

RULES AND REGULATIONS

TITLE 58. RECREATION

PENNSYLVANIA GAMING CONTROL BOARD

[58 PA. CODE CH. 513]

Response to Public Comment

Subpart I. COMPLUSIVE AND PROBLEM GAMBLING

CHAPTER 513. UNDERAGE GAMING

§ 513.2. Exclusion requirements.

Comment:

Section 513.2(a) - Applicant recognizes that the legislation prohibits anyone under 18 years of age from being in the area where slot machines are operated. However, the proposed regulation broadens this prohibition to the entire gaming floor. Depending on the structure of the facility, access to the racetrack, restaurants or other non-gaming venues may require entrance onto the casino floor. The Board should allow itself the latitude to permit access to the gaming floor so long as a person under the age of 18 can do so without coming within close proximity to the slot machines.

Response:

The Board declines to accept this comment. The Board's regulations define the term "gaming floor" as follows:

§ 401.4 Definitions.

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Gaming area or gaming floor - Any portion of a licensed facility where slot machines have been installed for use or play.

and

§ 463.3. Slot machine location.

(a) A gaming floor shall consist of one or more areas within a licensed facility approved by the Board for the placement and operation of slot machines.

The Board recognizes that a particular licensed gaming entity may contemplate incorporating ingress and egress through or across areas of its facility which are in close proximity to its gaming floor for a variety of reasons. A licensed gaming entity which desires to permit ingress and egress in close proximity to its "gaming floor" must designate these areas in its submissions and seek Board approval.

Comment:

Section 513.2(a) prohibits any individual under the age of 18 from being on the gaming floor of a licensed facility while § 513.2(b) prohibits persons under the age of 21 from playing a slot machine in a licensed facility. A literal reading of these two provisions allows persons between the ages of 18 and 21 to be physically present on the gaming floor while at the same time being prohibited from operating a slot machine. This circumstance presents a concern for Downs Racing with regard to effective monitoring of the gaming area. Unfortunately, it is inevitable that some of the individuals in this 18-21 age

bracket may attempt to participate in gaming activities in violation of the law, and extreme vigilance would be required on the part of the licensee to attempt to prevent such unlawful activity. Given the number of patrons expected to be present in the gaming area at one time and given the frequency of patrons filtering in and out of the gaming area, such a task is unreasonably difficult and burdensome. This is especially troublesome since administrative sanctions can be imposed on the licensee if a person engages in conduct that violates §§ 513.2 (a) and (b) (See § 513.3(b)). Moreover, it is respectfully submitted that allowing patrons between the ages of 18 to 21 in the gaming area invites, to some extent, underage participation in gaming activity in contravention of the act. Downs Racing requests a simple clarification of § 513.2 to eliminate the aforementioned problem. Each licensee should be permitted to exercise its business discretion as to how it will implement § 513.2(a) so long as the licensee complies with the act and the regulation itself. Specifically, Downs Racing submits that a licensee, if it so chooses, be permitted to adopt an internal rule prohibiting any individuals under the age of 21 from being present on the gaming floor. This clarification request is entirely consistent with the act and § 513.2(a) and § 513.2(b) of the regulations as they now stand. Section 1518(a)(13) of the act, 4 Pa.C.S. §1518(a)(13), which identifies certain

enumerated prohibitions and provides the statutory predicate for the regulation, provides only that it is unlawful for any person under the age of 18 to be permitted in the gaming area. (4 Pa. C.S. § 1207(8), prohibits person under the age of 21 from operating slot machines). This section does not prohibit a licensee from adopting a stricter rule that restricts access to the gaming area to person under the age of 21. The same is true of § 513.2(a) of the regulations as it now stands. While it is clear that an individual licensee can not adopt a rule that allows individuals under the age of 18 on the gaming floor, it is equally as clear that a licensee can adopt a rule for its casinos which prohibits person under the age of 21 from being on the gaming floor. Additionally, from a policy perspective, Downs Racing submits that making this clarification and allowing casinos, if they choose, to prohibit person under the age of 21 in the gaming area, furthers the goal of inhibiting underage gambling.

Response:

The Board does not believe this comment requires any amendment or change to the proposed regulation. The comment states "...it is equally as clear that a licensee can adopt a rule for its casinos which prohibits person [sic] under the age of 21 from being on the gaming floor." A licensee can adopt a rule

for its facility which prohibits persons under the age of 21 from being on the gaming floor.

§ 513.4. Enforcement.

Comment:

Section 513.4(a) - It is inappropriate to prohibit a licensee from raising a legitimate defense in response to an administrative action. There are many instances where a licensee may reasonably believe that an individual is at least 21 years of age. Through this provision, the Board is creating a *per se* standard that establishes culpability on the part of the licensee no matter what efforts the licensee makes to determine the age of the patron. However, if a licensee has taken every possible measure to ascertain a patron's age (including obtaining the opinion of the Board agent assigned to the property) and in the end is wrong due to misrepresentation by the individual, what purpose is served by imposing a sanction against the licensee? Similar to other gaming jurisdictions, licensee should be allowed to present as its defense the efforts it made to ascertain the age of a patron. The sufficiency of those efforts and the reasonableness of the licensee's belief would then be assessed by the hearing officer or the Board.

Response:

The Board declines to accept this comment.

The Board's mandate from the legislature is clear. Pursuant to section 1207 of the Act, the Board has the duty to require that each licensed gaming entity prohibit persons under 21 years of age from operating or using slot machines. This legislative directive does not provide for the exceptions suggested.

The Board's purpose in adopting the regulation as proposed is to provide the gaming industry with the clear and unwavering position of the Board regarding underage gaming. Each licensed gaming entity must prevent, not merely attempt to prevent, persons under the age of 21 from operating or using slot machines. Should the efforts of any particular licensed gaming entity prove to be unsuccessful in this regard, reasonable and appropriate Board-imposed sanctions should encourage the licensed gaming entity to review and improve their compliance efforts.

Finally, the regulation as proposed does not prohibit a licensed gaming entity from submitting evidence demonstrating the compliance efforts it has undertaken and any reasonable belief it has formulated in an effort to mitigate the administrative sanction imposed by the Board for its noncompliance.