

**RULES AND REGULATIONS**

**PENNSYLVANIA GAMING CONTROL BOARD**

**[58 PA. CODE CHS 403, 405, 421, 435, 441, 491 and 493]**

**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 delegation of powers, investigatory subpoena, supplier log books, service by the Board and consent agreements. 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 CHS 403, 405, 421, 441, 491 and 493]

Title 58. Recreation

Part VII. Gaming Control Board

Subpart A. GENERAL PROVISIONS

CHAPTER 403. BOARD OPERATIONS AND ORGANIZATION

§ 403.5. Delegation of powers.

(a) The Board may, consistent with the act and this part, delegate its authority to perform any of its functions to a Board member or member of the Board's staff.

(b) Any delegation of Board authority will be effected by promulgation of a regulation or the adoption of a formal resolution at a public meeting of the Board. The regulation or resolution will specify:

(1) The specific authority delegated.

(2) The Board member or Board staff members to whom the authority is delegated.

(3) Any limitations or conditions imposed on the authority delegated.

(c) All delegations of authority made under this section will remain in effect indefinitely unless otherwise specified in the implementing regulation or resolution.

(d) Any delegation of authority adopted by the Board may be modified or rescinded by the Board through promulgation of a regulation or the adoption of a subsequent formal resolution at a public meeting of the Board.

(e) Notwithstanding any other provision of this section, any matter that has been delegated to the Board staff may alternatively be presented to and determined by the Board on its own motion, at the discretion of the Chairperson or at the request of the Board staff.

#### **CHAPTER 405. BUREAU OF INVESTIGATIONS AND ENFORCEMENT**

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##### **§ 405.6. Investigatory subpoena.**

(a) The Director of the Office of Enforcement Counsel is authorized to require the attendance and testimony of witnesses and the production of any books, accounts, papers, records, documents, and files necessary for all action within the authority of the Bureau of Investigations and Enforcement under the act or this part.

(b) The Director of the Office of Enforcement Counsel or his representative may issue subpoenas.

(c) In case of disobedience of any subpoena or the contumacy of any witness appearing before the Director of the Office of Enforcement Counsel or his representative, the Director of the Office of Enforcement Counsel or his representative may invoke the aid of the Commonwealth Court or any court of record of the Commonwealth to require the person subpoenaed to obey the subpoena or to give evidence or to produce books, accounts, papers, records, documents and files relative to the matter in question.

(d) The issuance of a subpoena under this section shall not be required to secure the cooperation of a person who is an applicant for, or the holder of, a license, permit, certification or registration issued by the Board, or to secure the voluntary cooperation of any person.

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**SUBPART B. LICENSING, REGISTERING, CERTIFYING AND PERMITTING**

**CHAPTER 421. GENERAL PROVISIONS**

**§ 421.1. General requirements.**

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(g) An applicant shall at all times have the burden of proof. It shall be the applicant's affirmative responsibility to establish the facts supporting their suitability under the act and this subpart by clear and convincing evidence, including

why a license, certificate, permit or registration should be issued or renewed by the Board.

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CHAPTER 435. EMPLOYEES

§ 435.1. General provisions.

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(o) Any individual who is required to hold a license or permit as a condition of employment or qualification may not wager at any licensed facility in the Commonwealth.

(p) Any registrant or employee who is not subject to licensure or permitting may not wager at the licensed facility in which the registrant or employee is employed.

(q) Any licensed, permitted or registered employee must wait at least 30 days following the date that the employee either leaves employment with a slot machine licensee or is terminated from employment with a slot machine licensee before the employee may wager at the licensed facility in which the employee was formerly employed.

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SUBPART C. SLOT MACHINE LICENSING

CHAPTER 441. SLOT MACHINE LICENSING.

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§ 441.20 Wagering by former employees.

A licensed gaming entity may not allow a former employee to wager at the licensed facility in which the employee was employed for 30 days following the date the employee ceased employment with the licensed gaming entity.

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Subpart H. PRACTICE AND PROCEDURE

CHAPTER 491. GENERAL RULE OF PRACTICE

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§ 491.3. Service by the Board.

(a) Service by the Board may be made by any competent adult. Service will be made by certified mail or personally delivering a copy:

(1) Directly to the person named in the notice, pleading, or order.

(2) At the residence of the person named in the notice, pleading, or order, to an adult member of the family with whom the person named resides. If no adult member of the family is found, then to an adult person in charge of the residence.

(3) At the residence of the person named in the notice, pleading, or order, to the clerk or manager of the hotel, inn, apartment house, boarding house or other place of lodging at which the person named resides.

(4) At any office or usual place of business of the person named in the notice, pleading, or order, to his agent or to the person for the time being is in charge thereof. For purposes of this subsection, the phrase "any office or usual place of business of the person named in the notice, pleading, or order" will include the following locations:

(i) The licensed facility at which the person named is employed, licensed in connection therewith, or routinely performs his duties of employment.

(ii) The office of the agent identified by the person named to receive service of process.

(b) Proof of service shall be evidenced by a return of service filed with the Office of the Clerk in the manner and form prescribed by the Board.

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#### CHAPTER 493. PLEADINGS

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#### § 493.2. Formal complaints.

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(1) Except as otherwise expressly provided in the act or this part, a person who holds a license, certification, permit or registration shall at all times have the burden of proof in complaint proceedings. It shall be the person's affirmative

responsibility to establish the facts of their case by clear and convincing evidence, including:

(1) Why they should not be subject to board-imposed administrative sanction or other discipline.

(2) Why they do not owe an assessment, cost, fee, fine, penalty, restitution, tax or monetary sanction.

(m) This section supplements 1 Pa. Code §§ 35.9-35.14[.] (relating to formal complaints; and orders to show cause).

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§ 493.12. Discovery.

(a) Upon written request from a party in a proceeding served upon another party in the proceeding, the requesting party shall be entitled to the name and address of any witness who may be called to testify on behalf of the responding party and all documents or other material in the possession or control of the responding party which the responding party reasonably expects will be introduced into evidence. The responding party shall be under a continuing duty to update its response to this request.

(b) The presiding officer may, upon request of a party, permit the testimony of a witness or the introduction of other evidence not disclosed pursuant to a request made pursuant to subsection (a), if following proffer by the party seeking to



present such evidence, the presiding officer determines that justice so requires.

(c) Upon the request of a party in a proceeding and for good cause shown, the presiding officer may allow other discovery to be conducted, but in no case shall information furnished to or obtained by the Board or the Bureau from any source, including information contained in the Bureau of Licensing Suitability Report, or information or files in the possession of the Bureau of Investigations and Enforcement, or information in the possession or control of an agency which relates to an ongoing civil or criminal investigation, be discoverable under this subsection.

(d) Depositions shall be conducted [Discovery shall be] in accordance with 1 Pa. Code §§ 35.145-35.152 (relating to depositions).

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**§ 493.14. Consent agreements.**

(a) Parties in a proceeding may propose consent agreements to the hearing officer or to the Board at any stage of a proceeding, including prior to the entry of a final order or prior to the initiation of proceedings.

(b) All consent agreements shall be in writing, signed by all parties in the proceeding, and accurately reflect all the terms of the consent agreement, including the facts agreed to by

the parties constituting the grounds for the action proposed in the consent agreement.

(c) If the consent agreement is proposed in a matter that is the subject of a proceeding before a hearing officer, the proposal of the consent agreement shall stay the proceeding until the consent agreement is acted upon by the Board.

(d) The consent agreement shall be presented to the Board for its approval or disapproval. If the Board approves the consent agreement, it will become the final order of the Board. If the Board disapproves the consent agreement, the parties shall be notified and the consent agreement and any documents solely relating to the consent agreement shall not constitute part of the record.