

RULES AND REGULATIONS

TITLE 58. RECREATION

PENNSYLVANIA GAMING CONTROL BOARD

[58 PA. CODE CHS 403, 405, 421, 441, 491 and 493]

Response to Public Comment

SUBPART A. GENERAL PROVISIONS

CHAPTER 435. EMPLOYEES

§ 435.1. General provisions.

Comment:

We object to the provision prohibiting any individual required to hold a license or permit as a condition of employment to wager at any licensed facility in the Commonwealth. Although this practice was originally instituted in New Jersey in the early years of casino gaming, subsequently it was proven to be unnecessary to fulfill the purposes of the New Jersey Casino Control Act and employees below the level of key employees are now permitted to wager at casinos (gaming related employees may not wager at their employers casino). At the very least, we believe this regulation should permit wagering at casinos other than those where a person is employed.

Response:

The Board declines to accept this comment. The Board believes that the restriction on wagering for permitted and licensed employees is appropriate given the access level and authority associated with these levels of authorization. As way

of further response, this regulation allows registered employees or other employees who are not subject to licensure or permitting to wager in facilities other than the facility in which they are employed.

Comment:

Section 435.1(o) prohibits any person who is required to hold a license or permit as a condition of employment or qualification from wagering at any licensed facility in the Commonwealth. This section is too restrictive in that it does not allow individuals required to hold a license or permit as a condition of their employment to wager at a licensed facility in the Commonwealth in which they are not employed. This restriction will cause several serious practical problems for the licensee. First, given that licensees are generally not familiar with employees of other licensees, this requirement would be difficult for licensees to enforce and consequently such licensees may unwittingly allow gaming by prohibited persons. Second, in a competitive gaming environment, it is typical within the industry for certain employees of licensees to visit facilities of other licensees to evaluate their operations, promotional offers, overall entertainment environment, etc. These activities allow for licensees to maintain a competitive gaming environment through increased awareness of the services and promotions offered by competitors. Moreover, these activities

ultimately result in increased revenue for the licensee which, in turn, increases the amount of revenue distributed to the Commonwealth. To prohibit such activities, which are typically used in the gaming industry, would frustrate productive competition between licensees. Third, the section as written will likely inhibit potential employees from applying for casino jobs because of their desire to enjoy the gaming experience as a patron. Lastly, there appears to be no good reason for such a prohibition and no apparent risk being protected.

It is respectfully requested that rather than such a broad prohibition, this section should be redrafted to provide that individuals required to hold a license or permit as a condition of their employment may not wager at the licensed facility in which they are employed.

Response:

See the preceding response. Additionally, this restriction only applies to gaming. Licensed and permitted individuals would still be able to visit other licensed facilities.

Comment:

Section 435.1(q) provides that any licensed, permitted or registered employee must wait at least 30 days following the date in which they either leave or are terminated from employment before they may wager at the licensed facility in which they were formerly employed. There does not seem to be any

basis for the prohibition set forth in this section. Unless there are performance related reasons to ban an employee from the premises, which is a step that can be taken by licensees without the benefit of the prohibition of this section, there seems to be little or no reason to ban former employees from frequenting their previous place of employment to engage in gaming activity. Given that problem employees can be prohibited from entering the premises by means which already exist, the prohibition contained in this section seems unnecessary and should therefore be eliminated.

Response:

The Board declines to accept this comment.

SUBPART C. SLOT MACHINE LICENSING

CHAPTER 441. SLOT MACHINE LICENSING

§ 441.20. Wagering by former employees.

Comment:

It will be impracticable to place the burden on casino licensees to prevent former employees from wagering in their facilities. Those persons will not generally be on any "exclusion list", nor necessarily be persons recognized by surveillance or other floor employees nor persons such as juveniles whose physical characteristics identify them. Former employees could easily enter a casino and wager at a slot machines without detection. If they were detected by gaming

enforcement personnel, the casino would face regulatory sanctions for an action by a third party that is outside of its control.

Response:

The Board accepts this comment and has removed this provision.

SUBPART H. PRACTICE AND PROCEDURES

CHAPTER 493. PLEADINGS

§ 493.2. Formal complaints.

Comment:

We believe it is unfair and may not comport with due process to provide that any person holding a license has a burden of proof by clear and convincing evidence when responding to formal complaints. Again, following the New Jersey Practices and Procedures the burden on complaints against individuals shifts to the Division of Gaming Enforcement and the test is by preponderance of the evidence requiring clear and convincing evidence and placing the burden on the applicant at all times is unreasonable.

Response:

The Board declines to accept this comment.

Comment:

Section 493.2 provides that a person who holds a license, certification, permit or registration shall at all times have the burden of proof in complaint proceedings and shall have the affirmative responsibility to establish the facts of their case by clear and convincing evidence. The standards enumerated in this section are unfair and conflict with fundamental due process concerns owing to persons in any proceeding of this nature. As a general rule in civil and criminal cases, Plaintiffs carry the burden of proof in proving their claims. Significantly, there does not seem to be a basis for a departure from this rule under the circumstances provided for in this section. Thus, the party seeking a remedy should be able to justify its request and bear the burden of proof regarding the elements within the claims presented. This is especially true when sanctions, fines and other penalties are sought. It is submitted that the burden of proof in any such proceeding should be held by the Board, as the agency attempting to take action against a person. This change would allow proceedings to be conducted in a manner which appropriately protects the rights of individuals subject to such proceedings.

Response:

The Board declines to accept this comment.