

**RULES AND REGULATIONS**

**PENNSYLVANIA GAMING CONTROL BOARD**

**[58 PA. CODE CH 403]**

**Draft Temporary Regulations**

The Pennsylvania Gaming Control Board (Board), under authority in 4 Pa.C.S. § 1202 (relating to general and specific powers), has drafted temporary regulations to facilitate the prompt implementation of 4 Pa.C.S. Part II (relating to gaming), enacted by the act of July 5, 2005 (P.L. 572, No. 71)(Act 71). Included in this draft are regulations pertaining to emergency board orders. Upon adoption of the regulations by the Board, the Board's temporary regulations will be added to Part VII (relating to Gaming Control Board). By publishing these 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 to the Pennsylvania Gaming Control Board, Office of Communications, P.O. Box 69060, Harrisburg, PA

17106-9060, ATTENTION: Public Comment. The public comment period will end on Tuesday June 20, 2006.

THOMAS A. DECKER, CHAIRPERSON

ANNEX A

RULES AND REGULATIONS

TITLE 58. RECREATION

PENNSYLVANIA GAMING CONTROL BOARD

[58 PA. CODE CHAPTER 403]

Title 58. Recreation

Part VII. Gaming Control Board

Subpart A. GENERAL PROVISIONS

CHAPTER 403. BOARD OPERATIONS AND ORGANIZATION

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§ 403.6. Emergency orders.

(a) Upon request of the Office of Enforcement Counsel in accordance with subsection (d), a temporary emergency order may be issued by, or on behalf of, the Executive Director of the Board. A temporary emergency order may be issued without a hearing and without notice and shall notify the person to whom the temporary emergency order is issued that he may request a

hearing to be held by the Executive Director within 72 hours of the request being filed with the Board.

(b) A temporary emergency order may be issued to suspend a license, certification, permit or registration or to direct that a person refrain from engaging in, or cease and desist engaging in, specific conduct.

(c) A temporary emergency order may be issued if there is insufficient time to provide notice and hearing prior to the issuance of the order; the order is necessary to preserve the public health, welfare, or safety or the integrity of gaming in the Commonwealth; and determination of one of the following has occurred:

(1) A person holding a license, certification, permit or registration issued by the Board has been convicted of a felony, a criminal gaming offense, or crime of dishonesty or false statement.

(2) A licensee has failed to pay required assessments or to satisfy its tax obligations under the act.

(3) Such action is necessary to prevent or cure a violation of any provision of the act, this part or other Federal or State laws or regulations.

(d) If the Office of Enforcement Counsel determines that circumstances exist which require that immediate action be taken

on behalf of the Board, it may submit a request for a temporary emergency order. The request will include:

(i) The circumstances upon which the determination to request the order was made.

(ii) The grounds upon which the order is being requested.

(iii) The specific relief sought in the order.

(e) A temporary emergency order must be issued in writing and filed, together with the request for a temporary emergency order required by subsection (d), with the Office of the Clerk no later than the close of the next business day following its issuance.

(f) A temporary emergency order must specify that the person subject to the temporary emergency order may request an informal hearing before the Executive Director within 72 hours of filing the request with the Office of the Clerk.

(g) The Bureau of Investigations and Enforcement will cause the temporary emergency order and the request for a temporary emergency order required by subsection (d) to be served upon the person named in the temporary emergency order. Service required by this subsection will be made as expeditiously as practicable following the issuance of the order and the request. Service will be made in the manner prescribed by § 491.3 (relating to service by the Board).

(h) Within 72 hours of the filing a request for an informal hearing with the Board, an informal hearing before the Executive Director will be held at the Board headquarters.

(i) The Executive Director or their designee may sign subpoenas to secure the attendance of witnesses and the production of documents.

(j) The procedure for the informal hearing will be as follows:

(1) The Executive Director or their designee will call the hearing to order and present the request for a temporary emergency order filed by the Office of Enforcement Counsel pursuant to subsection (d).

(2) The person named in the temporary emergency order may respond by submitting evidence and witnesses supporting the position that the temporary emergency order should be dissolved or modified.

(3) The Executive Director or their designee may require that witnesses testify under oath. All relevant evidence is admissible. The Executive Director or their designee may question witnesses.

(4) The licensee may make a concluding argument as to why the temporary emergency order should be dissolved or modified.

(5) Upon receiving all evidence presented by the

person named in the order and hearing the person's final argument, the Executive Director or their designee shall render a decision as to whether or not the temporary emergency order will continue, be modified or dissolved. Unless the Executive Director dissolves the temporary emergency order, the matter will be scheduled for a hearing before the Board as provided in subsection (k).

(k) Temporary emergency orders issued pursuant to this chapter, except those that have been dissolved, shall be presented to the Board at its next meeting or within 10 business days, whichever is longer, where a hearing will be conducted to determine the validity of the issuance of the order, unless the Board has referred the matter to the Office of Hearings and Appeals pursuant to § 492.6 (relating to hearings generally), at which time a hearing shall be conducted by a hearing officer and a report submitted within the period of time required under this section. Under no circumstance shall such hearing be commenced more than 10 business days after service of the temporary emergency order or the next Board meeting, unless a delay is requested by the person named in the order. The Chairman shall designate a presiding officer to direct the hearing and rule on evidentiary matters. The presiding officer's rulings will be advisory only and may be overruled by the Board. The temporary emergency order, statement filed in support thereof and any

modifications to the order shall be part of the evidentiary record of the proceeding. The Office of Enforcement Counsel will present evidence to the Board in support of the temporary emergency order. Upon any such presentation, the person named in the order shall have the burden to present evidence to rebut the evidence presented in support of the temporary emergency order. Upon conclusion of oral arguments and evidentiary presentations, the Board will determine whether sufficient cause exists to continue, modify or dissolve the temporary emergency order, or refer the matter to the Office of Hearings and Appeals for additional presentation of evidence and testimony of witnesses. If the matter is referred to the Office of Hearings and Appeals, the temporary emergency order shall remain in effect, with or without modification as the Board deems appropriate.

(1) If the Board finds that the un rebutted facts and circumstances presented are sufficient to support the issuance of the temporary emergency order, that dissolution of the temporary emergency order would pose an immediate threat to the public health, safety or welfare, or the public's interest in the effective regulation of gaming demands the action, it shall adopt a resolution ratifying the temporary emergency order. The Board may modify the temporary emergency order based upon the evidence presented at the hearing. The Board's resolution shall

establish the length of term for the order by establishing an expiration date, dependent on the completion of specified remedial actions or dependent on the filing of, or final resolution of, a complaint alleging the person violated a provision of the Act or this part. If the expiration date is dependent upon specific remedial actions, the Board shall provide a detailed description of the remedies in the resolution and shall establish procedures whereby the person can demonstrate that it has complied with the required remedies. Any resolution adopted to ratify the temporary emergency order is a final order of the Board for purposes of appeal.

(m) If the Board finds that there is insufficient cause to continue the temporary emergency order, it shall adopt a resolution dissolving the emergency order and the privileges of the person named in the order shall be reinstated.

(n) Resolutions ratifying or dissolving temporary emergency orders adopted by the Board pursuant to this section shall have no effect upon the power and duty of the Office of Enforcement Counsel to initiate, in its sole discretion, proceedings for violations of the act or this part or upon the outcome of any proceeding so initiated.

(p) Copies of the Board's final order shall be served on the person named in the order by certified or overnight express mail, postage prepaid; or by personal delivery in accordance



with § 491.3.