

Comments of the Independent Regulatory Review Commission**on****Pennsylvania Gaming Control Board Regulation #125-54 (IRRC #2589)****Compulsive and Problem Gambling; Self Exclusion****March 28, 2007**

We submit for your consideration the following comments on the proposed rulemaking published in the January 27, 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. Section 501a.1. Definitions. - Protection of the public health, safety and welfare; Clarity.

Compulsive and problem gambling and compulsive and problem gambler

The terms are used throughout this rulemaking but are not defined. The Board has explained that there is a difference between “compulsive gambling” and “problem gambling.” We recommend that the terms “compulsive gambling” and “problem gambling” be defined. This would assist the regulated community with the development, administration and enforcement of the required compulsive and problem gambling plans and self-exclusion lists contained in this rulemaking.

Qualified treatment professional

Representative Paul Clymer, Republican Chairman of the House Gaming Oversight Committee, has expressed concern with this definition. He believes the definition lacks clarity because it does not specify the type of training a qualified treatment professional should have to treat a compulsive gambler. The National Association of Social Workers, Pennsylvania Chapter, and the Pennsylvania Psychological Association have expressed similar concerns.

We agree with these commentators. In order to protect compulsive or problem gamblers from being referred to or treated by unqualified treatment professionals, we recommend that the final-form regulation contain the criteria or process whereby a person is recognized as a “qualified treatment professional.” The regulation should identify the specific types of certification, licensure or degrees, or experience necessary. The regulation could also set forth specific training, education, professional or vocational standards for the professionals that will treat compulsive and problem gamblers.

There are additional references to treatment professionals or organizations elsewhere in the regulation. For example, Section 501a.2(c)(3)(v) includes the term: “qualified treatment professionals, including mental health, behavioral health and other professions and to community

compulsive gambling organizations.” Section 501a.3(a)(5) refers to “community, public and private treatment services.” Sections 501a.3(b) and (g) include the term “person with specialized knowledge, skill, training or experience in responsible gaming employee training programs.” Rather than using different terms within the substantive provisions of the regulation, the final-form regulation should use the defined term “qualified treatment professional.” In addition, the definition of “qualified treatment professional” should specify the different types of practitioners and programs that are encompassed by this term.

2. Section 501a.2. Compulsive and problem gambling plan. - Statutory authority; Legislative intent; Protection of the public health, safety and welfare; Reasonableness; Implementation procedures; Clarity.

Subsection (a) states that a slot machine licensee must submit a compulsive and problem gambling plan when it submits its application for a license and cannot commence operations until the plan is approved by the Board. How does the Board notify a licensee of its approval or disapproval? If the plan is disapproved, does the licensee have an opportunity to provide additional information or amend its plan to secure approval? These procedures should be included in the final-form regulation.

Subsection (c)(3) states that a “compulsive and problem gambling plan” must contain “policies and procedures” that include a list of items. It is unclear how licensees would write and implement “policies and procedures” for some of the items in the list.

For example, Subsection (c)(3)(iii) reads: “The responsibility of patrons with respect to responsible gambling.” What types of policies and procedures would be written for this? How and when would licensees implement “policies and procedures” concerning their “patrons” and “responsible gambling”?

Under Subsection (c)(3)(vi), a licensee’s plan must include procedures for referral of suspected or known compulsive and problem gamblers to qualified treatment professionals. This subsection states that this provision does not “create a duty for licensed facilities or its employees to refer compulsive and problem gamblers to qualified treatment professionals.” We note that Section 1102 of the Pennsylvania Race Horse Development and Gaming Act (Act) (4 Pa.C.S.A. §§ 1101-1904) lists the public policy purposes and objectives of the General Assembly pertaining to the Act. Section 1102(10) states the following:

The public interest of the citizens of this Commonwealth and the social effect of gaming shall be taken into consideration in any decision or order made pursuant to this part.

How is the public adequately protected from the negative social effects of gaming if a licensee is not required to refer suspected or known compulsive and problem gamblers to qualified treatment professionals? The Board should explain how this subsection meets the legislative intent of the General Assembly.

In Subsection (c)(11), what is the intent of the reference to an “outreach program”?

Subsection (c)(12) references “Board-approved signs.” How will the Board approve the signs? Are there any prerequisites for the signs? What criteria will be used to determine if the signs are acceptable and legible? This information should be included in the final-form regulation.

Subsection (c)(13) states that a plan must include, “Other policies and procedures to encourage responsible gambling.” We have two concerns. First, what other policies or procedures would be acceptable? Second, if the Board keeps this provision in the final-form regulation, we recommend that it be amended to read: “Other policies and procedures to *prevent compulsive and problem gambling.*” We believe this language is more consistent with the intent of the plan.

Subsection (e) requires a slot machine licensee to submit amendments to the plan to the Board for review and approval prior to implementation of the plan. The timeframes associated with the submittal by the licensee and review by the Board should be included in the final-form regulation.

3. Section 501a.3. Employee training program. - Implementation procedures; Clarity.

Subsection (a)(10) requires training to include procedures to prevent self-excluded persons from receiving any advertisement, promotion or target mailing after 90 days of a receiving notice from the Board that the person has been placed on the self-exclusion list. We have two questions. First, what is the basis for the 90-day period? Second, why isn’t the 90-day period referenced in Section 503a.4, which relates to duties of slot machine licensees?

Subsection (b) requires permanent employees to be trained “within timetables approved by the Board for the completion of the training.” We recommend that the timetables be included in the final-form regulation.

Subsection (d) requires certain employees to receive “periodic” reinforcement training that must be “reported in a manner prescribed by the Board.” These requirements are vague. A specific time period for reinforcement training and the manner for reporting it should be included in the final-form regulation.

What procedures will the Board use to review and approve a slot machine licensee’s Internet-based training program under Subsection (g)? This should be included in the final-form regulation. In addition, why is Board approval necessary for Internet programs but not for “in-house” programs?

4. Section 501a.5. Liability. - Statutory authority; Legislative intent; Protection of the public health, safety and welfare

Under this section, a slot machine licensee or an employee of the licensee will not be liable for damages in any civil action, which is based on one of the following:

- (1) Failure to include any of the requirements of this chapter in its compulsive and problem gambling plan under this chapter;
- (2) Compliance or noncompliance with this section or a plan adopted under this chapter;

- (3) An action or failure to take action under this chapter or a plan adopted under this chapter;
- (4) Failure to withhold gambling privileges from an individual; and
- (5) Permitting an individual to gamble.

Section 1516(c) of the Act provides that gaming entities or employees are not liable in any judicial proceedings that arise as a result of certain instances that relate only to self-excluded persons. However, this regulatory provision far exceeds the statutory limitations.

We have two questions. First, what is the Board's statutory authority for extending immunity to and limiting the liability of licensees beyond instances involving self-excluded persons? Second, how is this immunity consistent with the legislative intent of Section 1102(10) of the Act?

5. Section 501a.6. Signage requirements. - Implementation procedures; Clarity.

Subsection (a) and (b) pertain to text that must be included on signage posted in slot machine licensed facilities and on marketing or advertising material of licensed facilities and junket licensees. Both subsections note that the text to be included "will be determined by the Board." Will the text differ for each facility or licensee? How will the Board inform the licensees of the correct standards or legibility requirements? This information should be included in the final-form regulation.

6. Section 501a.7. Check cashing. - Legislative intent; Implementation procedures; Clarity.

Subsection (a) prohibits certain parties involved with gaming from cashing certain types of checks payable to an individual. Examples of the types of checks include Social Security and disability payment. This subsection concludes with the phrase, "to enable the individual to take part in gaming." How would a party be able to determine what the individual will do with the cash from the check? In order to meet the legislative intent of the Act as noted in Section 1102(10), we recommend that the listed parties in this subsection be prohibited from cashing any of the types of checks listed.

7. Section 503a.2. Request for self-exclusion. - Statutory authority; Legislative intent; Protection of the public health, safety and welfare; Implementation procedures; Clarity.

This section does not inform a person where they must go to have their name placed on the self-exclusion list. The Board's form entitled "Request for Voluntary Self-Exclusion from Gaming Activities" states that a person can place their name on the list by filing the form, in person, with the Board. The location listed for the Board is in Harrisburg, Pennsylvania. As Representative Clymer noted, this requirement would be burdensome to a compulsive gambler. In order to assist potential compulsive and problem gamblers with filing these forms, we recommend that the regulation be amended to indicate that persons may apply to have their names placed on the self-exclusion list at any of the Board's offices located at licensees' facilities across the Commonwealth. We believe that allowing individuals to self-exclude at a slot machine licensed

facility will be less burdensome on individuals that choose to self-exclude and help the Board meet the legislative intent of Section 1102(10) of the Act.

The phrase “form and manner prescribed by the Board” is used in Sections 503a.2(a) and 503a.4(f). The phrase “form prescribed by the Board” is used in Section 503a.5(b). These sections lack details that would allow the regulated community to comply with the regulation. These sections also fail to provide the criteria that the Board will use to evaluate a particular action or request. The Board should either delete the vague phrases or add the needed detail that would allow the regulated community to know what they are expected to do and how the Board will evaluate their actions.

If the information originally provided to the Board by an individual changes, Subsection (d) requires that individual to update the Board within 30 days. How and where would an individual update that information? This information should be included in the final-form regulation.

Subsection (f)(3) uses the term “problem gambler.” Is there a reason the term “compulsive and problem gambler” is not used?

Section (f)(6) releases the Commonwealth, the Board and all slot machine licensees from certain liabilities under four enumerated circumstances. The circumstances listed in Subsections (f)(6)(i) and (ii) can be found in Section 1516(c) of the Act. We have two concerns. First, similar to our comment on Section 501a.5, what is the Board’s statutory authority for including the circumstances contained in Subsection (f)(6)(iii), which pertains to disclosure by a slot machine licensee of information regarding a self-excluded person to any person or group and Subsection (f)(6)(iv), which pertains to disclosure of information regarding a self-excluded person by the Board?

Second, people that may be considering self-exclusion need to know that any information provided to either a slot machine licensee or the Board will remain confidential. If those people do not have that sense of security, they may decide not to self-exclude. How do the provisions contained in Subsections (f)(6)(iii) and (iv) adequately protect the citizens of this Commonwealth from the potential negative effects of gaming? How is this immunity consistent with the legislative intent of Section 1102(10) of the Act?

8. Section 503a.3. Self-exclusion list. - Protection of the public health, safety and welfare; Implementation procedures; Clarity.

Subsection (a) requires the Board to maintain the official self-exclusion list and to notify each slot machine licensee of any changes to the list by either first class mail or electronic means. How soon after the Board becomes aware of a change will it notify the licensees? Failure to notify the licensees in an expeditious manner could be problematic for the compulsive or problem gambler. We recommend that the final-form regulation be amended to require immediate or 24-hour notification.

The phrase “gaming activity” is used in Subsection (g). What is meant by this phrase? We recommend that this term be defined. The phrase “gaming activities” is also used in Section 503a.4(f).

9. Section 503a.4. Duties of slot machine licensees. - Protection of the public health, safety and welfare; Implementation procedures; Clarity.

Under Subsection (a)(1)(ii), who are “designated representatives of the Board” and how will licensees be required to contact them? How quickly must the notification take place? This information should be included in the final-form regulation.

Subsection (b) states, in part, the following: “If the Board does not object to the procedures or amendments thereto, the procedures or amendments shall be deemed to be approved.” What is the deadline for the Board to act? When will the licensee be notified that the training procedures and materials or amendments have been approved?

Signs stating that a person who is on the self-exclusion list may be subject to arrest for trespassing must be posted at all entries to a licensed facility under Subsection (c). We have two questions. First, similar to the provisions found in Section 501a.6, pertaining to signage requirements, is Board approval of the signs required? If it is, we recommend that the procedures for Board approval be included in the final-form regulation. Second, if Board approval of the signs is not required, are there any size or legibility prerequisites for the signs? If so, they should be included in the final-form regulation.