in N.J.A.C. 19:41-5.15 for each new entity qualifier.

(c) For each person identified pursuant to (a)3 above, a new petition for a waiver of qualification pursuant to N.J.A.C. 19:51-1.14(b)3 or 4 shall be filed with the Commission within 30 days of the mailing of the required notice.

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Chapter 407. Public Access to Board Records.

- 407.1. Case Files. Pages 25 – 26. This provision provides that the Board shall place records into confidential and non-confidential files and that the Board will determine if confidential information can be released to someone requesting same. The Board should provide notice and the opportunity to be heard to the person who filed the confidential information before confidential information is released.

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Chapter 431. Supplier Licenses.

431.2. Supplier licensing standards and application.

- An exception from the qualification of institutional investors should be added to this section. Also, we would recommend adding waiver provisions for certain officers and directors similar to the NJCCC regulatory provisions. Please see N.J.A.C. 19:51-1.14 attached hereto and incorporated herein by reference.

- (a)(3). Page 45. This section requires a plan of the diversity goals in ownership, participation and operation of licensed entities (includes manufacturer/supplier licenses.). A plan of diversity goals in ownership is not possible in some situations. For example, a publicly traded company cannot place such restrictions and goals on its ownership and such goals and restrictions would be illegal under securities law. Further, the New Jersey Casino Control Act and regulations promulgated thereunder had requirements for diversity plans and goals. The United States District Court for the District of New Jersey found that the regulations of the NJCCC governing diversity goals and plans violated the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and permanently enjoined the NJCCC from enforcing a licensee's Equal Employment and Business Opportunity Plan. Rudolph v. Adamar of New Jersey, Inc., et al., 2001 WL 1335031 (D.NJ. 2001).

In addition, a supplier with a small market share may have very few employees and a diversity plan may not be feasible.

2. All correspondence concerning the realty, construction, maintenance, or business of a proposed or existing casino hotel or related facility;
3. Copies of all promotional material and advertising;
4. A personnel file on each employee of the licensee, including sales representatives;
5. Financial records of all transactions concerning the realty, construction, maintenance, or business of a proposed or existing casino hotel or related facility.

(b) The records listed in (a) above shall be held for at least five years.

Amended by R.1989 d.281, effective June 5, 1989.
See: 21 N.J.R. 705(a), 21 N.J.R. 1525(a).

Reduction of recordkeeping to transactions directly related to the casino hotel or related facility. Requirement deleted for maintenance of personnel file beyond five years and submission of files to Commission upon closing.

19:51-1.10 Causes for suspension, failure to renew or revocation of a license

(a) Any of the following shall be cause for suspension, refusal to renew or revocation of a casino service industry license, although suspension, refusal to renew or revocation may be made for sufficient cause other than those listed:

1. Violation of any provision of the Casino Control Act or these rules and regulations;
2. Conduct which would disqualify the applicant, or any other person required to be qualified, if such person were applying for original licensure;
3. Failure to comply with all applicable Federal, State and local statutes, ordinances and regulations;
4. A material departure from any representation made in the application for licensure.

19:51-1.11 Equal employment opportunity

The rules relating to equal employment opportunity and affirmative action program requirements for casino service industry enterprises are set forth in N.J.A.C. 19:53-1.3, 1.5, 1.6 and 1.7.

19:51-1.12 Fees

The general rules relating to the fees for the issuance and renewal of casino service industry and junket enterprise licenses are set forth in N.J.A.C. 19:41-9.8.

Amended by R.1992 d.412, effective October 19, 1992.
See: 24 N.J.R. 2695(b), 24 N.J.R. 3738(a).

Junket enterprise added.

Amended by R.1997 d.1, effective January 6, 1997.
See: 28 N.J.R. 4570(a), 29 N.J.R. 157(a).

Amended N.J.A.C. references and deleted reference to additional rules.

19:51-1.13 Exemption

(a) The general rules relating to exemption of persons or fields of commerce from licensure as casino service industries are set forth in N.J.S.A. 5:12-92(c).

(b) The Commission may, upon the written request of any person, or upon its own initiative, exempt any person or field of commerce, other than a junket enterprise, from the casino service industry licensure requirements of sections 92c and d of the Act, pursuant to the standards contained in N.J.S.A. 5:12-92(c).

Amended by R.1992 d.412, effective October 19, 1992.
See: 24 N.J.R. 2695(b), 24 N.J.R. 3738(a).

Exemption not allowed for junket enterprise.

19:51-1.14 Persons required to be qualified

(a) Except as otherwise provided in (b) below and N.J.A.C. 19:51-1.14B, no casino service industry license shall be issued or renewed unless the individual qualifications of each of the following persons shall have first been established in accordance with all provisions, including those cited, of the Act and the rules of the Commission. The Commission shall apply the following provisions to both corporate and non-corporate applicants or licensees or, if that is not possible, the Commission will in its discretion apply comparable standards to non-corporate applicants and licensees.

1. In the case of casino service industry licenses issued in accordance with subsections 92a and b of the Act:
 - i. The applicant or licensee;
 - ii. If the applicant or licensee is, or if it is to become a subsidiary, each holding company and each intermediary company;
 - iii. Each natural person who directly or indirectly holds any beneficial or ownership interest of five percent or more of the applicant or licensee;
 - iv. Each person who directly or indirectly holds any beneficial or ownership interest of five percent or more of a holding company or intermediary company of the applicant or licensee;
 - v. Each director of the applicant or licensee or of a holding or intermediary company thereof;
 - vi. Each officer of the applicant or licensee or of a holding or intermediary company thereof;
 - vii. The management employee supervising the regional or local office which employs the sales representative who will solicit business or deal directly with a casino licensee;
 - viii. Each employee who will act as a sales representative or otherwise regularly engage in the solicitation of business from casino licensees.

2. In the case of casino service industry or junket enterprise licenses issued in accordance with subsections 92c and d or section 102 of the Act:

- i. The applicant or licensee;
- ii. Each natural person who directly holds any beneficial or ownership interest of five percent or more or who indirectly holds any beneficial or ownership interest of 10 percent or more of the applicant or licensee;
- iii. Each holding company that directly holds any beneficial or ownership interest of five percent or more of the applicant or licensee.
- iv. Each inside director of the applicant or licensee;
- v. Each officer of the applicant or licensee;
- vi. The management employee supervising the regional or local office which employs the sales representative or junket representative soliciting business or dealing directly with a casino licensee;
- vii. Each employee who will act as a sales representative or otherwise regularly engage in the solicitation of business from casino licensees and each junket representative who will deal directly with casino licensees or their employees.

(b) Notwithstanding (a) above, any of the following persons may request in writing that the Commission waive their obligation to qualify as part of a casino service industry license issuance or renewal by making the appropriate showing required in (b)1 through 4 below:

1. If the person is required to qualify as an officer, the person shall be required to demonstrate that he or she is not significantly involved in and has no authority over the conduct of business with a casino licensee. Such request shall include, at a minimum, the following:

- i. A description of his or her title, duties and responsibilities with the applicant, licensee or with any affiliate thereof;
- ii. The terms of his or her compensation; and
- iii. A certification by the officer or, if the applicant or licensee is governed by N.J.S.A. 5:12-92c and d, by counsel for the applicant or licensee, stating that the officer is not significantly involved in and has no authority over the conduct of business with any casino licensee or applicant.

2. If the person is required to qualify as an outside director of a holding company of an applicant or licensee governed by N.J.S.A. 5:12-92a, the person shall be required to demonstrate that he or she is not significantly involved in the management or ownership of the applicant or licensee. Such request shall include, at a minimum, the following:

- i. A description of his or her title, duties and responsibilities with the applicant, licensee or with any affiliate thereof;
- ii. The terms of his or her compensation;
- iii. Any board committee memberships, including a description of the functions and responsibilities of any such committee;
- iv. His or her ownership interest; and
- v. A certification by the director stating that the director is not significantly involved in the management or ownership of the applicant or licensee.

3. If the person is required to qualify as an owner of the applicant or licensee or a holding or intermediary company thereof and requests a waiver as an institutional investor, the person shall be required to demonstrate compliance with the standards for institutional investor status set forth in N.J.S.A. 5:12-27.1 as well as the standards for waiver set forth in N.J.S.A. 5:12-85f, as applied to the casino service industry applicant or licensee, regardless of whether such applicant or licensee is publicly traded or privately held. Such request shall include, at a minimum, the following:

- i. The number of shares held and percent of ownership;
- ii. A copy of the most recent notice filed with the Securities and Exchange Commission;
- iii. A list of any direct or indirect owners;
- iv. An explanation as to why such investor should be considered an institutional investor pursuant to N.J.S.A. 5:12-27.1; and
- v. A certification by the investor stating that the investor has no present involvement in, and no intention of influencing the business activities of, the applicant or licensee or any holding or intermediary company thereof and will give the Commission 30 days notice if the investor determines to become involved in or influence such activities in the future.

4. If the person is required to qualify as an owner of the applicant or licensee or of a holding or intermediary company of the applicant or licensee, the person shall be required to demonstrate their inability to control such applicant, licensee or holding or intermediary company. For a publicly traded corporation, any person who owns or beneficially holds five percent or more of the equity securities of such corporation shall be presumed to have the ability to control such corporation, unless such presumption is rebutted by clear and convincing evidence.

(c) Notwithstanding (a) and (b) above, the Commission may require a casino service industry applicant or licensee to establish the qualifications of any person if the Commission determines that the qualification of such person would further the policies of the Act. In making such determination, the Commission shall consider, without limitation, the following:

1. Title, duties and responsibilities;
2. Terms of compensation;
3. Ownership interest;
4. Prior status as a qualifier;
5. Ability to appoint a member of the board of directors;
6. Commonality of interest with other owners of the applicant or licensee, or holding or intermediary company thereof;
7. Business relationship with the applicant or licensee;
8. Criminal conduct or associations; and
9. The recommendations of the Division.

(d) In addition to the persons required to qualify pursuant to (a) above, each applicant for a junket enterprise license may be required, upon directive from the Commission, to establish the qualifications of any junket representative employed by that junket enterprise, regardless of whether such junket representative deals directly with a casino licensee.

1. The Division may request the Commission to require a junket representative employed by a junket enterprise licensee or applicant to establish his or her qualifications at any time.

2. Any junket enterprise required to establish the qualifications of a junket representative pursuant to this subsection may be required, subject to the provisions of N.J.A.C. 19:41-8.6, to pursue a determination as to the qualifications of the junket representative regardless of whether the employment relationship with the junket representative has been terminated.

3. Any person required to establish his or her qualifications as a junket representative pursuant to this subsection may be required to pursue a determination as to his or her qualifications as a junket representative regardless of whether the employment relationship with the junket enterprise has been terminated.

R.1979 d.376, effective September 26, 1979.

See: 11 N.J.R. 265(a), 11 N.J.R. 599(b).

Amended by R.1989 d.281, effective June 5, 1989.

See: 21 N.J.R. 705(a), 21 N.J.R. 1525(a).

Technical changes.

Amended by R.1992 d.412, effective October 19, 1992.

See: 24 N.J.R. 2695(b), 24 N.J.R. 3738(a).

Junket enterprise added; open to review at any time.

Amended by R.1993 d.37, effective January 19, 1993.

See: 24 N.J.R. 3695(a), 25 N.J.R. 348(b).

Stylistic changes.

Amended by R.1997 d.1, effective January 6, 1997.

See: 28 N.J.R. 4570(a), 29 N.J.R. 157(a).

Amended section name.

Amended by R.1998 d.475, effective September 21, 1998.

See: 30 N.J.R. 2370(b), 30 N.J.R. 3515(a).

Rewrote (a); and added new (b) and (c).

Amended by R.2001 d.94, effective March 19, 2001.

See: 32 N.J.R. 3757(a), 33 N.J.R. 1019(b).

Rewrote section.

Amended by R.2001 d.359, effective October 1, 2001.

See: 33 N.J.R. 2258(a), 33 N.J.R. 3454(b).

In (a)2iv, inserted "inside" preceding "director"; rewrote (b)2 and (b)2v.

Amended by R.2002 d.78, effective March 18, 2002.

See: 33 N.J.R. 3723(a), 34 N.J.R. 1273(b).

In (a), substituted "Except as otherwise provided in (b) below and N.J.A.C. 19:51-1.14B, no" for "No" at the beginning of the introductory paragraph.

19:51-1.14A Notification of changes in qualifiers of gaming-related casino service industry licensees or applicants and holding companies

(a) Each casino service industry licensee or applicant required to be licensed in accordance with N.J.S.A. 5:12-92a and N.J.A.C. 19:51-1.2 shall notify the Commission and the Division, in writing, within five business days, of the following:

1. The appointment, nomination, election, resignation, termination, incapacitation or death of any natural person required to qualify pursuant to N.J.A.C. 19:51-1.14(a)1 or (c);

2. The identity of any person required to be qualified pursuant to N.J.A.C. 19:51-1.14(a)1iii or iv on the basis of a newly acquired ownership interest; or

3. The identity of any person whose obligation to qualify was waived pursuant to N.J.A.C. 19:51-1.14(b)3 or 4 if that person subsequently attains an ownership interest that is:

i. At least five percent greater than the interest held at the time the most recent waiver was granted; and

ii. At least 10 percent or more of the applicant, licensee or holding or intermediary company thereof.

(b) For each new qualifier identified pursuant to (a)1 or 2 above, the following forms, as applicable, shall be filed with the Commission within 30 days of the mailing of the required notice; provided, however, that the Commission may, upon written request from the licensee or applicant and for good cause shown, grant an additional 30 days within which to file the required forms:

1. A complete application for qualification as set forth in N.J.A.C. 19:41-7.1A for each new natural person qualifier, except that an outside director of a holding or intermediary company shall be permitted to file a Personal History Disclosure Form—2A (PHD-2A) as set forth in N.J.A.C. 19:41-5.4; or

2. A complete Business Entity Disclosure Form—Gaming (BED-Gaming) as set forth in N.J.A.C. 19:41-5.15 for each new entity qualifier.

(c) For each person identified pursuant to (a)3 above, a new petition for a waiver of qualification pursuant to N.J.A.C. 19:51-1.14(b)3 or 4 shall be filed with the Commission within 30 days of the mailing of the required notice.

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- (a)(4)(i) and (ii). Pages 45 – 46. This section requires that key employee qualifiers must file multi-jurisdictional personal history disclosure forms and pay a non-refundable deposit of \$5,000 and additional charges based on actual expenses incurred by the Board, in addition to the manufacturer's license application fee of \$50,000. We believe the \$5,000 deposit is excessive and unnecessary. The Board pursuant to the Act must require a non-refundable deposit, but as the applicant must pay the cost of investigation, a lower deposit is appropriate.

- (a)(7). Pages 46-47. This provision provides that a supplier may not hold a direct or indirect ownership interest in a manufacturer or slot machine licensee. A supplier may have an ownership interest in a manufacturer by the holding of stock in a publicly traded entity. We would recommend that this provision indicate that a supplier cannot own a controlling interest in a manufacturer.

- (b)(4)(ii) and (iii). Page 48. This section requires that the applicant provide a tax clearance certificates from Department of Revenue and Unemployment Compensation Department. This requirement is unnecessary and will delay the filing of the applications. Many applicants are not required to pay taxes in Pennsylvania or do not have employees within the Commonwealth. Further, these certificates can take up to six months to obtain from the departments. The Board during the investigation would have the ability to obtain this information, if necessary.

- (d). Page 48. This section provides that neither the applicant, nor a person directly related, may be a party in an ongoing civil proceeding to overturn or

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otherwise challenge a decision or order of the Board or Commissions pertaining to approval, denial or conditioning of license to conduct thoroughbred pari-mutual wagering or operate slot machines. Basically, this eliminates the right to appeal contained in section 12 of the Pennsylvania Gaming Act, and therefore, is beyond the powers authorized by the Act and likely unconstitutional.

431.3. Supplier requirements and prohibitions.

- (b). Page 49. May only employ technicians who have been approved by a licensed manufacturer. Pursuant to the PA Gaming Act, the supplier's are to be independent of the manufacturer's and should be responsible for the hiring of its own technicians. This provision contradicts the mandate for independence of the suppliers.
- (e). Page 50. Upon request, a supplier must submit the agreement with a licensed manufacturer or gaming entity and a detailed business plan. The Board's review may include review of the business experience of the supplier and financial independence. This provision is more acceptable than the provision in the proposed regional supplier regulations. This allows for the manufacturers and suppliers to determine the agreement that best fits their business situation and still permits the Board to review same to ensure that the Board has no issue with the agreement.

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Chapter 435. Employees.

435.2. Key Employee Qualifier License.

- (b). Page 55. This section lists the contents of the application form and includes items contained in the multi-jurisdictional form. However, § 431.241 states that the individual must file the multi-jurisdictional form. This section should be clarified to indicate if the information in § 435.2 is for a supplemental form or is part of the multi-jurisdictional form.

- (b) (14). Page 56. Requires a photograph from the Commonwealth Photo Imaging Network. We are unclear as to why it is necessary for this to be from the Commonwealth Photo Imaging Network. Many of the individuals who will file on behalf of manufacturers and suppliers as key employee qualifiers reside outside the Commonwealth of Pennsylvania, if not out of the country. If the Board would like to have electronic access to the photographs, that could be provided via a digital photograph.

435.3. Key Employee License.

- (a). Page 58. Includes manufacturer and supplier employees. This provision includes an individual employed by a manufacturer or a supplier as a key employee as defined by the Pennsylvania Act. The definition of a key employee in the Act is an individual who is employed as a director or departmental head and is empowered to make discretionary decisions to regulate machine operations. This is directed to the slot operators and not to the manufacturers and suppliers. Individuals

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who have the capacity to make decisions at the manufacturer/supplier level would be key employee qualifiers. It is unclear as to who else, if any one, this would include from the manufacturers or suppliers and anyone that should qualify in connection with a manufacturer's or supplier's license would file as a key employee qualifier.

- (c). Pages 59 – 60. The Board may require letters of reference from law enforcement agencies. This requirement exists in other gaming jurisdictions, but is not followed because most law enforcement agencies will not provide a reference. As this is difficult or impossible to obtain, this provision should be eliminated.

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Chapter 471. Filings Fees.

471.3. Schedule of Fees for Manufacturers and Suppliers.

- (a)(1). Page 67. Manufacturers and suppliers initial application fee is \$2,500, plus the \$5,000 non-refundable key employee. The license issuance fee is \$50,000 for the manufacturer and \$25,000 for the supplier. The annual renewals are \$25,00 and \$10,000 respectively, except for the non-refundable deposit for the key employee qualifiers, these are the fees set forth in the statute. See comments Section 431.2(a)(4)(i) and (ii).

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Chapter 481. Minority and Women Owned Businesses.

481.2. Definitions.

- Participation Plan. Pages 69 – 70. This section defines participation plan as a plan developed by a licensed entity, including manufacturers and suppliers, that requires the utilization of a minority or women owned business enterprise for a specific minimum percentage of the value of the contract. See comments to section 431.2(a)(3).

481.4. Establishment of diversity plan required.

- Pages 70 – 71. This section requires that all licensed entities or applicants establish a diversity plan. See comments to section 431.2(a)(3).

481.5. Report of Participation.

- Pages 71 – 73. Each licensee must file a report with the Board during its renewal concerning the performance of its diversity plan. See comments to section 431.2(a)(3).

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Proposed Regional Supplier Amendments

Addition to § 431.3(e)(1). Pages 1 - 2. Supplier Licensing Standards. Under (h), the Board could establish five supplier regions. Under (i), each region would have to have at least five suppliers, but no more than ten. Under (k), a supplier could only operate within its region. The requirement of regional suppliers does not benefit the Commonwealth of Pennsylvania, nor the slot machine operators, manufacturers or suppliers. By permitting a supplier to sell for a manufacturer throughout the Commonwealth, it provides the supplier with the ability to grow a significant business in Pennsylvania and utilize more resources within the Commonwealth. By having multiple suppliers, there would be smaller entities that would not have the necessary expertise regarding the equipment, nor, as they would by smaller businesses, the necessity to utilize other services within the Commonwealth. Further, the license application fee for a supplier who will only be able to sell only in a certain region would be cost prohibitive, and there may not be sufficient suppliers per region.

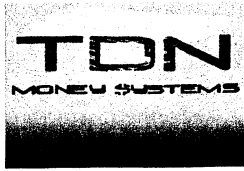
By limiting the number of licenses per region, there is a restraint of free trade. If a supplier enters into an agreement with a manufacturer and meets the licensing standard, they should not be prohibited from supplying machines to the operators.

Addition § 431.3(m)(i). Page 2. Requires that agreements entered into prior to Board approval of the manufacturer and supplier not be recognized by the Board. This provision has no benefit. If the Board has the ability to approve the agreements, it can

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review agreements that were entered prior to and in anticipation of the issuance of licenses. If the Board deems revisions necessary, it can make the appropriate ruling.

Addition § 431.3(m)(ii). Page 3. This provision provides that the agreement between a supplier and a manufacturer shall not extend the one year license term. This provision has no benefit to the Commonwealth or the suppliers and/or manufacturers. By requiring only a one year agreement, it does not permit the manufacturer and supplier to develop a long term relationship and for the supplier to understand the manufacturers product. Agreements for distribution in Pennsylvania should be permitted for as long as the parties deem appropriate, and would be invalidate if the supplier or manufacturer was not licensed by the Board.



TDN Money Systems

PGCB GMS -15
RECEIVED

MAY 16 2005

May 11, 2005

Pennsylvania Gaming Control Board
Office of Communications
PO Box 69060
Harrisburg, PA 17106-9060

Board Members:

This letter is in regard to the proposed Rules & Regulations Title 58. We have a few questions and comments:

QUESTIONS & COMMENTS

PAGE 4 ASSOCIATED EQUIPMENT:

- 1) Does a manufacturer of associated equipment, whose principal place of business is currently in Pennsylvania, still have to sell their product through a licensed supplier?

COMMENT: I believe that a small manufacturer of associated equipment should not have to apply for a Manufacturer's License but should be required to apply for a Supplier's License only. In our particular case, we might sell \$1,000,000.00 of associated equipment (TITO redemption KIOSKS) for the entire Pennsylvania market. Most jurisdictions recognize this particular piece of equipment as gaming, and therefore, require a gaming license. It would practically take us out of the market with regulatory expenses if we are required to get a manufacturer's license, and then in addition, have to sell our product through a licensed supplier. This puts small companies such as ours in the same category as the large slot manufacturers with the same regulatory expenses but grossly lower potential revenues. There should be consideration given to small Pennsylvania based companies such as ours with lower regulatory costs and the ability to market their product direct to the casinos.

- 2) Would Bill Validators inside slot machines and Ticket (TITO) redemption kiosks that redeem the TITO ticket for cash be considered associated equipment? (mentioned again page 37 section 4)

PAGE 8B CONFIDENTIAL INFORMATION

- 1) Does this mean that we have to release our source code or other proprietary information to the board? If so, what reasonable safeguards are in place to protect this information?

PAGE 43 SECTION 431.1

- 1) Would the board also, upon written request from the supplier, issue a supplier's license to an applicant who holds a similar license in another jurisdiction such as New Jersey, as they state that they will do for a Manufacturer?

COMMENT: I believe that a small supplier who holds a gaming license in another jurisdiction should be given the same consideration as the manufacturer.

PAGE 45 SECTION 3 DIVERSITY IN OWNERSHIP

- 1) Does this mean that we would have to establish a plan to bring in minority or women in an ownership position in our company, and is minority or women ownership mandated as a requirement for licensing?

PAGE 49 SUPPLIER REQUIREMENTS TOP PARAGRAPH

- 1) Can a licensed supplier represent more than one slot or associate equipment manufacturer, or does the company have to be the exclusive supplier for just one manufacturer?

COMMENT: I believe it is in the best interest of the industry to allow the supplier to represent just one slot manufacturer but as many manufacturers of associated equipment as the supplier deems necessary.

PAGE 49 SECTION B TECHNICIANS

- 1) Are the slot techs considered certified if they go through the slot manufacturer's training program, or would they have to be certified or schooled by an independent Slot Tech certification school?

PAGE 50 CHAPTER 433 SUPPLIER LICENSE RENEWAL

COMMENT: We are in negotiations with a number of slot manufacturers for the distribution rights in Pennsylvania. If our supplier's license has to be renewed every year, this would put us in jeopardy of infusing a lot of capital for start-up only to have a license possibly revoked in the second year. I don't have a solution to this because I realize the need for vendor integrity in this industry. I merely want to bring this to the attention of the board. If a supplier would not have their license renewed in the second year, it could seriously impact on the existence and profitability of the enterprise. Would it be possible to issue an initial two-year supplier's license, and then have annual renewals thereafter?

PAGE 64 TESTING & CERTIFICATION

- 1) Would associated equipment also be required to be tested and certified through an independent lab?

COMMENT: I would suggest utilizing both GLI and BMM independent testing labs until the board sets up its own lab. Utilizing just one lab such as GLI causes a big delay with everything being submitted for testing at one time. We've waited as long as 6 to 8 months before testing could begin on a product after it has been submitted. Utilizing two independent labs will help move things at a much faster pace.

Thank you for your consideration and I appreciate your efforts in furthering gaming in Pennsylvania.

Sincerely

A handwritten signature in cursive script, appearing to read "Richard C. Orlando", followed by a long horizontal flourish line extending to the right.

Richard C. Orlando

President

TDN MONEY SYSTEMS

Robert A. Graci

May 11, 2005

Pennsylvania Gaming Control Board
Office of Communications
P.O. Box 69060
Harrisburg, Pennsylvania 17106-9060

PGCB GMS-16
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MAY 16 2005

Re: Draft Temporary Regulations – Comments

Dear Chairman Decker and Members of the Board:

In response to the notice which the Pennsylvania Gaming Control Board (the "Board") caused to be published in the April 23, 2005, edition of the Pennsylvania Bulletin, 35 Pa. Bull. No. 17, p. 2569 (Apr. 23, 2005), we have been asked by the Pennsylvania Horse Racing Association (the "Association") to prepare and submit comments on the Board's draft temporary regulations. The Association is comprised of representatives from the licensed racing entities in the Commonwealth of Pennsylvania, and their affiliates, including Greenwood Racing, Inc., MEC Pennsylvania Racing, Inc., Mohegan Tribal Gaming Authority, MTR Gaming Group, Inc., and Penn National Gaming, Inc. As licensed racing entities, the Association's members or their licensed affiliates may apply for Category 1 slot machine licenses to be issued by the Board. As such, the Association and its members have a keen interest in the Board's work and the regulations, both temporary and permanent, adopted by the Board to carry out that work. This interest extends, of course, to the regulations addressing general administrative matters, as well as those dealing with manufacturers and suppliers, as the success of the respective slot licensees will be inextricably intertwined with those other licensed entities.

At the outset, on behalf of the Association, we wish to commend the Board and its staff for the fine effort it has made in drafting these temporary regulations. It is our hope that all of our comments and suggestions will be viewed in the light of our desire to work with the Board as it strives to implement the Pennsylvania Race Horse Development and Gaming Act (the "Act").

For organizational purposes, we will identify the section or chapter of the draft temporary regulations upon which we wish to comment at the beginning of the discussion of that section or chapter. Our comments follow:

I. § 401.4. Definitions – Associated equipment.

The Association recognizes, of course, that this definition of "associated equipment" is identical to that found in section 1103 of the Act. 4 Pa. C.S. § 1103 (relating to definitions). We respectfully urge the Board to refine this definition.

Pennsylvania Gaming Control Board
May 11, 2005
Page 2

We understand the need to obtain all equipment "associated" with any gaming aspect of a slot machine from a licensed supplier. See 4 Pa. C.S. § 1317(a) (relating to supplier and manufacturer licenses application); 58 Pa. Code § 431.3 (proposed). However, there are many parts of a slot machine, such as decals, seats and light bulbs, which have nothing to do with the operation of the slot machine as a gaming device. As written, this definition, along with 58 Pa. Code § 431.3 (proposed), would obligate slot machine licensees to obtain such parts only from licensed suppliers.

Our suggestion in this regard, we submit, is consistent with section 431.1 of the draft temporary regulations, 58 Pa. Code § 431.1(a)(1) and (2) (relating to supplier license requirements) (proposed), which refer to slot machines or associated equipment which "are specifically designed for use in the conduct of slot machine gaming" or "are needed to conduct slot machine gaming." This proposed regulation clearly recognizes that not all "parts" of a slot machine are used or needed to conduct gaming. See also 58 Pa. Code § 431.1(d) (proposed) (excluding certain computer systems from the requirement that they be provided through a licensed supplier).¹

Requiring slot machine licensees to obtain parts not essential to gaming from licensed suppliers has the potential for unnecessarily driving up costs to the slot machine licensees without any enhancement to the integrity of gaming in the Commonwealth. Accordingly, we suggest that the definition of "associated equipment" be adjusted appropriately to limit its applicability to that equipment required for gaming.

II. § 401.4. Definitions – Central control computer.

Again, the Association recognizes the statutory basis of this definition. We submit that the definition should be amended to allow for the monitoring of the number and amount of paper currency collected which is akin to but different from "coin in, coin out, ticket in, ticket out," as currently set forth in the definition.

In addition, though not necessarily a problem with the definition of "central control computer" but related to that definition, we believe that criteria for "remote machine activation and disabling of slot machines" should be clearly set forth. The Association recognizes that acquisition and operation of the central control computer are the responsibility of the Department of Revenue, 4 Pa. C.S. § 1323 (relating to central control computer system), and that the Department is authorized to promulgate rules and regulations to carry out its prescribed duties under the Act, 4 Pa. C.S. § 1501(a) (relating to responsibility and authority of department). However, the Act requires that the central control computer, provide, *inter alia*, "[t]he ability to meet all reporting and control requirements as prescribed by the board and the department." 4

¹ We note that this provision will allow slot machine licensees to reduce costs by being able to deal directly with the manufacturers of these computer systems.

Pennsylvania Gaming Control Board
May 11, 2005
Page 3

Pa. C.S. §1323(a)(7). Therefore, the Association believes that it would be within the authority of the Board to establish such control criteria and urges the Board to do so.

III. § 401.4. Definitions – Key employee qualifier.

It appears that the definition of "key employee qualifier" is derived from section 1311 of the Act, 4 Pa. C.S. § 1311(a) (relating to key employee requirement qualification). This definition is extremely broad and, we believe, will result in needless licensing (and resulting expense for the Board and the Pennsylvania State Police which will ultimately be borne by the licensees) and delays in the licensing process.

As currently written, every shareholder of a manufacturer, supplier or slot machine licensee, *i.e.*, "persons who directly or indirectly hold any beneficial interest in or ownership of the securities of a licensee," is a "key employee qualifier," regardless of the extent of his or her holdings. A person who owns a single share of stock in a licensee would therefore be deemed to be a "key employee qualifier" under this definition. Applicants for manufacturer, supplier and slot machine licenses will have to pay at least \$5,000.00 for the background investigation of each such key employee qualifier. 58 Pa. Code § 471.3(b) (proposed) (relating to schedule of fees for manufacturer and supplier licenses). The financial consequences of this definition, particularly for the publicly traded corporate applicant, have the potential for being excessive.

The Association notes that section 1311 of the Act from which this definition is taken is limited to slot machine licensees. The definition and the proposed regulations which rely on it apply to manufacturer and supplier licensees, as well. See e.g. 58 Pa. Code § 427.2 (proposed) (relating to manufacturer licensing standards and application); 58 Pa. Code § 431.2 (proposed) (relating to supplier licensing standards and application); and 58 Pa. Code § 471.3(b) (proposed) (relating to schedule of fees for manufacturer and supplier licenses).

Moreover, the statutory provision gives the Board the authority to waive the key employee requirement qualification for publicly traded corporations where the security holder "is not significantly involved in the activities of the corporation and does not have the ability to control the corporation or elect one or more directors thereof." 4 Pa. C.S. § 1311(a). We urge the Board to engraft this waiver provision onto the proposed regulation and to define the circumstances in which it will be applicable. We suggest that the Board consult the definition of "controlling interest" as found in the statute and the draft temporary regulations in doing so.

IV. § 423.2. Application processing.

Pursuant to section 1202(b)(17) of the Act, the Board is required to promulgate regulations pertaining to the operation of the Bureau of Investigations and Enforcement which guarantee the separation of functions between the Bureau and the Board. This separation is constitutionally

Pennsylvania Gaming Control Board
May 11, 2005
Page 4

mandated. *See Lyness v. Commonwealth, State Board of Medicine*, 605 A. 2d 1204 (Pa. 1992). In order to achieve that result, the Association urges the Board, *inter alia*, to require that all information collected by the Board during the application process, including the information prescribed by section 432.2(a), be placed into the evidentiary record of the application proceeding and served upon the applicant. Such a requirement will ensure that the applicant is aware of all information gathered by or for the Board and will give the applicant the opportunity to respond to all matters upon which the Board might rely in passing on its application, resulting in the fundamental fairness of the application process.

V. Chapter 431. Supplier Licenses

The Association recognizes, of course, that the Act requires slot machine licensees to obtain slot machines and associated equipment from a licensed, Pennsylvania-based supplier. In addition to our comments on specific sections of the proposed temporary regulations concerning supplier licensees set out more particularly below, it is the Association's desire that the regulations further define the role of a supplier and, in that regard, we have a number of questions which we suggest that the Board consider. For example, will individual suppliers be permitted to represent more than one manufacturer? Will fees charged by the suppliers be monitored by the Board? Who will set those fees - the Board or the market? Will a "sole and exclusive supplier" be free to charge whatever fee it wishes? These matters will impact on the number, types and costs of slot machines that will be available to the slot machine licensees. They will also define the number and types of slot machines available for the entertainment of the Pennsylvania gaming public.

Turning to the specific draft regulations, section 431.3(a) requires that a licensed supplier establish and maintain "a principal place of business" in the Commonwealth. 58 Pa. Code § 431.3(a) (proposed). Neither this section nor the definitional section of the regulations define "principal place of business." For clarity and consistency of application, the Association suggests that the Board define the phrase "principal place of business."

Section 431.3(b) requires, *inter alia*, that licensed suppliers only employ technicians who have been approved by licensed manufacturers. 58 Pa. Code § 431.3(b) (proposed). Section 435.4 requires that individuals employed by supplier licensees as gaming employees must obtain occupation permits from the Board. 58 Pa. Code § 435.4(a) (proposed). A "gaming employee" includes employees of supplier licensees involved with repair or distribution of slot machines and associated equipment. 58 Pa. Code 401.4 (proposed) (definition of "gaming employee"). Since "technician" is not defined in the draft regulations in the context of supplier licensees, we can only assume that a supplier technician is a gaming employee and, as such, is subject to the occupation permit requirements of the Act and the regulations. If this is the Board's intent, we ask that it be clearly expressed.

Pennsylvania Gaming Control Board
May 11, 2005
Page 5

This might appear to be a concern solely to potential supplier licensees. The Association notes its concern because higher application costs for supplier licensees might be passed on, either directly or indirectly, to the slot machine licensees who are obligated to use the services of the supplier licensees. The Board, of course, is ever mindful of its obligations to protect the public fisc and to carry out the objectives of the Act. 4 Pa. C.S. § 1202(a) (relating to general powers of the Board). Among those objectives are the enhancement of employment in the Commonwealth, 4 Pa. C.S. § 1102(2), and providing a source of new revenue for economic development opportunities. 4 Pa. C.S. § 1102(3). Those objectives should not be attained by unnecessarily burdening the slot machine licensees with increased costs.

Moreover, this provision requiring "approval" by manufacturers should be clarified. How is such approval to be established? Will there be "continuing education" or "certification" requirements? These points are not addressed in the current version of the draft temporary regulations.

Subsection (c) of section 431.3 is also of concern to the Association as currently drafted. The Association certainly concurs that access to adequate inventory is a valid concern for the Board and a proper subject for regulation. Requiring that a supplier "maintain" an adequate inventory, however, might needlessly drive up costs to the supplier (by, for example, requiring a large or larger warehouse). Those increased costs will (and should) be passed on to the slot machine licensees. This problem could be alleviated by requiring that a supplier have access to adequate inventory from a manufacturer without dictating that the supplier maintain the inventory. As written, "maintain" is subject to varying interpretations and may not yield the result intended by the Board. The Association, therefore, asks the Board to reconsider this point and to clarify it to yield the most efficient and cost-effective solution.

The Association requests clarification of the exclusion provided for in section 431(d). The computer systems listed in this subsection, including wide-area progressive computer systems and associated computer system equipment, are excluded from the requirement that they be provided by a licensed supplier. Does this exclusion, which allows slot machine licensees to deal directly with the manufacturers to obtain and service these computer systems and the equipment associated with them, allow the slot machine licensees to obtain all parts of the wide-area progressive system, including the slot machine terminals on which the progressive game is played, directly from the manufacturer of that game?

On a related topic, the Association asks the Board to consider the acquisition of so-called "participation games" by slot machine licensees. These are slot machines that have elevated fees because they are named after popular board games or television game shows. Will such slot machines have to be obtained through licensed suppliers? Such a requirement may drive up the cost of those games which we anticipate will be popular with Pennsylvania gamers based on their popularity elsewhere. This increased cost may result in a reduction in the availability of

Pennsylvania Gaming Control Board
May 11, 2005
Page 6

these games in Pennsylvania gaming establishments to the detriment of Pennsylvania's slot machine players.

VI. Chapter 435. Employees

The Association realizes that the Board's ability to promulgate rules and regulations is, in many respects, constrained by the Act. We acknowledge that the Board may not adopt regulations which conflict with the Act. To the extent it is empowered to do so, the Association recommends that the Board consider the effect of the definitions contained in the draft regulations relating to the licensing and permitting of employees of licensees.

As previously noted, some of the definitions, such as that of "key employee qualifier," are quite broad. They may unnecessarily and unintentionally expand the scope of those employees that need licenses or permits. This expansion will increase and necessarily slow the work of the Board, the Bureau of Investigations and Enforcement and the Pennsylvania State Police in reviewing, approving and issuing required licenses and permits. It will also increase the costs to the applicants for these licenses and permits.

These heightened costs increase the possibility of decreasing the number of qualified applicants to the detriment of the Commonwealth's fledgling gaming industry. A relatively small manufacturer, for example, may be disinclined to apply for a Pennsylvania license if the cost would be too great. That manufacturer would not be able to distribute in Pennsylvania to the detriment of potential suppliers and, ultimately, to the detriment of slot machine licensees who would face the potential of increased costs due to decreased competition. The Association asks the Board to consider restricting the licensing of employees to that which is necessary to guarantee the integrity of gaming in the Commonwealth.

The Association notes that section 435.3(a) referring to "key employees," 58 Pa. Code § 435.3(a) (proposed)(relating to key employee license), contains an inconsistency. It refers to "key employee as defined by the Act." However, generally in the Act, "key employee" refers to an employee of a slot machine licensee. This section of the draft regulations, however, applies to slot machine licensees, manufacturer licensees and supplier licensees. The Association urges clarification of this point.

VII. Chapter 451. Licensee Recordkeeping Requirements

This chapter does not address the method or form by which licensees must keep required records. The Association suggests that the Board specify in section 451.1 that records may be kept by any available method or means, including paper, magnetic and electronic, to allow the licensees to take full advantage of advances in technology in this area.

Pennsylvania Gaming Control Board
May 11, 2005
Page 7

While the proposed regulation requires retention of certain financial records, § 451.1(a)(5), and copies of tax returns and related documents, § 451.1(a)(6), it contains no requirement for the retention of general accounting records. For guidance and clarification, the Association suggests that the Board adopt such a requirement.

We likewise seek clarification of the requirement contained in section 451.1(a)(3). The requirement that all promotional material and advertising be maintained is extremely broad and could be needlessly burdensome.

The Association also urges clarification of the reference to "a personnel file" and to "sales representatives" in section 451.1(a)(4). As the contents of a personnel file may vary from employer to employer, the Board, by regulation, should specify the matters it wishes the employer to retain. The Board should likewise define "sales representative." Does this include independent representatives who are not employees of the licensee? So that the licensees have proper guidance and do not unintentionally run afoul of the Board's desires, we seek clarification of this point.

VIII. § 461.2. Testing and certification generally.

The Association seeks a clarification of this section. We are concerned that, as written, it may be interpreted as requiring the testing and certification of each individual slot machine brought into the Commonwealth. If that is what is intended, the Association urges the Board to make that intention clear. The Association contends, however, that such an interpretation is far more than the Act requires. While the Board clearly has the authority to go beyond the requirements of the Act in its rule-making power, the Association believes that the consequences of such a rule could have a negative impact on gaming in Pennsylvania. Such an interpretation has the potential of limiting the types of slot machines, the manufacturers and the game themes that could be available and used in the Commonwealth. Moreover, it has the distinct possibility of delaying the ordering of slot machines, their delivery into the Commonwealth, and the opening of licensed gaming entities. Those delays will result in the concomitant delay in generating the new source of revenue that is one of the objectives of the Act, 4 Pa. C.S. § 1102(3), which the Board is to promote. 4 Pa. C.S. § 1202(a).

The Association recommends that rather than requiring the approval of individual machines, the Board approve these computer-game platforms and the various software for the different game themes. That, we believe, would be consistent with the approval requirements of the Act and would alleviate the delays and other problems we detail above.

As with other sections, the Association urges the Board to remain vigilant in its efforts to keep costs to a minimum while ensuring the integrity of slot machine gaming in the Commonwealth. If individual testing and approval is required, associated costs, which are mentioned but not

Pennsylvania Gaming Control Board
May 11, 2005
Page 8

specified in the regulations, 58 Pa. Code § 461.2(e) and (f), will become another unnecessary burden on the licensees. The Association, accordingly, recommends that the Board, to the greatest permissible extent, accept other gaming jurisdiction certifications under section 1320 of the Act, 4 Pa. C.S. § 1320, as provided in proposed section 461.2(c)(1) of the draft temporary regulations.

IX. § 471.1. Fees generally.

While the fees applicable to slot machine licenses are not included in the draft temporary regulations currently under consideration, this section provides for "fees generally." It is understood by the Association and its members that this general provision will eventually be applicable to slot machine licensees, as well, in that, as currently written, it applies to all "applicants" and "licensees."

Our concern with this provision, which we recognize is derived from the language of § 1208(1) of the Act, is its breadth. Neither this regulation nor the Act places any limits on the fees that the Board may charge other than to place in the Board the power and duty to "levy and collect fees ... to fund the operations of the Board." 4 Pa. C.S. § 1208(1); 58 Pa. Code § 471.1(1) (proposed). Neither the Act nor the regulation contain any time frame to be considered when determining which operations of the Board need to be funded and the extent of the funding that is required.

We note that, in what might be considered to be a related topic, the Board is required to approve a budget specifying the costs and expenses incurred by the Board in carrying out its responsibilities under the Act. 4 Pa. C.S. § 1402 (relating to gross terminal revenue deductions). We assume that the Board will be required to adopt a annual budget, like other state agencies and boards. We suggest inclusion of the language contained in § 471.1 that would tie the fees that the Board could levy and collect to the Board's annual operating budget. Such a requirement would act to constrain the Board's authority in setting fees to that which is reasonable to fund the Board's operations. It would also avoid any argument that the Board was acting arbitrarily in setting the fees to fund the Board's operations.

We also request that the Board make it clear in section 471.3 that slot machine licensees will not be responsible for the costs associated with the licensing of suppliers and manufacturers. As potential slot machine licensees, we recognize, of course, that we will ultimately be responsible for the budget of the Board, as well as the budgets of the Department of Revenue, the Pennsylvania State Police, and the Office of Attorney General in carrying out their respective responsibilities under the Act. 4 Pa. C.S. § 1402(a)(1)(2), (4) and (6). That burden should not be increased by any manufacturer or supplier license applicant's failure to satisfy its obligations under this section.

Pennsylvania Gaming Control Board

May 11, 2005

Page 9

On a relatively minor point, we request that the Board consider the availability of electronic fund transfers for the payment of fees to the Board as now required by check or money order. 58 Pa. Code § 471.1(d) (proposed). Such permission will benefit the Board by reducing paperwork and by guaranteeing the timely receipt of all required fees.

X. Proposed Regional Supplier Amendments.

We are aware that an amendment to the draft temporary regulations has been proposed to the Board that would require the establishment of regional suppliers. In addition to our comments on Chapter 431 (relating to supplier licenses), we offer the following comments to that proposal.

The existence of regional suppliers may limit the number of licensed suppliers available to slot machine licensees. In doing so, regional suppliers would have the potential to decrease competition and drive up costs to the slot machine licensees. This regionalization also has the possibility of limiting the types and numbers of slot machine games that might otherwise be available to the slot machine licensees and, ultimately, to the Pennsylvania gaming public. To maximize revenues and to attract the greatest number of players, Pennsylvania's slot machine licensees need to have access to all of the same slot machines that the competition in neighboring states has available to them.

The Association requests that the Board consider these matters as it decides whether to adopt the proposal requiring regional suppliers.

XI. Miscellaneous Provisions.

We have identified a number of typographical or other apparent scrivener's errors in the proposed regulations. We list them here in an effort to assist the Board.

Throughout the draft regulations, references to defined terms are sometimes capitalized and sometimes not. For example, the word "Act" is capitalized in section 421.2(a)(4), but appears in lower case in section 427.1(c). In both instances, the text is referring to the word as defined in section 401.4. The Association suggests that the regulations be uniform in its treatment of defined words and phrases for fear their disparate treatment could lead to differing interpretations.

In a similar vein, in most instances when a section of the Act is referenced in the regulations, the section is followed by a parenthetical statement identifying the subject of the section, *e.g.* section 1402 (relating to gross terminal revenue deductions). As with the decision to use upper or lower case, the Association suggests uniformity in this context, as well.

Pennsylvania Gaming Control Board
May 11, 2005
Page 10

Section 423.3(a)(2) refers to "required fees." The following section refers to "applicable fees." 58 Pa. Code § 423.4(a)(2). The Association believes that these sections are referring to the same fees and should refer to them uniformly as either "required fees" or "applicable fees."

In section 427.2(c), a comma should be inserted between the words "holding" and "affiliate."

In section 431.3(d), the word "place" should be changed to "placed."

For consistency and completeness, in light of related provisions, the Association suggests that section 435.2(b)(10) be changed from "a slot machine licensee or a supplier" to "a slot machine licensee, a manufacturer licensee or a supplier licensee."

Section 435.3(b)(13) should be changed from "criminal history records" to "criminal history record information."

The word "copy" should be deleted from section 495.5(a).

The word "executes" in section 495.6(d), for consistency, should be changed to "verifies."

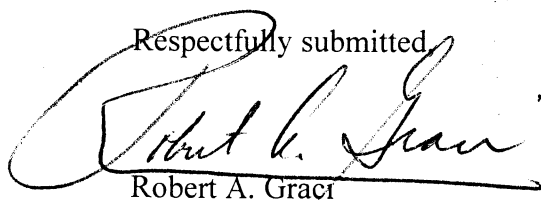
In section 497.5(a)(1), the word "title" should be changed to "part."

In section 497.5(b), the word "title" should be changed to "part."

In section 499.1(b), the reference to "section 497.2" should be changed to "section 499.2."

Thank you for your time, attention, and serious consideration to these comments and suggestions of the Pennsylvania Horse Racing Association. Should you have any questions, I may be contacted by telephone at (717)237-6067 or by e-mail at rgraci@eckertseamans.com. The Association stands ready to work with the Board and staff in these matters of mutual concern.

Respectfully submitted,



Robert A. Graci

RAG/smb

H. WILLIAM DeWEESE
THE MINORITY LEADER



HOUSE OF REPRESENTATIVES
COMMONWEALTH OF PENNSYLVANIA
HARRISBURG

May 12, 2005

PGCB_GMS-17
RECEIVED
MAY 16 2005

PGCB
P.O. Box 69060
Harrisburg, PA 17106-9060
Attn: Public Comment

To Whom It May Concern:

These public comments are submitted in support of the Proposed Regional Supplier Amendments to the Draft Regulations Concerning Manufacturer and Supplier Licenses of the Pennsylvania Gaming Control Board dated April 12, 2005. As two of the chief architects of Act 71, we are intimately familiar with the legislative intent and goals of the "supplier requirement" in that law and we are committed to that law being implemented in a manner which provides the best possible opportunity for those goals to be achieved.

We strenuously urge the Gaming Control Board to adopt the Proposed Regional Supplier Amendments to their draft regulations because the Proposed Amendments:

- **Reflect the clear legislative intent of Act 71 to foster a new industry in Pennsylvania;**
- **Reflect the clear legislative intent of Act 71 that the Pennsylvania Gaming Control Board rather than out-of-state manufacturers determine who will be licensed as suppliers in the Commonwealth;**
- **Will provide substantive opportunity for small businesses and for diversity in the ownership of supplier licensees;**
- **Will provide economic growth and job creation in all regions of the Commonwealth;**
- **Will provide exceptional flexibility in the marketplace.**

The Proposed Regional Supplier Amendments reflect the clear legislative intent of Act 71 to foster a new industry in Pennsylvania. – In establishing a "supplier requirement" in Act 71, the General Assembly intended to establish a meaningful new industry in Pennsylvania that would provide broad-based economic benefit to businesses and working men and women in the Commonwealth rather than enriching a few large, wealthy, out-of-state corporations. That is why Pennsylvania, by enacting the "supplier requirement" in Act 71, is unique in requiring a

distribution system for slot machines and associated equipment that is independent from the manufacturing licensees. In order to implement fully our legislative intent, the Proposed Regional Supplier Amendments provide a framework for assuring a vibrant industry that will create jobs and commerce in various areas of the state. The establishment of five supplier regions in the Commonwealth -- with a minimum of five suppliers within each region (and more than five at the Board's discretion, if competition in the industry allows) assures that there will be at least 25 valuable supplier licensees in Pennsylvania. The Proposed Regional Supplier Amendments provide flexibility to the Gaming Control Board both in establishing the regions and in determining the number of supplier licenses to be issued within each region in order to insure that each supplier licensee can operate in a profitable manner. Profitability is also achieved by provisions in the Proposed Supplier Amendments permitting either exclusive or non-exclusive manufacturer/supplier agreements. By contrast, permitting statewide suppliers will, as a practical matter, result in five economically viable supplier licensees in Pennsylvania. This will be a far cry from the creation of a new industry as envisioned in the passage of Act 71.

Reflect the clear legislative intent of Act 71 that the Pennsylvania Gaming Control Board rather than out-of-state manufacturers determine who will be licensed as suppliers in the Commonwealth. – It was the obvious intent of the General Assembly that the state licensing and regulatory agency, the Pennsylvania Gaming Control Board, would determine who shall receive supplier licenses in Pennsylvania based not only upon satisfying criminal background checks but upon the goals enumerated in the statute – i.e. economic development throughout the state, job creation in all regions of the Commonwealth, diversity in ownership of licensees, and small business development. The Proposed Regional Supplier Amendments include provisions for recognition and approval of agreements between manufacturers and their suppliers entered into AFTER these entities have been licensed. Under such a system, the Commonwealth completely controls who the suppliers will be and can insure not only that only the best qualified entities receive licenses but also that: minorities, women, and small businesses are included within the supplier networks; economic development opportunities exist throughout the state; job creation occurs within all regions of the Commonwealth – all of which were the intended result of the “supplier requirement” in Act 71. Under the statewide supplier proposal embodied in the Board's Draft Regulations, the selection of suppliers will be decided by the manufacturers based purely on their own economic interest, even if those interests subvert the legislative intent enumerated in Act 71. Their selections will be presented to the Gaming Control Board as a fait accompli. While the Board can refuse to license those with questionable backgrounds, it will be unable to insure that the best qualified applicants receive licenses or that the diversity, economic development and job creation goals of Act 71 are met.

More importantly, manufacturer-selected suppliers are antithetical to the concept of competition, and competition, at its best, is the basic mechanism of market-based economies. We submit that the economic self-interest of slot machine manufacturers and manufacturer-selected suppliers will not support competition in the distribution segment of the slot machine industry in this Commonwealth. If a regional supplier network is not established and manufacturer-selected suppliers drive the supply segment of the slot machine industry, there will surely be no significant employment impact, personal earnings impact, attendant business revenue impact, or local tax impact.

Provide substantive opportunity for small businesses and for diversity in the ownership of supplier licensees. -- Act 71 expressly includes a major goal of providing substantial and meaningful opportunities for small businesses, minority business enterprises and women's business enterprises in the Pennsylvania gaming industry. The language to this effect in Act 71 was neither intended as "surplus" nor intended to simply pay lip service to this concept. It was, in fact, a critical aspect of the legislation and one relied upon by many members of the General Assembly who supported and voted for the legislation. It is imperative that the Act be implemented in a way that provides a realistic opportunity to achieve these goals.

The Proposed Regional Supplier Amendments offer such an opportunity both through the number of licenses created, the required meaningful Board oversight in awarding and policing them and the ability it gives to small businesses to compete for these licenses. It creates the best opportunity for local small business development, minority business development and women's business development throughout the state together with the job creation and economic development opportunities attendant to that. A statewide system with no limitation on the number of licenses, that as a practical matter will likely result in the issuance of five economically viable supplier licenses, will provide little opportunity for meaningful small business, minority and women's participation – and will entirely compromise the Board's ability to address those issues in the supplier area. The capitalization requirements alone for such statewide businesses are such that small businesses, minority business enterprises and women's business enterprises will, as a practical matter, be precluded from seeking licenses. Because the approach embodied in the Proposed Regional Supplier Amendments gives reasonable assurance that each license issued will have some value, and allows for expansion in number of licenses where appropriate, the Board can assure small businesses, minority and women business enterprises are reasonably in the "mix" at the same time that it can assure real competition. It is the only approach that will provide the opportunities that were an integral factor in the drafting and passage of Act 71.

Provide for economic growth and job creation in all regions of the Commonwealth. – The General Assembly considered ancillary business development throughout the Commonwealth as a major benefit to the passage of gaming legislation in Pennsylvania. While the Act contained various geographic requirements for the slot machine facilities themselves, it contained no such requirements or restrictions on either gaming-related vendors/suppliers or non-gaming-related vendors/suppliers. The only requirement in Act 71 was that suppliers be Pennsylvania-based businesses. The lack of requirements and restrictions on location of these ancillary businesses was not accidental. They were viewed as the mechanism by which the economic development and job creation benefits of legalized gaming could be expanded to all parts of the Commonwealth rather than being clustered around the slot facilities themselves. The lack of geographic requirements and restrictions provides the Board with substantial flexibility in the licensing of these businesses so that every portion of the state receives the benefits of the legalization of slot machines in Pennsylvania. The Proposed Regional Supplier Amendments, by the establishment of five regions with a minimum of five suppliers within each region, ensure that the economic benefits of legalized gaming are spread throughout all areas of the state. It is the only system that can achieve this result. Any system that does not regionalize the supplier

network will most likely result in meaningful job development and economic benefit only in one or two areas of the Commonwealth.

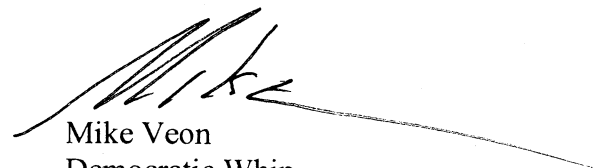
Provide exceptional flexibility in the marketplace. -- The creation of a regional supplier network within the regulatory design set forth in the Proposed Regional Supplier Amendments allows for the marketplace to work without great interference within that framework. Manufacturers and suppliers would be permitted to enter into agreements providing for a supplier to be the exclusive distributor of that manufacturer's products. Manufacturers and suppliers would also be able to enter into agreements that do not provide such exclusivity. It will allow the largest manufacturers to have the exclusive type of agreement they normally seek. At the same time, it will provide smaller manufacturers the opportunity to market in Pennsylvania by entering into non-exclusive agreements with a supplier. Suppliers for large manufacturers will be economically viable based upon the volume of slot machines they will handle for that manufacturer. Suppliers who do not have an agreement with a large manufacturer will be economically viable through the ability to have non-exclusive agreements with several smaller manufacturers. The proposal also will allow small manufacturers to market their products in Pennsylvania when they may well be precluded from doing that under an exclusive statewide system. Finally, the requirement in the Proposed Regional Supplier Amendments that after-market sales also be conducted through the licensed supplier network will provide value and long-term business stability for licensed suppliers and provide a beneficial mechanism to manufacturers and slot facility licensees for the sale and disposal of older machines.

In conclusion, the Pennsylvania Gaming Control Board should adopt the Proposed Regional Supplier Amendments in their entirety. It is a carefully crafted proposal that reflects the intent of the General Assembly in enacting Act 71 and provides the best opportunity to achieve those goals.

Sincerely,



H. William DeWeese
Minority Leader
PA House of Representatives



Mike Veon
Democratic Whip
PA House of Representatives

REP. THADDEUS KIRKLAND, CHAIR



REP. JEWELL WILLIAMS
VICE CHAIR

REP. THOMAS BLACKWELL
SECRETARY

REP. JOSEPH PRESTON
TREASURER

RONALD STARR
EXECUTIVE DIRECTOR

Pennsylvania General Assembly
COMMONWEALTH OF PENNSYLVANIA
HARRISBURG

Pennsylvania Legislative Black Caucus

May 13, 2005

PGCB 'GMS-18
RECEIVED
MAY 16 2005

PGCB
P.O. Box 169060
Harrisburg, PA 17106-9060
Attn: Public Comment

Dear Mr. Hays:

We have reviewed the draft of Proposed Supplier and Manufacturer Regulations dated April 12, 2005 and the Proposed Regional Supplier Amendments also posted on the Pa Gaming Control Board's website. We hereby submit the following as our public comments on these proposals.

We strongly support the Proposed Regional Supplier Amendments which implement the clear intent of Act 71. The establishment of a regional supplier network as detailed in the proposed Amendment would provide for the establishment of a meaningful new industry in Pa and provide substantial opportunity for small businessmen and businesswomen in Pa, particularly for minority and women owned business enterprises. We were advocates for the passage of Act 71. We voted for the legislation with a strong understanding that it would result in significant opportunity for minority and women owned businesses and for job creation opportunities among the economically disadvantaged. Failure to adopt the Proposed Regional Supplier Amendments will represent a step in the wrong direction toward inclusion of opportunities for minority and women business enterprises and would be contrary to the legislative intent expressed in the statute.

Section 1212 of the Pennsylvania Race Horse Development and Gaming Act specifically recites the intent and goal of the General Assembly to promote and insure diversity in all aspects of the activities authorized in Act 71. This can only be achieved by adoption of the Proposed Regional Supplier Amendments. The establishment of five supplier regions in the Commonwealth, with a minimum of five suppliers within each region, assures that there will be at least 25 supplier licenses available in Pennsylvania. This creates the best opportunity for local small business

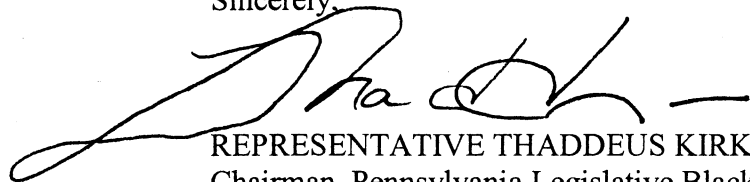
development throughout the state together with the job creation and economic development opportunities attendant to that. The establishment of this network of suppliers would create major opportunities for minority and women owned business enterprises throughout the Commonwealth.

By contrast, a supplier system that provides only for statewide suppliers will likely result in only a handful of supplier licenses being available. Such a system will, in our opinion, provide little opportunity for meaningful minority or women business enterprise participation and will substantially compromise the Board's ability to carry out the law's intent in the supplier area.

Finally, the Proposed Regional Supplier Amendments insures that the Commonwealth, rather than private businesses, controls the selection of suppliers in Pennsylvania. Only such a system can ensure that minority and women business enterprises are provided significant opportunity for participation in the supplier network. If the Commonwealth does not control the selection process, the selection of suppliers will be decided by private manufacturers based purely on their own economic interest, even if those interests subvert the legislative intent with respect to establishing jobs and small business development in the state and insuring diversity in the industry.

In conclusion, we strongly urge the Pennsylvania Gaming Control Board to adopt the Proposed Regional Supplier Amendments in accordance with the intent and goals of Act 71 and the Board's designated responsibilities under the Race Horse Industry Development and Gaming Act.

Sincerely,

A handwritten signature in black ink, appearing to read 'Thaddeus Kirkland', written over a horizontal line.

REPRESENTATIVE THADDEUS KIRKLAND
Chairman, Pennsylvania Legislative Black Caucus

cc: Ed Rendell, Governor
Bill DeWeese, Democratic Leader
Mike Veon, Democratic Whip
All PLBC Members

DRAFT REGULATIONS COMMENT FORM

PGCB GMS-19

Please complete all of the fields below before printing:

Date: May 12, 2005

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MAY 16 2005

Section # or
Subject Comments on Title 58, Part VII

Edward W. Diggs
Kirkpatrick & Lockhart Nicholson
Graham LLP

Robert P. Krauss
Ballard Spahr Andrews & Ingersoll, LLP

Christopher A. Lewis
Blank Rome, LLP

Philadelphia County

Philadelphia County

Allegheny County

Organization: N/A

GMS 19.1

MEMORANDUM

To: Pennsylvania Gaming Control Board

From: Edward W. Diggs, - Kirkpatrick & Lockhart Nicholson Graham LLP
Robert P. Krauss – Ballard Spahr Andrews & Ingersoll, LLP
Christopher A. Lewis – Blank Rome LLP,

Date: May 12, 2005

Re: Proposed Manufacturers/Suppliers Regulations

The attached “mark-up” of the Regulations recently proposed by the Pennsylvania Gaming Control Board (“PGCB”) is submitted for your consideration.

The authors of this memorandum would be pleased to meet with one or more of the members of PGCB or its staff with respect to this memorandum or the attached “mark-up”. These documents were not intended to advocate for any potential applicant for a license or a permit under Act 71 (“Act”) but rather address technical details of the Proposed Regulations, including conformance to the language of the Act. In that regard, in addition to the “mark-up”, please consider the following:

1. The PGCB should assure that the same identical words used in the Act or in other parts of the Regulations are used in expressing definitions or regulatory provisions. If any different words are used, proper statutory construction would require a different intent for the different words.
2. We assume that references in the Regulations to “this part” are to Title 58—Recreation. Reference is made to 1 Pa. Code, Section 1.3 for conformance.
3. Key Employee—Key Employee Qualifier. First, the two definitions seem to overlap in many respects. Granted that the Regulations provide that if one holds a key employee qualifier license, one does not have to hold a key employee license. However, the intent of key employee qualifier appears to be directed more to persons who own or finance a licensee rather than individuals who operate a licensee. Perhaps this type of division would be helpful. In addition, with respect to the definition key employee qualifier, a “control person” cannot include a person who holds **any** ownership in a licensee—an exception is required for public companies and should apply only to a person who holds a “controlling interest”. In addition, the language pertaining to a bank or underwriter should be conformed to Section 1313(B) of the Act which was debated at length to make it clear that all types of institutional lenders and underwriters would not be required to be licensed merely because of their lending and other financing activities. Finally, in the third line from the bottom of this definition, the term “employee” must be limited to “key employees”.

4. Section 407.1(b). The same record might contain both confidential and non-confidential information. Will the full record be in the confidential file and a redacted form in the non-confidential file? If so, this should be specifically set forth in the Proposed Regulation.

5. Section 421.3—will disqualification occur upon any violation or only a material violation or repeated violation? The same question arises with respect to applicable “federal or state laws or regulations”. There should be a limitation.

6. Section 423.1(d)—the Act does not refer to financial **stability**, but rather financial **fitness** (as set forth in the third line of this subsection).

7. Section 4.23.1(h)—it would appear that agents or employees of investigators (who are not government employees) should be held responsible for gross negligence or willful or wanton misconduct.

8. Section 423.2(a)(6)—the drafters of the Act rejected a requirement for a tax clearance procedure. Experience is that a tax clearance requires over one year to complete. The Act refers to a tax lien certificate—as should the Regulations. See Section 1308(b) of the Act.

9. Section 423.5(b)—we believe that requiring board approval to withdraw an application may not be respectful of the individual rights of applicants. Some applicants may not understand the rigorous nature of the application process and may not want to subject themselves or their families to intense public scrutiny. It is understood that the application fee is not refundable. However, except in cases where the public needs protection from an applicant, it would appear that a balanced public policy would permit an applicant to withdraw an application upon request and upon forfeiting the applicant’s application fee and paying any accrued background investigation costs not covered by the fee. If the Board determines to retain this section, a standard should be added with respect to the Board’s exercise of its discretion as to whether it will permit an application to be withdrawn.

10. Section 427.3(a)(5)—applicants who are licensed in other states will virtually always have administrative actions pending in the ordinary course.

11. Section 435.1—should the initial subsection (a) include a statement that Section 435.1 pertains to employee licenses or permits. This is not clear but, we assume, is intended.

12. Section 435.1(g)—we are confused as to whether this section is an addition to or a clarification of Section 1513 of the Act. If it is retained, the term “in consideration for” is certainly ambiguous. Is it a “reward” to transport a member of the PGCB or an employee thereof to view an applicant’s manufacturing facility? Is it intended that, under such cases, the member or employee would have to require that the Board pay for such a trip and the Board would then bill the applicant for the trip?

GMS19.3

13. Subpart F—Section 481.1 et. seq. Several members of the Committee suggested that Subpart F is too general and should be more specific as to goal setting and specific reporting against approved plans or goals.

14. Section 495.1—add a new subpart (d) before the existing subpart (d) as follows:

“Pleadings shall be endorsed with an address where papers may be served in connection with the pending proceedings as well as a phone number. Endorsement with a fax number shall constitute endorser’s agreement to accept papers connected with the proceeding by fax. Notation of counsel’s current Supreme Court identification number issued by the Court Administrator of Pennsylvania shall constitute proof of the right to practice in the Commonwealth.”

This conforms to Pennsylvania Rules of Civil Procedure Section 205.1 and 440(d)(1). Existing Subpart (d) will be re-lettered (e) and the reference in the first line will be to subsections (a)-(d)...

15. Section 495.5—73 P.S., Section 2260.303 et. seq., permits agencies to accept electronic filings. The same permission is granted under Pennsylvania Rule of Civil Procedure 2205.4. The PGCB should consider permitting all filings to be made by fax or electronic means.

16. Section 495.5(b)(2)—the reference to “may be required” in the second line seems to be an after-the-fact requirement. Is the document deemed filed if the PGCB requires supplemental information? Conventionally, the document would have information evidencing the signor’s authority. We suggest this standard be adopted rather than the after-the-fact requirement.

17. We are not commenting on the proposed “Coy Amendments” at this time.

/er
Attachment

GMS 19.4

RULES AND REGULATIONS

TITLE 58. RECREATION

PENNSYLVANIA GAMING CONTROL BOARD

[58 PA. CODE CHS 401, 403, 407, 421, 423, 427, 431, 433, 435,
451, 461, 471, 481, 491, 495, 497, 499]

Pennsylvania Gaming Control Board

TABLE OF CONTENTS

Title. 58. Recreation

Part VII. Gaming Control Board

Subpart A. GENERAL PROVISIONS

CHAPTER 401. PRELIMINARY PROVISIONS

§ 401.1. Purpose

§ 401.2. Scope

§ 401.3. Construction

§ 401.4. Definitions

§ 401.5. Jurisdiction

CHAPTER 403. BOARD OPERATIONS AND ORGANIZATION

§ 403.1. Participation at meetings and voting

§ 403.2. Meetings

§ 403.3. Board office hours

§ 403.4. Public communication

CHAPTER 407. PUBLIC ACCESS TO BOARD RECORDS

§ 407.1. Case files

§ 407.2. Minutes of public meeting and annual report

GMS 19.5

§ 407.3. Extensions of time to review folders

Subpart B. LICENSING

CHAPTER 421. GENERAL PROVISIONS

§ 421.1. General requirements

§ 421.2. Licensed entities

§ 421.3. Disqualification criteria

§ 421.4. Investigations; supplementary information

CHAPTER 423. APPLICATIONS

§ 423.1. General requirements

§ 423.2. Application processing

§ 423.3. License issuance

§ 423.4. Incomplete applications

§ 423.5. Application withdrawal

CHAPTER 427. MANUFACTURER LICENSES

§ 427.1. Manufacturer license requirements

§ 427.2. Manufacturer licensing standards and
application

§ 427.3. Alternative manufacturer licensing standards

CHAPTER 431. SUPPLIER LICENSES

§ 431.1. Supplier license requirements

§ 431.2. Supplier licensing standards and application

§ 431.3. Supplier requirements and prohibitions

CHAPTER 433. LICENSE RENEWAL

§ 433.1. Renewal of manufacturer and supplier license

CHAPTER 435. EMPLOYEES

§ 435.1. General provisions

§ 435.2. Key employee qualifier license

§ 435.3. Key employee license

§ 435.4. Occupation permit

Subpart C. RECORDKEEPING

CHAPTER 451. LICENSEE RECORDKEEPING REQUIREMENTS

§ 451.1. Recordkeeping generally

Subpart D. SLOT MACHINE TESTING AND CERTIFICATION

CHAPTER 461. SLOT MACHINE TESTING AND CERTIFICATION

REQUIREMENTS

§ 461.1. Protocol requirements

§ 461.2. Testing and certification generally

Subpart E. FEES

CHAPTER 471. FILING FEES

§ 471.1. Fees generally

§ 471.2. Obligation to pay fees; nonrefundable nature
of fees

§ 471.3. Schedule of fees for manufacturer and supplier
licenses

Subpart F. MINORITY AND WOMEN'S BUSINESS ENTERPRISES

CHAPTER 481. GENERAL PROVISIONS

§ 481.1. Statement of purpose and policy

§ 481.2. Definitions

§ 481.3. Diversity participation

§ 481.4. Establishment of diversity plan required

§ 481.5. Report of participation

Subpart G. PRACTICE AND PROCEDURE

CHAPTER 491. GENERAL RULES OF PRACTICE

§ 491.1. Office of the Clerk

§ 491.2. Filing generally

CHAPTER 495. DOCUMENTARY FILINGS

§ 495.1. Form of documentary filings generally

§ 495.2. Form of documents

§ 495.3. Incorporation by reference

§ 495.4. Single pleading covering more than one matter

§ 495.5. Execution of documents

§ 495.6. Verification

§ 495.7. Number of copies

CHAPTER 497. TIME

§ 497.1. Date of filing

§ 497.2. Computation of time

§ 497.3. Issuance of Board orders

§ 497.4. Effective dates of Board orders

§ 497.5. Extensions of time and continuances

CHAPTER 499. REPRESENTATION BEFORE THE BOARD

§ 499.1. Appearance in person

§ 499.2. Appearance by attorney

§ 499.3. Other representation prohibited at hearings

§ 499.4. Notice of appearance or withdrawal

§ 499.5. Form of notice of appearance

§ 499.6. Contemptuous conduct

§ 499.7. Suspension and disbarment

RULES AND REGULATIONS

TITLE 58. RECREATION

PENNSYLVANIA GAMING CONTROL BOARD

[58 PA. CODE CHS 401, 403, 407, 421, 423, 427, 431, 433, 435,
451, 461, 471, 481, 491, 495, 497, 499]

Pennsylvania Gaming Control Board

INTRODUCTION

The Pennsylvania Gaming Control Board (Board), under authority contained in section 1202 of the Pennsylvania Race Horse Development and Gaming Act of 2004 (act), has drafted temporary regulations to facilitate the prompt implementation of the act, enacted July 4, 2004 (H.B. 2330) (Act 71). Upon adoption of the regulations by the Board, the Board's temporary regulations will be added to 58 Pa. Code, Recreation, Part VII, and will be titled Gaming Control Board. By publishing these temporary regulations in draft form, the Board seeks public comment prior to the adoption of the regulations.

Contact Person

Interested persons are invited to submit written comments, suggestions or objections to the draft temporary regulations via United States mail to The Pennsylvania Gaming Control Board, Office of Communications, P.O. Box 69060, Harrisburg, PA 17106-9060.

GMS 19.10

ANNEX A

TITLE 58. RECREATION

PART VII. GAMING CONTROL BOARD

Subpart A. GENERAL PROVISIONS

CHAPTER 401. PRELIMINARY PROVISIONS

§ 401.1. Purpose.

The purpose of this part is to facilitate the implementation of the act.

§ 401.2. Scope.

(a) This subpart governs the practice and procedure before the Board.

(b) This subpart is intended to supersede the applicability of 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure) to practice and procedure before the Board.

§ 401.3. Construction.

(a) This part shall be liberally construed to secure the just, speedy and inexpensive determination of every action or proceeding to which it is applicable. The Board at any stage of an action or proceeding may disregard an error or defect of procedure which does not affect the substantive rights of the parties.

(b) The Board at any stage of an action or proceeding may waive a requirement of this part when necessary or appropriate,

if the waiver does not adversely affect a substantive right of a participant as determined by the Board.

(c) Subsections (a) and (b) supersede 1 Pa. Code § 31.2 (relating to Liberal Construction).

§ 401.4. Definitions. *All definitions must conform to the act.*

The following words and terms, when used in this part, have the following meanings, unless the context clearly indicates otherwise:

Act - The Pennsylvania Race Horse Development and Gaming Act, 4 Pa.C.S. §§ 1101-1904.

Affiliate or affiliated company - A person that directly or indirectly, through one or more intermediaries or controls, is controlled by or is under common control with a specified person.

Applicant - ^{Any} ~~A~~ person, officer, director or key employee, who on his own behalf or on behalf of another, is applying for permission to engage in an act or activity which is regulated under this part. In cases in which the applicant is a corporation, foundation, organization, business trust, estate, limited liability company, trust, partnership, limited partnership, association or ^{any other} ~~a~~ form of legal business entity, the Board shall determine the associated persons whose qualifications are necessary as a precondition to the licensing of the applicant.

Application - A written request, in a form or forms approved by the Board, for permission to engage in an act or activity ^{any} which is regulated under the act. An application shall include supplements, reports, documentation or other information requested by the Board as part of the application process.

Application fee - The amount of money required to be paid for an application submitted to the Board. Such payments are nonrefundable.

Approved, approval or approve - When used in reference to an application submitted to the Commissions to conduct harness or thoroughbred race meetings or the Board to authorize and regulate the placement and operation of slot machines, the terms refer to the date that an application to the Commissions or the Board is granted regardless of the pendency of administrative or judicial appeals or other legal action challenging the decision of either Commission or the Board.

Associated equipment - ^{Any} ~~E~~quipment or mechanical, electromechanical or electronic contrivance, component or machine used in connection with gaming, including linking devices which connect to progressive slot machines or slot machines, replacement parts, equipment which affects the proper reporting of gross revenue, computerized systems for controlling and monitoring slot machines, including, but not limited to, the

GMS19.13

central control computer and devices for weighing or counting money.

Authority - An authority created by the Commonwealth which purchases State gaming receipts under section 1202 of the act (relating to General and Specific Powers).

Authorized personnel - A member or designated employee of the Board or a designated employee or agent of the Bureau.

Background investigation - A security, criminal, credit and suitability investigation of a person as provided for in this part. The investigation shall include the status of taxes owed to the United States and to the Commonwealth and its political subdivisions.

Backside area - Those areas of the racetrack facility that are not generally accessible to the public and which include, but are not limited to, those facilities commonly referred to as barns, track kitchens, recreation halls, backside employee quarters and training tracks, and roadways providing access thereto. The term does not include those areas of the racetrack facility which are generally accessible to the public, including the various buildings commonly referred to as the grandstand or the racing surfaces, paddock enclosures and walking rings.

Board - The Pennsylvania Gaming Control Board established under section 1201 of the act (relating to Pennsylvania Gaming Control Board Established).

GMS 19.14

Bonds - Bonds, notes, instruments, refunding notes and bonds and other evidences of indebtedness or obligations, which an authority issues to fund the purchase of State gaming receipts.

Bureau - The Bureau of Investigations and Enforcement of the Board.

Central control computer - A central site computer controlled by the Department and accessible by the Board to which all slot machines communicate for the purpose of auditing capacity, real-time information retrieval of the details of a financial event that occurs in the operation of a slot machine, including, but not limited to, coin in, coin out, ticket in, ticket out, jackpots, machine door openings and power failure, and remote machine activation and disabling of slot machines.

Cheat - To alter without authorization the elements of chance, method of selection or criteria which determine:

(i) The result of a slot machine game.

(ii) The amount or frequency of payment in a slot machine game.

(iii) The value of a wagering instrument.

(iv) The value of a wagering credit.

The term does not include altering for required maintenance and repair.

Clerk - The Clerk to the Board.

Commission or Commissions - The State Horse Racing Commission or the State Harness Racing Commission, or both, as the context may require.

Complainants - Persons who complain to the Board or Bureau of an act or omission by an applicant, licensee, permittee or person, or claimed violation of this act, or of this part, or of an order of the Board. ✓

Confidential information -

(i) Background investigation information, including all information provided under section 1310(a) ^{of the act} (relating to Slot Machine License Application Character Requirements), submitted in connection with an application required for the issuance of a license or permit under this part, Board rules, discovery procedures, or cross-examination or that is provided as a courtesy to a party in a formal proceeding received by the Board or the Department as well as records obtained or developed by the Board or the Department as part of an investigation related to an applicant, ~~or~~ licensee ^{of permittee} ^{any of} containing the following:

(A) Personal information, including, but not limited to, home addresses, telephone numbers, social security numbers, educational records, memberships, medical records, tax returns and declarations, actual or proposed compensation, financial account records, credit-worthiness, or financial condition

GMS 19.16

relating to an applicant, ^{licensee} or permittee or the immediate family thereof.

(B) Business information, ^{which} shall be ^{limited to} documents and information relating to proprietary information, trade secrets, patents or exclusive licenses, architectural and engineering plans, ^{omit sec (C)} [security information] and information relating to competitive marketing materials and strategy which may include, but not be limited to, customer-identifying information or customer prospects for services subject to competition.

(C) Security information, including, but not limited to, risk prevention plans, detection and countermeasures, emergency management plans, security and surveillance plans, equipment and usage protocols, and theft and fraud prevention plans and countermeasures.

(D) Information with respect to which there is a reasonable possibility that public release or inspection of the information would constitute an unwarranted invasion into personal privacy as determined by the Board.

(E) Record or information that is designated confidential by statute or the Board.

(F) Records of an applicant or licensee not required to be filed with the United States Securities and Exchange Commission by issuers that either have securities registered under Section 12 of the Federal Securities and Exchange Act of

1934 or are required to file reports under Section 15(d) of that act.

(G) Records considered nonpublic matters or information by the United States Securities and Exchange Commission as provided by 17 Code of Federal Regulations 200.80.

(ii) Exceptions. *Notwithstanding anything contained in subpart (i) above*
~~The following information is exempted~~
to the contrary:
~~from the definition of confidential information.~~

(A) Records containing information received by the Board or the Department or information obtained or developed as part of an investigation related to the applicant, ~~or~~ *licensee or permittee* may be disclosed to state or Federal law enforcement agencies or entities when the Attorney General or a court of competent jurisdiction determines that the information contains evidence of a possible violation of laws, rules or regulations enforced by those agencies or entities.

(B) Records from an applicant, *licensee or permittee* may be disclosed to ~~the~~ *such* applicant, licensee or permittee upon written request. Records from an applicant, *licensee or permittee* may be disclosed to a person with the written consent of the applicant, licensee or permittee.

(C) Records containing information from an applicant, *licensee or permittee* that is already in the public domain or subsequently becomes a part of the public domain by an action by the applicant is not subject ~~to this definition.~~ *to the confidentiality requirements set forth in subpart (i) above.*

Controlling interest - A person shall be deemed to have the ability to control a publicly traded ~~corporation~~^{entity,} or to elect one or more of the members of its board of directors, if the holder owns or beneficially holds 5% or more of the securities of the publicly traded domestic or foreign corporation, partnership, limited liability company or other form of legal entity, unless the presumption of control or ability to elect is rebutted by clear and convincing evidence. A person who is a holder of securities of a privately held domestic or foreign corporation, partnership, limited liability company or other form of legal entity shall be deemed to possess a controlling interest unless the presumption of control is rebutted by clear and convincing evidence.

Conviction - A finding of guilt or a plea of guilty or nolo contendere, whether or not a judgment of sentence has been imposed as determined by the law of the jurisdiction in which the prosecution was held. The term does not include a conviction that has been expunged or overturned or for which an ~~individual~~^{person} has been pardoned or an order ~~of Accelerated~~^{relating to a disposition} ~~Rehabilitative Disposition.~~^{through any diversionary or similar program.}

Department - The Department of Revenue of the Commonwealth.

Final order - Includes the following:

GMS 19.19

(i) An order by the Board which approves, issues, renews, revokes, suspends, conditions, denies issuance or renewal of a license, *or permit,*

(ii) An action by the Board which affects personal or property rights, privileges, immunities, duties, liabilities or obligations, ^{*and*} ~~disposes~~ of all claims and of all parties before the Board. *{ words missing*

(iii) An action by the Board which is designated by the Board as final.

Financial backer - An investor, mortgagee, bondholder, note holder or other sources of equity or capital provided to an applicant or licensed entity.

Formal record - The pleadings in a matter or proceeding, a notice or Board order initiating the matter or proceeding, and if a hearing is held, the following shall be included in the formal record: transcript of hearing, exhibits received in evidence, exhibits offered but not received in evidence, offers of proof, motions, stipulations, subpoenas, proofs of service, determinations made by the Board thereon, and certifications to the Board.

Federal tax identification number - The Social Security number of an individual or the Employer Identification Number of a business, fiduciary or other person.

entity

Fund - The State Gaming Fund established under section 1403 of the act (relating to Establishment of State Gaming Fund and Net Slot Machine Revenue Distribution).

Gaming employee -

(i) An employee of a slot machine licensee, including, but not limited to:

(A) Cashiers.

(B) Change personnel.

(C) Counting room personnel.

(D) Slot attendants.

(E) Hosts or other persons authorized to extend complimentary services.

(F) Machine mechanics or computer machine technicians.

(G) Security personnel.

(H) Surveillance personnel.

(I) Supervisors and managers.

(ii) The term includes employees of a person holding a supplier's license whose duties are directly involved with the repair or distribution of slot machines and associated equipment sold or provided to ^a ~~the~~ licensed facility within this Commonwealth as determined by the Board. The term does not include bartenders, cocktail servers or other persons engaged solely in preparing or serving food or beverages, clerical or

secretarial personnel, parking attendants, janitorial, stage, sound and light technicians and other nongaming personnel as determined by the Board under section 1322 (c) of the act (relating to Slot Machine Accounting Controls and Audits).

wrong cite -
(321?)

Gross terminal revenue - The total of wagers received by a slot machine minus the total of:

(i) Cash or cash equivalents paid out to patrons as a result of playing a slot machine which are paid to patrons either manually or paid out by the slot machine.

(ii) Cash paid to purchase annuities to fund prizes payable to patrons over a period of time as a result of playing a slot machine.

(iii) ^{Any} personal property distributed to a patron as the result of playing a slot machine. This does not include travel expenses, food, refreshments, lodging or services.

The term does not include counterfeit money or tokens, coins or currency of other countries which are received in slot machines, (except to the extent that they are readily convertible to United States currency), cash taken in fraudulent acts perpetrated against a slot machine licensee for which the licensee is not reimbursed or cash received as entry fees for contests or tournaments in which the patrons compete for prizes.

Horsemen of this Commonwealth - A thoroughbred or standardbred horse owner or trainer who enters and runs his

horse at a licensed racing entity in the current or prior calendar year and meets the requirements of the horsemen's organization of which he is a member to participate in the receipt of benefits therefrom. The term includes an employee of a trainer who meets the requirements of the horsemen's organization of which he is a member to participate in the receipt of benefits therefrom.

Horsemen's organization - A trade association which represents the majority of owners and trainers who own and race horses at a licensed racetrack.

Institutional investor - A retirement fund administered by a public agency for the exclusive benefit of Federal, state or local public employees, investment company registered under the Investment Company Act of 1940 (15 U.S.C.A. §§ 80a-1 - 80a-64), collective investment trust organized by banks under Part Nine of the Rules of the Comptroller of the Currency, closed end investment trust, chartered or licensed life insurance company or property and casualty insurance company, banking and other chartered or licensed lending institution, investment advisor registered under The Investment Advisors Act of 1940 (15 U.S.C.A. §§ 80b-1 - 80b-21), and ^{such} other persons as the Board may determine consistent with this part.

IRS - The Internal Revenue Service of the United States.

Issued, issuance or issue - When used in reference to an application submitted to the State Horse Racing Commission or the State Harness Racing Commission to conduct harness or thoroughbred race meetings or the Board to authorize the placement and operation of slot machines, the terms refer to the date when a determination by the Commissions or the Board approving an application brought before the agencies becomes final, binding and nonappealable and is not subject to a pending legal challenge.

✓ **Key employee** - (Any individual who is employed in a director or department head capacity and who is empowered to make discretionary decisions that regulate slot machine operations, including the general manager and assistant manager of the licensed facility, director of slot operations, director of cage and credit operations, director of surveillance, director of marketing, director of management information systems, director of security, comptroller and any employee who supervises the operations of these departments or to whom these department directors or department heads report and other positions which the Board will determine based on detailed analyses of job descriptions as provided in the internal controls of the licensee as approved by the Board under section 1322(c) of the act (relating to Slot Machine Accounting Controls and Audits).

All other gaming employees unless otherwise designated by the Board, will be classified as non-key employees.

See Comment

Key employee qualifier - An individual employed by a person who is a slot machine licensee, manufacturer licensee or supplier licensee who holds a management or supervisory position

or who controls the operations of the licensee. The term includes: officers; directors; persons who directly or indirectly hold any beneficial interest in or ownership of the

securities of a licensee; a person who has the ability to control the licensee, has a controlling interest in the licensee, elects a majority of the Board of directors of the licensee, or otherwise has the ability to control the licensee;

a lender, other than a bank or lending institution which makes a loan or holds a mortgage or other lien acquired in the ordinary course of business; an underwriter; and a ^{key} employee of a slot machine licensee, manufacturer licensee or supplier licensee required to be licensed by the Board.

License fee - The amount of money required to be paid for the application, issuance or renewal of any type of license required by the act, this part, or as directed by the Board.

Licensed entity - A slot machine licensee, manufacturer licensee, supplier licensee or other person licensed by the Board under this part.

NOT defined
"who has a controlling interest"?

need exception for public company - applies only to a controlling interest

CONFORM TO 1313(B) of the Act

Licensed facility - The physical land-based location and associated areas at which a licensed gaming entity is authorized to place and operate slot machines.

Licensed gaming entity or slot machine licensee - A person that holds a slot machine license under this part.

Licensed racetrack or racetrack - The term includes the physical facility and grounds where a person has obtained a license from either the State Horse Racing Commission or the State Harness Racing Commission to conduct live thoroughbred or harness race meetings respectively with pari-mutuel wagering.

Licensed racing entity - ^{Any} A legal entity that has obtained a ^{The term -... copy from § 1103 of the act} license to conduct live thoroughbred or harness horse race meetings respectively with pari-mutuel wagering from either the State Horse Racing Commission or the State Harness Racing Commission under the Race Horse Industry Reform Act ^(RHIRA is a defined term) ~~(45 P.S. §§325.101-325.402)~~.

Manufacturer - A person who manufactures, builds, rebuilds, fabricates, assembles, produces, programs, designs or otherwise makes modifications to slot machines or associated equipment for use or play of slot machines in this Commonwealth for gaming purposes.

Manufacturer license - A license issued by the Board authorizing a manufacturer to manufacture or produce slot

machines or associated equipment for use in this Commonwealth for gaming purposes.

Manufacturer licensee - A manufacturer that obtains a manufacturer license.

Manufacturer's serial number - The unique number permanently assigned to a slot machine by a slot machine manufacturer for identification and control purposes, which number shall be affixed to the outside of the slot machine cabinet in a location as approved by the Board.

Municipality - A city, borough, incorporated town or township.

Net terminal revenue - The ^{net} amount of the gross terminal revenue less the tax and assessments imposed by sections 1402, 1403, 1405, and 1407 _{of the act.}

Nonprimary location - ^{Any} facility in which pari-mutuel wagering is conducted by a licensed racing entity other than the racetrack where live racing is conducted.

Occupation permit - A permit authorizing an individual to be employed or work as a gaming employee at a licensed facility.

Permit fee - The amount of money required to be paid for the application, issuance or renewal of any type of permit required by the act, this part or as directed by the Board.

Permittee - A holder of a permit issued under this part.

Person - A natural person, corporation, foundation, organization, business trust, estate, limited liability company, licensed corporation, trust, partnership, limited liability partnership, association or ^{other} a form of legal business entity.

Progressive payout - A slot machine wager payout that increases in a monetary amount based on the amounts wagered in a progressive system.

Progressive system - A computerized system linking slot machines in one or more licensed facilities within this Commonwealth and offering one or more common progressive payouts based on the amounts wagered.

Qualified majority - A vote by the Board consisting of at least one member of the Board who is a gubernatorial appointee and each of the four legislative-appointees.

Race Horse Industry Reform Act - 45 P.S. §§325.101 - 325.402.

Respondents - Persons subject to the jurisdiction of the Board, who are required to respond to an order or notice issued by the Board or the Bureau instituting a proceeding or investigation.

Revenue- or tourism-enhanced location - ^{Any} A location within this Commonwealth determined by the Board, which will maximize net revenue to the Commonwealth or enhance year-round recreational tourism within this Commonwealth, in comparison to

other proposed facilities and is otherwise consistent with this part and its declared public policy purposes.

SEC - The Securities and Exchange Commission of the United States.

Securities - As defined in the act of December 5, 1972 (P.L. 1280, No. 284), known as the Pennsylvania Securities Act of 1972.

Slot machine -

(i) A mechanical or electrical contrivance, terminal, machine or other device approved by the Board which, upon insertion of a coin, bill, ticket, token or similar object therein or upon payment of ^{any} consideration ^{whatsoever} including the use of electronic payment system except a credit card or debit card, is available to play or operate, the play or operation of which, whether by reason of skill or application of the element of chance, or both, may deliver or entitle the person playing or operating the contrivance, terminal, machine or other device to receive cash, billets, tickets, tokens or electronic credits to be exchanged for cash or to receive merchandise or anything of value, ^{whatsoever} whether the payoff is made automatically from the machine or manually. A slot machine:

(A) May utilize spinning reels or video displays, or both.

(B) May or may not dispense coins, tickets or tokens to winning patrons.

(C) May use an electronic credit system for receiving wagers and making payouts.

(ii) The term includes associated equipment necessary to conduct the operation of the contrivance, terminal, machine or other device.

Slot machine license - A license issued by the Board authorizing a person to place and operate slot machines under ~~this part~~ ^{the act} and this part.

Slot machine licensee - A person that holds a slot machine license.

State gaming receipts - Revenues and receipts required by ~~the act~~ ^{the act} ~~this part~~ to be paid into the State Gaming Fund, the Pennsylvania Race Horse Development Fund and the Pennsylvania Gaming Economic Development and Tourism Fund, and all rights, existing on July 5, 2004 [~~Editor's Note: the blank refers to the~~ ^{no - the Act} ~~effective date of adoption of the temporary regulations~~] or coming into existence after July 5, 2004, to receive any of those revenues and receipts.

State Treasurer - The State Treasurer of the Commonwealth.

Supplier - A person that sells, leases, offers or otherwise provides, distributes or services slot machine or associated

equipment for use or play of slot machines in this Commonwealth at a licensed gaming facility.

Supplier license - A license issued by the Board authorizing a supplier to provide products or services related to slot machines or associated equipment to licensed gaming entities.

Supplier licensee - A supplier that holds a supplier license.

Trade secret - A private formula, pattern, device, cost study or compilation of information which is used in a business and which, if disclosed, would provide the opportunity to obtain an advantage over competitors who do not know or use it.

§ 401.5. Jurisdiction.

The Board will have exclusive jurisdiction over all matters within the scope of its powers under the act.

or (c) if reversal - see p 23

CHAPTER 403. BOARD OPERATIONS AND ORGANIZATION

§ 403.1. Participation at meetings and voting.

(a) *Any* Qualified majority vote. *Any* Action by the Board, *except as set forth* in subparts (b) and (d) below, including the approval, issuance, denial or conditioning of *any* license or the making of an order or the ratification of a permissible act done or order made by one or more of the members of the Board shall require a qualified majority vote.

(b) Majority vote. ^{NY} Action by the Board to suspend, revoke, not renew, void or require forfeiture of a license or permit previously issued by the Board, to impose an administrative fine or penalty or to issue cease and desist orders under section 1201 of the act (relating to Pennsylvania Gaming Control Board Established), shall require a majority vote of all the Board members.

(c) Member abstention If a Board member has a disqualifying interest in a voting matter, ^{the} a member shall disclose the nature of his disqualifying interest, disqualify himself and abstain from voting in a proceeding in which his impartiality may be reasonably questioned, including, but not limited to, instances where he knows that he possesses a substantial financial interest in the subject matter of the proceeding or any ^{other} interest that could be substantially affected by the outcome of the proceeding. If it is a legislative appointee member that has disqualified himself, the qualified majority shall consist of the remaining three legislative appointees and at least two gubernatorial appointees.

c+d should be reversed

(d) Disqualifying interest. When a member has disqualified himself, his abstention from voting shall apply only to the singular voting matter that led to his disqualification and not apply to other matters under consideration by the Board for which he is otherwise qualified.

§ 403.2. Meetings.

(a) Public sessions. The proceedings of all public sessions shall be conducted in accordance with 65 Pa.C.S. Chapter 7 (relating to The Sunshine Act) and the act of June 21, 1957 (P.L. 390, No. 212) (65 P.S. §§ 66.1-66.9), known as the Right-to-Know Law.

(b) Regularly scheduled meetings. The Board will meet in Harrisburg once a month, and on other dates, times and locations as the Chairman of the Board determines.

(c) Record of proceedings. The Board will cause to be kept a record of all proceedings held at public meetings of the Board. A verbatim transcript of those proceedings will be prepared by the Board, *and posted on the Commission's website.*

§ 403.3. Board office hours.

Board offices will be open from 9:00 AM to 5:00 PM on business days except Saturdays, Sundays and legal holidays or unless otherwise directed by the Chairman.

§ 403.4. Public communication.

Requests for information regarding the Board may be directed to:

Office of Communications
Pennsylvania Gaming Control Board
P.O. Box 69060

CHAPTER 407. PUBLIC ACCESS TO BOARD RECORDS

§ 407.1. Case files.

(a) Records. Formal records in proceedings before the Board or the Bureau shall contain a file for nonconfidential records and a file for confidential records.

(b) Contents. Contents of folders containing records relating to a particular proceedings shall conform to the following:

(1) A nonconfidential file shall contain formal records, complaints, petitions, answers, replies, motions, briefs, orders and opinions that are ^{NOT confidential} ~~subject to disclosure~~. The file shall also include correspondence, reports and other materials that are ^{NOT confidential} ~~subject to disclosure~~.

(2) A confidential folder shall contain confidential information, as defined in section 401.4, which may include formal records, complaints, petitions, answers, replies, motions, briefs, orders and opinions. The file shall also include correspondence, reports and other materials that are ^{confidential} ~~not~~ ~~subject to disclosure~~.

(c) Access. Access to formal records shall conform to the following:

(1) Nonconfidential formal records shall be available for inspection upon request made during normal Board business hours.

(2) Requests for confidential formal records shall be made to determine if the material may be released for inspection. The Board or the Bureau shall review the request and provide its determination and notice to the requestor within 30 days of the request.

§ 407.2. Minutes of public meeting and annual report.

Minutes of the public meeting and annual reports shall be available for public inspection and copying upon request to the Office of the Clerk during normal Board business hours and for a certain cost for copying as the Board may determine through a schedule published in the *Pennsylvania Bulletin*.

§ 407.3. Extensions of time to review folders.

For good cause the Board may extend the time limits applicable to requests for access to documents. In the case of documents displaying no need for confidentiality, or, conversely, documents containing information which the Board considers ~~improper for public inspection~~ ^{confidential information}, the Board may direct the appropriate treatment thereof.

Subpart B. LICENSING

CHAPTER 421. GENERAL PROVISIONS

§ 421.1. General requirements.

(a) A license issuance, renewal, or other licensing approval issued by the Board is deemed a revocable privilege.

No person holding a license, renewal, or other licensing

approval is deemed to have any ^{property} rights therein, *except as specifically provided in the Act*

(b) An application submitted under the act constitutes the seeking of a privilege, and the burden of proving qualification is on the applicant.

(c) An application for license, renewal, or other licensing approval from the Board will constitute a request to the Board for a decision on the applicant's general suitability, financial suitability, character, integrity, and ability to engage in, or be associated with, gaming activity in this Commonwealth. By filing an application with the Board, the applicant specifically consents to investigation to the extent deemed appropriate by the Board. The investigation may include a background investigation of the applicant, employees of the applicant, all persons having a controlling interest in the applicant, and other persons as determined by the Board.

(d) By applying for a license, renewal, or other licensing approval from the Board; ^{R (i)} the applicant agrees to abide by all provisions of the act.

(e) ⁽ⁱⁱ⁾ An applicant ^{agrees to} ~~shall~~ waive liability as to the Board, its members, its employees, the Commonwealth and its

instrumentalities for damages resulting from disclosure or publication in any manner, other than a willfully unlawful disclosure or publication, ^{of} ~~or~~ material or information acquired during an investigation of the ~~individual~~ ^{applicant}, and

(iii) The applicant agrees to consent to executing all releases required by the Board.

§ 421.2. Licensed entities.

(a) Licenses that may be issued by the Board include, but are not limited to:

(1) Manufacturer's license, which authorizes the approved licensee to manufacture, build, rebuild, fabricate, assemble, produce, program, design or otherwise make modifications to slot machines or associated equipment for use or play of slot machines in this Commonwealth in accordance with the act.

(2) Supplier's license, which authorizes the approved licensee to sell, lease, offer or otherwise provide, distribute or service slot machines or associated equipment for use or play of slot machines in this Commonwealth in accordance with the act.

(3) Slot machine license, which authorizes the approved licensee to place and operate slot machines in this Commonwealth in accordance with the act *and the rules and regulations adopted, from time to time, by the Board.*

(4) Key employee qualifier license, which authorizes the approved key employee qualifier, as defined in section 401.4 of the Act, to be employed in a designated position by ^a[an → see 401.4 - Applicant not included] applicant or } holder of a manufacturer license, a supplier license or a slot machine license.

(5) Key employee license, which authorizes the approved key employee, as defined in section 401.4 of the Act, to be employed in a designated position by an applicant or holder of a manufacturer license, supplier license or slot machine license.

§ 421.3. Disqualification criteria.

A manufacturer license, a supplier license or a slot machine license or a renewal thereof, may be denied, suspended or revoked to or from a person or applicant who has failed to provide to the satisfaction of the Board that the person or applicant or any of the persons required to be qualified, are in fact qualified in accordance with the act and with this part,

comment → who has violated the act or this part, who is disqualified under the criteria set forth in the act, who has materially departed from representation made in the application for licensure, or who has failed to comply with applicable Federal or state laws or regulations, ^{applying to _____ ?} A suspension, non-renewal or denial of a license or license application may be made for a sufficient cause consistent with the act and the public interest.

§ 421.4. Investigations; supplementary information.

The Board may make an inquiry or investigation concerning an applicant, licensee or any person involved with an applicant or licensee as it may deem appropriate either at the time of the initial application and licensure or at any time thereafter. It shall be the continuing duty of all applicants and licensees to provide full cooperation to the Board in the conduct of the inquiry or investigation and to provide supplementary information requested by the Board.

not defined

CHAPTER 423. APPLICATIONS

§ 423.1. General requirements.

(a) Every application shall be submitted on forms supplied or approved by the Board and shall contain all information and documents as required by the Board.

(b) The applicant shall file with the application all supplemental forms provided by the Board. The forms require full disclosure of all details relative to the applicant's suitability to conduct ^{gaming} business in this Commonwealth.

(c) Upon request of the Board, the applicant shall further supplement any information provided in the application. The applicant must provide all requested documents, records, supporting data, and other information within the time period specified in the request, or if no time is specified, within 30 days of the date of the request. If the applicant fails to

or as otherwise requested by the Board.

provide the requested information within the required time period as set forth in the request, the Board may deny the application.

(d) An applicant must submit evidence to the Board of the applicant's financial ~~stability~~^{fitness}, integrity and responsibility. In determining an applicant's financial fitness, the Board's review will include, but not be limited to: the applicant's bank references, business and personal income and disbursement schedules, annual financial statements and tax returns, whether the applicant has adequate financing available to pay all current obligations, and whether the applicant is likely to be able to adequately ~~cover~~^{pay} all existing and foreseeable obligations in the future.

(e) All information provided to the Board shall be true and complete. If there is any ^{material} change in the information provided to the Board, the applicant must promptly file a written amendment in a form prescribed by the Board.

(f) The application and any amendments or supplements must be sworn to or affirmed by the applicant before a notary public.

(g) The Board will automatically deny the application of any applicant that refuses to submit to a background investigation or provide requested information as required under the act.

(h) Neither the Commonwealth, the Board, Pennsylvania State Police, any agency or authorized designee or agent of the Board that the Board requests to conduct background investigations, nor the employees of any of the foregoing, may be held liable for any inaccurate or incomplete information obtained through an investigation.

(i) An applicant that submits a document which is in a language other than English to the Board with an application or in response to a request for information from the Board or the Board's agents shall also submit an English translation of the non-English language document. The translation includes the signature, printed name, address and telephone number of the translator and a verification by the translator of the truth and accuracy of the translation.

§ 423.2. Application processing.

(a) Upon a determination that all prerequisites for filing have been met, the Board will:

(1) Accept the application for filing and cause it to be docketed.

(2) Notify the applicant or the applicant's attorney, if any, in writing of the fact that the application has been accepted for filing and docketed, the date of the acceptance for filing and the docket number assigned to the applicant. The Board will also notify the applicant that the acceptance for

filing and docketing of the application will not constitute evidence that any requirement of the act has been satisfied.

(3) Obtain and evaluate information as may be necessary to determine the qualifications of the applicant and ^{any} matter relating to the application.

(4) Request the Bureau to promptly conduct an investigation and provide the information necessary to determine the qualifications of the applicant and ^{any} matter relating to the application.

(5) Request the Pennsylvania State Police to provide criminal history background investigations, determine employee eligibility consistent with section 435.1, ^{of this part} conduct fingerprinting, receive handwriting exemplars, photograph applicants and perform duties as directed by the Board.

(6) Request the Department to promptly conduct a tax ^{lien} ~~clearance~~ review.

(7) Request the Department of Labor and Industry to perform an unemployment compensation tax ^{lien} ~~clearance~~ review and a workers compensation tax ^{lien} ~~clearance~~ review.

(8) Make requests of any agencies, entities or persons to conduct investigations or evaluations on behalf of the Board or the Bureau or to provide information, as deemed necessary by the Board, ^{or the Bureau.}

(b) The Board will keep and maintain a list of all applicants for licenses under this part together with a record of all actions taken with respect to applicants.

§ 423.3. License issuance.

(a) In addition to criteria provided under the act, the Board will not issue or renew a license to an applicant or licensee unless the Board finds that the applicant has established it has met the following criteria:

(1) The applicant has developed and implemented or agreed to develop and implement a diversity plan to assure that all persons are accorded equality of opportunity in employment and contracting by the applicant, its contractors, subcontractors, assignees, lessees, agents, vendors and suppliers.

(2) The applicant has paid all required fees.

(3) The applicant has fulfilled any conditions required by the Board or provided by the act.

(4) The applicant in all other respects is found suitable consistent with the laws of the Commonwealth and is otherwise qualified to be issued a license or permit.

(b) Nothing contained in the act is intended or may be construed to create an entitlement to a license by any person.

§ 423.4. Incomplete applications.

(a) The Board will not consider an application that is incomplete. An application will be deemed incomplete if it fails to include one or more of the following requirements:

(1) Applicable fees paid.

(2) Information and accompanying documentation required by the Board.

(b) If an application is deemed incomplete, the Board will notify the applicant of the deficiencies in the application and permit the applicant to revise the application and resubmit the application to the Board within a time period prescribed by the Board.

(c) Refusal to provide information as requested by the Board, its designees or agents or the Pennsylvania State Police shall result in the immediate denial of a license or permit.

§ 423.5. Application withdrawal.

(a) Except as provided in (e) below, a written notice of withdrawal of application may be filed by an applicant at any time prior to the Board's final decision.

(b) No application shall be permitted to be withdrawn, however, unless the applicant shall have first established to the satisfaction of the Board that withdrawal of the application would be consistent with the public interest and the policies of the act.

(c) The Board shall have the authority to direct that any applicant so permitted to withdraw his application shall not be eligible to apply again for licensure, permit, or registration until a designated time as the Board determines.

(d) Unless the Board shall otherwise direct, no fee or other payment relating to any application shall become refundable by reason of withdrawal of the application.

or as otherwise provided in sections 1209 or 1305 of the act,

(e) Where a hearing on an application has been requested by a party or directed by the Board, the Board shall not permit withdrawal of said application after:

(1) the application matter has been assigned to a hearing examiner authorized by law to hear a matter; or

(2) the Board has made a determination to hear the application matter directly.

CHAPTER 427. MANUFACTURER LICENSES

§ 427.1. Manufacturer license requirements.

(a) In determining whether an applicant shall be licensed as a manufacturer under this section, the Board will consider whether the person satisfies one or more of the criteria listed in this section, ^{and ?} whether the applicant manufactures devices, machines, or equipment, which are or have one of the following:

(1) Specifically designed for use in the operation of a slot machine ^{facility} licensee.

(2) Needed to conduct an authorized game ^{not defined}

(3) The capacity to affect the outcome of the play of ^{slot machine} a game.

(4) The capacity to affect the calculation, storage, collection, or control of gross ^{gaming} revenue.

(b) An applicant for or holder of a manufacturer license shall have a continuing duty to ^{promptly}:

(1) Notify the Board of a material change in the information, materials, and documents submitted in the license application or renewal application submitted by the applicant or licensee or a change in circumstances that may render the applicant or licensee ineligible, unqualified or unsuitable to hold the license under the licensing standards and requirements of the act ^{and} of this part.

(2) Provide any information requested by the Board or the Bureau relating to licensing or regulation; cooperate with the Board ^{or the Bureau} in investigations, hearings, and enforcement and disciplinary actions; and comply with all conditions, restrictions, requirements, orders, and rulings of the Board in accordance with the act.

(c) In accordance with section 1317 of the act (relating to Supplier and Manufacturer Licenses Application), a person, its affiliates ^e, intermediary, subsidiary or holding companies ^y, who has applied for or who is applying for or holds a manufacturer's

license or a slot machine license shall is not eligible to apply for or hold a supplier license.

§ 427.2. Manufacturer licensing standards and application.

(a) The standards and requirements for qualification for a manufacturer license are set forth as follows and in section 1317 of the act (relating to Supplier and Manufacturer Licenses Applications). The applicant shall submit:

(1) A nonrefundable application ^{processing} fee.

(2) An original and seven copies of the Manufacturer/Supplier Application and Disclosure Information Form for the applicant that has applied for the license under this part.

(3) A plan of the diversity goals in the ownership, participation and operation of licensed entities in this Commonwealth, as set forth in section 1212 of the act (relating to Diversity Goals of Board) and Chapter 481^{of this part}, signed by the chief executive officer of the applicant.

(4) An application from every key employee qualifier as specified by the Manufacturer/Supplier Application and Disclosure Form or as determined by the Board, which shall consist of the following:

(i) An original and one copy of the Multi-Jurisdictional Personal History Disclosure Form with a nonrefundable deposit of \$5,000 per application for each key

employee qualifier, as defined in section 401.4 (^{of this part} relating to Definitions).

(ii) The applicant may be subject to additional ^{fees} ~~charges~~ based on the actual expenses incurred by the Board in conducting the background investigation.

(5) Copies of all filings required by the Securities and Exchange Commission including, ^{but not limited to,} all annual reports filed with the United States Securities Exchange Commission, under sections 13 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C.A. 78a), quarterly reports filed with the United States Securities Exchange Commission, under sections 13 or 15(D) of the Securities Exchange Act of 1934 (15 U.S.C.A. § 78m and 780-6), current reports filed with the United States Securities Exchange Commission, under sections 13 or 15(D) of the Securities Exchange Act of 1934 ^{and} proxy statements issued by the applicant during the 2 immediately preceding fiscal years.

(6) ^{All} Properly executed forms for Consents to Inspections, Searches and Seizures; Waivers of Liability for Disclosures of Information and Consents to Examination of Accounts and Records in forms as prescribed by the Board.

(7) The applicant, or its affiliate, intermediary, ⁽ⁱ⁾ subsidiary or holding company shall affirm that it does not hold any direct or indirect ownership interest in any supplier applicant or licensee, or ⁽ⁱⁱ⁾ employs, directly or indirectly, an

officer, director, supervisory or principal employee of a supplier applicant or licensee.

(8) Other information or documentation required by the Board.

(b) Each application for manufacturer's license will include the production of financial books, records, information, documentation and assurances to satisfy the Board of the following:

(1) The financial ^{fitness} ~~stability~~, good character, honesty, integrity and responsibility of the applicant.

(2) That all key employee qualifiers individually qualify under the standards of section 1317 of the act (relating to Supplier and Manufacturer Licenses Applications).

(3) The integrity of all financial backers, investors, mortgagees, bondholders, and holders of indentures, notes or other evidences of indebtedness, either in effect or proposed, which bears any relationship to the applicant.

see definition of financial Backer-Conform

(4) The suitability of the applicant and all key employee qualifiers of the applicant based on the satisfactory results of:

(i) A background investigation of all owners, officers, Board of directors and key employees or their equivalent in other jurisdictions.

(ii) A current tax ^{lien} ~~clearance~~ review performed by the Department.

(iii) A current unemployment compensation tax ^{lien} ~~clearance~~ review and a workers compensation tax ^{lien} ~~clearance~~ review performed by the Department of Labor and Industry.

(c) The applicant, licensee, holding ^{Company,} affiliate, intermediary or subsidiary company thereof, or an officer, director or key employee thereof, is prohibited from making a contribution of money or in-kind contribution to a candidate for nomination or election to a public office in the Commonwealth or to a political committee or State party in this Commonwealth or to ^{any} a group, committee or association organized in support of a candidate, political committee or State party, as set forth in section 1513 of the act (relating to Political Influence).

(d) Neither the applicant nor a person ^{affiliated with or} directly related to the applicant may be a party in any ongoing civil proceeding in which the applicant is seeking to overturn or otherwise challenge a decision or order of the Board or Commissions, pertaining to the approval, denial or conditioning of a license to conduct thoroughbred or harness horse race meetings respectively with pari-mutuel wagering, or to operate slot machines in this Commonwealth.

§ 427.3. Alternative manufacturer licensing standards.

(a) The Board may, upon written request of a manufacturer license applicant, issue a manufacturer license to an applicant who holds a similar license in another jurisdiction within the United States if:

(1) The Board determines, after investigation, that the licensing standards in a jurisdiction in which the applicant is licensed are similarly comprehensive, thorough and provide equal, if not greater, safeguards as provided in the act and that granting the petition is in the public interest.

(2) A completed application has been filed by the applicant.

(3) The applicant has otherwise met all statutory requirements for licensure.

(4) The applicant has provided current, updated information to the Board associated with a similar license in a jurisdiction related to its financial viability and suitability.

(5) The applicant has no administrative or *comment* enforcement actions pending in another jurisdiction.

(6) There are no pending or ongoing investigations of possible material violations by the applicant in another jurisdiction.

(b) This section may not be construed to waive fees associated with obtaining a license through the application process in this Commonwealth.

CHAPTER 431. SUPPLIER LICENSES

§ 431.1. Supplier license requirements.

(a) In determining whether an applicant will be licensed as a supplier under this section, the Board will consider whether the person satisfies the criteria listed in this section. [?] whether the person sells, leases, offers or otherwise provides, distributes or services slot machines or associated equipment at a licensed gaming facility which:

(1) Are specifically designed for use in the conduct of slot machine gaming.

(2) Are needed to conduct slot machine gaming.

(3) Have the capacity to affect the outcome of the play of a slot machine.

(4) Have the capacity to affect the calculation, storage, collection or control of gross ^{gaming} receipts.

(b) An applicant for or holder of a supplier license shall have a continuing duty to ^{promptly} do all of the following:

(1) Notify the Board of a material change in the information, materials, and documents submitted in the license application or renewal application submitted by the applicant or licensee or a change in circumstances that may render the applicant or licensee ineligible, unqualified or unsuitable to

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427

hold the license under the licensing standards and requirements of the act.

(2) Provide information requested by the Board or the Bureau relating to licensing or regulation; cooperate with the Board in investigations, hearings, and enforcement and disciplinary actions; and comply with all conditions, restrictions, requirements, orders, and rulings of the Board in accordance with the act.

(c) In accordance with section 1317 of the act (relating to Supplier and Manufacturer Licenses Application), a person, its affiliates, intermediary, subsidiary or holding companies, who has applied for or who holds a manufacturer's license or a slot machine license is not eligible to apply for or hold a supplier license.

(d) Slot monitoring computer systems, casino management computer systems, player tracking computer systems, slot accounting computer systems, ticket-in/ticket-out computer systems, bonusing computer systems, wide-area progressive computer systems, and all computer systems and associated computer system equipment are excluded from a requirement that they be provided through a licensed supplier as set forth in this part. Persons or entities providing these computer systems to slot machine licensees, including manufacturers, may employ *NON licensed*

individuals to service and repair computer systems and associated computer system equipment.

§ 431.2. Supplier licensing standards and application.

(a) The standards and requirements for qualification for a supplier license are set forth below and in section 1317 of the act (relating to Supplier and Manufacturer Licenses Application). The applicant shall submit:

(1) A nonrefundable application processing fee.

(2) An original and seven copies of the Manufacturer/Supplier Application and Disclosure Information Form for the applicant that has applied for the license under this part.

(3) A plan of the diversity goals in the ownership, participation and operation of licensed entities in the Commonwealth, as set forth in section 1212 of the act (relating to Diversity Goals of Board) and chapter 481^{of this part} signed by the chief executive officer of the applicant.

(4) An application from every key employee qualifier as specified by the Manufacturer/Supplier Application and Disclosure Form or as determined by the Board, which shall consist of the following:

(i) An original and one copy of the Multi-Jurisdictional Personal History Disclosure Form with a nonrefundable deposit of \$5,000 per application for each key

employee qualifier, as defined in section 401.4/^{of this part}(relating to Definitions).

(ii) The applicant may be subject to additional charges based on the actual expenses incurred by the Board in conducting the background investigation.

(5) Copies of all filings required by the Securities and Exchange Commission) ^{but not limited to,} including all annual reports filed with the U.S. Securities Exchange Commission, under sections 13 or 15(d) of the Securities Exchange Act of 1934, 15 U.S.C. 78a, et seq., quarterly reports filed with the U.S. Securities Exchange Commission, under sections 13 or 15(d) of the Securities Exchange Act of 1934, 15 U.S.C. 78a, et seq., current reports filed with the U.S. Securities Exchange Commission, under sections 13 or 15(d) of the Securities Exchange Act of 1934, 15 U.S.C. 78a, et seq. ^{and} proxy statements issued by the applicant during the 2 immediately preceding fiscal years.

(6) All properly executed forms for Consents to Inspections, Searches and Seizures; Waivers of Liability for Disclosures of Information and Consents to Examination of Accounts and Records in forms as prescribed by the Board.

(7) The applicant, or its affiliate, intermediary, subsidiary or holding company must affirm that it does not ⁽ⁱ⁾ hold a direct or indirect ownership interest in a manufacturer or slot machine license applicant or licensee, or ⁽ⁱⁱ⁾ employs, directly

or indirectly, an officer, director, supervisory or principal employee of a manufacturer or slot machine license applicant or licensee.

(8) Other information or documentation required by the Board.

(b) Each application for supplier's license shall include the production of financial books, records, information, documentation and assurances to satisfy the Board of:

(1) The financial ^{fitness} ~~stability~~, good character, honesty, integrity and responsibility of the applicant.

(2) That all key employee qualifiers individually qualify under the standards of section 1317 of the act (relating to Supplier and Manufacturer Licenses Application).

(3) The integrity of all financial backers, investors, mortgagees, bondholders, and holders of indentures, notes or other evidences of indebtedness, either in effect or proposed, which bears a relationship to the applicant and

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40

(4) The suitability of the applicant and all key employee qualifiers of the applicant based on the satisfactory results of:

(i) A background investigation of all owners, officers, Board of directors and key employees or their equivalent in other jurisdictions.

(ii) A current tax ^{lien} ~~clearance~~ review performed by the Department.

(iii) A current unemployment compensation tax ^{lien} ~~clearance~~ review and a workers compensation tax ^{lien} ~~clearance~~ review performed by the Department of Labor and Industry.

(c) The applicant, licensee, holding ^{company,} affiliate, intermediary or subsidiary company thereof, or an officer, director or key employee thereof, is prohibited from making a contribution of money or in-kind contribution to a candidate for nomination or election to a public office in this Commonwealth or to a political committee or state party in the Commonwealth or to ^{any} group, committee or association organized in support of a candidate, political committee or state party, as set forth in section 1513 of the act.

(d) Neither the applicant nor a person ^{affiliated with or} directly related to the applicant may be a party in any ongoing civil proceeding in which the applicant is seeking to overturn or otherwise challenge a decision or order of the Board or Commissions, pertaining to the approval, denial or conditioning of a license to conduct thoroughbred or harness horse race meetings respectively with pari-mutuel wagering, or to operate slot machines in this Commonwealth.

§ 431.3. Supplier requirements and prohibitions.

A licensed supplier shall be the sole and exclusive authorized source of slot machines or associated equipment, as provided in section 1317 of the act (relating to Supplier and Manufacturer Licenses Application), that are sold, leased, offered or otherwise provided for use or play, distributed, serviced or repaired at a licensed gaming entity. Every licensed supplier shall:

(a) Establish a principal place of business in the Commonwealth within 1 year of the Board's approval of the supplier license and maintain a principal place of business throughout the period during which the license is held.

(b) Only employ technicians that have been approved by a licensed manufacturer.

(c) Maintain at all times an adequate inventory of replacement parts and supplies for slot machine operation and support.

(d) At the time of licensure, have assets or available lines of credit to support the sale, financing, servicing and repair of all slot machines to be placed in service by the supplier. The assets and available lines of credit shall be from a source or sources independent of slot machine manufacturers and licensed gaming entities.

(e) Upon request of the Board, submit to the Board for review an agreement with a licensed manufacturer or with a

licensed gaming entity and detailed business plans. The Board's review may include, but not be limited to, all financing arrangements, inventory requirements, warehouse requirements, warehouse space, technical competency, compensative agreements and other terms or conditions to ensure the financial independence of the licensed supplier from the licensed manufacturer and licensed gaming entity.

CHAPTER 433. LICENSE RENEWAL

§ 433.1. Renewal of manufacturer and supplier license.

(a) A license issued under this part shall be valid for a term of 1 year and for all subsequent renewals. An application for renewal shall be filed by a licensed entity, conducting business on a regular or continuing basis, no later than 60 days prior to the expiration of the license.

(b) The licensed entity shall complete and file an original and 7 copies of a Manufacturer/Supplier License Renewal Application Form which shall, without limitation, disclose all changes in ownership of the licensed entity, and the new owner shall be required to submit an application for licensure and evidence that ^{they are} ~~he is~~ qualified for licensure.

(1) The licensed entity shall disclose all changes in personnel who are to be ^{licensed} ~~qualified~~ by the Board.

(2) The licensed entity shall pay a license renewal fee when the Renewal Application Form is filed.

(3) Once a Renewal Application Form has been filed and the renewal fee has been paid, the original license shall remain in effect until the Board has determined that the licensed entity has complied with all conditions of licensure as originally provided by the Board, or the Board has determined that an adverse material change in a condition of the original license has occurred which shall result in the non-renewal of the license.

CHAPTER 435. EMPLOYEES

§ 435.1. General provisions.

(a) The issuance or renewal of a license or permit by the Board shall be a revocable privilege. No individual holding a license or permit under this part shall be deemed to have a property interest in the license or permit.

(b) It shall be the affirmative responsibility of each individual applying for a license or permit under this part to establish his individual qualifications. All information provided to the Board must be true and complete. If there is a change in the information provided to the Board, an applicant shall promptly file a written amendment in a manner prescribed by the Board. An individual who fails to cooperate with the

or the Bureau
Board/in its review of an application under this part will not be granted a license or permit.

(c) An individual applying for a license or permit under this part will provide all information required by the act and this part and satisfy all requests for information pertaining to qualification in a form required by the Board. An individual who fails to provide information, documentation and disclosures required by this part or the Board or who fails to reveal a fact material to qualification shall not be granted a license or permit under this part. An applicant shall waive liability as to the Board, its employees, the Commonwealth and its instrumentalities for damages resulting from disclosure or publication in a manner, other than a willfully unlawful disclosure or publication, or material or information acquired during an investigation of the individual.

(d) An individual applying for a license or permit under this part shall have the continuing duty to provide assistance or information required by the Board or the Bureau, and to cooperate in an inquiry, investigation or hearing conducted by the Board or the Bureau. If, upon issuance of a formal request for information, evidence or testimony, an applicant, licensee or permittee refuses to comply with requests for assistance or information, the application, license or permit shall be denied or revoked by the Board.

(e) An individual who receives a license or permit under this part shall have the continuing duty to report an arrest or conviction for an offense under 18 Pa.C.S. (relating to Crimes and Offenses), of an offense under 75 Pa.C.S. § 3802 (relating to Driving Under Influence of Alcohol or Controlled Substance) or of a comparable offense in other United States or foreign jurisdictions to the Board.

(f) An individual may not be employed by a slot machine licensee, manufacturer licensee or supplier licensee in any capacity unless he is a citizen of the United States or can demonstrate that he holds a current and valid work authorization and is not restricted from working in the capacity for which employment is sought or held. Authorization to work in the United States may be demonstrated by submitting one of the following:

- (1) A permanent resident alien card.
- (2) A temporary employment authorization card.
- (3) A document which the Board deems to be sufficient evidence or authorization.

(g) No applicant, licensee or permittee may give or provide, or offer to give or provide, compensation or reward or a percentage or share of the money or property played or received through gaming in consideration for obtaining a license or permit ^{issued pursuant to this part} ~~to participate in gaming operations.~~

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(h) An individual regulated by this part shall have a duty to inform the Board and the Bureau of an action which the individual believes would constitute a violation of the act. No person who so informs the Board or the Bureau will be discriminated against by an applicant, licensee or person for supplying the information.

(i) An individual who submits a document under this part in a language other than English to the Board, ^{the Bureau} or the Pennsylvania State Police with an application for a license or permit or in response to a request for information from the Board, ^{the Bureau} or the Pennsylvania State Police shall also submit an English translation of the non-English language document. The translation shall include the signature, printed name, address and telephone number of the translator and a verification by the translator of the truth and accuracy of the translation.

(j) ^{All licenses and permits issued under this part shall be valid for a period of one year and for all renewals.} Sixty days prior to the expiration of a license or permit under this part, a licensee or permittee may submit a renewal application to the Board. ^{Seven (7) copies of the renewal application and the applicable fees shall be filed with the Board.} If the renewal application meets all the requirements of this part, the Board may renew the license ^{or permit.} A new background investigation is not required unless ordered by the Board. All licensees and permittees shall provide an updated photograph at least every 2 years.

(k) If the Board receives a complete renewal application but fails to act upon the application prior to the expiration of

the license or permit, the license or permit shall continue in effect until acted upon by the Board.

(l) A reference to a slot machine licensee, manufacturer licensee or supplier licensee under this chapter includes an applicant for a slot machine license, manufacturer license or supplier license in addition to a person who is already licensed.

(m) The Board will maintain a list of all individuals who have applied for a license or permit under this part as well as a record of all actions taken with respect to each applicant, *which list shall be open to public inspection.*

§ 435.2. Key employee qualifier license.

(a) An individual employed by a person who is a slot machine licensee, a manufacturer licensee, or a supplier licensee as a key employee qualifier, as defined in section 401.2 *of this part,* must obtain a key employee qualifier license from the Board.

(b) An application for licensure as a key employee qualifier shall be on a form prescribed by the Board and include the following:

(1) The name and address of the individual to include the home address and history of residence *[Limit years?]* and all current business addresses.

(2) Daytime and evening telephone numbers.

(3) Date of birth.

- (4) Physical description.
- (5) Social security number.
- (6) Citizenship, resident alien status or authorization to work in the United States.
- (7) Marital history.
- (8) Military history.
- (9) Employment history, including gaming-related employment.
- (10) Verification of an applicant's employment or an offer of employment from a slot machine licensee, ~~or~~ a supplier, *licensee or a manufacturer licensee.*
- (11) A description of the employment responsibilities of the individual and ~~their~~ ^{his} relationship to the operation of the slot machine licensee, manufacturer licensee or supplier licensee and of all education, training and experience that qualifies the individual for the position.
- (12) Consent to a background investigation, including a signed, dated and notarized release authorization necessary to obtain information from governmental agencies and other institutions.
- (13) The individual's criminal history records information and arrests or criminal charges brought against the individual.
- (14) A photograph from the Commonwealth Photo Imaging Network.

(15) A set of fingerprints consistent with section 1802 of the act (relating to Submission of Fingerprints).

(16) A list of civil judgments consistent with section 1310(b) of the act (relating to Slot Machine License Application Character Requirements).

(17) Details relating to ^{any} a similar license^s obtained in ~~another~~ jurisdiction^s.

(18) A tax ^{lien} clearance certificate from the Department.

(19) The appropriate filing fee.

(20) ^{Any additional} information required by the Board ~~or the Bureau~~.

(c) In addition to the information under subsection (b), the Board may require letters of reference ^{from law enforcement agencies} under section 1310(b) of the act (relating to Slot Machine License Application Character Requirements).

(d) After review of the information submitted under subsection^s (b), ^{and (c)} including the background investigation, the Board may issue a key employee qualifier license if the individual applicant has proven by clear and convincing evidence that he is a person of good character, honesty and integrity and is qualified ^{and suitable} to hold a key employee qualifier license.

(e) A license under this chapter will be nontransferable.

(f) An individual who receives a license under this chapter need not ^{an} obtain additional license as a key employee.

§ 435.3. Key employee license.

(a) An individual employed by a slot machine licensee, manufacturer licensee or supplier licensee as a key employee as defined by the act must obtain a key employee license from the Board.

(b) An application for licensure as a key employee shall be on a form prescribed by the Board and shall include the following:

(1) The name and address of the individual, to include the home address and history of residence and all business addresses.

(2) Daytime and evening telephone numbers.

(3) Date of birth.

(4) Physical description.

(5) Social security number.

(6) Citizenship, resident alien status or authorization to work in the United States.

(7) Marital history.

(8) Military history.

(9) Employment history, including gaming related employment.

(10) Verification of an applicant's employment or an offer of employment from a slot machine licensee, manufacturer licensee or a supplier licensee.

(11) A description of the employment responsibilities of the individual and a statement of all education, training and experience that qualifies the individual for the position.

(12) Consent to a background investigation, including a signed, dated and notarized release authorization necessary to obtain information from governmental agencies and other institutions.

(13) The individual's criminal history, records, ^{information} and arrests or criminal charges brought against the individual.

(14) A photograph from the Commonwealth Photo Imaging Network.

(15) A set of fingerprints consistent with section 1802 of the act (relating to Submission of Fingerprints).

(16) A list of civil judgments consistent with section 1310(b) of the act (relating to Slot Machine License Application Character Requirements).

(17) Details relating to a similar license obtained in another jurisdiction.

(18) A tax ^{lien} ~~clearance~~ certificate from the Department.

(19) The appropriate filing fee.

(20) ^{Any additional} Information required by the Board ^{or the Bureau.}

(c) In addition to the information under subsection (b), the Board may require letters of reference from law enforcement

agencies under section 1310(b) of the act (relating to Slot Machine License Application Character Requirements).

(d) After review of the information submitted under subsection^d (b), ^{and (c)} including the background investigation, the Board may issue a key employee licenses if the individual applicant has proven by clear and convincing evidence that he is a person of good character, honesty and integrity and is qualified hold a license as a key employee.

(e) A license under this chapter will be nontransferable.

§ 435.4. Occupation permit.

(a) An individual employed by a slot machine licensee or a supplier licensee as a gaming employee as defined by section 1103 of the act and section 401.4/^{of this part} (relating to Definitions) must apply for and receive an occupation permit from the Board.

(b) An application for an occupation permit shall be on a form prescribed by the Board and shall include the following:

(1) The name and address of the individual, to include the home address and residence history and all business addresses.

(2) Daytime and evening telephone numbers.

(3) Date of birth.

(4) Physical description.

(5) Social security number.

(6) Citizenship, and, if applicable, resident alien status, including employment authorization.

(7) Marital history.

(8) Military history.

(9) Employment history, including gaming-related employment.

(10) Verification of an applicant's employment or an offer of employment from a slot machine licensee ~~or a supplier licensee.~~

(11) A description of the employment responsibilities of the individual and a statement of all education, training and experience that qualifies the individual for the position.

(12) Consent to a background investigation by the Board, including a signed, dated and notarized release authorization necessary to obtain information from governmental agencies and other institutions.

(13) The individual's criminal history record^{information}, and arrests or criminal charges brought against the individual.

(14) A photograph from the Commonwealth Photo Imaging Network.

(15) Fingerprints consistent with section 1802 of the act (relating to Submission of Fingerprints).

(16) Details relating to a similar license obtained in another jurisdiction.

(17) A tax ^{lien} clearance certificate from the Department.

(18) The appropriate filing fee.

(19) ^{Any additional} information required by the Board, ~~or the Bureau.~~

(c) In addition to the information under subsection (b), the Board may require letters of reference from law enforcement agencies under section 1310(b) of the act (relating to Slot Machine License Application Character Requirements).

(d) After review of the information submitted under subsection ^(c) (b), including a background investigation, the Board may issue a permit if the individual has proven that he is a person of good character, honesty and integrity and is qualified to hold an occupation permit.

(e) An individual who wishes to receive an occupation permit under this chapter may provide the slot machine licensee or supplier with written authorization to file the application on the individual's behalf.

(f) A license under this chapter will be nontransferable.

Subpart C. RECORDKEEPING

CHAPTER 451. LICENSEE RECORDKEEPING REQUIREMENTS

§ 451.1. Recordkeeping generally.

(a) All Manufacturer, Supplier and slot machine licensees shall maintain in a place secure from theft, loss or destruction, adequate records of business operations which shall

be made available to the Board upon request. These records shall include:

(1) All correspondence with the Board and other governmental agencies on the local, state and Federal level.

(2) All correspondence concerning gaming equipment with a licensed slot machine operator or other licensed entity.

(3) Copies of all promotional material and advertising.

(4) A personnel file on each employee of the licensee, including sales representatives.

(5) Financial records of all transactions concerning ~~gaming equipment~~ ^{slot machines and associated equipment} with a licensed slot machine ~~operator~~ ^{licensee} or other licensed entity.

(6) Copies of all tax returns, reports, and other tax documents filed with a taxing entity of the Federal government as well as a state or local taxing entity for a period of seven (7) years or a longer period as prescribed by the taxing entity.

(b) Except as provided in subsection (a)(6) relating to tax documents, the records listed in subsection (a) will be held for at least 5 years.

Subpart D. SLOT MACHINE TESTING AND CERTIFICATION

CHAPTER 461. SLOT MACHINE TESTING AND CERTIFICATION REQUIREMENTS

§ 461.1. Protocol requirements.

In accordance with section 1324 of the act (relating to Protocol Information), all licensed slot machine manufacturers and suppliers shall be required to enable all slot machine terminals to communicate with the Department's Central Control Computer for the purpose of transmitting auditing program information and activating and disabling slot machine terminals.

§ 461.2. Testing and certification generally.

(a) In accordance with section 1320 of the act (relating to Slot Machine Testing and Certification Standards), all slot machine terminals to be deployed in this Commonwealth shall be tested and certified prior to operation and use in a licensed facility in this Commonwealth.

(b) All slot machines operated in this Commonwealth must be approved by the Board.

(c) The Board has the authority to require either of the following procedures with respect to testing and certifying a slot machine:

(1) Accept other gaming jurisdiction certification under section 1320 of the act (relating to Slot Machine Testing and Certification Standards), *~*

(2) Utilize the services of a slot machine testing and certification facility to conduct the testing until a slot

machine testing and certification facility is created by the Board.

(d) *On or before July 5, 2007,* ~~Within 3 years,~~ the Board shall establish, *and maintain an independent* a slot machine testing and certification facility, *The cost of establishment and* ~~through an~~ *operation of such facility shall be* assessment paid by *each* manufacturer licensee, *in accordance with a schedule adopted by the Board,*

(e) The Board will require payment of all cost for the testing and certification of all slot machines through procedures prescribed by the Board.

(f) The Board will require the *manufacturer or supplier* licensee seeking approval of ^athe slot machine to pay all costs of transportation, inspection and testing.

Subpart E. FEES

CHAPTER 471. FILING FEES

§ 471.1. Fees generally.

(a) In accordance with section 1208 of the act (relating to Collection of Fees and Fines), the Board has the power and duty to levy and collect fees from various applicants, licensees and permittees to fund the operations of the Board.

(b) A pleading or other document for which a filing fee is required to be charged will be received, but will not be deemed filed, until the filing fee, bond ⁽¹⁾ letter of credit or other cost that may be required by statute or regulation has been paid.

(c) The fees collected by the Board will be deposited into the State Gaming Fund as established in section 1403 of the act (relating to Establishment of State Gaming Fund and Net Slot Machine Revenue Distribution).

(d) Fees shall be paid by money order or check made payable to the "Commonwealth of Pennsylvania." Cash will not be accepted by the Board.

§ 471.2. Obligation to pay fees; nonrefundable nature of fees.

filing, application or processing
(a) A fee ~~obligation~~ arising in accordance with the act or this part shall be due and payable notwithstanding the withdrawal or abandonment of an application or the termination in a manner of an existing license.

(b) Except as otherwise provided in section 1209/^{or 1305} of the act (relating to Slot Machine License Fee^s), amounts actually paid by the applicant, licensee or permittee in accordance with the act and this part are not refundable.

§ 471.3. Schedule of fees for manufacturer and supplier licenses.

(a) In accordance with section 1208 of the act (relating to Collection of Fees and Fines), the Board has the power and duty to levy and collect fees from applicants for manufacturer's licenses and supplier's licenses. The licensing fee schedule shall be as follows:

(1) Manufacturer's license fee schedule. The fees for obtaining and renewing a manufacturer's license are as follows:

- (i) Initial application fee: \$2,500.
- (ii) License issuance fee: \$50,000.
- (iii) Annual renewal fee: \$25,000.

(2) Supplier's license fee schedule. The fees for obtaining and renewing a supplier's license are as follows:

- (i) Initial application fee: \$2,500.
- (ii) License issuance fee: \$25,000.
- (iii) Annual renewal fee: \$10,000.

(b) In order to recover the cost of the investigation and consideration of license and permit applications by manufacturers and suppliers, each application for a manufacturer license or a supplier license must be accompanied by a nonrefundable fee of \$5,000 per key employee and key employee qualifier. If the cost of the background investigations exceeds *for each such person* \$5,000, the Board shall require the manufacturer or supplier applicant to pay additional costs associated with the investigations.

(c) On or after July 5, 2006, and annually thereafter, the Board may increase the fees imposed under this section by an amount not to exceed an annual cost-of-living adjustment

calculated as set forth in section 1208(2) of the act (relating to Collection of Fees and Fines).

Subpart F. MINORITY AND WOMEN'S BUSINESS ENTERPRISES

CHAPTER 481. GENERAL PROVISIONS

§ 481.1. Statement of purpose and policy.

(a) This part establishes and prescribes the procedures for promoting and ensuring that licensed entities, licensed facilities, and applicants for licensure foster participation and diversity in all aspects of their gaming operations in this Commonwealth.

(b) It is the policy of the Board to promote and ensure that licensed entities, licensed facilities, and applicants for licensure conduct all aspects of their operations in a manner that assures diversity of opportunity as follows:

(1) In the ownership, participation, and operation of licensed entities and licensed facilities in this Commonwealth.

(2) Through the ownership, participation and operation of business enterprises associated with or utilized by licensed entities and licensed facilities.

(3) Through the provision of goods and services utilized by licensed entities and licensed facilities.

(c) It is further the policy of the Board to promote and ensure diversity in employment and contracting by a licensed

entity, licensed facility or an applicant for a license and its contractors, subcontractors, assignees, lessees, agents, vendors, and suppliers.

§ 481.2. Definitions.

The following words and terms, when used in this part, have the meanings given to them in this section, unless the context clearly indicates otherwise.

Diversity plan - A plan developed by a licensed entity, licensed facility or an applicant for a license which promotes and ensures diversity in ownership, participation, and operation of licensed facilities or licensed entities; and in employment and contracting by a licensed facility and licensed entity.

Minority - The ethnic/racial categories identified in employer survey reports that are required by the United States Equal Opportunity Commission and the Office of Federal Contract Compliance Programs of the United States Department of Labor under section 709 of Title VII of the Civil Rights Act of 1964 (42 U.S.C.A. § 2000(e)-8) or by subsequent amendments to that Federal act.

Participation plan - An obligation imposed by a licensed entity, licensed facility or applicant as part of its contract with a contractor that requires the contractor to perform the contract through the utilization of minority or women owned

business enterprises for a specified ~~minimum~~ percentage of the value of the contract.

§ 481.3. Diversity participation.

(a) The Board will compile a list of the minority and women's business enterprises that are certified by the Bureau of Minority and Women's Business Enterprises of the Department of General Services under 68 Pa.C.S. Part I (relating to Commonwealth Procurement Code) and will make the list available to all licensed entities, licensed facilities and applicants for licensure. The list developed by the Board will be reviewed annually to determine that each minority business enterprise and women's business enterprise continue to remain eligible for participation as minority and women's business enterprises.

(b) The list of minority business enterprises and women's business enterprises compiled by the Board may be relied upon by a licensed entity, licensed facility or applicant to establish the eligibility of the enterprise as a minority or women's business enterprise for the purpose of promoting and ensuring minority and women's business participation.

§ 481.4. Establishment of diversity plan required.

(a) Each licensed entity, licensed facility or applicant, as the case may be, in its application for licensure, shall include a diversity plan that establishes ~~a separate goal of~~ *diversity as a goal* ~~diversity~~ in the ownership, participation, and operation of, and

employment at, the licensed entity or licensed facility or by the applicant. The Board will ~~determine~~ ^{assess} whether the stated goals set forth in each diversity plan are reasonable and represent a good faith effort to assure that all persons are accorded equality of opportunity in contracting and employment by a licensed entity, licensed facility or an applicant for a license, and its contractors, subcontractors, assignees, lessees, agents, vendors, and suppliers.

(b) A licensed entity, licensed facility or applicant may achieve its diversity goals through one of the following:

(1) Contracting or transacting directly with minority and women's business enterprises.

(2) Contracting with a non-minority business enterprise ~~under~~ under terms and conditions that establish a participation plan.

(3) Hiring and promoting qualified minorities.
(c) On-site audits may be performed on an annual basis or at the discretion of the Board to ensure compliance with this subpart.

§ 481.5. Report of participation.

(a) As part of an application to renew a license under the act and this part, each licensed entity or licensed facility shall file a report with the Board concerning the performance of its diversity plan. The report shall contain all of the following:

*In comparison to
the appropriate
application pool
and population*

(1) Employment data, including information on minority and women representation in the workforce in all job classifications; salary information; ~~and information on~~ recruitment and training, ^{information} including executive and managerial level recruitment and training; and retention and outreach efforts.

(2) The total number and value of all contracts or transactions awarded for goods and services.

(3) The total number and value of all contracts or transaction awarded to minority and women's business enterprises.

(4) The total number and value of all contracts awarded that contain a participation plan.

(5) The total number and value of all subcontracts to be awarded to minority and women's business enterprises under contracts containing a participation plan.

(6) An identification of each subcontract actually awarded to a minority or women's business enterprise under contracts containing a participation plan during each calendar quarter and the actual value of each such subcontract.

(7) An identification of each contract or transaction awarded to a minority or women's business enterprise.

(8) A comprehensive description of all efforts made by the licensed entity, licensed facility or applicant to monitor and enforce the participation plan.

(9) Information on minority and women investment, equity ownership, and other ownership or management opportunities initiated or promoted by the licensed entity or licensed facility.

(10) Other information deemed necessary by the Board to ensure compliance with the act and this part.

(b) The Board will use the report required under subsection (a) to monitor compliance with this part. The Board may request that the Bureau of Minority and Women's Business Enterprises, of the Department of General Services, assist the Board in determining whether the licensed entity, licensed facility or applicant complies with the requirements of this part.

Subpart G. PRACTICE AND PROCEDURE

CHAPTER 491. GENERAL RULES OF PRACTICE

§ 491.1. Office of the Clerk.

(a) The Board will have within its organization an Office of the Clerk whose duties will be as follows:

(1) Provide information as to practice and procedure before the Board, under this subpart.

(2) Receive and docket applications and pleadings and other documents filed with the Board. Receipt and transmission of the information may be by electronic means, only under a policy established by the Board.

(b) All filings and requests for practice and procedure information should be directed to:

Office of the Clerk
Pennsylvania Gaming Control Board
P.O. Box 69060
Harrisburg, PA 17106-9060

(c) The Clerk will maintain a docket of all proceedings, and each proceeding as initiated will be assigned an appropriate designation. The docket will be available for inspection and copying by the public during the Board's office hours.

§ 491.2. Filing generally.

(a) Pleadings and other documents filed with the Board should clearly designate the docket number or similar identifying symbols, if any, employed by the Board, and should set forth a short title. The identity of the individual making the submission, including name, mailing address, and status (for example, party, attorney for a party, and the like) shall appear on the document.

(b) Pleadings, including documents filed under this chapter will also comply with chapter 495 (relating to Documentary Filings).

(c) In a proceeding when, upon inspection, the Board is of the opinion that a pleading tendered for filing does not comply with this subpart or this title or, if it is an application or similar document, does not sufficiently set forth required material or is otherwise insufficient, the Board may decline to accept it for filing and may return it without filing, or the Board may accept it for filing and advise the person tendering it of the deficiency and require that the deficiency be corrected.

(d) The Board may order redundant, immaterial, ~~obscene or~~ *scandalous or* *impertinent matter or* otherwise inappropriate comments stricken from documents filed with it.

CHAPTER 495. DOCUMENTARY FILINGS

§ 495.1. Form of documentary filings generally.

(a) Applications, petitions, complaints, answers or similar documents shall be divided into numbered paragraphs.

(b) Copies of contracts, agreements, permits or other writings referred to in the application or petition may be attached as exhibits. Copies of writings or orders already of record with the Board need not be attached to the application or

petition if reference by docket number is made to the proceeding in which they were filed.

(c) Pleadings or other documents filed with the Board in a proceeding shall clearly show the docket number or similar identifying symbols, if any, and title of the proceeding before the Board. They shall also show, in the title of a particular pleading or other document filed the name of the person on whose behalf the filing is made. If more than one person is involved, a single name only need be included in the title.

Comment

(d) Subsections (a)-(c) supersede 1 Pa. Code § 31.5 (relating to Communications and Filings Generally).

§ 495.2. Form of documents.

(a) The method of receipt and transmission of information will be under a policy established by the Board.

(b) Subsection (a) supersedes 1 Pa. Code § 33.2 (relating to Form).

§ 495.3. Incorporation by reference.

(a) Except as otherwise provided in subsection (b), documents on file with the Board may be incorporated by reference into a subsequently filed pleading or other document. A document may be so incorporated only by reference to the specific document and to the prior filing and docket number at which it was physically filed.

(b) No document which has been on file with the Board for more than 7 years may be incorporated by reference in a current document unless the person filing the current document first makes inquiry to the Office of the Clerk and ascertains that the earlier document continues to be readily available in the active records of the Board.

§ 495.4. Single pleading covering more than one matter.

(a) Except as otherwise provided under this chapter (relating to Formal Proceedings), a single pleading may be accepted for filing with respect to a particular transaction and one or more related transactions and shall be deemed to be a single filing for purposes of the computation of fees under chapter 471 (relating to Schedule of Fees Payable to the Board).

(b) If, upon review, the Board determines that the transactions are not closely related or otherwise properly joined, the Board will direct that the single pleading be refiled as two or more separate pleadings each subject to a separate filing fee.

(c) Subsection (a) supersedes 1 Pa. Code § 33.4 (relating to Single Pleading or Submittal Covering More Than One Matter).

§ 495.5. Execution of documents.

- Comment

(a) Signature. Except as may be otherwise ordered or requested by the Board, the original copy of a pleading, or other document shall be signed in ink by the party in interest,

or by his attorney, as required by subsection (b), and show the office and post office address of the party or attorney. Other copies filed shall conform thereto.

(b) Subscription.

(1) A pleading or other document filed with the Board shall be subscribed by one of the following:

(i) The person filing the documents, and severally if there is more than one person so filing.

(ii) An officer if it is a corporation, trust, association or other organized group.

(iii) An officer or employee thereof if it is another agency, a political subdivision, or other governmental authority, agency or instrumentality.

(iv) An attorney having authority with respect thereto.

(2) A document filed by a corporation, trust, association or other organized group, may be required to be supplemented by appropriate evidence of the authority of the officer or attorney subscribing the documents.

(c) Effect.

(1) The signature of the person subscribing a document filed with the Board constitutes a certificate by the individual that:

(i) The person has read the document being subscribed and filed, and knows the contents thereof.

(ii) The document has been subscribed and executed in the capacity specified upon the document with full power and authority to do so, if executed in a representative capacity.

(iii) The document is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification or reversal of existing law, to the best of the person's knowledge, information and belief formed after reasonable inquiry.

(iv) The document is not interposed for an improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

(2) If a document is signed in violation of this subsection, the Board, upon motion or upon its own initiative, may impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include striking the document, dismissal of the proceeding or the imposition of civil penalties under section 1518 of the act (relating to Prohibited Acts; Penalties).

(d) Supersession. Subsections (a)-(c) are identical to 1 Pa. Code § 33.11 (relating to Execution).

§ 495.6. Verification.

(a) Applications, petitions, formal complaints, motions and answers thereto containing an averment of fact not appearing of record in the action or containing a denial of fact shall be personally verified by a party thereto or by an authorized officer of the party if a corporation or association. Verification means a signed written statement of fact supported by oath or affirmation or made subject to the penalties of 18 Pa.C.S. § 4904 (relating to Unsworn Falsification to Authorities). If verification is required, notarization is not necessary.

(b) The verification form should comply substantially with the following:

VERIFICATION

I, _____, hereby state that the facts above set forth are true and correct (or are true and correct to the best of my knowledge, information and belief) and that I expect to be able to prove the facts. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 (relating to Unsworn Falsification to Authorities)

Date: _____

(Signature)

(c) When an affidavit is used, the form should comply substantially with the following:

AFFIDAVIT

I, _____ (Affiant) being duly sworn (affirmed) according to law, depose and say that (I am authorized to make this affidavit on behalf of _____ corporation, being the holder of the office of _____ with that corporation,) and that the facts above set forth are true and correct (or are true and correct to the best of my knowledge, information and belief) and (I or corporation) expect to be able to prove the facts.

(Signature of affiant)

Sworn and subscribed before me this _____ day of _____, 20____.

(Signature of official administering oath)

(d) An individual who executes a pleading or other document knowing that it contains a false statement and who causes it to be filed with the Board shall be subject to prosecution of a misdemeanor of the second degree in violation of 18 Pa.C.S. § 4904(a).

(e) Subsections (a)-(d) supersede 1 Pa. Code § 33.12 (relating to Verification).

§ 495.7. Number of copies.

(a) An original and seven copies of pleadings or documents other than correspondence shall be furnished to the Board at the time of filing, except as may be otherwise required by statute or ordered or requested by the Board.

(b) In the case of applications and petitions, one of the copies filed with the Board may be filed without exhibits.

(c) In the case of complaints or petitions, when more than one respondent is named, an additional copy of the complaint or petition shall be filed for each additional respondent.

(d) Subsections (a)-(c) supersede 1 Pa. Code § 33.15 (relating to Number of Copies).

CHAPTER 497. TIME

§ 497.1. Date of filing.

(a) Whenever a pleading or other document is required or permitted to be filed under this part or by statute, it will be deemed to be filed on one of the following dates:

(1) On the date actually received in the Office of the Office of the Clerk.

(2) On the date deposited with an overnight express package delivery service as shown on the express delivery

receipt attached to or included within the envelope containing the document.

(3) On the date deposited in the United States mail as shown by the United States Postal Service stamp on the envelope or on a United States Postal Service Form 3817 certificate of mailing. A mailing envelope stamped by an in-house postage meter is insufficient proof of the date of mailing.

(b) Failure to include a legible delivery receipt with the document may result in an untimely filing.

(c) Except as otherwise permitted by the Board, a document transmitted by facsimile or electronically to the Board will not be accepted for filing within the meaning of this section.

(d) Subsections (a)-(c) supersede 1 Pa. Code § 31.11 (relating to Timely Filing Required).

§ 497.2. Computation of time.

(a) Except as otherwise provided by statute, in computing a period of time prescribed or allowed by this title or by statute, the day of the act, event or default after which the designated period of time begins to run is not included. The last day of the period is included, unless it is Saturday, Sunday or a legal holiday in this Commonwealth, in which event the period shall run until the end of the next day which is

neither a Saturday, Sunday or holiday. Intermediate Saturdays, Sundays and legal holidays shall be included in the computation.

(b) Except as otherwise provided by statute, in computing a period of time prescribed or allowed by this title or by statute which is measured by counting a specified number of days backward from a scheduled future act, event or default, the day of the scheduled future act, event or default is not included. The day on which the prescribed or allowed action is to occur shall be included, unless it is a Saturday, Sunday or a legal holiday in this Commonwealth, in which event the day of the prescribed or allowed action shall run until the next preceding day which is neither a Saturday, Sunday or holiday. A part-day holiday shall be considered as a holiday. Intermediate Saturdays, Sundays and legal holidays are included in the computation.

(c) Subsections (a) and (b) supersede 1 Pa. Code § 31.12 (relating to Computation of Time).

§ 497.3. Issuance of Board orders.

(a) In computing a period of time involving the date of the issuance of an order by the Board, the day of issuance of an order will be the date the Office of the Clerk enters the order. An order will not be made public prior to its entry except when, in the Board's judgment, the public interest so requires. The date of entry of an order may or may not be the day of its

adoption by the Board. The Clerk will clearly indicate on each order the date of its adoption by the Board and the date of its entry.

(b) The date of entry of an order which is subject to review by the Supreme Court of Pennsylvania is governed by 2 Pa.C.S. Chapter 7, Subchapter A (relating to Judicial Review of Commonwealth Agency Action). The date of issuance of an order shall be deemed to be the date of entry for the purposes of computing the time for appeal under an applicable statute relating to judicial review of Board action.

(c) Subsections (a) and (b) are identical to 1 Pa. Code § 31.13 (relating to Issuance of Agency Orders).

§ 497.4. Effective dates of Board orders.

(a) An order of the Board promulgating regulations shall be effective upon publication in the *Pennsylvania Bulletin* unless otherwise specially provided in the order.

(b) Except as provided in subsection (a), an order of the Board shall be effective as of the date of entry unless otherwise specially provided in the order.

(c) Subsections (a) and (b) supersede 1 Pa. Code § 31.14 (relating to Effective Dates of Agency Orders).

§ 497.5. Extensions of time and continuances.

(a) Extensions of time shall be governed by the following:

(1) Except as otherwise provided by statute, whenever under this title or by order of the Board, or notice given thereunder, an act is required or allowed to be done at or within a specified time, the time fixed or the period of time prescribed may, by the Board, for good cause be extended upon motion made before expiration of the period originally prescribed or as previously extended. Upon motion made after the expiration of the specified period, the act may be permitted to be done where reasonable grounds are shown for the failure to act.

(2) Requests for the extension of time in which to file briefs shall be filed at least 5 days before the time fixed for filing the briefs unless the Board, for good cause shown allows a shorter time.

(b) Except as otherwise provided by statute, requests for continuance of hearings or for extension of time in which to perform an act required or allowed to be done at or within a specified time by this title or by order of the Board, shall be by motion in writing, timely filed with the Board, stating the facts on which the application rests, except that during the course of a proceeding, the requests may be made by oral motion in the hearing before the Board. Only for good cause shown will

requests for continuance be considered. The requests shall be submitted at least 5 days prior to the hearing date.

(c) Subsections (a) and (b) supersede 1 Pa. Code § 31.15 (relating to Extensions of Time).

CHAPTER 499. REPRESENTATION BEFORE THE BOARD

§ 499.1. Appearance in person.

(a) Individuals may represent themselves.

(b) In adversarial proceedings, [partnerships, corporations, trusts, associations, agencies, political subdivisions and government entities] ^{persons} shall be represented only under section ^{499.1 and 499.2} ~~479.2~~ (relating to Appearance by Attorneys). For purposes of this section, without limitation, a request for licensure under sections 1302, 1304, 1305, 1315 and 1317 of the act or a license or permit determined by the Board, shall be considered to be an adversarial proceeding. } omit

(c) Subsections (a) and (b) supersede 1 Pa. Code § 31.21 (relating to Appearance in Person).

§ 499.2. Appearance by attorney.

^{omit} (a) [Individuals, partnerships, associations, corporations or governmental entities] ^{persons} may be represented in a proceeding by an attorney at law admitted to practice before the Supreme Court of Pennsylvania.

(b) An attorney licensed in a jurisdiction which does not accord like privileges to members of the bar of this Commonwealth may appear before the Board with the permission of the Board consistent with Pa.B.A.R. 301 (relating to Admission pro hac vice).

(c) Subsections (a) and (b) supersede 1 Pa. Code § 31.22 (relating to Appearance by an Attorney).

§ 499.3. Other representation prohibited at hearings.

(a) Participants, individuals, partnerships, associations, corporations or governmental entities may not be represented at a hearing before the Board except:

(1) As stated in sections ⁴⁹⁹~~479~~.1 and ⁴⁹⁹~~479~~.2 (relating to Appearance in Person; and Appearance by Attorney).

(2) As otherwise permitted by the Board in a specific case.

(b) Subsection (a) supersedes 1 Pa. Code § 31.23 (relating to Other Representation Prohibited at Hearings).

§ 499.4. Notice of appearance or withdrawal.

(a) An individual appearing without representation before the Board shall file with the Office of the Clerk an address for service of a notice or other written communication. A change in address which occurs during the course of the proceeding shall be reported to the Office of the Clerk promptly.

(b) An attorney whose name and address appear in a representative capacity on an initial pleading filed with the Office of the Clerk shall be considered to have entered an appearance in that proceeding. An attorney who enters the matter at a later stage of the proceeding shall file with the Office of the Clerk a written notice of the appearance, which shall state his name, address and telephone number and the name and address of the person on whose behalf he appears. The notice shall be served on the participants in the proceeding. A change in address which occurs during the course of the proceeding shall be reported to the Office of the Clerk promptly.

(c) A person appearing or practicing before the Board in a representative capacity may be required to file a power of attorney with the Board showing his authority to act in that capacity.

(d) An attorney who wishes to withdraw an appearance shall file with the Office of the Clerk a written notice of withdrawal. The notice shall be served on the participants.

(e) Subsections (a) and (d) supersede 1 Pa. Code § 31.24 (relating to Notice of Appearance).

§ 499.5. Form of notice of appearance.

(a) The form of notice of appearance is as follows:

COMMONWEALTH OF PENNSYLVANIA

BEFORE THE PENNSYLVANIA GAMING CONTROL BOARD

In the Matter of:

[File, Docket or other identifying No.:]

NOTICE OF APPEARANCE

Please enter my appearance in the above-designated matter on behalf of _____.

I am authorized to accept service on behalf of said participant in this matter.

[CHECK ONE]

On the basis of this notice, I request a copy of each document hereafter issued by the Board in this matter.

I am already receiving or have access to a copy of each document issued by the Board in this matter and do not on the basis of this notice require an additional copy.

Signature

Attorney Identification Number

Name (Printed)

P.O. address

City, state and zip code

Telephone Number
(including area code)

(b) Subsection (a) supersedes 1 Pa. Code § 31.25 (relating to Form of Notice of Appearance).

§ 499.6. Contemptuous conduct.

(a) Contemptuous conduct at a hearing before the Board shall be grounds for exclusion from the hearing and for summary suspension without a hearing for the duration of the hearing.

(b) Subsection (a) is identical to 1 Pa. Code § 31.27 (relating to Contemptuous Conduct).

§ 499.7. Suspension and disbarment.

(a) The Board may deny, temporarily or permanently, the privilege of appearing or practicing before it to a person who is found by the Board, after notice and opportunity for hearing in the matter, to have done one or more of the following:

(1) Lacked the requisite qualifications to represent others.

(2) Engaged in unethical, contemptuous or improper conduct before the Board.

(3) Repeatedly failed to follow Board directives.

(b) For the purpose of subsection (a), practicing before the Board shall include:

(1) Transacting business with the Board.

(2) The preparation of a statement, opinion or other paper by an attorney, accountant, engineer or other expert,

filed with the Board in a pleading or other document with the consent of the attorney, accountant, engineer or other expert.

(3) Appearances at a hearing before the Board.

(c) Subsections (a) and (b) are identical to 1 Pa. Code § 31.28 (relating to Suspension and Disbarment).



Kirkpatrick & Lockhart Nicholson Graham LLP

May 13, 2005

David R. Overstreet

Via First Class Mail

PGCB GMS-20

RECEIVED

MAY 16 2005

Pennsylvania Gaming Control Board
P.O. Box 69060
Harrisburg, PA 17106-9060
Attn: Public Comment

RE: Comments on Draft Temporary Regulations

Dear Sir or Madam:

Pennsylvania Coin & Slot, LLC. ("PA Coin"), by its counsel, Kirkpatrick & Lockhart Nicholson Graham, LLP, submits the following comments on the Draft Temporary Regulations proposed to be adopted by the Pennsylvania Gaming Control Board and published at 35 *Pa. Bull.* 2569 (Apr. 23, 2005). PA Coin also comments on the Proposed Regional Supplier Amendments, 35 *Pa. Bull.* 2588 (Apr. 23, 2005).

PA Coin is a Pennsylvania Limited Liability Company with an office in Bensalem, Bucks County, Pennsylvania. PA Coin was formed by Atlantic City Coin & Slot Service Company, Inc. ("AC Coin") for the purpose of establishing a full-service gaming equipment supplier operation in Pennsylvania. PA Coin intends to apply for a supplier license and, if awarded same, to invest in the infrastructure and workforce development necessary to service the needs of slot licensees in the Commonwealth. Building on the expertise, reputation, integrity and outstanding regulatory compliance history of AC Coin (which has served as the exclusive distributor for International Game Technology in Atlantic City and the Caribbean since 1983 and which holds over 140 gaming-related vendor licenses), PA Coin will provide gaming licensees with a reliable source of products and services.

PA Coin appreciates the opportunity to submit the following comments.



Kirkpatrick & Lockhart Nicholson Graham LLP

Pennsylvania Gaming Control Board

Page 2

May 13, 2005

Comments on Draft Temporary Regulations

Section 401.4, Definition of “Key employee qualifier”

As defined in draft § 401.4, “key employer qualifier” includes any person “who directly or indirectly hold[s] any beneficial interest in or ownership of the securities of a licensee.” Consistent with the comment to draft § 431.2(a)(7) below, this definition of “key employer qualifier” should be amended to confirm that, in the case of publicly-traded licensees, key employer qualifiers include persons who hold a controlling interest in the licensee.

Section 431.2(a)(7)

Draft § 431.2(a)(7) provides that an “applicant” for a supplier license must affirm that “it does not hold a direct or indirect ownership interest in a manufacturer or slot machine license applicant or licensee.” The term “applicant” is defined in draft § 401.4 as a “person, officer, director or key employee, who on his own behalf or on behalf of another, is applying for permission to engage in an act or activity which is regulated under this part.”

Please confirm that the Board does not intend to prohibit applicants and key employee qualifiers from owning less than a controlling interest in publicly-traded manufacturers and slot machine applicants or licensees or from investing in mutual funds that own shares in such entities. Section 431.2(a)(7) should be amended to add: “Nothing in this section is intended to prohibit applicants and key employer qualifiers from owning less than a controlling interest in publicly-traded manufacturers or slot machine license applicants or licensees.”

Section 431.3(2)

Draft § 431.3(2) provides that a licensed supplier shall “[o]nly employ technicians that have been approved by a licensed manufacturer.” This provision is unnecessary and imposes undue limitations on licensed, and therefore otherwise qualified, responsible and suitable, suppliers and should be deleted. In addition, to the best of PA Coin’s knowledge, no other jurisdiction in the United States imposes such a limitation on the ability of suppliers to employ technicians of their choosing.



Kirkpatrick & Lockhart Nicholson Graham LLP

Pennsylvania Gaming Control Board

Page 3

May 13, 2005

Having demonstrated to the Board that they are suitable, qualified and responsible, licensed suppliers should be permitted to employ properly trained technicians without obtaining approval from a licensed manufacturer. As a condition of licensing, a supplier must furnish the Board with evidence of the supplier's "financial stability, integrity and responsibility." Draft 58 Pa. Code § 423.1(d). Moreover, the supplier must demonstrate to the Board that it is "suitable" and "otherwise qualified to be issued a license." Draft 58 Pa. Code § 423.3(a)(4). As an essential element of its business plan, which will be reviewed by the Board, a licensed supplier will develop policies related to screening of job applicants to ensure that individuals being considered for technician positions have the appropriate experience and/or training/education and have the requisite license or are licensable. In addition, as will be addressed during the application process, a supplier will provide training, including essential training on each type of machine distributed by the supplier. Having satisfied the Board of its qualifications, a licensed supplier should not be required to seek approval from a manufacturer before hiring a technician.

Allowing manufacturers to dictate to suppliers who they will hire will unduly interfere with the ability of suppliers to be responsive to the needs of licensed facilities and to develop their operations in Pennsylvania. As is typical throughout the United States, incidental to or pursuant to contracts with suppliers, manufacturers will review and approve supplier business plans, facilities and staffing levels. Any agreement between a supplier and manufacturer for the sale and service of gaming devices in Pennsylvania will almost certainly impose an obligation on the supplier to maintain an appropriate level of professional, trained technicians to properly service the gaming devices operating in the Commonwealth. Manufacturers will thus have significant input into the business affairs of suppliers. At the same time, however, suppliers will have contractual obligations to, and must respond in a timely manner to the needs of, licensed facilities. Compelling suppliers to obtain approval from manufacturers before they hire technicians will interfere with the ability of suppliers to satisfy their obligations by, among other things, delaying the retention of additional technicians until manufacturer approval is obtained.

In sum, a supplier licensee should have the authority to determine the level of experience/education technicians must possess to ensure the supplier satisfactorily performs its contractual obligations. As such, it is respectfully submitted that § 431.3(2) should be deleted in its entirety, as it serves no regulatory purpose.



Kirkpatrick & Lockhart Nicholson Graham LLP

Pennsylvania Gaming Control Board

Page 4

May 13, 2005

Comments on Proposed Regional Supplier Amendments

Proposed Section 431.2(a)(11)

As proposed, § 431.2(a)(11) appears to require applicants to speculate regarding their ability to obtain licenses in all jurisdictions that license the type of activities in which the applicants might engage, irrespective of whether an applicant has ever applied for, or intends to apply for, a license in such jurisdictions. Only licensing authorities in the respective jurisdictions have the authority to determine whether an applicant is “qualified” to be licensed. Thus, at most, an applicant could attest that it believes that it would be found to be qualified to hold a license in all such jurisdictions. Nevertheless, § 431.2(a)(11) appears to suggest that applicants must evaluate the licensing statutes and regulations in effect throughout the United States and then offer an opinion with respect to whether or not they would receive a license.

Proposed § 431.2(a)(11) is burdensome and unreasonable and should not be adopted.

Proposed Section 431.2(a)(12)

See comment to Draft § 431.2(a)(7) above.

Proposed Sections 431.3(8) & (9)

Proposed §§ 431.3(8) & (9) would require the Board to establish five distinct supplier regions and to issue no less five supplier licenses in each jurisdiction. For the following reasons, these proposed provisions (and related provisions in §§ 431.3(10) – (12)) should not be adopted by the Board.

The Legislature could have, but did not, include regional supplier requirements in the Race Horse Development and Gaming Act. The decision to include, or, in this case exclude, such requirements is a fundamental policy decision that must be made by the Legislature. See Pa. Const. Art. II, § 1; see also *Holgate Bros. Co. v. Bashore*, 331 Pa. 255, 200 A. 672 (1938). This Board, therefore, does not have authority to impose regional supplier requirements. See *Green v. Milk Control Comm’n*, 340 Pa. 1, 3, 16 A.2d 9, 9 (1940) (“The power and authority to be exercised by administrative commissions must be conferred by legislative language clear and unmistakable. A doubtful power does not exist.”)



Kirkpatrick & Lockhart Nicholson Graham LLP

Pennsylvania Gaming Control Board

Page 5

May 13, 2005

Moreover, mandating regional suppliers would undermine the objectives of the Gaming Act by forcing into existence a large number of what will almost certainly prove to be unsuccessful businesses. Because of the limited number of slot machine licenses to be issued in Pennsylvania, if the regionalization plan is adopted, suppliers will outnumber licensees. In other words, supply will significantly exceed demand. With supply fixed, as mandated by the proposed regulations, the inevitable outcome is failing enterprises.

In addition, the Board need not impose regional supplier licensing in order to advance the objectives of the Gaming Act. Manufacturers will select a supplier or supplier(s) based upon the supplier's business acumen, financial strength, experience, operational plan, and ability to obtain a license from the Board. In this regard, as a supplier hoping to represent a manufacturer in Pennsylvania, PA Coin has evaluated the entire market and established operational plans which included having sales and service facilities located in two regions in the Commonwealth with the intent of hiring Pennsylvania residents in each region.

Finally, forcing manufacturers and slot machine licensees to coordinate with multiple, small suppliers in multiple regions will impose unwarranted administrative and logistical burdens on the Board and licensees. For example, manufacturers will have the burden of performing due diligence on multiple "supplier" candidates, negotiating multiple agreements with different suppliers which could result in different terms for pricing, delivery and service. Furthermore, the administrative costs to the Board and the Bureau of Enforcement and Investigations will increase due to the need to investigate, license and monitor multiple suppliers located across the Commonwealth.

In sum, for the reasons set forth above, PA Coin respectfully requests that the Board not adopt the proposed plan for regionalization of suppliers.

Proposed Section 431.3(13)

Proposed § 431.3(13) provides that all agreements between a licensed manufacturer and a licensed supplier shall be subject to review and approval of the Board and that the Board will neither recognize nor approve any agreement entered into between a manufacturer and supplier prior to the manufacturer and supplier being licensed by the Board. For the following reasons, this provision should not be adopted.



Kirkpatrick & Lockhart Nicholson Graham LLP

Pennsylvania Gaming Control Board

Page 6

May 13, 2005

While other jurisdictions reserve the right to review contracts between manufacturers and suppliers, to the best of PA Coin's knowledge, no jurisdiction in the United States reserves to itself the right to approve such contracts. If the Board has a legitimate reason to deny an application for a license or a renewal of a license, it should take such an action. The Board, however, should not instead attempt to indirectly regulate the conduct of suppliers and manufacturers by asserting the power to veto their agreements. If a supplier or a manufacturer otherwise meets the rigorous requirements imposed by the Gaming Act and the Board's regulations, there is no reasonable basis for the Board to insert itself into the business affairs of qualified, licenses entities.

Moreover, it would be unreasonable for the Board to expect manufacturers and licensees to defer contract formation until after the Board issues licenses to all the parties involved. Such a condition will slow the implementation of slots in Pennsylvania and make it very difficult for suppliers and licensees alike to provide the Board with complete disclosure of their plans for doing business in Pennsylvania. The Board will have the power to review the contracts and the power to deny licensee applications. There is, therefore, no public purpose associated with forcing suppliers and manufacturers to defer contract formation until after both parties have been licensed. Rather, manufacturers and suppliers should be permitted to enter into agreements subject to or conditioned upon both parties being licensed by the Board. By proceeding in this manner, manufacturers will be assured that they will have a reliable distribution network in Pennsylvania before they apply for a license. At that same time, suppliers will be able to finalize and begin to implement workforce and infrastructure development plans.

Proposed Section 431.3(13)(ii)

Proposed § 431.3(13)(ii) provides that the term of the agreement between a manufacturer and a supplier shall not extend beyond the term of the supplier license in effect on the date the agreement is entered into or one year, whichever is longer. This provision would undermine a principal objective of the Gaming Act and impose undue restrictions on manufacturers and suppliers without serving a public purpose and should not be adopted.

Forcing manufacturers and suppliers to enter into short-term agreements would undermine the stated legislative objective of "provid[ing] broad economic opportunities to the citizens of this Commonwealth." Relationships between manufacturers and suppliers are built on long-term, often exclusive, agreements. The nature of these agreements reflects the fact that manufacturers must protect their trade secrets and



Kirkpatrick & Lockhart Nicholson Graham LLP

Pennsylvania Gaming Control Board

Page 7

May 13, 2005

suppliers must be able to justify the considerable investment necessary to meet the needs of slot licensees. A supplier looking to develop its business and build the necessary infrastructure to support its customers and satisfy the manufacturer's requirements may need to secure long-term financing commitments from financial institutions. Being limited to a one-year contract will make it difficult to secure such financing. In the absence of stability provided by long-term agreements with manufacturers, manufacturers will be reluctant to bring new products to Pennsylvania and suppliers will be unable to make significant investments in employees and infrastructure in Pennsylvania. Employees, in turn, will face ongoing uncertainty, resulting from the fact that suppliers may, or may not, be in business in Pennsylvania for more than one year.

Manufacturers and suppliers should be free to negotiate all terms and conditions of their agreements, including the length of the agreements. As noted above, the Board has the power to deny applications for licenses or renewals of licenses. A standard condition of agreements between manufacturers and suppliers is that both parties must obtain and maintain all necessary licenses. As a consequence, the Board effectively has the power to end a relationship between a manufacturer and supplier, if it determines that the relationship is not in the public interest. Proposal § 431.3(13)(ii), therefore, is unnecessary and should not be adopted as proposed.

Proposed Section 431.3(14)

Proposed § 431.3(14) would provide that the Board must review and approve all agreements between suppliers and slot machine licensees. Because it would impose an undue administrative burden on the Board, suppliers and slot machine licensees, this provision should not be adopted.

In the day-to-day operation of a slot machine facility, there will be occasions when the facility will be placing orders with a supplier on a daily or weekly basis for parts/components. The Board or its staff should not be burdened with having to review/approve such agreements, as there is little to be gained from a regulatory standpoint. Such a procedure will also create an administrative nightmare for the Board and staff, the slot machine facility and supplier. As such, the proposed regulation should not be adopted.



Kirkpatrick & Lockhart Nicholson Graham LLP

Pennsylvania Gaming Control Board

Page 8

May 13, 2005

Thank you for your consideration.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'D. Overstreet', with a long horizontal flourish extending to the right.

David R. Overstreet

DRO:nlh

Cc: Thomas McCormick

Enclosure