Comments of the Independent Regulatory Review Commission

Pennsylvania Gaming Control Board Regulation #125-230 (IRRC #3262)

Video Gaming

November 4, 2020

We submit for your consideration the following comments on the proposed rulemaking published in the September 5, 2020 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b). Section 5.1(a) of the Regulatory Review Act (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 rulemaking, Act 42 legalized video gaming terminals (VGTs) at truck stop establishments.

Under Act 42, the Board was given authority to promulgate temporary regulations to administer VGT gaming. Those temporary VGT regulations were published in the March 17, 2018 edition of the *Pennsylvania Bulletin.* The temporary regulations, except for regulations related to security and surveillance, expired two years after publication.

This proposed regulation begins the process of converting the Board's temporary VGT 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 or 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 VGTs are 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. We ask the Board to provide more complete answers as directed below:

- Identify what other states allow VGTs and how those states administer video gaming in response to RAF question #12; and
- Categorize those entities mentioned in response to RAF question #15 as either small businesses or another size business.

3. Section 1101a.2. Definitions. – Clarity; Reasonableness.

The Board is defining the term "commercial motor vehicle" by referencing that definition from the Uniform Commercial Driver's License Act found in 75 Pa.C.S § 1603 (relating to definitions.) Why did the Board decide to use this definition for the term "commercial motor vehicle"?

4. Section 1102a.3. Conditional terminal operator and procurement agent licenses. – Clarity.

We have two concerns with this section. First, the title of this section references two types of licenses. However, the text of this section only addresses conditional terminal operator licenses. We suggest that the title be amended to reflect the correct subject matter of this section.

Second, the last subsection of this section, Subsection (f), states the following: "A request for conditional licensure must include a $100 fee in addition to the applicable fee under 4 Pa.C.S. § 4101 (relating to fee)." This is the first reference to the fact that the request for conditional licensure is separate and optional from that of a permanent license. We believe the clarity of the section would be improved if this was mentioned at the beginning of the section. Also, is the request made on a form or in some other manner? This should also be clarified in the final-form regulation.

We note that similar language is found in §§ 1103a.3 (relating to conditional establishment licenses) and 1104a.2 (relating to conditional procurement agent principal licenses) and ask the Board clarify those sections as well.

5. Section 1102a.4. Terminal operator licensee change of control. – Clarity.

This section uses phrase the "change of control" and "controlling interest" interchangeably. We have two concerns. First, the phrase "controlling interest" is defined in Section 3102 of the Act (4 Pa.C.S. § 3102). We believe it would be beneficial to the regulated community if that term was included in § 1101a.2, relating to definitions.

Second, we believe the clarity of Subsection (a) would be improved by adding the phrase "or acquisition of controlling interest" after the phrase "controlling interest." We note that similar language is found in §§ 1103a.4(a) (relating to establishment licensee change of control), 1106a.1(g)(1) (relating to supplier licenses) and 1107a.1(g)(1) and ask the Board to clarify those sections as well.

6. Section 1103a.1. Establishment licenses. – Need; Reasonableness.

Subsection (b) states that truck stop establishments must meet certain requirements. Subsection (b)(2) requires at least 20 parking spots for commercial motor vehicles. The definition of "commercial motor vehicle" noted above addresses the weight or type of vehicle that qualifies as such, but it does not address the length or width of a particular vehicle. Why does Subsection (b)(2) require parking spaces to be "of sufficient size to accommodate vehicles which are 8 feet in width and 53 feet in length" or of a certain weight? What is the need for the length and width requirements of this subsection? This should be explained in the Preamble to the final-form regulation.

7. Section 1106a.1. Supplier licenses. – Protection of the public health, safety and welfare; Clarity; Reasonableness.

We have two concerns with this section. First, Subsection (a)(1) states the following: "A supplier filing an application of licensure under this chapter shall not be required to file a diversity plan as set forth in § 431a.2(a)(3)." Why is a diversity plan not needed for this type of license? We ask the Board to explain the need for this provision in the Preamble to the final-form regulation. We note a similar provision can be found at § 1107a.1(a)(1), relating to manufacturer licenses.

Second, Subsection (b)(5) requires an applicant to submit details of "any supplier license issued by the Board to the applicant under section 1317 of the act (relating to supplier licenses)." To protect the integrity of gaming, we believe it would be beneficial to amend this subsection to require applicants to notify the Board of any supplier license that was not only issued, but also denied. This would be similar to requirement of Subsection (b)(6) to notify the Board if a license was granted or denied by other gaming jurisdictions.

We note that similar language is found in § 1107a.1(b) (relating to manufacturer licenses) and ask the Board to clarify that section as well.

8. Chapter 1112a. Video gaming terminal, redemption terminal and associated equipment testing and certification. – Clarity.

Section 1112a.1, relating to definitions, includes a definition for "educational institution." This term is not used in the body of Chapter 1112a. However, it is used in Chapter 1113a, relating to possession of video gaming terminals. When the Board prepares the final-form regulation, we ask that it review the definitions included in Chapter 1112a to ensure they are being used in that chapter and to delete or add definitions as appropriate.

9. Section 1112a.1. Definitions. – Clarity.

The definition of "asset number" reads as follows: "A unique number assigned to a video gaming terminal by a terminal operator for the purpose of tracking the video gaming terminal, while owned by the terminal operator." It is our understanding that VGTs can also be leased by terminal operators. We suggest that this definition be amended to reflect that fact or amended to delete the reference to ownership of VGTs.

10. Section 1112a.9. Redemption terminals. – Clarity.

Subsection (g)(1) requires a lock securing a storage box. Subsection (g)(3) requires a lock securing the contents of the storage box and the key to lock "must be different from the keys

referenced in paragraphs (1) and (2)." These provisions are unclear because Subsection (g)(1) and (g)(2) reference locks, but Subsection (g)(3) references keys. In addition, it is unclear if the lock or key referenced in Subsection (g)(1) must be different than the lock or key referenced in Subsection (g)(3). This should be clarified in the final-form regulation.

11. Section 1113a.1. Possession of video gaming terminals generally. – Clarity.

Subsection (b)(1) includes a reference to VGTs outside of a "licensed facility." We believe the intent of this subsection is to regulate the possession of VGTs outside of the establishment licensee's facility and suggest that the final-form regulation be amended to reflect that distinction.

12. Section 1116a.3. Redemption terminals. – Clarity.

Subsection (d) reads as follows: "The redemption terminal must only accept redemption tickets from video gaming terminals in the same video gaming area." We note that § 1112a.9 (e), allows a redemption terminal to function as bill breaker. We believe the clarity of Subsection (d) would be improved if it included a reference to § 1112a.9(e) and the fact that redemption terminals can also be used as bill breakers.

13. Section 1118a.5. Penalties. – Clarity.

Chapter 1118a relates to compulsive and problem gaming. This section reads as follows: "An establishment licensee that fails to fulfill any of the requirements of this chapter shall be assessed an administrative penalty and may have its establishment license suspended by the Board." It is our understanding that Section 3516 of the Act (relating to issuance and renewal) (4 Pa.C.S. § 3516) allows the Board to suspend, revoke or deny renewal of a license. Since the Board has the authority to revoke and deny renewal of a license, we suggest that those potential actions also be included in this section of the rulemaking and other sections as the Board deems appropriate.

14. Chapter 1119a. Self-exclusion. – Protection of the public health, safety and welfare; Clarity.

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. The Board has communicated with IRRC that the language included in Chapter 1119a 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.

15. Chapter 1120a. Exclusion of persons from video gaming. – Clarity.

Subsection 1120a.2(a) states that the Board will maintain a list of persons to be excluded or ejected from an "establishment licensee facility." This term is also used in §§ 1120a.3(a)(1) and (2). However, other subsections of this chapter such as §§ 1120a.3(a)(3) and (4) and (b)(1) use the term "licensed facility." These defined terms have different meanings. We ask the Board to

review the use of these two terms throughout this chapter to ensure that the proper terminology is used consistently.

16. Miscellaneous clarity.

- § 1104a.1(e) should be amended to include the word “applicant” after the word “principal.”
- § 1105a.1(e) should be amended to include the word “applicant” after the phrase “key employee.”