

Title 58—RECREATION

PENNSYLVANIA GAMING CONTROL BOARD [58 PA. CODE CHS. 401, 421, 435 AND 499]

Temporary Regulations

Under the Pennsylvania Gaming Control Board's (Board) Resolution No. 2005-3 REG, entitled Adoption of Temporary Regulations, dated June 16, 2005, the Board has the authority to amend the temporary regulations, adopted on June 16, 2005, as it deems necessary in accordance with the purpose of the act of July 5, 2004 (P. L. 572, No. 71) (Act 71) and to further the intent of Act 71. Therefore, the Board has decided to make editorial changes to the temporary regulations, dated June 16, 2005, as deposited with the Legislative Reference Bureau (Bureau) and published at 35 Pa.B. 4045 (July 15, 2005).

Therefore, the Board has deposited with the Bureau amendments to 58 Pa. Code §§ 401.4, 405.2, 405.3, 421.4, 435.2, 435.3, 499.1 and 499.2. The amendments are effective as of May 4, 2006.

The temporary regulations of the Board, 58 Pa. Code Chapters 401, 405, 421, 435 and 499 are amended by amending §§ 401.4, 405.2, 405.3, 421.4, 435.2, 435.3, 499.1 and 499.2 to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

Order

The Board, acting under the authorizing statute, orders that:

(a) The following temporary regulations of the Board, 58 Pa. Code Chapters 401, 405, 421, 435 and 499, are amended by amending §§ 401.4, 405.2, 405.3, 421.4, 435.2, 435.3, 499.1 and 499.2 to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

(b) The Chairperson of the Board shall certify the preceding order and deposit the regulations with the Bureau as required by law.

(c) These amendments shall take effect on May 4, 2006.

THOMAS A. DECKER,
Chairperson

Fiscal Note: 125-21. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART VII. GAMING CONTROL BOARD

Subpart A. GENERAL PROVISIONS

CHAPTER 401. PRELIMINARY PROVISIONS

§ 401.4. Definitions.

The following words and terms, when used in this part, have the following meanings, unless the context clearly indicates otherwise:

* * * * *

Key employee qualifier—Officers; directors; persons who directly or indirectly hold any beneficial interest in or ownership of an amount equal to 5% or more of an equity interest of an applicant or licensee; a person who has the ability to control the applicant or licensee, has a controlling interest in the applicant or licensee, elects a majority of the board of directors of the applicant or licensee, or otherwise has the ability to control the applicant or

licensee; a lender, other than a bank or lending institution which makes a loan or holds a mortgage or other lien acquired in the ordinary course of business; an underwriter; a financial backer whose holdings are valued at an amount equal to 5% or more of an equity interest in the applicant or licensee including holders of convertible bonds, the conversion of which would or does result in the owner holding 5% or more of an equity interest in the applicant or licensee; employees of a slot machine applicant or licensee, manufacturer applicant or licensee or supplier applicant or licensee required to be licensed by the Board as a key employee qualifier; and any other person required to be licensed by the Board as a key employee qualifier.

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Statement of Investigation—An order of the Board in response to a petition for a declaratory order regarding inquiry and investigation of a purchase of an eligible applicant or licensee which specifies the particular criterion satisfied by the purchaser, provides for the continuing obligation of the purchaser to provide information to the Board, is applicable only as to the purchase of a specific eligible applicant or licensee, and provides an expiration date not to exceed 6 months from the date of issuance unless otherwise extended by the Board.

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CHAPTER 405. BUREAU OF INVESTIGATIONS AND ENFORCEMENT

§ 405.2. Information.

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

(b) The Director of the Bureau, the Chief Enforcement Counsel, and their designees, will have the power and authority to administer oaths and affirmations for the purpose of obtaining sworn statements with regard to any matter or thing which may properly fall within the jurisdiction of the Board. Any person so designated will have the power and authority to obtain by subpoena the sworn statement of a person deemed to have information relevant to an investigation that the Board is authorized to conduct. Designation under this section will be made in writing, filed with the Clerk of the Board and remain in effect until revoked.

(c) 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 information, data and documents requested by the Bureau relating to an applicant, licensee, permittee or registrant.

(d) 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 Investigation or gaming authorities of the Commonwealth or other domestic or foreign agencies or jurisdictions.

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

§ 405.3. Office of Enforcement Counsel.

(a) The Office of Enforcement Counsel has been established within the Bureau of Investigations and Enforcement (Bureau) which has the following powers and duties:

* * * * *

(3) Initiate, in its sole discretion, proceedings for violations of the act or this part 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.

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**Subpart B. LICENSING, REGISTERING, CERTIFYING AND PERMITTING
CHAPTER 421. GENERAL PROVISIONS**

§ 421.4. Investigations; supplementary information.

(a) The Board and the Bureau may:

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(2) Upon request from an eligible applicant or licensee and upon receipt of an application and appropriate fees, make an inquiry or investigation concerning a purchaser of an applicant or licensee prior to the conclusion of the purchase, as if the purchaser were an eligible applicant. The eligible applicant or licensee may petition the Board, on behalf of the purchaser, for a Statement of Investigation, under § 493.5 (relating to petition for declaratory order). This inquiry or investigation does not replace the application procedure or process required under the act and this part which is a requirement for licensure.

(b) It shall be the continuing duty of all applicants and licensees to provide full cooperation to the Board and the Bureau in the conduct of the inquiry or investigation and to provide supplementary information requested by the Board or the Bureau.

CHAPTER 435. EMPLOYEES

§ 435.2. Key employee qualifier license.

(a) All key employee qualifiers of manufacturers, suppliers, slot machine licensees, junket enterprises, management companies or applicants thereof, including natural persons and entities, shall obtain a key employee qualifier license from the Board.

(b) Notwithstanding the provisions of subsection (a), a key employee qualifier entity who meets the following criteria shall be required to complete the same application as the applicant or licensee with which it is filing, as if it were itself the applicant or licensee:

(1) A holding or intermediary company of an applicant or licensee.

(2) A general partner of a limited partnership applicant or licensee.

(3) A beneficial holder or owner of a controlling interest in an applicant or licensee.

(4) Any other entity notified by the Board that the Board deems necessary to protect the public or to enhance the integrity of gaming in this Commonwealth.

(c) Except as provided in subsection (b), an application for licensure as a key employee qualifier must be on a form prescribed by the Board and include the following:

* * * * *

(16) Verification of the applicant's status as a key employee qualifier from the applicant for or holder of a slot machine license, manufacturer license, supplier license, junket enterprise license or management company license.

(17) If the applicant is an employee, a description of the employment responsibilities of the individual and their relationship to the operation of the slot machine license, manufacturer license, supplier license, junket

enterprise license or management company license and of all education, training and experience that qualifies the individual for the position.

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(d) In addition to the information under subsection (c), the Board may require letters of reference under section 1310(b) of the act.

(e) After review of the information submitted under subsections (c) and (d), including the background investigation, the Board may issue a key employee qualifier license if the individual applicant has proven by clear and convincing evidence that he is a person of good character, honesty and integrity and is qualified and suitable to be licensed as a key employee qualifier. An individual who receives a license under this chapter need not obtain an additional license as a key employee.

(f) A license issued under this section will be nontransferable, and will be valid only for the specific slot machine licensee, manufacturer licensee, supplier licensee, junket enterprise licensee or management company licensee for which it was granted.

(g) Notwithstanding the definition of key employee qualifier in § 401.4 (relating to definitions), any of the following persons may request in writing that the Board waive their obligation to be licensed as a key employee qualifier as part of a manufacturer, supplier or slot machine license issuance or renewal, management company license or renewal or junket enterprise license issuance or renewal by making the appropriate showing:

* * * * *

(2) If the person required to be licensed as a key employee qualifier as an outside director of an affiliate, intermediary, subsidiary or holding company of an applicant or licensee, and the person is not a member of the audit committee, the person shall be required to demonstrate that he is not significantly involved in the management or ownership of the applicant or licensee. The request must include, at a minimum, the following:

* * * * *

§ 435.3. Key employee license.

(a) All key employees of manufacturers, suppliers, slot machine licensees, junket enterprises, management companies or applicants thereof, shall obtain a key employee license from the Board.

(b) An application for licensure as a key employee must be on a form prescribed by the Board and include the following:

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(16) Verification of the applicant's employment or an offer of employment from a slot machine licensee, manufacturer, supplier, junket enterprise, management company or applicant thereof.

(17) A description of the employment responsibilities of the individual and their relationship to the operation of the slot machine licensee, manufacturer, supplier, junket enterprise or management company and of all education, training and experience that qualifies the individual for the position.

* * * * *

(f) Notwithstanding the definition of key employee in § 401.4 (relating to definitions), any of the following persons may request in writing that the Board waive their obligation to be licensed as a key employee as part

of a manufacturer, supplier or slot machine license issuance or renewal, management company license or renewal or junket enterprise license issuance or renewal by making the appropriate showing:

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Subpart H. PRACTICE AND PROCEDURE

CHAPTER 499. REPRESENTATION BEFORE THE BOARD

§ 499.1. Appearance in person.

(a) Individuals may represent themselves before the Board.

(b) Except as provided in subsection (a), a party in a proceeding before the Board shall be represented by an attorney authorized to appear before the Board in accordance with § 499.2 (relating to appearance by attorney).

(c) Subsections (a) and (b) supersede 1 Pa. Code § 31.21 (relating to appearance in person).

§ 499.2. Appearance by attorney.

(a) A party in a proceeding before the Board who elects to be represented by an attorney in the proceeding, or who is required by § 499.1 (relating to appearance in person) to be represented by an attorney in the proceeding, shall be represented by an attorney at law admitted to practice before the Pennsylvania Supreme Court, an attorney admitted to practice before the highest court of a jurisdiction other than the Commonwealth which permits

attorneys licensed in this Commonwealth to practice before its courts and agencies, or an attorney authorized in accordance with subsection (b) to appear in connection with the proceeding.

(b) An attorney admitted to practice before the highest court of a jurisdiction other than the Commonwealth which does not permit attorneys licensed in this Commonwealth to appear before its courts and agencies may, at the discretion of the Board, be authorized to appear in connection with a particular proceeding. The Board will determine whether to grant the authorization upon the filing of a motion with the Clerk to the Board by an attorney admitted to practice law before the Pennsylvania Supreme Court and in good standing therewith, which contains the information required to satisfy the written notice provision of Pa.B.A.R. No. 301 (relating to admission pro hac vice), and provided that the attorney filing the motion shall be and remain the attorney of record in the proceeding and further provided that both the attorney of record and the attorney admitted under this subsection shall both sign all documents submitted or filed in connection with the proceeding.

(c) Subsection (a) supersedes 1 Pa. Code § 31.22 (relating to appearance by attorney).

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