

RULES AND REGULATIONS

TITLE 58. RECREATION

PENNSYLVANIA GAMING CONTROL BOARD

[58 PA. CODE CHAPTER 511]

PREAMBLE

The Pennsylvania Gaming Control Board (Board), under 4 Pa.C.S. § 1203(a) (relating to temporary regulations), adopts temporary regulations to facilitate implementation of 4 Pa.C.S. Part II (relating to gaming), enacted by the act of July 5, 2004 (P. L. 572, No. 71) (Act 71). The Board's temporary regulations will be added to Part VII (relating to Gaming Control Board). Chapter 511 entitled Persons Required to be Excluded, is added to Subpart J, entitled Exclusion of Persons.

Purpose and Background

Under 4 Pa.C.S. § 1203(a) (relating to temporary regulations), the Board is authorized to promulgate temporary regulations to facilitate the prompt implementation of Act 71. The regulations are necessary to enhance the credibility of the licensed operation of slot machines and associated equipment within this Commonwealth and to carry out the policy and purposes of the Board. To invite public input, the Board published draft regulations on the Board's website and 10-day public comment period was provided.

Under 4 Pa.C.S. § 1203(b), the temporary regulations adopted by the Board expire no later than three years following the effective date of Act 71 or upon promulgation of regulations as generally provided by the law. These temporary regulations shall not be subject to sections 201--205 of the act of July 31, 1968 (P. L. 769, No. 240), known as the Commonwealth Documents Law (CDL)(45 P. S. §§ 1201--1208) or to the act of June 25, 1982 (P.L. 633, No. 181), known as the Regulatory Review Act (71 P. S. §§ 745.1--745.15).

Financial Impact

Act 71 and the regulations will provide for the implementation and management of gaming within this Commonwealth and the collection of fees and taxes from entities and individuals authorized by the Board to be employed by, provide gaming related services to, or operate gaming facilities.

The appropriations from the Commonwealth for the implementation of Act 71 and costs of administering 4 Pa.C.S. Part II will be reimbursed by the licensed entities as specified within Act 71. Individuals and entities that wish to obtain licenses as gaming entities shall pay to the Gaming Fund significant licensing fees to obtain the authority to do business within this Commonwealth. Part of these fees shall reimburse the Board and the Pennsylvania State Police for licensing processes and background investigations. The licensing, registration, certification and

permitting of individuals and other classes of applicants will be reimbursed by the applicants through fees established by the Board.

It is anticipated that all expenses of the Board and all associated activities shall be reimbursed by the applicants and gaming entities as previously specified. The Board shall have no financial impact on the State budget.

Statutory Authority

The Board is authorized under 4 Pa.C.S. § 1203(a) to adopt and publish temporary regulations to implement the policies and purposes of Act 71.

Regulatory Review

Under 4 Pa.C.S. § 1203(b), the Board's authority to adopt temporary regulations will expire two years from the effective date of Act 71.

Findings

The Board finds that:

(1) Under 4 Pa.C.S. § 1203(a), the temporary regulations are exempt from the requirements of the Regulatory Review Act and sections 201--205 of the CDL.

(2) A 10-day public comment period was held prior to the adoption of the temporary regulations.

(3) The adoption of the temporary regulations provided by this order is necessary and appropriate for the administration of the authorizing statute.

Order

The Board, acting under the authorizing statute, orders that:

(a) The Board acting under the authority of the Act 71, adopts as its final-form temporary regulations, the draft regulations as amended by resolution at the May 19, 2006, public meeting. The temporary regulations pertain to persons required to be excluded.

(b) The following temporary regulations of the Board, 58 Pa. Code Chapter 511 are added: §§ 511.1–511.10 to read as set forth in Annex A.

(c) The temporary regulations are effective May 19, 2006.

(d) The temporary regulations shall be posted in their entirety on the Board's website and published in the *Pennsylvania Bulletin*.

(e) The temporary regulations shall be subject to amendment as deemed necessary by the Board in accordance with the purpose of Act 71 and to further the intent of Act 71.

(f) The Chairperson of the Board shall certify this order and deposit the regulations with the Legislative Reference Bureau as required by law.

THOMAS A. DECKER,
Chairperson

ANNEX A

RULES AND REGULATIONS

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[58 PA. CODE CHS 511]

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§ 511.1. Definitions.

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

Candidate - Person whose name is included in a petition to be placed on the exclusion list pursuant to section 1514 of the act (relating to regulation requiring exclusion of certain persons) and this chapter.

Career or professional offender - Any person, who for the purpose of economic gain, engages in activities that are deemed criminal violations or contrary to the public policy of this Commonwealth and the act.

Cheat -

(i) To alter, without authorization, the elements of chance, method of selection or criteria which determine:

(A) The result of a slot machine game.

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

(C) The value of a wagering instrument.

(D) The value of a wagering credit.

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

(iii) The term includes an act or acts in any jurisdiction that would constitute any offense under section 1518 of the act (relating to prohibited acts and penalties).

Excluded person - A person who has been placed upon the exclusion list by preliminary or final order of the Board and who, pursuant to sections 1514 and 1515 of the act (relating to regulation requiring exclusion of certain persons; repeat offenders excludable from licensed gaming facility) and this chapter, is required to be excluded or ejected from a licensed gaming facility.

Exclusion list - A list of names of persons who, pursuant to this chapter and sections 1514 and 1515 of the act, are required to be excluded or ejected from a licensed gaming facility, upon order of the Board after investigation by the Board or Bureau.

§ 511.2. Maintenance and distribution of the list.

(a) The Board will maintain a list of persons to be excluded or ejected from a licensed facility.

(b) The list shall be open to public inspection at the Board's central office during normal business hours and shall be distributed to every slot machine licensee within this

Commonwealth, who shall acknowledge receipt thereof in writing or electronically.

(c) Each slot machine licensee shall have the responsibility to distribute copies of the list to its employees. Any additions, deletions, or other updates to the list shall be distributed by each slot machine licensee to its employees within two business days of the slot machine licensee's receipt of such updates from the Board.

§ 511.3. Criteria for exclusion.

(a) The exclusion list may include any person who meets any of the following criteria:

(1) A career or professional offender whose presence in a licensed facility would, in the opinion of the Board, be inimical to the interest of the Commonwealth or a licensed gaming entity, or both.

(2) An associate of a career or professional offender whose presence in a licensed facility would be inimical to the interest of the Commonwealth or a licensed gaming entity, or both.

(3) Any person who has been convicted of a criminal offense under the laws of any State, or of the United States, which is punishable by more than one year in prison, or who has been convicted of any crime or offense involving moral turpitude,

and whose presence in a licensed facility would be inimical to the interest of the Commonwealth or a licensed gaming entity, or both.

(4) Any person whose presence in a licensed facility would be inimical to the interest of the Commonwealth or licensed gaming therein, including:

(i) Cheats.

(ii) Persons whose gaming privileges, permits, licenses, or other approvals have been suspended, revoked or denied.

(iii) Persons who pose a threat to the safety of the patrons or employees of a slot machine licensee.

(iv) Persons with a documented history of conduct involving the undue disruption of the gaming operations of slot machine licensees.

(v) Persons subject to an order of a court of competent jurisdiction in the Commonwealth excluding such persons from all licensed facilities.

(vi) Persons with pending charges or indictments for a gaming or gambling crime or a crime related to the integrity of gaming operations.

(vii) Persons who have been convicted of a gaming or gambling crime or crime related to the integrity of gaming operations.

(viii) Persons who have performed any act or have a notorious or unsavory reputation that would adversely effect public confidence and trust in gaming, including, being identified with criminal activities in published reports of various federal and state legislative and executive bodies that have inquired into criminal or organized criminal activities.

(b) For purposes of subsection (a), a person's presence may be considered "inimical to the interest of the Commonwealth or of licensed gaming therein" if known attributes of the person's character and background meet one or more of the following criteria:

(1) Are incompatible with the maintenance of public confidence and trust in the credibility, integrity and stability of licensed slot operation.

(2) May reasonably be expected to impair the public perception of, and confidence in, the strict regulatory process created by the act.

(3) Create or enhance a risk of the fact or appearance of unsuitable, unfair or illegal practices, methods or activities

in the conduct of gaming or in the business or financial arrangements incidental thereto.

(c) A finding of inimicality may be based upon the following:

(1) The nature and notoriety of the character or background of the person.

(2) The history and nature of the involvement of the person with licensed gaming in the Commonwealth or any other jurisdiction, or with any particular slot machine licensee or licensees or any affiliate, intermediary, subsidiary or holding company thereof.

(3) The nature and frequency of any contacts or associations of the person with any slot machine licensee or licensees, or with any employees or agents thereof.

(4) Any other factor reasonably related to the maintenance of public confidence in the efficacy of the regulatory process and the integrity of gaming operations, the gaming industry and its employees.

(d) A person's race, color, creed, national origin or ancestry, or sex shall not be a reason for placing the name of any person upon such list.

§ 511.4. Duties of the Bureau of Investigations and Enforcement.

(a) The Bureau of Investigations and Enforcement ("Bureau") will, on its own initiative, or upon referral by the Board, investigate any individual who would appear to be an appropriate candidate for placement on the exclusion list.

(b) If, upon completion of an investigation, the Bureau determines that an individual should be placed on the exclusion list, the Bureau will file a petition for exclusion with the Board, identifying the candidate and setting forth a factual basis why the Bureau believes the candidate satisfies the criteria for exclusion set forth under section 1514 or 1515 of the act or this chapter.

(c) When the Bureau files a complaint alleging a violation of section 1514 of the act and § 511.9(a)(2) against any licensee, the Bureau will file simultaneously a petition to exclude the person alleged in the complaint to meet the criteria for exclusion set forth under § 511.3.

(d) If, upon completion of an investigation undertaken upon referral by the Board, the Bureau determines that an individual should not be placed on the exclusion list, the Bureau will so recommend in writing to the Board.

§ 511.5. Procedure for entry of names onto the exclusion list.

(a) The Board may place a person on the exclusion list following:

(1) Upon the filing of a petition by the Bureau in accordance with the procedures set forth under section 1514(f) of the act and § 511.4.

(2) Upon receipt of an order from a court of competent jurisdiction within the Commonwealth, excluding such person from all licensed gaming facilities. The Board may consider such action upon receipt of the court order, after at least 30 days notice to the Bureau and to such person by certified mail at his last known address.

§ 511.6. Application for preliminary placement of a candidate on the exclusion list.

(a) In addition to filing a petition for exclusion, the Bureau may, in its discretion, file an application with the Board seeking preliminary placement of the candidate on the exclusion list pending completion of the plenary hearing on the petition for exclusion. An application for preliminary placement on the list shall be supported by reliable documentary or other evidence.

(b) The Board may conduct a review of the application for preliminary placement and supporting material, and if the Board determines that the reliable documentary or other supporting evidence establishes a reasonable possibility that the candidate satisfies the criteria for exclusion established by section 1514 of the act and § 511.3, the Board will issue a preliminary order

placing the candidate on the exclusion list pending the issuance of a final order in accordance with the provisions of § 511.7. Following the issuance of the preliminary order, the Board will notify the excluded individual in accordance with the notice and hearing procedures set forth under section 1514 of the act.

(c) Upon receipt of the exclusion notification, an excluded individual shall have 30 days to demand a hearing before the Board. Failure to demand a hearing within 30 days after service shall be deemed an admission of all matters and facts alleged in the Board's notice and a final order may be entered, placing the individual on the Board's exclude list.

(d) A preliminary order designating a candidate as an excluded person shall be effective upon its service upon slot machine licensees.

(e) The preliminary placement of a candidate on the exclusion list pursuant to section 1514 of the act and this chapter shall have the effect of requiring the exclusion or ejection of the excluded person from any licensed facility.

§ 511.7. Final order of exclusion.

The Board may issue a final order placing a person on the exclusion list:

(1) After determining at a hearing that the person named for exclusion satisfies the criteria for exclusion established by the act or § 511.3.

(2) After admission by the person named for exclusion of all matters and facts alleged in the Board's notice, either affirmatively, or through failure to request a hearing within 30 days of service of the exclusion notification.

§ 511.8. Information contained on the exclusion list.

(a) The following information and data will be provided to the slot machine licensees for each excluded person:

(1) The full name and all aliases the person is believed to have used.

(2) A description of the person's physical appearance, including height, weight, type of build, color of hair and eyes and any other physical characteristics which may assist in the identification of the person.

(3) Date of birth.

(4) The effective date of the order mandating the exclusion or ejection of the person named therein.

(5) A photograph, if available, that is consistent with the standards of the Commonwealth Photo Imaging Network.

(6) Last know address of record.

(7) Other identifying information as is deemed necessary by the Board and the Bureau.

§ 511.9. Duty of slot machine licensee.

(a) A slot machine licensee shall exclude or eject the following persons from its licensed gaming facility:

(1) Any excluded person.

(2) Any person known to the slot machine licensee to satisfy the criteria for exclusion set forth in section 1514 of the act and § 511.3.

(b) If an excluded person enters, attempts to enter, or is in a licensed facility and is recognized by employees of the slot machine licensee, the slot machine licensee shall immediately notify the Board and Bureau of such fact in accordance with the procedures set forth by the Board.

(c) The Board may, upon request of any slot machine licensee or any person who has been excluded or ejected from a licensed facility pursuant to § 511.7, refer a matter to the Bureau for investigation to determine whether such person meets the criteria for exclusion provided in section 1514 of the act and § 511.3.

(d) It shall be the continuing duty of a slot machine licensee to inform the Board and the Bureau, in writing, of the names of persons it believes are appropriate for placement on the

exclusion list and the reason why they believe said persons should be placed on the exclusion list.

(e) Licensed gaming entities or employees thereof shall not be liable for damages in any civil action, which is based on the following:

(1) Failure to withhold gambling privileges from an excluded person.

(2) Permitting an excluded person to gamble.

(3) Excluding an excluded person from a licensed gaming facility as required under § 1514 of the act or this section.

§ 511.10. Petition to remove name from exclusion list.

(a) An excluded person may petition the Board to request a hearing concerning his removal from the list at any time after five years from the placement of the excluded person on the list by the Board.

(b) The petition shall be signed, with supporting affidavits, and shall state the specific grounds believed by the petitioner to constitute good cause for removal from the list. Upon receipt of such petition, the Bureau shall be given an opportunity to answer in writing.

(c) The Board may decide the petition on the basis of the documents submitted by the parties. The Board may summarily deny the petition or may grant the petition and direct that a hearing

be held in accordance with section 1514(g) of the act. The Board shall grant the petition only upon a finding that there is new evidence, which is material and necessary, or that circumstances have changed since the placement of the excluded person on the list, and that there would be a reasonable likelihood that the Board would alter its previous decision.

(d) Any excluded person who is barred from requesting a hearing concerning his removal from the list by subsection (a) may petition the Board for early consideration at any time; provided, however, that no excluded person may, within the 5 year period of exclusion, file more than one such petition. The petition shall be verified, with supporting affidavits, and shall state any specific grounds upon which exclusion was based, and the facts and circumstances which warrant the relief sought. Upon receipt of such petition, the Bureau will be given an opportunity to answer in writing. The Board may decide the petition on the basis of the documents submitted by the parties. The Board may summarily deny the petition or may grant the petition and direct that a hearing be held in accordance with section 1514(g) of the act. The Board will consider the following criteria when making its decision on a petition:

(1) Upon a finding that there exist extraordinary facts and circumstances warranting early consideration of the excluded person's request for removal from the list.

(2) If exclusion was pursuant to § 511.5(a)(2) (relating to maintenance and distribution of the list), upon a finding that the excluded person has completed the period of probation or otherwise satisfied the terms of any court-ordered exclusion.