

PROPOSED RULEMAKING

PENNSYLVANIA GAMING CONTROL BOARD

[58 PA. CODE CHS. 401a, 434a, 438a AND 441a] Preliminary Provisions; Onsite Shopkeeper Certification, Labor Organizations; and Slot Machine Licenses

The Pennsylvania Gaming Control Board (Board), under its general authority in 4 Pa.C.S. § 1202(b)(15) and (30) (relating to general and specific powers) and the authority in 4 Pa.C.S. §§ 1102(8) and (9), 1202(23) and 1313 (relating to legislative intent; general and specific powers; and slot machine license application financial fitness requirements), proposes to amend Chapters 401a, 438a and 441a (relating to preliminary provisions; labor organizations; and slot machine licenses) and add Chapter 434a (relating to onsite shopkeeper certification) to read as set forth in Annex A.

Purpose of the Proposed Rulemaking

This proposed rulemaking replaces the permitting requirements for individuals in labor organizations with registration requirements and adds a new chapter that sets forth the requirements for certification of onsite shopkeepers and their regulatory responsibilities. Onsite shopkeepers are businesses that engage in commercial activities at a licensed facility which typically may include restaurants, bars or retail shops. This chapter also specifies the duties and responsibilities of slot machine licensees concerning their relationship with onsite shopkeepers. It also makes minor revisions to provisions in Chapter 441a relating to agreements.

Explanation of Amendments to Chapters 401a, 438a and 441a and the Addition of Chapter 434a

Section 401a.3 (relating to definitions) adds a definition of the term "onsite shopkeeper" as a person that engages in any commercial activity at a licensed facility. The definition of vendor is also being amended by deleting the list of examples. This list had generated some confusion amongst businesses that thought the list was all inclusive, instead of illustrative.

The new Chapter 434a (relating to onsite shopkeeper certification) has been modeled on the existing Chapter 437a (relating to vendor certification and registration). Most of the application forms and procedures for processing applications for onsite shopkeepers will be the same as those used for vendors.

Section 434a.1 (relating to general onsite shopkeeper requirements) requires onsite shopkeepers to obtain certification.

Section 434a.2 (relating to onsite shopkeeper certification applications) contains the application process for certification, general requirements that applicants must comply with and the requirement that an applicant must pay all fees and investigation costs before they will be issued a certification.

Section 434a.3 (relating to individual certifications and investigations) specifies which individuals associated with a certified onsite shopkeeper will be required to obtain individual certifications and the form that these individuals will be required to file.

Section 434a.4 (relating to certification term and renewal) specifies that the term of onsite shopkeeper certifications shall be 4 years and outlines the process for renewal of certifications.

Section 434a.5 (relating to certified onsite shopkeeper responsibilities) lists general responsibilities of certified onsite shopkeepers and specifies which employees of certified onsite shopkeepers will be required to obtain nongaming employee registrations.

Section 434a.6 (relating to approved onsite shopkeepers list; prohibited onsite shopkeepers) requires the Board to maintain a list of approved and prohibited onsite shopkeepers, bars slot machine licensees from entering in to an agreement with a onsite shopkeeper on the prohibited onsite shopkeeper list, and sets forth the criteria the Board will use when determining whether or not a onsite shopkeeper should be placed on the prohibited onsite shopkeeper list. It also outlines the process an onsite shopkeeper on the prohibited onsite shopkeeper list must use to seek removal from the prohibited onsite shopkeeper list.

Section 434a.7 (relating to permission to conduct business prior to certification) sets forth the requirements that must be met by an onsite shopkeeper applicant if they desire to conduct business with a slot machine licensee prior to receiving their certification.

Section 434a.8 (relating to slot machine licensees' duties and responsibilities) lists the responsibilities of slot machine licensees relating to conducting business with a certified onsite shopkeeper. These include: investigating the background and qualifications of onsite shopkeepers; avoiding relationships with onsite shopkeepers of questionable character; requiring agreements to have a cancellation clause if the agreement does not meet Board standards; requiring slot machine licensees to report actions by a onsite shopkeeper that may be a violation of the Act or the Board's regulations; and reporting revenues received from certified onsite shopkeepers.

Chapter 438a is being amended to replace the permitting requirement for labor organization officers, agents and management employees with a requirement that these individuals seek registration. These individuals typically do not work in a licensed facility and rarely would need to be in a restricted area. Accordingly, the Board has determined that registration, rather than obtaining a permit, is more appropriate for these individuals.

More specifically, § 438a.3 (relating to registration of labor organization officers, agents and management employees) has been amended to replace all references to permits with references to registration. Additionally, since registrations do not require renewals, subsection (d) has been revised to reflect that a registration will be valid for as long as the individual holds their current position and subsections (e) and (f) have been deleted.

Minor revisions were made to Chapter 441a in §§ 441a.12 and 441a.13 (relating to maintaining agreements; filing of agreements; and Board review of agreements and records of agreements). The amendments to § 441a.12 will require slot machine licensees to submit to the Board copies of all written agreements or a written description of any oral agreement with a person which involves or may involve payments of \$500,000 or more per year to a slot machine licensee. This will allow the Board

to review the appropriateness of these significant financial transactions to determine their impact on the slot machine licensees and the integrity of gaming. The addition to § 441a.13 will require slot machine licensees to include a provision in all contracts requiring that a person who has contracted with a slot machine applicant or licensee comply with 4 Pa.C.S. Part II (relating to gaming) and regulations promulgated thereunder, including obtaining all required licenses, permits, certifications and registrations. This will allow slot machine licensees to void contracts with parties that should, but refuse to, file an application for a license, permit, certification or registration.

Affected Parties

This proposed rulemaking will affect labor organization officers, agents and management employees, all onsite shopkeepers and slot machine licensees that have onsite shopkeepers at their licensed facility or who provide goods or services valued at \$500,000 or more per year.

Fiscal Impact

Commonwealth

These amendments will eliminate the requirement that annual renewal applications be filed for labor organization officers, agents and management employees. This will reduce the number of permit renewal applications that will have to be processed by the Bureau of Licensing and the Bureau of Investigations and Enforcement of the Board.

By now requiring certification of onsite shopkeepers, these amendments will also increase the number of applications and renewals that are processed by the Bureau of Licensing and the BIE.

However, because applicants must reimburse the Board for all costs incurred associated with the processing of their applications and renewals, this proposed rulemaking will have no fiscal impact on the Board or other agencies of the Commonwealth.

Political Subdivisions

This proposed rulemaking will have no fiscal impact on political subdivisions of this Commonwealth.

Private Sector

Labor organization officers, agents and management employees will experience some cost savings because the application fee and investigation costs for registrations are less than they are for permits and registrations do not require annual renewals.

Onsite shopkeepers will bear the cost of filing applications and paying any additional costs related to the review of the applications that are not covered by the application fee.

General Public

This proposed rulemaking will have no fiscal impact on the general public.

Paperwork Requirements

Labor organization officers, agents and management employees will no longer have to file annual renewal applications.

Onsite shopkeepers and some of their employees will have to complete applications for certification.

Slot machine licensees will have to file monthly reports of income received from onsite shopkeepers with the Board and provide copies of agreements concerning the

provision of goods and services by the slot machine licensee that equal or exceed \$500,000 per year.

Effective Date

The proposed rulemaking will become effective upon final-form publication in the *Pennsylvania Bulletin*.

Public Comments

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed rulemaking, within 30 days after the date of publication in the *Pennsylvania Bulletin* to Mickey Kane, Secretary, Pennsylvania Gaming Control Board, P. O. Box 69060, Harrisburg, PA 17106-9060, Attention: Public Comment on Regulation #125-91.

Contact Person

The contact person for questions about this proposed rulemaking is Richard Sandusky, Director of Regulatory Review at (717) 214-8111.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on July 16, 2008, the Board submitted a copy of this proposed rulemaking and a copy of the Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Gaming Oversight Committee and the Senate Community, Economic and Recreational Development Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Board, the General Assembly and the Governor of comments, recommendations or objections raised.

MARY DIGIACOMO COLINS,
Chairperson

Fiscal Note: 125-91. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART VII. GAMING CONTROL BOARD

Subpart A. GENERAL PROVISIONS

CHAPTER 401a. PRELIMINARY PROVISIONS

§ 401a.3. Definitions.

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

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Onsite shopkeeper—A person, other than a slot machine licensee, who engages or proposes to engage in any commercial activity at the licensed facility and who is not otherwise required to be licensed, certified or registered.

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Vendor—

[(i)] A person who provides goods or services to a slot machine licensee or applicant, but who is not required to

be licensed as a manufacturer, manufacturer designee, supplier, management company or junket enterprise.

[(ii) The term includes:

(A) Suppliers of alcoholic beverages (if not otherwise regulated by the Pennsylvania Liquor Control Board), food and nonalcoholic beverages.

(B) Refuse handlers.

(C) Vending machine providers and service personnel.

(D) Linen and uniform suppliers.

(E) Janitorial and maintenance companies, not relating to the repair of slot machines or associated equipment.

(F) Tenant businesses or franchises located within licensed facilities.

(G) Providers of transportation services.

(H) Companies, subcontractors and professionals involved in the construction of a facility for a slot machine licensee or applicant.

(I) Lessors of real property or goods.

(J) Other entities which the Board will determine based on detailed analyses by the Board of vendor contracts.]

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Subpart B. LICENSING, PERMITTING, CERTIFICATION AND REGISTRATION

CHAPTER 434a. ONSITE SHOPKEEPER CERTIFICATION

- Sec. 434a.1. General onsite shopkeeper requirements.
- 434a.2. Onsite shopkeeper certification applications.
- 434a.3. Individual certifications and investigations.
- 434a.4. Certification term and renewal.
- 434a.5. Certified onsite shopkeeper responsibilities.
- 434a.6. Approved onsite shopkeepers list; prohibited onsite shopkeepers.
- 434a.7. Permission to conduct business prior to certification.
- 434a.8. Slot machine licensees' duties and responsibilities.

§ 434a.1. General onsite shopkeeper requirements.

An onsite shopkeeper shall apply to the Board for certification.

§ 434a.2. Onsite shopkeeper certification applications.

(a) An onsite shopkeeper seeking certification shall complete and the slot machine licensee of the licensed facility where the onsite shopkeeper is located shall submit the following to the Bureau of Licensing:

(1) An original and four copies of an On-site Shopkeeper Certification Application and Disclosure Information Form unless otherwise directed by the Board.

(2) The nonrefundable application fee posted on the Board's web site (www.pgcb.state.pa.us).

(3) An On-site Shopkeeper Certification Form—Private Holding Company for each intermediary and holding company of the applicant unless the onsite shopkeeper seeking certification is, directly or indirectly, wholly owned by a publicly traded company.

(4) Applications and release authorizations for each individual as required under § 434a.3 (relating to individual certifications and investigations).

(b) In addition to the materials required under subsection (a), an applicant for an onsite shopkeeper certification shall:

(1) Promptly provide information requested by the Board relating to its application or regulation and cooperate with the Board in investigations, hearings, and enforcement and disciplinary actions.

(2) Comply with the general application requirements in Chapters 421a and 423a (relating to general provisions; and applications).

(c) An applicant for an onsite shopkeeper certification will be required to reimburse the Board for costs incurred by the Board in conducting the review of the application.

(d) An onsite shopkeeper certification will not be issued until all fees have been paid.

§ 434a.3. Individual certifications and investigations.

(a) If a certified onsite shopkeeper or onsite shopkeeper seeking certification is a publicly traded company or a subsidiary of a publicly traded company, the officers of the certified onsite shopkeeper or onsite shopkeeper seeking certification who are responsible for the conduct of business with the slot machine licensee shall be required to apply for certification by filing with the Board a Pennsylvania Personal History Disclosure Form and the nonrefundable application fee posted on the Board's web site (www.pgcb.state.pa.us).

(b) If a certified onsite shopkeeper or onsite shopkeeper seeking certification is not a publicly traded company or a subsidiary of a publicly traded company, each officer and director of the entity shall be required to apply for certification by filing with the Board a Pennsylvania Personal History Disclosure Form and the nonrefundable application fee posted on the Board's web site (www.pgcb.state.pa.us). For the purposes of this subsection, the term "officer" means a president, chief executive officer, a chief financial officer and a chief operating officer, and any person routinely performing corresponding functions with respect to an organization whether incorporated or unincorporated.

(c) If a certified onsite shopkeeper or onsite shopkeeper seeking certification is a privately held entity, each individual who has a direct or indirect ownership or beneficial interest of 5% or more in the privately held entity shall be required to apply for certification by filing with the Board a Pennsylvania Personal History Disclosure Form and the nonrefundable application fee posted on the Board's web site (www.pgcb.state.pa.us).

(d) An individual who is a trustee of a trust that is required to file an On-site Shopkeeper Certification Form—Private Holding Company under § 434a.2 (relating to onsite shopkeeper certification applications) shall be required to apply for certification by filing with the Board a Pennsylvania Personal History Disclosure Form and the nonrefundable application fee posted on the Board's web site (www.pgcb.state.pa.us).

(e) Each officer and director of a privately held holding company of a certified onsite shopkeeper or onsite shopkeeper seeking certification may be required to apply for certification by filing with the Board a Pennsylvania Personal History Disclosure Form and the nonrefundable application fee posted on the Board's web site (www.pgcb.state.pa.us) if the Board determines that certification of the individual is necessary to protect the public or to enhance the integrity of gaming in this Commonwealth.

(f) Employees of a certified onsite shopkeeper who have entered into an agreement with a slot machine licensee on behalf of their certified onsite shopkeeper employer shall be required to file a Pennsylvania Personal History Disclosure Form if the Board determines that certification of the individual is necessary to protect the public or to enhance the integrity of gaming in this Commonwealth.

§ 434a.4. Certification term and renewal.

(a) Certifications and renewals issued under this chapter will be valid for 4 years from the date of Board approval.

(b) A renewal application and renewal fee shall be submitted to the Board at least 60 days prior to the expiration of an onsite shopkeeper certification.

(c) An onsite shopkeeper certification for which a completed renewal application and fee has been received by the Board will continue in effect until the Board sends written notification to the holder of the certification that the Board has approved or denied the certification.

§ 434a.5. Certified onsite shopkeeper responsibilities.

(a) A holder of an onsite shopkeeper certification shall have a continuing duty to:

(1) Provide information requested by the Board relating to certification; cooperate with the Board in investigations, hearings, and enforcement and disciplinary actions; and comply with conditions, restrictions, requirements, orders and rulings of the Board in accordance with the act.

(2) Report a change in circumstances that may render the holder of an onsite shopkeeper certification ineligible, unqualified or unsuitable to hold a certification under the standards and requirements of the act and of this part.

(b) Employees of a certified onsite shopkeeper shall be required to obtain a nongaming employee registration under § 435a.5 (relating to nongaming employee registration) if their job duties require any contact with patrons of the licensed facility.

(c) Employees of a certified onsite shopkeeper who are not required to obtain a nongaming employee registration under subsection (b) may be required to obtain a nongaming employee registration if the Board determines, after a review of the work being performed, that obtaining a nongaming employee registration is necessary for the protection of the integrity of gaming.

§ 434a.6. Approved onsite shopkeepers list; prohibited onsite shopkeepers.

(a) The Board will maintain a list of approved certified onsite shopkeepers and a list of prohibited onsite shopkeepers.

(b) A slot machine licensee may not enter into an agreement or continue to do business with an onsite shopkeeper on the prohibited onsite shopkeeper list.

(c) The Board will consider the following factors in determining whether an onsite shopkeeper will be listed as a prohibited onsite shopkeeper:

(1) The failure of an onsite shopkeeper to apply for certification after notice from the Board that certification is required.

(2) The failure of an onsite shopkeeper to cooperate with the Board in the Board's review of the application for certification.

(3) The onsite shopkeeper's certification is suspended, revoked or denied.

(4) The onsite shopkeeper is restricted from reapplication by action of the Board.

(5) The onsite shopkeeper is temporarily prohibited from doing business with slot machine licensees by action of the Board.

(d) A person or entity seeking to be removed from the list of prohibited onsite shopkeepers shall file a petition for removal in accordance with § 493a.4 (relating to petitions generally). The petitioner must state the specific grounds believed by the petitioner to constitute good cause for removal from the prohibited onsite shopkeepers list and how the onsite shopkeeper has cured the deficiencies that led to the onsite shopkeeper being placed on the prohibited onsite shopkeepers list.

§ 434a.7. Permission to conduct business prior to certification.

(a) Notwithstanding § 434a.1 (relating to general onsite shopkeeper requirements), the Board may allow an applicant for an onsite shopkeeper certification to conduct business at a licensed facility prior to the certification of the onsite shopkeeper applicant if the following criteria are met:

(1) A completed On-site Shopkeeper Certification Application and Disclosure Information Form and the nonrefundable application fee posted on the Board's web site (www.pgcb.state.pa.us) has been filed by the slot machine licensee in accordance with § 434a.2 (relating to onsite shopkeeper certification applications).

(2) The slot machine licensee certifies that it has performed due diligence on the onsite shopkeeper.

(b) Permission to conduct business under this section will be for 6 months.

(c) The Board may extend the relief for additional 6-month periods upon a showing of good cause by the slot machine licensee.

§ 434a.8. Slot machine licensees' duties and responsibilities.

(a) A slot machine licensee shall investigate the background and qualifications of the applicants for onsite shopkeeper certification that intend to operate at the slot machine licensee's licensed facility.

(b) A slot machine licensee shall have an affirmative duty to avoid agreements or relationships with applicants for onsite shopkeeper certification whose background or association is injurious to the public health, safety, morals, good order and general welfare of the people of this Commonwealth, who threaten the integrity of gaming in this Commonwealth or who discredit or tend to discredit the gaming industry in this Commonwealth or the Commonwealth.

(c) An agreement or contract between a slot machine licensee and an applicant for or holder of a onsite shopkeeper certification shall contain a cancellation clause that allows termination of the agreement or contract in the event that the Board or the slot machine licensee finds that the agreement or contract fails to meet the requirements of subsection (b). This provision applies to written and oral agreements and contracts.

(d) Slot machine licensees shall have a duty to inform the Bureau of an action by an applicant for or holder of

an onsite shopkeeper certification which the slot machine licensee believes would constitute a violation of the act or the Board's regulations.

(e) Slot machine licensees shall file a monthly report listing all payments received from onsite shopkeepers. The report shall be submitted to the Bureau of Licensing no later than the 15th calendar day of the following month. The report must include an alphabetical listing of onsite shopkeepers and the following information next to the name of each onsite shopkeeper:

- (1) The onsite shopkeeper's certification number.
- (2) The amount of the individual payments to the slot machine licensee.
- (3) The date of the individual payments to the slot machine licensee.
- (4) The grand total of all payments to the slot machine licensee made during the reporting period.
- (5) The total summarizing all previous payments to the slot machine licensee in the last 12 months beginning from the first payment date.

CHAPTER 438a. LABOR ORGANIZATIONS

§ 438a.3. **[Permitting] Registration** of labor organization officers, agents and management employees.

(a) Every labor organization officer, agent and management employee shall be **[permitted] registered** in accordance with this section.

(b) Every labor organization officer, agent and management employee shall file **an original and 2 copies** of a completed Labor Organization **[Permit] Registration Application Form** with the **[permit] registration** fee posted on the Board's web site (www.pgcb.state.pa.us).

(c) Applicants and **[permittees] registrants** under this section shall be subject to the general application requirements of Chapters 421a and 423a (relating to general provisions; and applications).

(d) **[Permits] Registrations** issued under this section will be valid for **[1 year from the date on which the permit is approved by the Board] as long as the individual holds the position which required the individual to seek registration.**

[(e) Renewals will be valid for 1 year and shall be filed no later than 60 days prior to the expiration of the current permit.

(f) A permit for which a completed renewal application and fee has been received by the Board will continue in effect until the Board sends written notification to the permittee that the Board has approved or denied the renewal of the permit.]

Subpart C. SLOT MACHINE LICENSING

CHAPTER 441a. SLOT MACHINE LICENSES

§ 441a.12. Maintaining agreements; filing of agreements.

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(c) *Filing agreements.* Each slot machine licensee shall submit the following to the Board:

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(4) A fully signed copy of all written agreements or a written description of any oral agreement with a person which involves or may involve payments of \$500,000 or more per year to a slot machine licensee.

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(f) *Oral agreements.* A written description submitted under this section must provide, at a minimum, the following:

(1) The nature of the goods or services to be provided to **or by** the slot machine licensee or applicant.

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§ 441a.13. Board review of agreements and records of agreements.

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(d) Each agreement maintained or filed under § 441a.12 must include a provision requiring that the person who has contracted with the slot machine applicant or licensee comply with the act and this part, including obtaining required licenses, permits, certifications and registrations.

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