

CHAPTER 405a. BUREAU OF INVESTIGATIONS AND ENFORCEMENT

Sec.

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Authority

The provisions of this Chapter 405a issued under 4 Pa.C.S. §§ 1201(f), 1202(a) and (b)(25) and (30) and 1206, unless otherwise noted.

Source

The provisions of this Chapter 405a adopted June 22, 2007, effective June 23, 2007, 37 Pa.B. 2808, unless otherwise noted.

§ 405a.1. General duties and powers.

(a) Except for administrative purposes, the Bureau is a distinct entity, independent of the Board, the Office of Chief Counsel and the Office of Hearings and Appeals.

(b) The Bureau has the powers and duties set forth in section 1517 of the act (relating to investigations and enforcement) including:

(1) The investigation and review of applicants seeking a license, permit, certification or registration.

(2) The investigation of licensees, permittees, registrants, certified gaming service providers and other persons for potential violations of the act, including potential violations referred to the Bureau by the Board or other persons.

(3) The monitoring of slot machine operations to ensure compliance with the act, this part and the integrity of gaming, including internal controls, exclusion list enforcement, underage gaming and drinking, individual complaints, information systems, integrity and security issues.

(4) The inspection and examination of all premises where slot machine operations are conducted, gaming devices or equipment are manufactured, sold, distributed or serviced or where records of these activities are prepared or maintained as provided in section 1517(e) of the act. Inspections may include the review and reproduction of any document or record.

(5) The conduct of audits of slot machine operations as necessary to ensure compliance with the act and this part. An audit may include, but is not limited to, reviews, examinations and inspections of:

(i) Accounting, administrative and financial records and procedures utilized by the licensed entity.

(ii) Internal control procedures and management control procedures.

(iii) Security and surveillance departments.

(iv) Corrective action taken by the licensee to resolve reported deficiencies.

- (v) Reports issued by an independent certified public accountant or independently registered public accounting firm pertaining to the adequacy of the licensee's system of internal controls over financial reporting.
 - (vi) The licensee's responses, if any, to the reports noted in paragraph (v).
 - (vii) Other matters required by the Board or the Bureau.
- (6) The referral of possible criminal violations under the act to the Pennsylvania State Police.
- (7) Being a criminal justice agency under 18 Pa.C.S. Chapter 91 (relating to criminal history record information).
- (c) The Bureau will determine the scope of a background investigation, which may not be directed or limited by the Executive Director or Chief Counsel of the Board.

Authority

The provisions of this § 405a.1 amended under 4 Pa.C.S. §§ 1103, 1202(b)(30), 1202.1, 1209(b), 1317(c), 1317.1(c), 1317.2, 1326 and 1516.1.

Source

The provisions of this § 405a.1 amended October 22, 2010, effective October 23, 2010, 40 Pa.B. 6083; amended October 7, 2011, effective October 8, 2011, 41 Pa.B. 5368. Immediately preceding text appears at serial pages (353397) to (353398).

§ 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.

Authority

The provisions of this § 405a.2 amended 4 Pa.C.S. §§ 1202(b)(30), 1311, 1311.1, 1311.2, 1317, 1317.1, 1318 and 1517.

Source

The provisions of this § 405a.2 amended November 7, 2008, effective November 8, 2008, 38 Pa.B. 6150. Immediately preceding text appears at serial page (328466).

§ 405a.3. Office of Enforcement Counsel.

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

(1) Advise the Bureau on all matters, including the granting of licenses, permits, certifications or registrations, the conduct of background investigations, audits and inspections and the investigation of potential violations of the act or this part.

(2) Make recommendations and objections relating to the issuance of licenses, permits, certifications and registrations.

(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 a license, permit, certification or registration, or the suspension or revocation of a license, permit, certification or registration.

(4) Act as the prosecutor in enforcement actions under the act.

(5) Seek a settlement that may include fines, penalties or other actions subject to approval by the Board.

(6) Appear at administrative hearings and other proceedings before the Board.

(7) Petition the Board for the appointment of a trustee under section 1332 of the act (relating to appointment of trustee).

(8) Review all information discovered during an investigation relating to an applicant's suitability and eligibility for a license, permit, certification or registration and, in accordance with law, independently determine the content and scope of that information to be included in the final background investigation report.

(9) Prepare a final background investigation report for inclusion in the applicant's suitability report to the Board relating to an applicant's suitability and eligibility for a license, permit, certification or registration.

(b) The Chief Enforcement Counsel will report to the Executive Director of the Board on administrative matters.

(c) The Chief Enforcement Counsel may be removed by the Board only for good cause shown.

Authority

The provisions of this § 405a.3 amended under 4 Pa.C.S §§ 1202, 1202.1, 1207, 1320 and 1517.

Source

The provisions of this § 405a.3 amended March 28, 2008, effective March 29, 2008, 38 Pa.B. 1474; amended October 7, 2011, effective October 8, 2011, 41 Pa.B. 5368. Immediately preceding text appears at serial page (344533).

§ 405a.4. Conduct.

(a) As provided in section 1202.1(c.1) of the act (relating to code of conduct), an attorney representing the Bureau or Office of Enforcement Counsel, or an employee involved in the hearing process, may not engage in an ex parte communication with a member or presiding officer of the Board, the Chief Counsel or an attorney from the Office of Chief Counsel who is advising the Board in relation to that matter.

(b) A member or presiding officer of the Board, the Chief Counsel or an attorney from the Office of Chief Counsel who advises the Board may not direct, restrict or influence any employee of the Board or Bureau with respect to the conduct and scope of an enforcement proceeding or hearing with which the employee is involved.

(c) If it becomes necessary for the Chief Counsel or an attorney from the Office of Chief Counsel or a Board member to become involved on behalf of the Board in any enforcement proceeding, the Chief Counsel or the attorney from the Office of Chief Counsel or the Board member involved shall be prohibited from participating in the adjudication of that matter.

(d) The Bureau may not disclose any portion of a background investigation report to a member of the Board, the Chief Counsel or an attorney from the Office of Chief Counsel who is advising the Board, prior to the Office of Enforcement Counsel's submission to the Board of the final background investigation report relating to an applicant's suitability and eligibility for a license, permit, certification or registration.

Authority

The provisions of this § 405a.4 amended 4 Pa.C.S. §§ 1202.1 and 1516.1.

Source

The provisions of this § 405a.4 amended October 7, 2011, effective October 8, 2011, 41 Pa.B. 5368. Immediately preceding text appears at serial pages (344533) to (344534).

§ 405a.5. Investigatory subpoena.

(a) The Chief Enforcement Counsel is authorized to require the attendance and testimony of witnesses and the production of books, accounts, papers,

records, documents, files, computer files and photographs in original or electronic format necessary for all action within the authority of the Bureau under the act or this part.

(b) The Chief Enforcement Counsel or a representative may issue subpoenas.

(c) In case of disobedience of any subpoena or the contumacy of any witness appearing before the Chief Enforcement Counsel or a representative, the Chief Enforcement Counsel or a representative may invoke the aid of Commonwealth Court or any court of record of this Commonwealth to require the person subpoenaed to obey the subpoena or to give evidence or to produce books, accounts, papers, records, documents, files, computer files and photographs in original or electronic format relative to the matter in question.

(d) The issuance of a subpoena under this section will not be required to secure the cooperation of a person who is an applicant for, or the holder of, a license, permit, certification or registration issued by the Board, or to secure the voluntary cooperation of any person.

Authority

The provisions of this § 405a.5 amended under 4 Pa.C.S. §§ 1202, 1207, 1320 and 1517.

Source

The provisions of this § 405a.5 amended March 28, 2008, effective March 29, 2008, 38 Pa.B. 1474. Immediately preceding text appears at serial pages (328467) to (328468).

§ 405a.6. Enforcement action.

(a) Upon a determination by the Office of Enforcement Counsel that sufficient facts exist to support enforcement action against a person holding a license, permit, certification or registration issued by the Board, the Office of Enforcement Counsel will initiate a complaint in accordance with § 493a.2 (relating to complaints), including a proposed order for an enforcement action and serve the complaint in accordance with § 491a.5 (relating to service).

(b) The complaint for an enforcement action will include a statement of the facts, the statute, regulation or statement of conditions that the person is being charged with violating and the remedy sought. The proposed order will be accompanied by a certificate of service demonstrating the date of service.

(c) Within 30 days from the date of service of complaint for an enforcement action, the person may file an answer in accordance with § 493a.5 (relating to answers to complaints, petitions, motions and other filings requiring a response) and serve a copy of the answer to the Office of Enforcement Counsel. Failure to file an answer within 30 days will be deemed:

(1) A waiver by the person of any right to an administrative hearing before the Board or the Office of Hearings and Appeals.

(2) An admission by the person of all matters and facts alleged in the proposed order for enforcement action.

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(3) Consent by the person to the entry of a final order by the Board disposing of the enforcement matter.

(d) Upon the person's failure to file an answer within the prescribed 30 days, the Office of Enforcement Counsel will file with the Clerk a Request for Default Judgment and present the proposed enforcement order to the Board. The Board may, by order, adopt the proposed enforcement order.

(e) The Clerk will serve a copy of the Board's final order upon the person in accordance with § 491a.5.

Authority

The provisions of this § 405a.6 amended under 4 Pa.C.S. §§ 1202, 1207, 1320 and 1517.

Source

The provisions of this § 405a.6 amended March 28, 2008, effective March 29, 2008, 38 Pa.B. 1474; amended July 17, 2009, effective July 18, 2009, 39 Pa.B. 3446; amended February 1, 2013, effective February 2, 2013, 43 Pa.B. 660. Immediately preceding text appears at serial pages (358725) to (358726).

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