

RULES AND REGULATIONS

TITLE 58. RECREATION

PENNSYLVANIA GAMING CONTROL BOARD

[58 PA. CODE CHS 405, 441 and 443]

PREAMBLE

The Pennsylvania Gaming Control Board (Board), under authority in 4 Pa.C.S. § 1202 (relating to General and specific powers), has drafted temporary regulations to facilitate the prompt implementation of 4 Pa.C.S. Part II (relating to Gaming), enacted by the act of July 5, 2004 (P.L. 572, No. 71). Upon adoption of the regulations by the Board, the Board's temporary regulations will be added to 58 Pa. Code, Recreation, Part VII (relating to Gaming Control Board). By publishing these temporary regulations in draft form, the Board seeks public comment prior to the adoption of the regulations.

Contact Person

Interested persons are invited to submit written comments, suggestions or objections to the draft temporary regulations via United States mail to the Pennsylvania Gaming Control Board, Office of Communications, P.O. Box 69060, Harrisburg, PA 17106-9060, ATTN: Public Comment. The public comment period will end on September 6, 2005.

THOMAS A. DECKER,
Chairman

Annex A

TITLE 58. RECREATION

PART VII. GAMING CONTROL BOARD

Subpart A. GENERAL PROVISIONS

Chap.

405. BUREAU OF INVESTIGATIONS AND ENFORCEMENT

CHAPTER 405. BUREAU OF INVESTIGATIONS AND ENFORCEMENT

Sec.

§ 405.1. General duties and powers.

§ 405.2. Information.

§ 405.3. Office of Enforcement Counsel.

§ 405.4. Procedures.

§ 405.5. Conduct.

§ 405.1. General duties and powers.

There is hereby established a Bureau of Investigations and Enforcement which shall have the powers and duties set forth in section 1517 of the act (relating to Enforcement) including:

(1) The investigation and review of all applicants seeking a license, permit or registration.

(2) The investigation of licensees, permittees, registrants and other persons for potential violations of the act, including potential violations referred to the Bureau by the Board or other person.

(3) The monitoring of slot machine operations to ensure compliance with the act and the integrity of gaming, including

internal controls, exclusion list enforcement, underage gaming and drinking, individual complaints, information systems, integrity and security issues.

(4) The inspection and examination of licensed entities as provided in section 1517(e) of the act (relating to Enforcement). Inspections may include the review and reproduction of any document or record.

(5) The conduct of audits of a licensed entity as necessary to ensure compliance with the act. An audit may include the review of accounting, administrative and financial records, management control systems, procedures and other records utilized by a licensed entity.

(6) The referral of possible criminal violations to the Pennsylvania State Police or other appropriate law enforcement agency.

§ 405.2. Information.

(a) An applicant, licensee, permittee or registrant shall provide all information, data and documents requested by the Bureau under section 1517(a) of the act (relating to Enforcement).

(b) A State or local law enforcement agency, including the Pennsylvania State Police and the Office of Attorney General, the Department or other executive agency shall provide all information, data and documents requested by the Bureau relating to an applicant, licensee, permittee or registrant.

(c) The Bureau may, upon request, provide pertinent information relating to an applicant, licensee, permittee or registrant to law enforcement agencies, including the Federal Bureau of Investigations or gaming authorities of the Commonwealth or other domestic or foreign agencies or jurisdictions.

(d) Information under this section may be provided or received by electronic distribution.

§ 405.3. Office of Enforcement Counsel.

(a) There is hereby established within the Bureau an Office of Enforcement Counsel which shall have the following powers and duties:

(1) Advise the Bureau on all matters, including the granting of licenses, permits or registrations, the conduct of background investigations, audits and inspections and the investigation of potential violations of the act.

(2) File recommendations and objections relating to the issuance of licenses, permits and registrations on behalf of the Bureau.

(3) Initiate, in its sole discretion, proceedings for violations of the act by filing a complaint or other pleading with the Board seeking civil fines or penalties, the imposition of conditions on licenses, or the suspension or revocation of a license.

(4) The Office of Enforcement Counsel may seek a settlement that may include fines, penalties or other actions subject to approval by the Board.

(b) The Enforcement Counsel shall be the director of the Office of Enforcement Counsel. The Enforcement Counsel shall be selected by the Board and shall be an attorney admitted to practice before the Pennsylvania Supreme Court.

(c) The Director of the Office of Enforcement Counsel shall report to the Executive Director of the Board on administrative and operational matters.

§ 405.4. Procedures.

(a) The Office of Enforcement Counsel shall act as the prosecutor in all enforcement actions under the act.

(b) The Board's Chief Counsel shall advise the Board in its adjudicatory capacity and represent the Board in appellate actions under the act.

(c) If the Bureau or the licensing Bureau files an objection to any license, permit or registration, an evidentiary record shall be established in order to allow the Board to reach a decision in accordance with the act.

§ 405.5. Conduct.

(a) An attorney representing the Office of Enforcement Counsel, or an employee involved in the hearing process, shall not discuss the case ex parte with a hearing officer, Chief Counsel or Board member.

(b) A hearing officer, the Chief Counsel or a Board member shall not discuss or exercise any supervisory responsibility over any employee with respect to an enforcement hearing with which the employee is involved.

(c) If it becomes necessary for the Chief Counsel or Board member to become involved on behalf of the Board in any enforcement proceeding, the Chief Counsel or Board member shall be prohibited from participating in the adjudication of that matter and shall designate appropriate individuals to exercise adjudicatory functions.

Subpart C. SLOT MACHINE LICENSING

Chap.

441. SLOT MACHINE LICENSES

443. CATEGORIES OF LICENSURE

CHAPTER 441. SLOT MACHINE LICENSES

Sec.

§ 441.13. Notification of anticipated or actual changes in key employee qualifiers or key employees

§ 441.14. Notification of new financial sources

§ 441.13 Notification of anticipated or actual changes in key employee qualifiers or key employees.

Each slot machine licensee or applicant shall immediately notify the Board, in writing, as soon as practicable, of the proposed appointment, appointment, proposed nomination, nomination, election, hiring, intended resignation, resignation,

removal, firing, incapacitation or death of any person required to be licensed as a key employee qualifier or key employee pursuant to sections 435.2 and 435.3. Such notice shall be addressed to the Office of the Clerk.

§ 441.14. Notification of new financial sources.

Each slot machine licensee or applicant shall immediately notify the Board, in writing, as soon as it becomes aware that it intends to enter into a transaction which would affect any relation to its licensed facility and may result in any new financial backers. Such notice shall be addressed to the Office of the Clerk.

CHAPTER 443. CATEGORIES OF LICENSURE

Sec.

§ 443.4. Category 2 slot machine licenses

§ 443.5. Category 3 slot machine licenses

§ 443.4 Category 2 slot machine licenses.

(a) In order to be eligible to receive a Category 2 slot machine license, an applicant must comply with all requirements of Chapter 441 and submit the following:

(1) A sworn or affirmed statement that neither the applicant, nor any of its affiliates, intermediaries, subsidiaries or holding companies is eligible to seek a Category 1 slot machine license.

(2) A statement detailing the proposed plans and location of the licensed facility.

(3) A statement detailing and establishing that the proposed location is in a revenue or tourism-enhanced location and is in compliance with the geographical requirements of section 1304(b) of the act (relating to Category 2 slot machine license). The statement shall include the appropriate business and tourism studies, economic impact studies, projected revenue and business plans.

(4) Any other information deemed necessary by the Board.

(b) The Board may issue a Category 2 slot machine license if it determines that the applicant has complied with the requirements of this section and Chapter 441 and has proven by clear and convincing evidence that it has the financial stability and integrity and the good character, honesty, integrity and responsibility to qualify for a slot machine license.

§ 443.5 Category 3 slot machine license.

(a) In order to be eligible to receive a Category 3 slot machine license, an applicant must comply with all requirements of Chapter 441 and submit the following:

(1) A sworn or affirmed statement that the applicant, its affiliate, intermediary, subsidiary or holding company has not applied for, has not been approved for and has not been issued a Category 1 or 2 slot machine license.

(2) A statement detailing the proposed plans and location of the licensed facility and confirming that the

facility shall be located at a well-established resort hotel which has no fewer than 275 existing guest rooms under common ownership and having substantial year-round recreational guest amenities.

(3) Documentation satisfactory to the Board proving that the applicant is the owner of the established resort hotel or is a wholly owned subsidiary of the owner of the established resort hotel. Documentation may include but not be limited to copies of the following documents:

(i) If a corporation, the applicant must submit all of the following:

- (a) Articles of incorporation.
- (b) Charter.
- (c) By-laws.

(ii) If a partnership, the applicant must submit all of the following:

- (a) Partnership agreements
- (b) Certificates of limited partnership, if applicable.

(iii) If a limited liability company, the applicant must submit all of the following:

- (a) Certificates of formation, amendment, and cancellation.
- (b) Operating agreements.

(4) A plan detailing how the applicant, as part of its operational plan, will monitor the gaming area to ensure that only registered guests or patrons of one or more of the amenities over the age of 21 are permitted to enter the gaming area.

(5) Any and all information deemed necessary by the Board to determine the operational viability, financial fitness or character of the applicant.

(b) An applicant must have three or more of the following amenities:

(1) Sports and recreational activities and facilities such as a golf course or golf driving range.

(2) Tennis courts or swimming pool.

(3) Health spa.

(4) Convention center.

(5) Meeting and banquet facilities.

(6) Entertainment facilities.

(7) Restaurant facilities.

(c) The Board may issue a Category 3 slot machine license if it determines that the applicant has complied with the requirements of this section and the applicable provisions of Chapter 441 and has proven by clear and convincing evidence that it has the financial stability and integrity and the good character, honesty, integrity and responsibility to qualify for a slot machine license.