

## Comments of the Independent Regulatory Review Commission



### **Pennsylvania Gaming Control Board Regulation #125-175 (IRRC #3040)**

#### **Licensing; Slot Software; Count Room Characteristics; Credit; Table Game Rules**

**January 15, 2014**

We submit for your consideration the following comments on the proposed rulemaking published in the November 16, 2013 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (RRA) (71 P.S. § 745.5b). Section 5.1(a) of the RRA (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. Section 427a.5. Responsibilities of a manufacturer. – Clarity; Reasonableness.**

Subsections (c) and (d) address the possibility that a slot machine licensee may service, repair or perform routine maintenance on slot machines. The Board proposes to delete Subsections (c) and (d) because they do not relate to the chapter or section heading. Relating to responsibilities of a supplier, the Board proposes to delete identical language from Section 431a.4(f) and (g). We agree with the Board that these subsections are not relevant to the respective chapters or sections. Is the language that the Board proposes to delete addressed elsewhere? We ask the Board to clarify in the Preamble of the final-form regulation where this information is found in the Board's regulations, or to explain why it is reasonable for Board regulations not to address slot machine service, repair or maintenance by slot machine licensees.

As noted, this comment applies to the Board's proposal to delete identical language from Section 431a.4(f) and (g).

#### **2. Section 435a.5. Nongaming employee registration. – Clarity and lack of ambiguity; Reasonableness of requirements; Implementation procedures and timetables for compliance.**

The Board proposes to create Subsection (f) which states that a registration issued under this section will be valid for four years from the date of Board approval. The subsection also provides that if a registrant is not employed for two years in a position that requires a nongaming registration, the registration will be deemed to have expired. The Board states that currently registrations do not have an expiration date, and therefore, a subsequent background check is not conducted beyond initial registration. The Board further explains that currently more than 5,500

nongaming employees remain registered with the Board but have not worked in a position that requires registration for two years or more. We agree that periodic background investigations are necessary to protect the integrity of gaming by ensuring that every nongaming employee remains eligible and suitable to hold a registration. However, neither the Preamble nor the proposed regulation addresses how the Board will implement these provisions. We ask the Board to provide detailed responses to the following questions in the Preamble of the final-form regulation.

- How will the Board notify the regulated community, including the 5,500 registrants referenced by the Board whose registrations will be deemed to have expired, of these changes?
- How will currently registered nongaming employees obtain registrations with expiration dates, and how will their expiration dates be determined?
- How will the two-year timeframe work? Will it begin on the effective date of the regulation, or will the 5,500 registrations referenced by the Board be deemed to have expired on the effective date of the regulation?

In responding to these questions, the Board should clarify how the regulated community will transition to compliance with these provisions, and explain how the implementation of these provisions, including the timeframe, is reasonable.

We have similar concerns and questions related to Section 437a.6(b) (relating to registration and certification term and renewal) which establishes an expiration date for a publicly traded gaming service provider's authorization. We ask the Board to clarify how the regulated community will transition to compliance with this provision, and explain how the implementation of this provision is reasonable.

Finally, the Board should ensure that the annex of the final-form regulation clearly reflects the Board's intent for implementation of the provisions in Section 435a.5 and Section 437a.6(b), and that the annex clearly states how the regulated community is to comply.

### **3. Section 441a.25. Approval of material debt transactions. – Clarity and lack of ambiguity; Implementation procedures.**

Subsection (e) states that a debt transaction that does not otherwise qualify as a material debt transaction **may** require Board approval **if** Board staff determines that approval is necessary to protect the integrity of gaming. [Emphasis added.] This provision is not regulatory language and does not set a binding norm. A regulation has the full force and effect of law, and this provision does not establish a standard that could be predicted by the regulated community. The Board should either remove the subsection or clearly identify the standards for debt transactions that do not otherwise qualify as a material debt transaction that **will** require Board approval.

These comments likewise apply to Section 441a.26(e).

#### **4. Section 609a.4. Approval of credit limits. – Clarity.**

Subsection (c) provides for the steps that shall be undertaken prior to approving a credit increase. Paragraph (c)(2) currently requires the reverification of patron information required under Section 609a.3(2) and (3). The Board proposes to delete the reference to Paragraph (c)(3). We ask the Board to explain in the Preamble of the final-form regulation the reasonableness of deleting this requirement.

These comments likewise apply to Section 609a.5(c), where the Board proposes the same change.

#### **5. Compliance with the RRA.**

We ask the Board to revise its response to Question #15 of the Regulatory Analysis Form in order to ensure that the new criteria required by Act 76 of 2012 related to small businesses are met. The Board should provide a citation to the relevant provisions of the federal definition of small business that were reviewed in the development of the rulemaking and an analysis of their applicability or inapplicability to the regulation.