

PROPOSED RULEMAKING

PENNSYLVANIA GAMING CONTROL BOARD

[58 PA. CODE CHS. 401a, 435a, 437a AND 441a] Gaming Service Providers and Slot Machine Licenses

The Pennsylvania Gaming Control Board (Board), under the 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. §§ 1317.2 and 1321 (relating to gaming service provider; and additional licenses and permits and approval of agreements) proposes to amend Chapters 401a, 435a, 437a and 441a to read as set forth in Annex A.

Purpose of the Proposed Rulemaking

With this proposed rulemaking, the Board is amending several sections to limit the types of agreements that operators are now required to file with the Board, specify which types of agreements require Board approval prior to implementation and to exempt professional sports teams from the requirements of gaming service provider certification and registration.

§ 401a.3—Definitions

Proposed amendments to the definition of “nongaming employee” reflect that not only certified but also registered gaming service providers may have nongaming employees. Additionally, a nongaming employee may now touch the outside of the slot machine provided that the contact does not affect play of the game. This was added because servers clear food and beverage requests generated from slot machines, which was not previously allowed.

§ 437a.1—General gaming service provider requirements

The Board proposes to amend the gaming service provider regulations to exempt professional sports teams of Major League Baseball, the National Football League, the National Basketball Association and the National Hockey League from the gaming service provider registration and certification requirements. Several licensed facilities have recently contracted with professional teams to purchase tickets for use by patrons of the licensed facility and to provide advertising during sporting events.

After reviewing the agreements and the requirements and exemptions in other gaming jurisdictions, the Board does not believe it is necessary for the protection of the public or the integrity of gaming to require professional sports teams to file for registration or certification as a gaming service provider.

Additionally, proposed amendments to § 437a.9(a)(3) (relating to permission to conduct business prior to certification or registration) reflect that the Bureau of Licensing is informed, but does not determine, that an applicant’s suitability may be at issue.

Chapter 441a. Slot machine licenses

In § 441a.12 (relating to maintaining agreements; filing of agreements), the Board proposes to amend the types of agreements that slot machine licensees are now required to file. Specifically, operators are required to maintain written agreements and the records associated with oral agreements with licensed manufacturers, sup-

pliers, franchisees and gaming service providers but are no longer required to file agreements with the Board. However, the Board may require operators to submit agreements or records upon request.

Proposed amendments to § 441a.13 (relating to Board approval of agreements) specify which agreements will require submission and Board approval such as corporate overhead agreements, shared services agreements and agreements that provide for the management of all or part of the gaming operations of a licensed facility.

Section 441a.14 (relating to master purchasing and disbursement report) is proposed to be amended for clarity and to reflect Board practice. Operators are versed on the reporting, coding and submission process in this section.

Section 441a.20 (relating to slot machine license agreements) is proposed to be rescinded as it is inconsistent with or duplicative of §§ 441a.12 and 441a.13 regarding agreements.

Affected Parties

Professional sports teams of Major League Baseball, the National Football League, the National Basketball Association and the National Hockey League will no longer be required to file for gaming service provider registration or certification. Additionally, operators will no longer be required to file certain agreements with the Board.

Fiscal Impact

Commonwealth. It is not anticipated that this proposed rulemaking will have a fiscal impact on the Board or other Commonwealth agencies.

Political subdivisions. This proposed rulemaking will not have fiscal impact on political subdivisions of this Commonwealth.

Private sector. Professional sports teams will benefit from the exemption as they will no longer be required to apply and submit to an investigation as a gaming service provider. Additionally, operators will benefit as they will no longer be required to file with the Board every agreement entered into with a licensed manufacturer, supplier, franchisee or gaming service provider.

General public. This proposed rulemaking will not have fiscal impact on the general public.

Paperwork Requirements

This proposed rulemaking will eliminate the need to file with the Board every agreement entered into with a licensed manufacturer, supplier, franchisee or gaming service provider unless requested by Board staff.

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 Susan A. Yocum, Assistant Chief Counsel, Pennsylvania Gaming Control Board, P. O. Box 69060, Harrisburg, PA 17106-9060, Attention: Public Comment on Regulation #125-161.

Contact Person

The contact person for questions about this proposed rulemaking is Susan Yocum, Assistant Chief Counsel, (717) 346-8300.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on May 16, 2012, the Board submitted a copy of this proposed rulemaking and a copy of a 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 and is available on the Board's web site at www.pgcb.pa.gov.

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.

WILLIAM H. RYAN, Jr.,
Chairperson

Fiscal Note: 125-161. 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:

* * * * *

Nongaming employee—An employee of a slot machine licensee or [certified] gaming service provider who is not included within the definition of "principal," "key employee" or "gaming employee," and:

(i) Whose job duties require the employee to be:

(A) On the gaming floor but do not require the employee to touch or have contact with slot machines, gaming tables or associated equipment other than exterior [cleaning] contact that does not affect the play of the game.

* * * * *

Subpart B. LICENSING, PERMITTING, CERTIFICATION AND REGISTRATION

CHAPTER 435a. EMPLOYEES

§ 435a.5. Nongaming employee registration.

* * * * *

(e) A registration issued under this section is valid for employment with any licensed entity or [certified] gaming service provider.

CHAPTER 437a. GAMING SERVICE PROVIDER CERTIFICATION AND REGISTRATION

§ 437a.1. General gaming service provider requirements.

* * * * *

(d) The following persons are exempt from the gaming service provider registration and the gaming service provider certification requirements of this chapter:

* * * * *

(15) Professional sports teams of Major League Baseball, the National Hockey League, the National Football League and the National Basketball Association.

(16) Any person not otherwise exempt under this subsection that is licensed by a Federal or state agency if the agency's licensing requirements are determined by the Bureau of Licensing to be substantially similar to those of the Board.

* * * * *

§ 437a.9. Permission to conduct business prior to certification or registration.

(a) Notwithstanding § 437a.1 (relating to general gaming service provider requirements), the Bureau of Licensing may authorize an applicant for a gaming service provider certification or registration to conduct business with a slot machine applicant or licensee prior to the certification or registration of the gaming service provider applicant if the following criteria are met:

* * * * *

(3) The applicant for gaming service provider registration or certification agrees, in writing, that the grant of permission to conduct business prior to registration or certification does not create a right to continue to conduct business and that the Bureau of Licensing may rescind, at any time, the authorization granted pursuant to this section, with or without prior notice to the applicant, if the Bureau of Licensing [determines] is informed that the suitability of the applicant [is] may be at issue or the applicant fails to cooperate in the application or investigatory process.

* * * * *

Subpart C. SLOT MACHINE LICENSING

CHAPTER 441a. SLOT MACHINE LICENSES

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

(a) Maintaining agreements. Each approved slot machine [applicant and] licensee shall maintain the following:

(1) A [fully signed] copy of every [written] executed agreement with licensed manufacturers, manufacturer designees, suppliers, tenant businesses or franchises located within the licensed facility and with persons required to file a notification with or be registered or certified with the Board in accordance with § 437a.1(a), (b) or (h) or Chapter 613a (relating to general gaming service provider requirements; and gaming related gaming service providers).

(2) Records [with respect to] associated with any oral agreement with licensed manufacturers, manufacturer designees, suppliers, tenant businesses or franchises located within the licensed facility and persons required to file a notification with or be registered or certified with the Board in accordance with § 437a.1(a), (b) or (h) or Chapter 613a.

(3) A copy of all executed land and real estate agreements relating to racing or gaming operations.

(4) A copy of amendments to agreements listed in paragraphs (1)—(3).

(b) [*Changes or amendments to agreements.* Slot machine applicants and licensees shall maintain changes or amendments to the terms of the agreements subject to subsection (a).] *Filing agreements.* The Board may require an approved slot machine licensee to submit a copy of a written agreement or a description of an oral agreement. A written description of an oral agreement submitted to the Board must include the following:

(1) A description of the goods or services to be provided and the person that will provide the goods or services to the approved slot machine licensee.

(2) The name and business address of the parties to the agreement.

(3) The duration of the agreement or the expected date or dates of performance.

(4) The financial terms of the agreement.

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

(1) A fully signed copy of written agreements with manufacturer applicants or licensees, manufacturer designee applicants or licensees, supplier applicants or licensees and with gaming service providers subject to certification under § 437a.1(b) (relating to general gaming service provider requirements).

(2) A precise written description of any oral agreement, in accordance with subsection (f), with manufacturer applicants or licensees, manufacturer designee applicants or licensees, supplier applicants or licensees and gaming service providers subject to certification under § 437a.1(b).

(3) A fully signed copy of all written agreements relating to land and real estate.

(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.

(d) *Changes or amendments to filed agreements.* Slot machine applicants and licensees shall file all changes or amendments to the terms of the agreements subject to subsection (c).

(e) *Additional agreements.* Notwithstanding the requirements of subsections (c) and (d) slot machine applicants or licensees may be required to submit a copy of any other written agreement, change or amendment or a precise written description of any other oral agreement, change or amendment as requested by the Board.

(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.

(2) The full name and business address of the nonslot machine licensee or applicant party to the agreement.

(3) The duration of the agreement, or if provided in the agreement, the specific date or dates of performance.

(4) The financial terms of the agreement.

(5) A description of the goods or services provided, including the expected duration and compensation.]

§ 441a.13. Board [review] approval of agreements [and records of agreements].

(a) [The Board may review an agreement and record maintained or filed under § 441a.12 (relating to maintaining agreements; filing of agreements) to determine] An approved slot machine licensee shall submit to the Board and receive Board approval prior to executing, relying upon or taking any action pursuant to the following:

(1) [The reasonableness of the terms of the agreement, including the terms of compensation.

(2) The qualifications of the persons involved in and associated with the agreement, after which the Board may make a finding as to the suitability of the persons to be involved or associated with the slot machine applicant or licensee.

(3) Whether any person involved therein or associated therewith is providing or likely to provide goods or services to, or conducting or likely to conduct business with, a slot machine applicant or licensee or its employees which requires a license, permit, certification, registration or notification under the act or this part, in which case the Board will direct that the appropriate application be promptly filed by the person.

(4) Whether any action is desirable or necessary to regulate, control or prevent economic concentration in any gaming service provider industry or to encourage or preserve competition in any gaming service provider industry.]

Corporate overhead assessment agreements, shared service agreements, centralized service agreements or an agreement under which an affiliate, intermediary, subsidiary or holding company of an approved slot machine licensee provides goods or services to the approved slot machine licensee.

(2) Agreements that provide for the management of all or part of the gaming operations of a licensed facility.

(3) Agreements under which a person receives payment based directly or indirectly on earnings, profits or receipts from the slot machines, table games or associated equipment.

(4) Amendments to agreements described in paragraphs (1)—(3).

(b) If the Board finds that an agreement is not in the public interest or is inimical to the interest of gaming in this Commonwealth, the Board may [, by order] deny approval, require the termination of the agreement [or association], the divestiture of any person associated [therewith] with the agreement or may pursue any remedy or combination of remedies provided for in the act or this part. If the agreement or association is not [thereafter] promptly terminated in accordance with

the Board's order, the Board may pursue any remedy or combination of remedies provided for in the act or this part.

(c) [Each] Any agreement maintained or filed under § 441a.12 (relating to maintaining agreements; filing of agreements) or this section shall be deemed to include a provision for its termination without liability on the part of the slot machine [applicant or] licensee, or [on the part of] any [qualified] party to the agreement or any related agreement [the performance of which is dependent upon the agreement], if the Board orders [that] the termination of the agreement [be terminated] in accordance with subsection (b).

(d) Each agreement maintained or filed under § 441a.12 or this section 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.

§ 441a.14. Master purchasing and disbursement report.

(a) Each approved slot machine [license applicant or] licensee shall generate a monthly Master Purchasing and Disbursement Report for [gaming service provider transactions] all expenditures. The report shall be submitted to the Bureau of Licensing no later than the 22nd calendar day of the following month[. The report] and must include the following information:

(1) A [payee] register listing alphabetically by payee all [nonpayroll transactions drawn] expenditures paid by the approved slot machine [applicant or] licensee, including [wire] transfers [and] of funds or credits to [gaming service providers] payees, and the following information next to the name of each payee:

(i) The [gaming service provider certification or registration number or exemption code] description code as set forth by the Bureau of Licensing.

(ii) The amount of the individual disbursement or credit.

(iii) The date of the individual disbursement or credit.

(iv) The subtotal of disbursements or credits by payee.

[(v) The grand total of all disbursements made during the reporting period.

(vi) The total summarizing all previous payments in the last 12 months beginning from the first payment date.]

(2) A [payee] register listing alphabetically by payee all [transactions drawn] expenditures paid by any affiliate, intermediary, subsidiary, holding company, management company or agent of the approved slot machine [applicant or] licensee for goods or services that benefit the approved slot machine [applicant or] licensee, including [wire] transfers [and] of funds or credits to [gaming service providers] payees, and the following information next to the name of each payee:

(i) The [gaming service provider certification or registration number or exemption code] description code as set forth by the Bureau of Licensing.

(ii) The amount of the individual disbursement or credit.

(iii) The date of the individual disbursement or credit.

(iv) The subtotal of disbursements or credits by payee.

[(v) The grand total of all disbursements made during the reporting periods.

(vi) The total summarizing all previous payments in the last 12 months beginning from the first payment date.

(3) A register listing alphabetically by gaming service provider transactions, including wire transfers and credits, in which the slot machine applicant or licensee itself acted in the capacity of a gaming service provider by providing goods or services. The register must include:

(i) The gaming service provider certification or registration number or exemption code of the gaming service provider to whom the goods or services were provided.

(ii) The date of each individual transaction.

(iii) The amount of each individual transaction.

(iv) A general description of the type of goods or services provided.

(v) Subtotals of payments or credits received by the slot machine licensee or applicant or disbursements or credits made by the slot machine licensee or applicant during the reporting period, by gaming service provider.

(vi) Totals of payments or credits received or disbursements or credits made by the slot machine licensee or applicant within the applicable 12-month period, by gaming service provider.]

(b) The reports shall be transmitted to the Bureau of Licensing by means of electronic data transmission in a format prescribed by the Board.

§ 441a.16. Slot machine license term and renewal.

(a) The slot machine license will be valid for 3 years from the date on which the initial license is issued or the renewal is approved by the Board.

* * * * *

§ 441a.20. [Slot machine license agreements] (Reserved).

[(a) An agreement or noncontractual relationship between a person and a slot machine licensee which provides for a payment to the person or an arrangement under which a person receives payment, however defined, of a direct or indirect interest, percentage or share of earnings, profits or receipts from slot machines and associated equipment of a licensed facility, shall require Board approval, regardless of the amount or percentage.

(b) Agreements shall be submitted to the Bureau of Licensing at least 60 days prior to the proposed effective date of the agreement. The agreement may not take effect until the agreement has been approved by the Board.

(c) An agreement will not receive Board approval if it, or if it when viewed in the aggregate as related to any of the persons who receive payment as a result of the agreement, creates a monopolization of economic opportunities or control of the

licensed gaming facilities in this Commonwealth under § 421a.5 (relating to monopolization of economic opportunities and control).

(d) Notwithstanding the definition of a principal, persons who receive payments under the agreements or arrangements shall be licensed by the Board prior to receiving the payments, unless the agreement or person is exempted under subsection (d).

(e) The following are exempt from the requirements of this section:

- (1) Fixed sum and hourly payments.
- (2) Gaming junket agreements.

(3) Employee profit sharing agreements administered by class or category.

(4) Management contracts.

(5) Slot system agreements for wide area progressive slot systems.

(6) Horsemen's organizations.

(7) Labor organizations.

(8) Other agreements determined by the Board.]

[Pa.B. Doc. No. 12-974. Filed for public inspection May 25, 2012, 9:00 a.m.]