

RULES AND REGULATIONS

Title 58—RECREATION

PENNSYLVANIA GAMING CONTROL BOARD

[58 PA. CODE CHS. 405a, 407a, 421a, 433a AND 435a]

Releases

The Pennsylvania Gaming Control Board (Board), under its general authority in 4 Pa.C.S. § 1202(b)(30) (relating to general and specific powers) and the specific authority in 4 Pa.C.S. §§ 1311, 1311.1, 1311.2, 1317, 1317.1, 1318 and 1517, amends Chapters 405a, 407a, 421a, 433a and 435a to read as set forth in Annex A.

Purpose of the Final-Form Rulemaking

This final-form regulations implement the requirement that applicants for a principal or key employee license execute releases that will enable the Board to receive information pursuant to a request for information under the Freedom of Information Act (5 U.S.C.A. § 552). It will also clarify that the Bureau of Investigations and Enforcement (Bureau) may request applicants for or holders of licenses, permits, certifications or registrations to also execute such a releases and that information received as a result of any release will be treated as confidential.

Explanation of Amendments to Chapters 405a, 407a, 421a, 433a and 435a

Currently, as part of the application process, applicants for principal or key employee licenses are required to execute a number of releases that allow the Board to conduct an investigation of the applicant. These releases include items such as tax information from the Departments of Revenue and Labor and Industry, military records and information from past employers.

This final-form regulations amend the general language related to releases in Chapter 421a to clarify that it includes releases that will enable the Board to receive information under to a request for information under the act in addition to the other releases required in the application.

The amendments to Chapters 433a and 435a specifically require applicants for principal or key employee licenses to execute releases that will enable the Board to receive information under a request for information under the act in addition to the other releases required in the application.

The amendments to Chapter 405a clarify that the Bureau may require applicants for or holders of a license, permit, certification or registration to also execute a release that will enable the Bureau and Board to receive information under a request for information under the act. The decision to require an individual to execute a release will be made on a case by case basis depending on the nature of the job the individual will be performing and results of the review of the other information provided by the individual.

Chapter 407a is being amended to clarify that all information received by the Board as a result of the execution of any release will be treated as confidential information.

Comment and Response Summary

Notice of proposed rulemaking was published at 38 Pa.B. 2054 (May 3, 2008).

The Board received comments from Sands Casino Resort Bethlehem, Washington Trotting Association, Inc., Aristocrat Technologies, Inc., Aristocrat Australia Pty. Ltd., Shuffle Master, Inc., WMS Gaming, Inc., Modern Gaming Pennsylvania, LLC, GTECH Corporation and Spielo Manufacturing ULC. By letter dated July 2, 2008, the Independent Regulatory Review Commission (IRRC) also submitted comments. All of these comments were reviewed by the Board and are discussed in detail in the following paragraphs.

Commentators and the Independent Regulatory Review Commission (IRRC) expressed concerns about whether the information obtained through the execution of a release would be treated as confidential information.

It was always the Board's intent to treat this information as confidential information. To further clarify this intent, the Board has added a new paragraph (8) to § 407a.3(a) (relating to confidential information) which states that any information obtained as the result of the execution of a release at the request of the Board will be considered to be confidential information. Additionally, §§ 421a.1, 433a.8 and 435a.2 have been further amended to clarify that the information requested as the result of a release under the Freedom of Information Act is to be provided to the Board.

IRRC also noted that information available under the Pennsylvania Right-to-Know Law (65 P. S. §§ 66.1—66.4) does not require a release. The Board agrees with IRRC's observation and accordingly has deleted the references to the Pennsylvania Right-to-Know Law in the final-form version of the regulations.

Affected Parties

Applicants for a principal or key employee license will be required to execute releases that will enable the Board to receive information about the applicants under a request for information under the act. The Board receives approximately 700 to 800 principal and key employee applications annually.

Fiscal Impact

Commonwealth

Applicants are responsible for paying the costs associated with the review of their applications. Therefore, these amendments will have no fiscal impact on the Board or other agencies of the Commonwealth.

Political Subdivisions

This final-form rulemaking will have no fiscal impact on political subdivisions of this Commonwealth.

Private Sector

Applicants who are required to execute these releases will be responsible for reimbursing the Board for any costs associated with the filing of the requests for information and time spent reviewing the information that is received.

General Public

This final-form regulations will have no fiscal impact on the general public.

Paperwork requirements

The Board is in the process of amending its existing applications to include the release related to requests for information under the Freedom of Information Act. These releases are not lengthy and should only take a few minutes for an applicant to complete.

Effective Date

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

Contact Person

The contact person for questions about this final-form regulations, 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 April 21, 2008, the Board submitted a copy of the proposed rulemaking, published at 38 Pa.B. 2054, and a copy of the Regulatory Analysis Form to IRRC and the Chairpersons of the House Gaming Oversight Committee and the Senate Committee (Committees) on Community, Economic and Recreational Development.

Under section 5(c) of the Regulatory Review Act, IRRC and the Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Board has considered all comments received from IRRC, the Committees and the public.

Under section 5.1(j.2) of the act (71 P. S. § 745.5a(j.2)), on October 1, 2008, the final-form rulemaking was deemed approved by the House Gaming Oversight Committee and the Senate Committee on Community, Economic and Recreational Development. Under section 5.1(e) of the Regulatory Review Act (71 P. S. § 745.5a(e)), IRRC met on October 2, 2008, and approved the final-form rulemaking.

Findings

The Board finds that:

(1) Public notice of intention to adopt these amendments was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) The final-form regulations are necessary and appropriate for the administration and enforcement of 4 Pa.C.S. Part II (relating to gaming).

Order

The Board, acting under 4 Pa.C.S. Part II, orders that:

(a) The regulations of the Board, 58 Pa. Code Chapters 405a, 407a, 421a, 433a and 435a are amended by amending §§ 405a.2, 407a.3, 421a.1, 433a.8 and 435a.2 to read as set forth in Annex A.

(b) The Chairperson of the Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(c) This order shall take effect upon publication in the *Pennsylvania Bulletin*.

MARY DIGIACOMO COLINS,
Chairperson

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 38 Pa.B. 5818 (October 18, 2008)).

Fiscal Note: Fiscal Note 125-84 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 58. RECREATION

PART VII. GAMING CONTROL BOARD

Subpart A. GENERAL PROVISIONS

CHAPTER 405a. BUREAU OF INVESTIGATIONS AND ENFORCEMENT

§ 405a.2. Information.

(a) An applicant for or holder of a license, permit, certification or registration shall provide all information, data and documents requested by the Bureau under section 1517(a) of the act (relating to enforcement). The Bureau may also request the execution of a release which would enable the Bureau and the Board to receive information pursuant to a request for information under the Freedom of Information Act (5 U.S.C. § 552).

(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 voluntary 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 pursuant to this section will be made in writing, filed with the Clerk, 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 may provide information, data and documents requested by the Bureau relating to an applicant for or holder of a license, permit, certification or registration.

(d) The Bureau may, upon request, provide pertinent information relating to an applicant for or holder of a license, permit, certification or registration to law enforcement agencies, including the Federal Bureau of Investigation or other domestic or foreign agencies or jurisdictions.

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

CHAPTER 407a. PUBLIC ACCESS TO BOARD FILES

§ 407a.3. Confidential information.

(a) Confidential information may include background investigation information, including information provided under section 1310(a) of the act (relating to slot machine license application character requirements), submitted in connection with an application required for the issuance of any license, permit, certification or registration under this part, discovery procedures, or cross-examination or that is provided as a courtesy to a party in a formal proceeding received by the Board or the Department as well as records obtained or developed by the Board or the Department as part of an investigation related to an applicant for or holder of a license, permit, certification or registration containing any of the following:

(1) Personal information, including home addresses, telephone numbers, Social Security numbers, educational records, memberships, medical records, tax returns and declarations, actual or proposed compensation, financial

account records, credit-worthiness or financial condition relating to an applicant, licensee or permittee or the immediate family thereof.

(2) Documents and information relating to proprietary information, trade secrets, patents or exclusive licenses, architectural and engineering plans and information relating to competitive marketing materials and strategies which may include customer-identifying information or customer prospects for services subject to competition.

(3) Security information including risk prevention plans, detection and countermeasures, emergency management plans, security and surveillance plans, equipment and usage protocols and theft and fraud prevention plans and countermeasures.

(4) Information with respect to which there is a reasonable possibility that public release or inspection of the information would constitute an unwarranted invasion into personal privacy as determined by the Board.

(5) Records or information that is designated confidential by statute or the Board.

(6) Records of an applicant or licensee not required to be filed with the SEC by issuers that either have securities registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C.A. § 781) or are required to file reports under section 15(d) of that act (15 U.S.C.A. § 780(d)).

(7) Records considered nonpublic matters or information by the SEC as provided by 17 CFR 200.80 (relating to commission records information).

(8) Information obtained about an applicant for or holder of a license, permit, certification or registration as a result of a release executed by the individual at the request of the Bureau or the Board.

(b) Confidential information may be released by the Board under the following circumstances:

(1) To State or Federal law enforcement agencies or entities upon approval of the Attorney General or pursuant to a lawful order issued by court of competent jurisdiction.

(2) To the public, in whole or in part, if one of the following occurs:

(i) Upon written request from the applicant or holder of a license, permit, certification or registration, to the extent that the information does not contain otherwise confidential information about another person.

(ii) If the information subsequently becomes a part of the public domain by an action by the applicant or holder of a license, permit, certification or registration.

(3) To a person with the written consent of the applicant or holder of a license, permit, certification or registration.

Subpart B. LICENSING, PERMITTING, CERTIFICATION AND REGISTRATION

CHAPTER 421a. GENERAL PROVISIONS

§ 421a.1. General requirements.

(a) A license, permit, certification or registration issuance, renewal or other approval issued by the Board is a revocable privilege. No person holding a license, permit, certification or registration, renewal, or other approval is deemed to have any property rights related to the license, permit, certification or registration.

(b) By filing an application with the Board, an applicant consents to an investigation of the applicant's general suitability, financial suitability, character, integrity and ability to engage in, or be associated with, gaming activity in this Commonwealth to the extent deemed appropriate by the Board. The investigation may include a background investigation of the applicant, employees of the applicant, all persons having a controlling interest in the applicant and other persons as determined by the Board.

(c) By filing an application for a license, permit, certification or registration issuance, renewal or other approval from the Board, an applicant agrees to:

(1) Abide by the provisions of the act and this part.

(2) Waive liability as to the Board, its members, its employees, the Pennsylvania State Police, the Commonwealth and its instrumentalities for damages resulting from disclosure or publication in any manner, other than a willfully unlawful disclosure or publication of material or information acquired during an investigation of the applicant.

(3) Execute all releases requested by the Board, including releases whereby the applicant consents to the release of information that may be requested by the individual under the Freedom of Information Act (5 U.S.C. § 552) to the Board.

(d) An applicant for or holder of a license, permit, certification or registration may not give or offer to give, compensation or reward or a percentage or share of the money or property played or received through gaming to a public official or public employee in consideration for or in exchange for obtaining a license, permit, certification or registration issued pursuant to this part.

(e) An applicant for or holder of a license, permit, certification or registration shall have a duty to inform the Bureau of an action which the applicant for or holder of a license, permit, certification or registration believes would constitute a violation of the act. A person who so informs the Bureau may not be discriminated against by an applicant for or holder of a license, permit, certification or registration for supplying the information.

(f) An applicant for a license, permit, certification or registration shall have a continuing duty to inform the Board of changes in the information supplied to the Board in or in conjunction with the original or renewal application. An applicant for or holder of a license, permit, certification or registration shall have a continuing duty to inform the Board of a change in circumstances that may render the applicant for or holder of a license, permit, certification or registration ineligible, unqualified or unsuitable to hold a license, permit, certification or registration under the standards and requirements of the act and of this part.

(g) An applicant for a license, permit, certification or registration shall have a continuing duty to 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.

(h) An application submitted to the Board constitutes the seeking of a privilege. An applicant shall at all times have the burden of proof. It shall be the applicant's affirmative responsibility to establish the facts supporting its suitability under the act and this part by clear and convincing evidence, including why a license, permit, certification or registration should be issued or renewed by the Board.

(i) A person holding a license, permit, certification or registration issued by the Board who violates a provision of the act or this part may be held jointly or severally liable for the violation.

(j) The Board will maintain lists of applicants for licenses, permits, certifications or registrations under this part as well as a record of the actions taken with respect to each applicant. The lists will be posted on the Board's web site (www.pgcb.state.pa.us).

CHAPTER 433a. PRINCIPAL LICENSES

§ 433a.8. Principal applications.

(a) An individual required to be licensed as a principal, unless otherwise directed by the Board, shall file:

(1) An original and three copies of a completed Multi-Jurisdictional Personal History Disclosure Form.

(2) An original and three copies of a completed Principal/Key Employee Form—Pennsylvania Supplement to the Multi-Jurisdictional Personal History Disclosure Form.

(3) Executed releases requested by the Board, including releases whereby the applicant consents to the release of information that may be requested by the individual pursuant to the Freedom of Information Act (5 U.S.C. § 552) to the Board.

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

(b) A principal entity required to be licensed as a principal shall file a completed Principal Entity Form and submit the applicable application fee posted on the Board's web site (www.pgcb.state.pa.us).

(c) A principal affiliate shall apply for the principal license as if it itself applying for the slot machine license, manufacturer license, manufacturer designee license, supplier license, management company license or junket enterprise license.

(d) In addition to the materials required under subsections (a) or (b), an applicant for a principal license shall:

(1) Promptly provide information requested by the Board relating to the principals' 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).

CHAPTER 435a. EMPLOYEES

§ 435a.2. Key employee license.

(a) An applicant for a key employee license from the Board, unless otherwise directed by the Board, shall submit:

(1) An original and three copies of a completed [Multi-jurisdictional] Multi-Jurisdictional Personal History Disclosure Form.

(2) An original and three copies of a completed Principal/Key Employee Form—Pennsylvania Supplement to the Multi-Jurisdictional Personal History Disclosure Form.

(3) Executed releases requested by the Board, including releases whereby the applicant consents to the release of

information that may be requested by the individual under the Freedom of Information Act (5 U.S.C. § 552) to the Board.

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

(b) In addition to the materials required under subsection (a), an applicant for a key employee license 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) In addition to the information under subsections (a) and (b), the Board may require letters of reference from law enforcement agencies under section 1310(b) of the act (relating to slot machine application character requirements).

(d) An applicant for a key employee license will be required to reimburse the Board for additional costs, based on the actual expenses incurred by the Board, in conducting the background investigation.

(e) After review of the information submitted under subsections (a), (b) and (c), including the background investigation, the Board may issue a key employee license if the individual applicant has proven that the individual is a person of good character, honesty and integrity and is eligible and suitable to be licensed as a key employee.

(f) A license issued under this section will be valid for employment with any licensed entity.

(g) An individual who is a key employee may request in writing that the Board waive the obligation to be licensed as a key employee by:

(1) Filing an original and three copies of a Principal/Key Employee Waiver Form.

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

(h) As part of the waiver request, the individual shall be required to demonstrate one of the following:

(1) The individual is not assigned to an applicant's or licensee's gaming operations in this Commonwealth.

(2) The individual's duties do not have an effect on or require contact with slot machines for use or play in this Commonwealth.

(i) The request for a waiver must include, at a minimum, the following:

(1) A description of the individual's title, duties and responsibilities with the applicant, licensee or with any of its affiliates, intermediaries, subsidiaries or holding companies.

(2) A certification by the chief executive officer stating that the employee is not assigned to the licensee's gaming operations in this Commonwealth or that the employee's duties do not have an effect on or require contact with slot machines for use or play in this Commonwealth.

(j) An applicant for a key employee waiver will be required to reimburse the Board for any additional costs, based on the actual expenses incurred by the Board, in conducting the background investigation.

[Pa.B. Doc. No. 08-2015. Filed for public inspection November 7, 2008, 9:00 a.m.]