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DOCUMENTS

#2695

REPORT OF THE PENNSYLVANIA GAMING CONTROL BOARD
TO THE INDEPENDENT REGULATORY REVIEW COMMISSION,
THE SENATE COMMUNITY, ECONOMIC AND RECREATIONAL
DEVELOPMENT COMMITTEE AND THE HOUSE GAMING
OVERSIGHT COMMITTEE ON
REGULATION # 125-86 (IRRC # 2695)
SLOT MACHINE LICENSING

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INDEPENDENT REGULATORY
REVIEW COMMISSION

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On March 19, 2009, the Independent Regulatory Review Commission (IRRC) voted to disapprove final-form Regulation #125-86 for the reasons outlined in IRRC's disapproval order. That order is attached to this report as Appendix B.

More specifically, IRRC stated:

This regulation does not preserve a license applicant's right under the Pennsylvania Racehorse Development and Gaming Act (Act) to protect certain information as confidential. By allowing questions to be raised at the public hearing relating to confidential information, the information itself may be inadvertently disclosed. In addition, by allowing an applicant to simply "request" that confidential information be heard in executive session, the Board can potentially deny the request, therefore further running the risk that protected information is revealed. Finally, without understanding the content of the questions before the licensing hearing, an applicant may not have the ability to make an informed decision regarding the waiver of his/her right to confidentiality imposed by the Act.

It was never the Board's intent to abridge an applicant's right to have confidential information protected. Instead, the purpose of this regulation is simply to provide a process for dealing with questions that may come up in a slot machine licensing hearing that could involve confidential information.

The Board would also note that because of the complexity of licensing hearings, the Board has held prehearing conferences prior to these hearings to go over procedural matters to ensure that the slot machine licensees understand how the hearings will be conducted. These prehearing conferences provide applicants an opportunity to raise any questions they have regarding the hearings, thereby reducing the chance that a slot machine applicant could be confused as to what their rights are pertaining to the protection of confidential information.

However, the Board does agree that the language of the final-form regulation could be improved by incorporating additional revisions as suggested by IRRC. To address the concerns raised in IRRC's disapproval order, the Board has made the following changes:

- In subsection (r), paragraph (1) has been revised by deleting the phrase "Request, at the licensing hearing, that the matter be heard in executive session." and

replacing it with "Invoke the protection afforded the applicant by 4 Pa.C.S. § 1206(f) and have the matter heard in executive session." This more appropriately reflects the protection afforded by the statute.

- Also in subsection (r), paragraph (2) has been amended by adding a reference to § 407a.3(a) of the Board's regulations. This section describes in detail the types of information that the Board deems to be confidential. By adding this reference, slot machine applicants will be provided additional guidance as to what the Board considers to be confidential information.

These changes have been included in the revised final-form regulation attached as Appendix A.

APPENDIX A

Annex A

Title 58. RECREATION

PART VII. GAMING CONTROL BOARD

SUBPART C. SLOT MACHINE LICENSING

CHAPTER 441a. SLOT MACHINE LICENSES

* * * * *

§ 441a.7. Licensing hearings for slot machine licensees.

* * * * *

(r) Information obtained by BIE during an applicant's background investigation based upon public record or upon information otherwise in the public domain will be heard by the Board during the licensing hearing. Information submitted by an applicant pursuant to 4 Pa.C.S. § 1310(a) (relating to slot machine license application character requirements) or obtained by the Board or BIE as part of a background investigation from any source not in the public domain is considered confidential. The Board may not require an applicant to waive any confidentiality provided for in 4 Pa.C.S. § ~~1310(a)~~ 1206(f) as a condition for the approval of a slot machine license or any other action of the Board. The Board may request that an applicant respond to inquiries related to confidential information during a licensing hearing to promote transparency in the regulation of gaming in the Commonwealth. An applicant who does not waive the right to confidentiality shall:

(1) ~~Request, at the licensing hearing, that the matter be heard in executive session~~ INVOKE THE PROTECTION AFFORDED THE APPLICANT BY 4 PA.C.S. § 1206(F) AND HAVE THE MATTER HEARD IN EXECUTIVE SESSION.

(2) Provide ~~sufficient~~ THE reason on the record to justify EXPLAINING THE BASIS FOR the invocation of the confidentiality UNDER § 407A.3(A) (RELATING TO CONFIDENTIAL INFORMATION) OF THIS PART.

(s) At its discretion, the Board may terminate, recess, reconvene and continue the licensing hearing.

[(s)] (t) * * *

[(t)] (u) * * *

[(u)] (v) * * *

[(v)] (w) * * *

[(w)] (x) * * *

[(x)] (y) * * *

[(y)] (z) * * *

[(z)] (aa) * * *

APPENDIX B

INDEPENDENT REGULATORY REVIEW COMMISSION
DISAPPROVAL ORDER

Commissioners Voting:

Public Meeting Held March 19, 2009

Arthur Coccodrilli, Chairman
George D. Bedwick
Nancy Sabol Frantz, Esq.
Karen A. Miller

Regulation No. 125-86 (#2695)
Pennsylvania Gaming Control Board
Slot Machine Licensing

On May 1, 2008, the Independent Regulatory Review Commission (Commission) received this proposed regulation from the Pennsylvania Gaming Control Board (Board). This rulemaking amends 58 Pa. Code § 441a.7. The proposed regulation was published in the May 17, 2008 *Pennsylvania Bulletin* with a 30-day public comment period. The final-form regulation was submitted to the Commission on February 11, 2009.

This final-form regulation expands the provisions related to licensing hearings for potential slot machine licensees. The Board may request, on the record at the licensing hearing, that a license applicant respond to questions that relate to confidential information. The applicant will have the option of waiving the right to confidentiality and answering the questions at the public hearing or requesting that the matter be heard in executive session.

In order to determine whether a regulation is in the public interest, the Regulatory Review Act requires this Commission to consider, among other things, the “reasonableness of requirements, implementation procedures...” 71 P.S. §745.5b (b)(3)(iv). This regulation does not preserve a license applicant’s right under the Pennsylvania Racehorse Development and Gaming Act (Act) to protect certain information as confidential. By allowing questions to be raised at the public hearing relating to confidential information, the information itself may be inadvertently disclosed. In addition, by allowing an applicant to simply “request” that confidential information be heard in executive session, the Board can potentially deny the request, therefore further running the risk that protected information is revealed. Finally, without understanding the content of the questions before the licensing hearing, an applicant may not have the ability to make an informed decision regarding the waiver of his/her right to confidentiality imposed by the Act.

For these reasons, we question the reasonableness of the rulemaking, as well as the clarity of implementation procedures relating to both the applicant’s waiver of his/her right to confidentiality, as well as the process for requesting an executive session. Therefore, based upon the information presented to us and after considering the criteria of the Regulatory Review Act discussed above, we find promulgation of this regulation is not in the public interest.

BY ORDER OF THE COMMISSION:

This regulation is disapproved.

Kim Kaufman, Executive Director

**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT**

I.D. NUMBER: 125-86

DATE: 4-22-09

SUBJECT: Subpart C: Chapter 441a (Section 441a.7)

AGENCY: Pennsylvania Gaming Control Board (PGCB)

TYPE OF REGULATION

- Proposed Regulation
- Final-Form Regulation (**Resubmit with Revisions**)
- Final Regulation with Notice of Proposed Rulemaking Omitted
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Governor
- Delivery of Tolled Regulation
 - a. With Revisions
 - b. Without Revisions

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FILING OF REGULATION

<u>DATE</u>	<u>SIGNATURE</u>	<u>DESIGNATION</u>
1. <u>4-22-09</u>	<u><i>Jane M. Earll</i></u> Senator Jane M. Earll	Senate Community, Economic & Recreational Development
2. <u>4/22/09</u>	<u><i>Wayne D. Fontana</i></u> Senator Wayne D. Fontana	Senate Community, Economic & Recreational Development
3. <u>4/22/09</u>	<u><i>Dante Santoni, Jr.</i></u> Representative Dante Santoni, Jr.	House Gaming Oversight
4. <u>4/22/09</u>	<u><i>Curt Schroder</i></u> Representative Curt Schroder	House Gaming Oversight
5. <u>4/22/09</u>	<u><i>Cheryl John</i></u>	Independent Regulatory Review Commission
6.		Legislative Reference Bureau