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

July 11, 2007

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

Re: Regulation #125-61 (IRRC #2610)  
Pennsylvania Gaming Control Board  
General Revisions; Applications; Licensed Entity Representatives; Manufacturer Licenses;  
Supplier Licenses; Horsemen's Organizations; Labor Organizations; Junket Enterprises;  
Management Companies

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](http://www.irrc.state.pa.us). If you would like to discuss them, please contact me.

Sincerely,

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 #125-61 (IRRC #2610)

### General Revisions; Applications; Licensed Entity Representatives; Manufacturer Licenses; Supplier Licenses; Horsemen's Organizations; Labor Organizations; Junket Enterprises; Management Companies

July 11, 2007

We submit for your consideration the following comments on the proposed rulemaking published in the May 12, 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. Fees. - Implementation procedures.

This rulemaking requires applicants to pay certain fees. The fee amounts are posted on the Board's website. A reference to the web listing of the Board's fees should be included in the final-form version of this regulation.

#### 2. Section 421a.1. General requirements. - Statutory authority; Reasonableness; Need; Clarity.

Subsection (a) reads:

A license, permit, certification or registration issuance, renewal or other approval issued by the Board is a revocable privilege. No person holding a license, permit, certification or registration, renewal, or other approval is deemed to have any property rights.

The second sentence is very broad. The Board needs to explain and clarify the intent of this sentence. If the intent is to limit property rights to any "license, permit, certification or registration issuance, renewal or other approval issued by the Board," then the final-form regulation should specify this intent.

Subsection (c)(2) reads:

(c) By filing an application for a license, permit, certification or registration issuance, renewal or other approval from the Board, an applicant agrees to:

\* \* \*

(2) Waive liability as to the Board, its members, its employees, the Pennsylvania State Police, the Commonwealth and its instrumentalities for damages resulting from

disclosure or publication in any manner, other than a willfully unlawful disclosure or publication of material or information acquired during an investigation of the applicant.

The Board should explain both the statutory authority for this provision and the need for requiring an applicant to agree to such an extensive waiver.

**3. Section 421a.3. Investigations; supplementary information. - Implementation procedure; Clarity.**

Under Subsection (a), the Board may investigate an applicant "as it may deem appropriate either at the time of the initial application **or at any time thereafter.**" (Emphasis added.) Would this provision apply after an application has been granted, denied or withdrawn? If so, we recommend that it be placed in another section of the Board's regulations pertaining to enforcement.

**4. Sections 423a.2 - 423a.3. Preliminary submission review; Application processing. - Fiscal impact; Reasonableness; Implementation procedure.**

These two sections address a preliminary review of applications for completeness and the subsequent review of a complete application. Neither section provides detail on how long the Board has to complete its preliminary or final review of an application. We recommend that the final-form regulation provide timeframes for the review of submissions and applications by the Board.

In addition, Section 423a.2(c) includes a reference to "the time period set by the Board." This is the period within which the applicant may respond to problems with the application identified during the preliminary review. When and how does the Board set this time period, and how is the applicant notified of the time period?

**5. Section 423a.4. Deficient applications. - Reasonableness; Need; Implementation procedure; Clarity.**

Subsection (a) includes the phrase "a time period prescribed by the Board." This is a time period in which an applicant may correct deficiencies in a rejected application. As above, this phrase raises the same concerns as Section 423a.2(c). When and how does the Board set this time period, and how is the applicant notified of the time period?

Subsection (b) reads: "Refusal to provide information as required in subsection (a) may result in the immediate denial of the application." The concern is that Subsection (a) does not include the words "information" or "required." Subsection (a) states that the Board will notify an applicant of "deficiencies" in the application and will "permit the applicant to cure the deficiencies." It does not mention any required information. If the intent is that refusal to respond to deficiencies identified by the Board will result in "immediate denial," then Subsection (b) should be clarified in the final-form regulation.

**6. Section 423a.5. Application withdrawal. - Reasonableness; Need; Implementation procedure.**

Subsection (a) requires the filing of a petition to withdraw an application. Why does an applicant have to petition the Board to withdraw an application? Why isn't a letter from the applicant notifying the Board of the withdrawal sufficient?

Under Subsection (d), why would an applicant's request for withdrawal of an application be denied?

If a petition for withdrawal is granted without prejudice, Subsection (d)(2) provides that the Board will determine when the applicant may be eligible to reapply. What criteria will the Board use to make this determination? Similar to Sections 423a.2-3, why isn't a timeframe included in the regulation?

**7. Section 423a.7. Restriction on application after denial or revocation. - Need; Reasonableness; Implementation procedure; Clarity.**

Subsection (a) states that a person, whose application was denied or whose license, permit or registration was revoked, may not apply again for five years. Within two years of denial or revocation, Subsection (c) allows a person to file a petition for permission to apply for a license, permit or registration before the expiration of the five-year ban. What are the bases for the five-year ban and the two-year period? What is the need for the two different time periods and a separate petition process? Why not just allow persons to apply again within two years?

**8. Section 427a.2. Manufacturer license applications and standards. - Reasonableness; Implementation procedure; Clarity.**

Subsection (b)(3) requires an applicant for a manufacturer's license to demonstrate that they have "the ability" to manufacture, build or repair slot machines. A commentator noted that this provision would prevent new businesses that want to enter this sector of the economy from obtaining licenses because they may not have "the ability" at the time of application. What is the need for this provision? As questioned by the commentator, how does this provision meet the economic development goals of the Pennsylvania Race Horse Development and Gaming Act (4 Pa.C.S.A. §§ 1101-1904) (Act)?

**9. Section 427a.5. Responsibilities of a manufacturer. - Need; Reasonableness; Clarity.**

Under Subsection (c), a commentator questioned the need for a written agreement between a slot machine licensee and a manufacturer licensee that would allow the slot machine licensee to service or repair slot machines or associated equipment. Since the slot machine licensee owns the equipment, what is the need for the written agreement? If this provision is needed, why is it under a section entitled "responsibilities of a manufacturer"? If it is not needed, it should be deleted from the final-form regulation.

Subsection (d) outlines the type of routine maintenance a slot machine licensee may perform on equipment. As noted in the comments on Subsection (c), what is the need for this provision and why is it in this section?

**10. Section 431a.4. Responsibilities of a supplier. - Need; Reasonableness; Clarity.**

Subsections (g) and (h) address what slot machine licensees and licensed manufacturers may do to a slot machine. Similar to our concerns above, what is the need for these provisions and why are they under a section entitled “responsibilities of a supplier”?

**11. Section 431a.5. Supplier log books. - Reasonableness; Need.**

This section requires suppliers to maintain log books to register individuals who enter their place of business. We have two questions. First, what is the need for this requirement?

Second, under Subsection (d), why must a supplier make the books available for inspection by the Department of Revenue or State Police?

**12. Chapter 436a. Horsemen’s Organizations. - Statutory authority; Reasonableness; Need.**

What is the need for requiring horsemen’s organizations to file a Horsemen’s Organization Registration Statement with the Board? What is the need for requiring officers, directors or representatives of horsemen’s organizations to obtain permits from the Board? What is the Board’s statutory authority for both of these provisions?

**13. Section 436a.1. Definitions. - Consistency with statute; Clarity.**

This section provides definitions for the chapter related to horsemen’s organizations. The definition of “horsemen” is similar to the definition of “Horsemen of this Commonwealth” found in the Act. The statutory definition differs in that it includes an employee of a trainer. Why was this provision not included in the regulatory definition of “horsemen”?

**14. Chapter 438a. Labor Organizations - Statutory authority; Reasonableness; Need; Clarity.**

What is the need for requiring labor organizations to file a Labor Organization Notification Form with the Board? What is the need for requiring officers, agents and management employees of labor organizations to obtain permits from the Board? What is the Board’s statutory authority for both of these provisions?

**15. Section 439a.1. Definitions. - Reasonableness; Clarity**

The definition of “junket” contains substantive provisions related to the selection or approval of a person to participate in a junket. In the final-form regulation, the Board should delete the substantive provisions from the definition and place them in a section related to the selection or approval of person to participate in a junket.

**16. Section 440a.4. Management company responsibilities. - Statutory authority; Fiscal impact; Reasonableness.**

A commentator believes the liability imposed on a management company under Subsection (b) is too broad. It believes it is improper to hold the management company liable for the actions of the slot machine licensee outside the purview of the management contract or the operation of the casino. Since the management company can't do anything to prevent violations, it should not be held jointly or severally liable for them. What is the legal justification for this provision?

**17. Miscellaneous clarity.**

- The term "entity" is used throughout the regulation. The term is not defined in statute or regulation.
- Section 421a.2(a)(5) references "...applicable Federal or state laws or regulations." In order to provide the regulated community with a more precise understanding of what they must comply with, we recommend that the applicable laws or regulations be referenced in the final-form regulation. In the alternative, the subsection should be deleted.
- Section 421a.5(b)(11) uses the phrase "Other evidence deemed relevant by the Board." This phrase is vague. We recommend that the final-form regulation be amended to specify as to what the other evidence must pertain.
- Section 423a.1(e) uses the phrase "...in a form prescribed by the Board." In addition, other provisions in the proposed regulation refer to an "applicable form." The final-form regulation should inform applicants of how to obtain copies of the appropriate forms.
- Section 423a.2 (a)(2) requires that an applicant submit "additional information and accompanying documentation required by the act or the Board's regulations...." What types of additional information and accompanying documentation are to be included in the application?

### Facsimile Cover Sheet



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**INDEPENDENT REGULATORY REVIEW COMMISSION**  
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**To:** Cheryl Posavec  
Richard Sandusky (214-8111)  
**Agency:** Pa Gaming Control Board  
**Phone:** 346-8319  
**Fax:** 703-2988  
**Date:** July 11, 2007  
**Pages:** 7

INDEPENDENT REGULATORY  
REVIEW COMMISSION

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**Comments:** We are submitting the Independent Regulatory Review Commission's comments on the Pennsylvania Gaming Control Board's regulation #125-61 (IRRC #2610). 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: Cheryl Posavec Date: 7/11/07