

**INDEPENDENT REGULATORY REVIEW COMMISSION  
DISAPPROVAL ORDER**

Commissioners Voting:

Public Meeting Held June 18, 2020

George D. Bedwick, Chairman  
John F. Mizner, Esq., Vice Chairman  
John J. Soroko, Esq., dissenting  
Murray Ufberg, Esq., recused  
Dennis A. Watson, Esq.

Order Issued July 6, 2020  
Regulation No. 125-228 (#3247)  
Pennsylvania Gaming Control Board  
General Table Games Provisions; Table Game  
Equipment; Electronic Table Games; Gaming  
Related Gaming Service Providers; Table  
Game Rules of Play

On January 27, 2020, the Independent Regulatory Review Commission (Commission) received this regulation from the Pennsylvania Gaming Control Board (Board). This rulemaking amends 58 Pa. Code Chapters 601a, 603a, 605a and 613a. It also deletes 42 chapters relating to rules of play for table games. Notice of proposed rulemaking was omitted for this regulation; it will become effective upon publication in the *Pennsylvania Bulletin*.

The Board's table game rules of play are currently codified as regulations in the *Pennsylvania Code*. Those regulations were adopted pursuant to the requirements of the Regulatory Review Act (RRA), the Commonwealth Attorneys Act (CAA) and the Commonwealth Documents Law (CDL). The purpose of this rulemaking is to provide a procedure for the Board to adopt new table games or amend existing table games outside of the requirements of the RRA, CAA and CDL.

As explained at our public meeting and in the documentation submitted in support of this final-omitted regulation, the Board believes the current process of adopting or amending table game rules of play is not efficient and does not provide the regulatory flexibility needed in the ever-changing and competitive gaming industry. They also believe the procedures being proposed are consistent with the statutory authority to promulgate regulations granted by the Pennsylvania Race Horse Development and Gaming Act (Act).

In determining whether a regulation is in the public interest, the RRA directs this Commission to first and foremost determine whether the agency has the statutory authority to promulgate the regulation and whether the regulation conforms to the intention of the General Assembly. 71 P.S. § 745.5b(a). After our review of the statutory authority cited by the Board (§ 1202(b)(30) and §13A02(1) and (2)) (4 Pa.C.S. § 1202(b)(30) and §13A02 (1) and (2)) and our review of § 13A03 (4 Pa.C.S. § 13A03), we find that the Board does not have the statutory authority for this rulemaking as it applies to adoption of rules for new table games.

Section 13A02 of the Act reads as follows:

The board shall promulgate regulations:

- (1) Establishing standards and procedures for table games and table game devices or associated equipment, including standards distinguishing electronic gaming tables, fully automated

electronic gaming tables and traditional gaming tables. The standards and procedures shall provide for any new table games or gaming tables and variations or composites of approved table games or gaming tables, provided the board determines that the new table game, gaming table or any variations or composites or other approved table games or gaming tables are suitable for use after a test or experimental period under the terms and conditions as the board may deem appropriate.

(2) Establishing standards and rules to govern the conduct of table games and the system of wagering associated with table games, including the conduct of table games and the system of wagering on electronic gaming tables and fully automated electronic gaming tables.

We acknowledge that this section of the Act, read by itself, can be interpreted in different ways and is not dispositive of whether table game rules of play must be adopted as formal regulations. However, when § 13A02 is read in conjunction with § 13A03 of the Act, the issue becomes clear - the intent of the General Assembly was for new table game rules of play to be formal regulations.

Section 13A03 reads as follows:

(a) Promulgation.--In order to facilitate the prompt implementation of this chapter, regulations promulgated by the board shall be deemed temporary regulations which shall expire not later than two years following the publication of the temporary regulation. The board may promulgate temporary regulations not subject to:

(1) Sections 201, 202, 203, 204 and 205 of the act of July 31, 1968 (P.L.769, No.240), referred to as the Commonwealth Documents Law.

(2) The act of June 25, 1982 (P.L.633, No.181), known as the Regulatory Review Act.

(3) Sections 204(b) and 301(10) of the act of October 15, 1980 (P.L.950, No.164), known as the Commonwealth Attorneys Act.

(b) **Expiration.--Except for temporary regulations governing the rules of new table games approved by the board,** the board's authority to adopt temporary regulations under subsection (a) shall expire two years after the effective date of this section. Regulations adopted after this period shall be promulgated as provided by law.

(c) **Temporary regulations.--The board shall begin publishing temporary regulations governing table game rules,** licensing of manufacturers and suppliers and surveillance standards in the Pennsylvania Bulletin no later than February 1, 2010. [Emphasis added.]

We believe the exemption provided under 13A03(b) is indicative of the General Assembly's intent for new table game rules of play to be promulgated as regulations. If the General Assembly did not intend for table game rules of play to be promulgated as formal regulations, there would be no need for the exemption provided in Subsection (b).

In addition, we believe a decision to circumvent the formal regulatory review process for new table game rules of play in the manner being proposed by the Board is a policy decision of such a substantial nature that it requires legislative review. (71 P.S. § 745.5(b)(4)). We are concerned that allowing the procedures being put forth by the Board to be promulgated without a clear and specific directive from the General Assembly could lead to other state agencies following suit.

In addition to determining if an agency has the statutory authority to promulgate a regulation and whether the regulation is consistent with the intent of the General Assembly, the RRA directs this Commission to determine if a regulation is in the public interest. In making that determination, this Commission must consider the criteria set forth in § 745.5b(b) of the Act (71 P.S. § 745.5b(b)). For the reasons set forth below, we find that this regulation is not in the public interest.

First, we do not believe there is a need for the regulation as it applies to rules for new table games. (71 P.S. § 745.5(b)(3)(iii)). Section 13A03 of the Act, cited above, provides the Board the general authority to adopt temporary regulations for a period of two years after the effective date of the Act. However, the authority to promulgate temporary regulations for rules for new table games does not expire. The process to promulgate a temporary regulation, or stated another way, to bring a new table game on-line, is less time consuming than the process included in this regulation. The Board can use the temporary rulemaking authority to allow new games to be available in Pennsylvania casinos and then propose corresponding permanent regulations.

In addition, this rulemaking is being promulgated under the final-omitted procedures provided by the CDL (45 P.S. § 1204). This procedure allows for an abbreviated rulemaking process that does not include a formal public comment period. Any changes needed for existing table game regulations can be made using the exact process used for this rulemaking. The time frames involved with a final-omitted rulemaking are similar to the time frames associated with the process being proposed by the Board.

In summary, we believe the use of Board's temporary ruling making authority for new table games and the use of the final-omitted rulemaking process for changes to existing table games would achieve the efficiency and flexibility goals of the Board while meeting the legislative intent of the General Assembly.

If the Board decides to proceed with this rulemaking, we raise concerns with the reasonableness of the procedures being proposed and also the manner in which they will be implemented for changes to the rules of existing table games and approval of new side wagers to existing games. (71 P.S. § 745.5(b)(3)(iv)). Our concern is the manner in which the public, this Commission, and the designated standing committees (committees) of the General Assembly

would be notified of proposed amendments to existing table games or proposed adoption of side wagers for existing table games. Section 601a.3(c) of the regulation requires new side wagers or changes to existing table games to be posted to the Board's website for a 30-day public comment period. We believe direct notice of any such proposal should be provided to this Commission and the committees. In addition, a more reasonable approach for notifying the public would be publication of a notice announcing the new side wager or amendments to rules of an existing game in the *Pennsylvania Bulletin*. This is an accepted practice for notifications regarding state agency actions.

We have determined that a portion of this regulation is not consistent with the statutory authority of the Board (4 Pa.C.S. §§ 1202(b)(30), 13A02 and 13A03) and the intention of the General Assembly. Additionally, after considering all of the other criteria of the Regulatory Review Act discussed above, we find promulgation of this regulation, as currently written, is not in the public interest.

**BY ORDER OF THE COMMISSION:**

This regulation is disapproved.



*George D. Bedwick*

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George D. Bedwick, Chairman