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INDEPENDENT REGULATORY  
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*House of Representatives*  
COMMONWEALTH OF PENNSYLVANIA  
HARRISBURG

May 22, 2007

Kim Kaufman, Executive Director  
Independent Regulatory Review Commission  
333 Market Street, 14th Floor  
Harrisburg, PA 17101

Re: Regulation #125-57  
Pennsylvania Gaming Control Board  
Rulemaking #125-57 - Subpart J. Exclusion of Persons  
Chapter 511a - Persons Required to be Excluded  
Chapter 513a - Underage Gaming

Dear Mr. Kaufman:

We submit for your consideration the following comments on the proposed regulation #125-57, which converts Chapters 511 and 513 of the PGCB's temporary regulations to permanent regulations. The regulation was published in the April 7<sup>th</sup> edition of the *Pennsylvania Bulletin*. The suggestions we are submitting are the following:

**§ 511a.1**

"*Excluded Person*" - It may be worthwhile to clarify that this definition does not include self excluded persons, since the list of self excluded persons is exempt from public disclosure pursuant to 4 Pa.C.S. § 1516(d).

**§ 511a.2(c)**

Should there be clarification that the entire list in (c) is not open to public inspection as per (a) and (b)? Given the potential for some of this information to be misused, e.g., birth dates, it may make sense to consider allowing only limited information on any list open to public access due to identity theft.

### **§ 511a.3(a)(4)(iv) and (v)**

It is worth noting that these provisions turn an option of the licensed entity, pursuant to 4 Pa.C.S. § 1515, into an affirmative duty pursuant to 4 Pa.C.S. § 1514 (a).

In particular, the language of § 511a.3(a)(4)(v) may have constitutional implications. "Persons with a history of conduct involving the disruption of the gaming operations of slot machine licensees" could include individuals engaged in legitimate expressive activity under the First Amendment to the United States Constitution and Article I, § 7 of the Pennsylvania Constitution. Groups organized to oppose legalized gaming as well as union organizers conducting a strike or other labor-related protest could be construed as having a "history of conduct involving the disruption of the gaming operations of slot machine licensees."

The actual licensees, as property owners and arguably private actors, may be constitutionally permitted to make an individual determination as to whether to exclude such individuals. The Board, however, acts as an agent of the Commonwealth. This regulation could be construed to allow the Board to consider legitimate, constitutionally protected expression as a basis for inclusion on a list of "excluded" individuals. Therefore, it appears that some change must be made to reflect this potential for chilling speech and related conduct.

### **§ 511a.4.(b)**

4 Pa.C.S. § 1515 governs persons "excludable" at the discretion of the licensed gaming entity. While it appears that these same individuals could be included in an exclusion list compiled by the board pursuant to its authority under 4 Pa.C.S. § 1514, it may be incorrect to cite § 1515 as the basis for the petition to exclude. This is, however, an objection to form rather than substance.

### **§ 511a.5(c)**

While 4 Pa.C.S. § 1516 (a) governs collection of winnings and recovery of losses for self-excluded persons, it is not apparent that such authority exists under either 4 Pa.C.S. § 1514 or § 1515. Without explicit statutory authority, such seizure of winnings appears to be improper.

### **§ 511a.5(d) and (e)**

4 Pa.C.S. § 1509(b) provides that part of the money in the Compulsive and Problem Gambling Treatment Fund consists of "money which can be allocated by the board." It is not clear, however, that these "winnings" fall into the category of money which can be allocated in this manner. Such moneys as would be withheld by § 511a.5(c), if not paid out to patrons as winnings (assuming the board is authorized to prevent such payments, see above), would be included in "gross terminal revenue". 4 Pa.C.S. § 1103. Unless authorized by statutory language

as one of the permissible deductions from gross terminal revenue or pursuant to some other tax or disbursement provision of Chapter 14 of Title 4, such an allocation may run afoul of other requirements of Title 4. 4 Pa.C.S. § 1408(a) provides for transfers to the fund for compulsive and problem gambling by establishing a fee structure which does not include such "allocated" winnings as envisioned by these regulatory provisions.

**§ 511a.6**

The reference to 4 PA. C. S. § 1515 may be inappropriate, see discussion of § 511a.4(b) above.

**§ 511a.8(e)(1)**

See discussion of §511a.5(c) above, it is unclear whether there is statutory authority to withhold such winnings.

**§ 511a.9**

One potential question is whether this process, at least theoretically, could conflict with a court-ordered exclusion or the terms of probation. While § 511a.9(g)(2) appears to mandate consideration of the court order or completion of probation, it does not dictate a result.

**§ 513a.2(d), (e) and (f)**

While a gaming entity is required to prohibit underage (under 21) persons from using slot machines, and the board has authority to allocate some funds to compulsive and problem gambling programs, it is unclear where the board is statutorily authorized to withhold or allocate under 21 winnings in this fashion. See discussion of §511a.5(c), (d) and (e) above.

**§ 513a.3(a)**

See discussion of § 513a.2(d) above.

**§ 513a.3(c)**

See discussion of § 513a.2(d) and (e) above.

As the Chairmen of the House Gaming Oversight committee, we have taken earnestly the role of reviewing regulations to make certain the PGCB is consistent with legislative intent of Act 135 and Act 71; and in the best interest of the public. Thank you for your consideration on these suggestions.

Sincerely,



Representative Harold James  
Majority Chairman  
Gaming Oversight Committee  
186<sup>th</sup> Legislative District



Representative Paul I. Clymer  
Minority Chairman  
Gaming Oversight Committee  
145<sup>th</sup> Legislative District

Cc: Scott Schalles, IRRC  
Richard Sandusky, Pennsylvania Gaming Control Board  
Gaming Oversight Committee Members