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INDEPENDENT REGULATORY REVIEW COMMISSION
333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

June 6, 2007

Anne LaCour Neeb, Executive Director
Pennsylvania Gaming Control Board
Strawberry Square
Verizon Tower, 5th Floor
Harrisburg, PA 17106-9060

Re: Regulation #125-57 (IRRC #2601)
Pennsylvania Gaming Control Board
Person Required to be Excluded; Underage Gaming

Dear Ms. Neeb:

Enclosed are the Commission's comments for consideration when you prepare the final version of this regulation. These comments are not a formal approval or disapproval of the regulation. However, they specify the regulatory review criteria that have not been met.

The comments will be available on our website at www.irrc.state.pa.us. If you would like to discuss them, please contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "K. Kaufman", is written over a horizontal line.

Kim Kaufman
Executive Director
wbg
Enclosure

cc: Honorable Jane M. Earll, Chairman, Senate Community, Economic and Recreational
Development Committee
Honorable Gerald J. LaValle, Minority Chairman, Senate Community, Economic and
Recreational Development Committee
Honorable Harold James, Majority Chairman, House Gaming Oversight
Honorable Paul I. Clymer, Minority Chairman, House Gaming Oversight

Comments of the Independent Regulatory Review Commission

on

Pennsylvania Gaming Control Board Regulation #125-57 (IRRC #2601)

Persons Required to be Excluded; Underage Gaming

June 6, 2007

We submit for your consideration the following comments on the proposed rulemaking published in the April 7, 2007 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b). Section 5.1(a) of the Regulatory Review Act (71 P.S. § 745.5a(a)) directs the Pennsylvania Gaming Control Board (Board) to respond to all comments received from us or any other source.

1. Statutory authority of the Board to withhold and allocate winnings.

Majority Chairman James and Minority Chairman Clymer of the House Gaming Oversight Committee submitted comments that questioned the Board's authority to withhold winnings of both excluded persons and underage gaming patrons. They also questioned the Board's authority to allocate those winnings to support compulsive and problem gambling programs. We share their concern and ask the Board to explain its statutory authority for both seizure and allocation of winnings under the two chapters of this rulemaking.

2. Section 511.a.2. - Maintenance and distribution of the exclusion list. - Need.

According to the Preamble, the exclusion list will be available to the public at the Board's office and on its website. There is no reference to the exclusion list being placed on the Board's website in the regulation. It is our understanding that this was an oversight and the final-form regulation will include a provision that states the exclusion list will be available on the website. We question the need for allowing public access to the exclusion list. This should be explained in the Preamble to the final-form regulation.

3. Section 511a.3. - Criteria for exclusion. - Implementation procedures; Clarity.

This section lists the criteria the Board will use to determine if an individual should be placed on the exclusion list. We have six concerns.

First, Subsection (a) allows the Board discretion as to who may be placed on the exclusion list. Under what circumstances would a person who meets the criteria in this subsection not be placed on the exclusion list?

Second, the criteria listed could be broadly interpreted to include many individuals whose presence in a licensed facility would not be harmful to the interest of the Commonwealth or a

slot machine licensee. The Board has explained that the criteria will only be applicable to those individuals whose conduct would directly affect gaming. In the Preamble to the final-form regulation, the Board should explain its intentions for applying the criteria when determining placement on the exclusion list.

Third, under Subsection (a)(2), an “associate” of a career or professional offender may be placed on the exclusion list. The Board has explained that this term would apply to individuals who have some known relationship or connection with a career or professional offender. Including similar language in the final-form regulation would improve the clarity of this term.

Fourth, the term “moral turpitude” is used in Subsection (a)(3). This term is not defined in the Pennsylvania Race Horse Development and Gaming Act (Act) (4 Pa.C.S. §§ 1101-1904). However, we note that Pennsylvania case law provides several definitions for this term. To improve clarity, we suggest that the term be defined in the final-form regulation.

Fifth, Subsection (a)(4)(iii) references “permits, licenses or other approvals that have been revoked.” It is unclear whether this reference pertains to permits, licenses or other approvals issued solely by the Board. The final-form regulation should specify whose approval is required.

Sixth, Subsection (b) lists existing “attributes” that determine whether a person’s presence is “inimical to the interest of the Commonwealth or of licensed gaming therein.” Subsection (c) provides an additional list of factors to determine a “finding” of inimicality. Two separate lists of factors that, in essence, define the same thing is redundant. To eliminate any confusion, we recommend that there be one list of factors to determine “inimicality.”

4. Section 511.a.5. - Placement on the exclusion list. - Clarity.

Subsection (a) pertains to when persons “may” be placed on the exclusion list. Similar to our first concern under Section 511.a.3, under what circumstances would a person who meets the criteria in this subsection not be placed on the exclusion list?

5. Section 511.a.8. - Duties of slot machine licensees. - Statutory authority; Legislative intent; Implementation procedures.

Subsection (c) states the following: “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 Bureau of the fact in accordance with the procedures set forth by the Board.” We recommend that the final-form regulation include the procedures for notification.

Subsection (e) states that slot machine licensees or their employees will not be liable to any person for damages in a civil action based on three factors. Section 1516(c) of the Act provides immunity to gaming entities or employees as it relates to the self-exclusion list. However, the Act does not provide similar immunity to gaming entities as it relates to their responsibilities for the enforcement of the exclusion list. We have two questions. First, what is the Board’s statutory authority for providing this immunity? Second, is this provision properly aligned with the legislative intent of the Act?

6. Section 513a.4. Signage requirements. - Implementation procedures; Clarity.

This section pertains to text that must be included on signage posted in slot machine licensed facilities. The section notes that the complete text to be included “shall be determined by the Board.” Will the text differ for each facility or licensee? How will the Board inform the licensees of the correct standards for eligibility? This information should be included in the final-form regulation.

7. Miscellaneous clarity.

Subsections 511a.3(a)(1), (2), and (3) use the phrase “inimical to the interest of the Commonwealth or slot machine licensee, or both.” We note that §§ 511a.3(a)(4) and (b) use a phrase similar to “inimical to the interest of the Commonwealth or licensed gaming therein.” Is there a reason one phrase is not used consistently throughout?

The phrase “notorious or unsavory” is used in § 511a.3(a)(4)(ix). This phrase is non-regulatory language that should be deleted.

Subsection 513a.2(e) indicates that winnings incurred by an individual under 21 years of age shall be remitted to the Board “to support compulsive and problem gambling programs.” We note that § 513a.3(c) states that under § 513a.2 (e), winnings obtained by a slot machine licensee from or held on account of a person under 21 years of age shall be remitted to the Board and “deposited into the Compulsive and Problem Gambling Treatment Fund.” Is there a reason that this Fund is not mentioned consistently in each of these subsections?

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INDEPENDENT REGULATORY
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INDEPENDENT REGULATORY REVIEW COMMISSION
333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

To: Cheryl Posavec
Richard Sandusky (214-8111)
Agency: Pa Gaming Control Board
Phone: 346-8319
Fax: 703-2988
Date: June 6, 2007
Pages: 5

Comments: We are submitting the Independent Regulatory Review Commission's comments on the Pennsylvania Gaming Control Board's regulation #125-57 (IRRC #2601). Upon receipt, please sign below and return to me immediately at our fax number 783-2664. We have sent the original through interdepartmental mail. You should expect delivery in a few days. Thank you.

Accepted by: *R. Sandusky* **Date:** 6/6/07