

## Comments of the Independent Regulatory Review Commission



### Pennsylvania Gaming Control Board Regulation #125-229 (IRRC #3261)

#### Interactive Gaming

October 21, 2020

We submit for your consideration the following comments on the proposed rulemaking published in the August 22, 2020 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (RRA) (71 P.S. § 745.5b). Section 5.1(a) of the RRA (71 P.S. § 745.5a(a)) directs the Pennsylvania Gaming Control Board (Board) to respond to all comments received from us or any other source.

#### 1. Protection of the public health, safety and welfare; Implementation procedures.

Act 42 of 2017 amended Title 4 Pa.C.S., relating to Amusements, to expand gaming opportunities in the Commonwealth. As it pertains to this regulation, Act 42 provides the authorized Category 1, 2, and 3 slot machine licensees the opportunity to petition to offer three categories of interactive gaming: non-peer-to-peer interactive games which simulate slot machines, non-peer-to-peer interactive games which simulate table games, and peer-to-peer interactive games which simulate poker.

In order to implement interactive gaming, the General Assembly granted the Gaming Board (Board) authority to promulgate temporary regulations which would expire two years after publication in the *Pennsylvania Bulletin*. The temporary regulations were published in five packages as follows:

- Chapters 801-803 were published on January 6, 2018;
- Chapters 804, 811, 812, 814, 815 and 818 were published on May 5, 2018;
- Chapter 809 and Chapters 810, 813 and 817 were published in two packages on April 28, 2018; and
- Chapter 830 was published on March 9, 2019.

Chapter 830 is the only regulation which remains in effect, all others having expired between January and May of this year.

This proposed regulation begins the process of converting the Board's temporary interactive gaming regulations to permanent regulations. In response to Regulatory Analysis Form (RAF) question #29, the Board indicates that the expected date of delivery of the final-form regulation is the third-fourth quarter of 2021. A cornerstone of the Pennsylvania Race Horse Development

and Gaming Act (Act) (4 Pa.C.S. §§ 1101 -- 4506) is the protection of the public health, safety and welfare and also the protection of the integrity of gaming. How will Board protect the public and also the integrity of the games it is charged with overseeing without temporary or permanent regulations in place? We urge the Board to return this regulatory package for final review to the Independent Regulatory Review Commission (IRRC) and the designated standing committees of the General Assembly as quickly as possible to ensure that interactive gaming is properly regulated.

## **2. Compliance with the RRA and regulations of IRRC.**

Section 5.2 of the RRA (71 P.S. § 745.5b) directs IRRC to determine whether a regulation is in the public interest. When making this determination, IRRC considers criteria such as economic or fiscal impact and reasonableness. To make that determination, IRRC must analyze the text of the proposed regulation and the reasons for the new or amended language. IRRC also considers the information a promulgating agency is required to provide under Section 5 of the RRA in the RAF (71 P.S. § 745.5(a)).

There are several instances where the Board's responses to RAF questions are incomplete. In returning the final form regulation, we the Board to:

- Identify what other states allow interactive gaming and how those states administer interactive gaming in response to RAF question #12;
- Categorize those entities mentioned in response to RAF question #15, such as interactive gaming operators, interactive gaming manufacturers, interactive gaming suppliers, etc., as either small businesses or another size business; and
- Approximate the number of interactive gaming operators, interactive gaming manufacturers, interactive gaming suppliers, interactive gaming service providers, and the principals, key employees, gaming employees, and nongaming employees listed in response to RAF question #16.

## **3. Section 811a.2. Internal controls. – Clarity and lack of ambiguity.**

Paragraph (b)(13) states in part, "For the purpose of this paragraph, "personal identifiable information" means any data or information that can be used, on its own or with other data or information, to identify, contact or otherwise locate a registered player, including a registered player's name, address, date of birth and Social Security number." We note, however, that the term "personal identifiable information" is used elsewhere in the regulation. For example, Section 810a.6 (relating to software authentication) states in part, "(4) To prevent leakage of personal identifiable information, there must be a documented method to ensure that raw production data is not used in testing." We ask the Board to move the definition of the term "personal identifiable information" to Section 801a.2 (relating to definitions) of the final form regulation to provide clarity for the regulated community.

**4. Section 812a.13. Dormant accounts. – Nonregulatory language.**

Subsection (b) states, “An interactive gaming account will be deemed dormant if there is no activity (login, game play, withdrawal, **and the like**)” for [two] years.” [Emphasis added.] “And the like” is nonregulatory language which does not provide a standard for the regulated community. We ask the Board to clarify this provision in the final-form regulation.

**5. Chapter 815a. Interactive gaming self-excluded persons. – Protection of the public health, safety and welfare; Clarity and lack of ambiguity.**

On January 29, 2020, IRRC submitted comments related to the Board’s proposed regulation #125-225 (IRRC #3246) entitled “Slot Machine Licenses; Accounting and Internal Controls; Compulsive and Problem Gambling Requirements; Casino Self-Exclusion; Table Game Equipment; Credit.” IRRC’s comment #1 related to self-exclusion and raised several concerns regarding how the Board would handle the self-exclusion process as relates to the various forms of gaming, including interactive gaming. The Board has communicated with IRRC that the language included in Chapter 815a has been amended to align with the language in proposed regulation #125-225. We ask the Board to ensure that the language in this final-form regulation mirrors, as appropriate, the language in final-form regulation #125-225 in order to protect the public health, safety and welfare and to provide clarity for the regulated community.