

CHAPTER 401a. PRELIMINARY PROVISIONS

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Authority

The provisions of this Chapter 401a 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 401a adopted June 22, 2007, effective June 23, 2007, 37 Pa.B. 2808, unless otherwise noted.

§ 401a.1. Purpose.

The purpose of this part is to facilitate the implementation of the act.

§ 401a.2. Construction.

(a) This part shall be liberally construed to secure the just, speedy and efficient determination of every action, proceeding or issue presented to which it is applicable. The Board at any stage of an action, proceeding or issue presented may disregard an error or defect of procedure which does not affect the substantive rights of the participants.

(b) Subsection (a) supersedes 1 Pa. Code § 31.2 (relating to liberal construction).

§ 401a.3. Definitions.

The following words and terms, when used in this part, have the following meanings, unless the context clearly indicates otherwise:

Act—The Pennsylvania Race Horse Development and Gaming Act (4 Pa.C.S. §§ 1101—1904).

Affiliate, affiliate of or person affiliated with—A person that directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with a specified person.

Applicant—A person, who on his own behalf or on behalf of another, is applying for permission to engage in an act or activity which is regulated under the act or this part. In cases in which the applicant is a person other than an individual, the Board will determine the associated persons whose qualifications are necessary as a precondition to the licensing of the applicant.

Application—A written request for permission to engage in an act or activity which is regulated under the act or this part.

Approved, approval or approve—The date that an application to the Board is granted regardless of the pendency of administrative or judicial appeals or other legal action challenging the decision of the Board.

Arrest—Detaining, holding, or taking into custody by police or other law enforcement authorities to answer for an alleged commission of an offense.

Associated equipment—Equipment or mechanical, electromechanical or electronic contrivance, component or machine used in connection with gaming, including the following:

- (i) Linking devices which connect to progressive slot machines or slot machines.
- (ii) Replacement parts needed to conduct slot machine gaming.
- (iii) Equipment which affects the proper reporting of gross revenue.
- (iv) Computerized systems for controlling and monitoring slot machines, including, the central control computer and devices for weighing or counting money.

BIE or Bureau—The Bureau of Investigations and Enforcement of the Board.

Background investigation—A security, criminal, credit and suitability investigation of a person as provided for in the act. The investigation must include the status of taxes owed to the United States and to the Commonwealth and its political subdivisions.

Backside area—

(i) Those areas of the racetrack facility that are not generally accessible to the public and which include facilities commonly referred to as barns, track kitchens, recreation halls, backside employee quarters and training tracks, and roadways providing access thereto.

(ii) The term does not include those areas of the racetrack facility which are generally accessible to the public, including the various buildings commonly referred to as the grandstand or the racing surfaces, paddock enclosures and walking rings.

Board—The Pennsylvania Gaming Control Board.

Board web site—www.gamingcontrolboard.pa.gov.

Central control computer—A central site computer controlled by the Department and accessible by the Board to which all slot machines communicate for the purpose of auditing capacity, real-time information retrieval of the details of a financial event that occurs in the operation of a slot machine, including, coin in, coin out, ticket in, ticket out, jackpots, machine door openings and power failure, and remote machine activation and disabling of slot machines.

Certificate holder—A slot machine licensee that was awarded a certificate to operate table games.

Certified gaming service provider—A gaming service provider that holds a gaming provider certification.

Certified vendor—A vendor that holds a vendor certification.

Charge—An indictment, complaint, information, summons or other notice of an alleged commission of an offense.

Clerk—The Clerk to the Board's Office of Hearings and Appeals.

Collateral agreement—Any contract between a management company or its affiliates, intermediaries, subsidiaries or holding companies and a slot machine licensee or its affiliates, intermediaries, subsidiaries or holding companies that

is related either directly or indirectly to a management contract or to any rights, duties or obligations created between a management company and a slot machine licensee.

Commission or Commissions—The State Horse Racing Commission or the State Harness Racing Commission, or both, as the context may require.

Compensation—A thing of value, money or a financial benefit conferred on or received by a person in return for services rendered, or to be rendered, whether by that person or another.

Complimentary—

(i) Any lodging, service or item, including a cash or noncash gift, which is provided directly or indirectly to an individual at no cost or at a reduced cost which is not generally available to the public.

(ii) The term includes lodging provided to an individual at a reduced price due to the anticipated or actual gaming activities of that individual. Group rates, including convention and government rates, shall be deemed generally available to the public.

(iii) The term includes points that are awarded to patrons of a licensed facility who are members of the licensed facility's player rewards program and credits for promotional slots play.

Conduct of gaming—The licensed placement and operation of games of chance under the act or this part and approved by the Board at a licensed facility.

Confidential information—Materials that are not generally available to the public.

Controlling interest—

(i) For a publicly traded domestic or foreign corporation, a controlling interest is an interest in a legal entity, applicant or licensee if a person's sole voting rights under state law or corporate articles or bylaws entitle the person to elect or appoint one or more of the members of the board of directors or other governing board or the ownership or beneficial holding of 5% or more of the securities of the publicly traded corporation, partnership, limited liability company or other form of publicly traded legal entity, unless this presumption of control or ability to elect is rebutted by clear and convincing evidence.

(ii) For a privately held domestic or foreign corporation, partnership, limited liability company or other form of privately held legal entity, a controlling interest is the holding of any securities in the legal entity, unless this presumption of control is rebutted by clear and convincing evidence.

(iii) A person who owns or beneficially holds less than 5% of the securities of a privately held domestic or foreign corporation, partnership, limited liability company or other form of privately held legal entity shall be deemed as having rebutted the presumption of control by clear and convincing evidence.

Conviction—

(i) A finding of guilt or a plea of guilty or nolo contendere, whether or not a judgment of sentence has been imposed as determined by the law of the jurisdiction in which the prosecution was held.

(ii) The term does not include a conviction that has been expunged or overturned or for which an individual has been pardoned or an order of Accelerated Rehabilitative Disposition has been entered.

*Corporation—*A publicly traded corporation.

*Credential—*A form of identification approved and issued by the Board.

*Department—*The Department of Revenue of the Commonwealth.

Ex parte communication—

(i) Any off-the-record communication engaged in or received by a member or presiding officer of the Board regarding the merits of or any fact in issue relating to a pending matter before the Board or presiding officer or which may reasonably be expected to come before the Board or presiding officer in a contested on-the-record proceeding.

(ii) The term does not include the following:

(A) Off-the-record communications by or between a member or presiding officer of the Board, the Department, the Pennsylvania State Police, the Attorney General or other law enforcement official prior to the beginning of the proceeding solely for the purpose of seeking clarification or correction to evidentiary materials intended for use in the proceedings.

(B) Communications between the Board or a member and the Office of Chief Counsel.

*Federal tax identification number—*The Social Security number of an individual or the Employer Identification Number of a business entity, fiduciary or other person.

*Final order—*One of the following:

(i) An action by the Board which approves, issues, renews, revokes, suspends, conditions, denies issuance or renewal of a license, permit, certification or registration.

(ii) An action by the Board which affects personal or property rights, privileges, immunities, duties, liabilities or obligations and disposes of all claims by or against parties before the Board.

(iii) An action by the Board which is designated by the Board as final.

*Financial backer—*An investor, mortgagee, bondholder, note holder or other source of equity or capital provided to an applicant or licensed entity.

*Formal record—*The pleadings in a matter or proceeding, a notice or Board order initiating the matter or proceeding, and if a hearing is held: the transcript of a hearing, exhibits received in evidence, offers of proof, motions, stipulations, subpoenas, proofs of service, determinations made by the Board thereon, and certifications to the Board.

*Gaming area or gaming floor—*Any portion of a licensed facility where slot machines have been installed for use or play.

Gaming employee—

- (i) An employee of a slot machine licensee, including:
 - (A) Cashiers.
 - (B) Change personnel.
 - (C) Count room personnel.
 - (D) Slot attendants.
 - (E) Dealers of croupiers.
 - (F) Machine mechanics, computer machine technicians or table game device technicians.
 - (G) Security personnel.
 - (H) Surveillance personnel.
 - (I) Personnel with SLOTS Link security administrator access and responsibilities.
 - (J) Hosts or other individuals authorized to extend complimentary services, including employees performing functions similar to those performed by a gaming junket representative.
 - (K) Promotional play supervisors, credit supervisors, pit supervisors, cashier supervisors, shift supervisors, table game managers and assistant managers and other supervisors and managers, except for those specifically identified in this part as key employees.
 - (L) Boxpersons.
 - (M) Floorpersons.
 - (N) Personnel authorized to issue promotional play.
 - (O) Personnel authorized to issue credit.
 - (P) Directors of the following departments:
 - (I) Food and beverage.
 - (II) Facilities.
 - (III) Construction.
- (ii) Employees of a licensed supplier, manufacturer, manufacturer designee or gaming related gaming service provider whose duties:
 - (A) Are directly involved with the repair, service or distribution of slot machines, table game devices or associated equipment sold or provided to a licensed facility within this Commonwealth.
 - (B) Require the employee's presence on the gaming floor or in a restricted area of a licensed facility.
- (iii) Employees of a gaming service provider whose duties require:
 - (A) The employee's presence on the gaming floor or in a restricted area of a licensed facility.
 - (B) The employee to access the slot machines, table game devices or associated equipment in a manner that does not affect the play of the game.
- (iv) Gaming junket representatives.
- (v) Other employees or individuals who the Board determines, after a review of the work being performed, require permits for the protection of the integrity of gaming.

Gaming service provider—

- (i) A person that provides goods or services to a slot machine licensee or applicant, but is not required to be licensed as a manufacturer, manufacturer designee, supplier, management company or gaming junket enterprise.

(ii) The term includes:

(A) Suppliers of alcoholic beverages (if not otherwise regulated by the Pennsylvania Liquor Control Board), food and nonalcoholic beverages.

(B) Refuse handlers.

(C) Vending machine providers and service personnel.

(D) Linen and uniform suppliers.

(E) Janitorial and maintenance companies, not relating to the repair of slot machines or associated equipment.

(F) Tenant businesses or franchises located within licensed facilities.

(G) Providers of transportation services.

(H) Companies, subcontractors and professionals involved in the construction of a facility for a slot machine licensee or applicant.

(I) Lessors of real property or goods.

(J) Other entities which the Board will determine based on detailed analyses by the Board of gaming service provider contracts.

Gaming service provider certification—A certification issued by the Board authorizing a gaming service provider to provide goods or services to a slot machine licensee or applicant.

Gaming service provider registration—A registration issued by the Board authorizing a gaming service provider to provide goods or services to a slot machine licensee or applicant.

Gross terminal revenue—The total of cash or cash equivalent wagers received by a slot machine minus the total of:

(i) Cash or cash equivalents paid out to patrons as a result of playing a slot machine which are paid to patrons either manually or paid out by the slot machine.

(ii) Cash paid to purchase annuities to fund prizes payable to patrons over a period of time as a result of playing a slot machine.

(iii) Any personal property distributed to a patron as the result of playing a slot machine. This does not include travel expenses, food, refreshments, lodging or services.

(iv) The term does not include counterfeit money or tokens, coins or currency of other countries which are received in slot machines (except to the extent that they are readily convertible to United States currency), cash taken in fraudulent acts perpetrated against a slot machine licensee for which the licensee is not reimbursed or cash received as entry fees for contests or tournaments in which the patrons compete for prizes.

Holding company—A person, other than an individual, which, directly or indirectly, owns, has the power or right to control or to vote 20% or more of the outstanding voting securities of a corporation or other form of business organization. A holding company indirectly has, holds or owns any such power, right or security if it does so through an interest in a subsidiary or successive subsidiaries.

IRS—The Internal Revenue Service of the United States.

Independent contractor—A person who performs professional, scientific, technical, advisory or consulting services to the Board for a fee, honorarium or similar compensation pursuant to a contract.

Institutional investor—A retirement fund administered by a public agency for the exclusive benefit of Federal, State or local public employees, investment company registered under the Investment Company Act of 1940 (15 U.S.C.A. §§ 80a-1—80a-64), collective investment trust organized by banks under Part Nine of the Rules of the Comptroller of the Currency, closed end investment trust, chartered or licensed life insurance company or property and casualty insurance company, banking and other chartered or licensed lending institution, investment advisor registered under the Investment Advisors Act of 1940 (15 U.S.C.A. §§ 80b-1—80b-21), and other persons registered in any foreign jurisdiction and regulated pursuant to a statute of any foreign jurisdiction that the Board determines to be substantially similar to either or both of the aforementioned statutes.

Intermediary—A person, other than an individual, which is:

(i) A holding company with respect to a corporation or other form of business organization, which holds or applies for a license under the act or this part.

(ii) A subsidiary with respect to a holding company.

Issued, issuance or issue—The date when a determination by the Board approving an application becomes final, binding and nonappealable and is not subject to a pending legal challenge.

Key employee—An individual who is:

(i) Employed in a director or department head capacity and who is empowered to make discretionary decisions that regulate slot machine or table game operations in this Commonwealth, including the general manager and assistant manager of the licensed facility, director of slot operations, director of table games operations, director of cage operations, director of credit operations, director of surveillance, director of marketing, director of management information systems, director of security, director of human resources, comptroller and any employee who is not otherwise designated as a gaming employee and who supervises the operations of these departments or to whom these department directors or department heads report.

(ii) Employed by a slot machine licensee, manufacturer licensee or supplier licensee whose duties affect or require contact with slot machines, slot monitoring systems, casino management systems, player tracking systems and wide-area progressive systems for use or play in this Commonwealth, whether or not the individual is assigned to gaming operations in this Commonwealth.

(iii) A sales representative seeking to sell slot machines, table game devices and associated equipment for use in this Commonwealth on behalf of a licensed manufacturer, manufacturer designee or supplier.

(iv) Employed in other positions which the Board will determine based on detailed analyses of the employee's duties or the job descriptions.

License fee—The amount of money required to be paid for the issuance or renewal of any type of license required by the act or as established by the Board.

Licensed entity—A slot machine licensee, manufacturer licensee, supplier licensee or other person licensed by the Board under this part.

Licensed entity representative—A person acting on behalf of or representing the interest of an applicant, licensee, permittee or registrant, including an attorney, agent or lobbyist regarding any matter which may reasonably be expected to come before the Board.

Licensed facility—

(i) The physical land-based location at which a licensed gaming entity is authorized to place and operate slot machines including the gaming floor, all restricted areas servicing slot operations, and food, beverage and retail outlets and other areas serving the gaming floor which are located either on or directly accessible from and adjacent to the gaming floor or the restricted areas servicing slot operations.

(ii) The term does not encompass areas or amenities exclusive to pari-mutuel activities, hotel activities including hotel rooms, catering or room service operations serving a hotel, convention, meeting and multipurpose facilities, retail facilities, food and beverage outlets and other amenities and activities not located on or adjacent to the gaming floor, or related to slot machine gaming operations.

Licensed gaming entity—A person that holds a slot machine license.

Licensed racetrack or racetrack—

(i) The physical facility and grounds where a person has obtained a license from either the State Horse Racing Commission or the State Harness Racing Commission to conduct live thoroughbred or harness race meetings respectively with pari-mutuel wagering.

(ii) The term “racetrack” or “its racetrack” means the physical land-based location at which live horse racing is conducted even if not owned by the person.

Licensed racing entity—A legal entity that has obtained a license to conduct live thoroughbred or harness horse race meetings respectively with pari-mutuel wagering from either the State Horse Racing Commission or the State Harness Racing Commission under the Race Horse Industry Reform Act.

Management company—A person or legal entity which, through a Board-approved management contract with a slot machine licensee, is responsible for the management of all or part of the operation of a licensed facility.

Management contract—A contract, subcontract or collateral agreement between a management company and a slot machine licensee if the contract provides for the management of all or part of a licensed facility.

Manufacturer—A person who manufactures, builds, rebuilds, fabricates, assembles, produces, programs, designs or otherwise makes modifications to

slot machines or associated equipment for use or play of slot machines in this Commonwealth for gaming purposes.

Manufacturer designee—A person who is designated by a licensed manufacturer pursuant to an agreement to supply or repair the licensed manufacturer's slot machines or associated equipment.

Manufacturer designee license—A license issued by the Board authorizing a manufacturer designee to supply or repair slot machines or associated equipment of a licensed manufacturer for use in this Commonwealth for gaming purposes.

Manufacturer designee licensee—A manufacturer designee that obtains a manufacturer designee license.

Manufacturer license—A license issued by the Board authorizing a manufacturer to manufacture or produce slot machines or associated equipment for use in this Commonwealth for gaming purposes.

Manufacturer licensee—A person that holds a manufacturer license.

Manufacturer's serial number—The unique number permanently assigned to a slot machine by a manufacturer for identification and control purposes.

Member—An individual appointed to and sworn in as a member of the Board in accordance with section 1201(b) of the act (relating to Pennsylvania Gaming Control Board established).

Municipality—A city, borough, incorporated town or township.

Net terminal revenue—The net amount of the gross terminal revenue less the tax and assessments imposed by sections 1402, 1403, 1405 and 1407 of the act.

Nongaming employee—An employee of a slot machine licensee, manufacturer, manufacturer designee, supplier or 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, table game devices or associated equipment other than exterior contact that does not affect the play of the game.

(B) In a restricted area and the employee:

(I) Is under the constant supervision of an employee of the slot machine licensee who is licensed or permitted and has appropriate access clearance to be in the restricted area.

(II) Is not required to touch or have contact with slot machines, table game devices or associated equipment other than exterior contact that does not affect the play of the game.

(ii) Who the Board determines, after a review of the work being performed, requires registration for the protection of the integrity of gaming.

Nonprimary location—A facility in which pari-mutuel wagering is conducted by a licensed racing entity other than the racetrack where live racing is conducted.

Occupation permit—A permit issued by the Board authorizing an individual to be employed or work as a gaming employee.

Offense—Felonies, crimes, high misdemeanors, misdemeanors, disorderly persons offenses, petty disorderly offenses, driving while intoxicated/impaired, motor vehicle offenses and violations of probation or any other court order.

On-the-record proceeding—A matter that comes before the Board or a presiding officer by way of application, complaint, petition, exception, appeal of staff decision, consent agreement or other proceeding for which a formal record is maintained and upon which the Board bases its order and adjudication.

Pending matter or contested on the record proceeding—

(i) A matter including the discretionary issuance, approval, renewal, conditioning, revocation, suspension or denial of any license, permit, certification or registration or any petitions or motions that would require Board consideration.

(ii) The term does not include a policy or administrative matter.

Permit fee—The amount of money required to be paid for issuance or renewal of any type of permit required by the Board.

Permittee—A holder of a permit issued under this part.

Person—A natural person, corporation, foundation, organization, business trust, estate, limited liability company, licensed corporation, trust, partnership, limited liability partnership, association or other form of legal business entity.

Presiding officer—

(i) A member of the Board, or other person designated by the Board to conduct a proceeding.

(ii) This definition supersedes 1 Pa. Code § 31.3 (relating to definitions).

Principal—Includes the following:

(i) An officer.

(ii) Director.

(iii) Person who directly holds a beneficial interest in or ownership of the securities of an applicant or licensee.

(iv) Person who has a controlling interest in an applicant or licensee, or has the ability to elect a majority of the Board of directors of a licensee or to otherwise control a licensee.

(v) Lender or other licensed financial institution of an applicant or licensee, other than a bank or lending institution which makes a loan or holds a mortgage or lien acquired in the ordinary course of business.

(vi) Underwriter of an applicant or licensee.

(vii) Other persons or employees of an applicant, slot machine licensee, manufacturer licensee or supplier licensee deemed to be a principal by the Board.

Publicly traded corporation—A person other than an individual which:

(i) Has a class or series of securities registered under the Securities Exchange Act of 1934 (15 U.S.C.A. §§ 78a—78pp) or on a foreign stock exchange determined by the Bureau of Licensing to have similar listing and reporting requirements to exchanges that are regulated under the Securities Exchange Act of 1934.

(ii) Is a registered management company under the Investment Company Act of 1940.

(iii) Is subject to the reporting obligations imposed by section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C.A. § 78o(d)) by reason of having filed a registration statement which has become effective under the Securities Act of 1933 (15 U.S.C.A. §§ 77a—77aa).

Race Horse Industry Reform Act—4 P. S. §§ 325.101—325.402.

Registered gaming service provider—A gaming service provider that is registered with the Board.

Registered vendor—A vendor that is registered with the Board.

Regular or continuing basis—A vendor will be deemed to conduct business on a regular or continuing basis if:

(i) The total dollar amount of transactions with a single slot machine licensee or applicant is or will be greater than \$200,000 within any consecutive 12 month period.

(ii) The total dollar amount of transactions with slot machine licensees or applicants is or will be greater than \$500,000 within any consecutive 12 month period.

Restricted area—An area where access is limited and is specifically designated by the Board as restricted, including:

(i) The cashiers' cage.

(ii) The soft count room.

(iii) The surveillance monitoring room.

(iv) The slot machine storage and repair rooms.

(v) The progressive controller room.

(vi) The central control computer room.

(vii) The information technology department.

(viii) Any additional area that the slot machine licensee designates as restricted in its Board-approved internal controls.

Revenue- or tourism-enhanced location—A location within this Commonwealth determined by the Board, which will maximize net revenue to the Commonwealth or enhance year-round recreational tourism within this Commonwealth, in comparison to other proposed facilities and is otherwise consistent with the act and its declared public policy purposes.

SEC—The Securities and Exchange Commission of the United States.

Secretary—Secretary to the Board.

Securities—As defined in the Pennsylvania Securities Act of 1972 (70 P. S. §§ 1-101—1-703).

Slot machine—

(i) A mechanical or electrical contrivance, terminal, machine or other device approved by the Board which, upon insertion of a coin, bill, token, gaming voucher, coupon or similar object therein or upon payment of any consideration, including the use of electronic payment system except a credit card or debit card, is available to play or operate, the play or operation of which, whether by reason of skill or application of the element of chance, or both, may deliver or entitle the person playing or operating the contrivance, terminal, machine or other device to receive cash, billets, tokens, gaming

vouchers or electronic credits to be exchanged for cash or to receive merchandise or anything of value, whether the payoff is made automatically from the machine or manually. A slot machine:

(A) May utilize spinning reels or video displays, or both.

(B) May or may not dispense coins, vouchers or tokens to winning patrons.

(C) May use an electronic credit system for receiving wagers and making payouts.

(ii) The term includes associated equipment necessary to conduct the operation of the contrivance, terminal, machine or other device.

Slot machine license—A license issued by the Board authorizing a person to place and operate slot machines under the act.

Slot machine licensee—A person that holds a slot machine license.

SLOTS Link—An electronic application system developed by the Board.

Staff—An employee or an independent expert, including but not limited to, attorneys, accountants, investment bankers, architects, engineers, scientific and technical consultants and licensed financial brokers retained by the Board.

State gaming receipts—Revenues and receipts required by the act to be paid into the State Gaming Fund, the Pennsylvania Race Horse Development Fund and the Pennsylvania Gaming Economic Development and Tourism Fund, and all rights, existing on July 5, 2004, or coming into existence after July 5, 2004, to receive any of those revenues and receipts.

State Treasurer—The State Treasurer of the Commonwealth.

Statement of Investigation—An order of the Board in response to a petition for an order regarding inquiry and investigation of a purchase of an eligible applicant or licensee which specifies the particular criterion satisfied by the purchaser, provides for the continuing obligation of the purchaser to provide information to the Board, is applicable only as to the purchase of a specific eligible applicant or licensee, and provides an expiration date not to exceed 6 months from the date of issuance unless otherwise extended by the Board.

Subsidiary—A person other than an individual. The term includes:

(i) A corporation, any significant part of whose outstanding equity securities are owned, subject to a power or right of control, or held with power to vote, by a holding company or an intermediary company.

(ii) A significant interest in a person, other than an individual, which is owned, subject to a power or right of control, or held with power to vote, by a holding company or an intermediary company.

(iii) A person deemed to be a subsidiary by the Board.

Supplier—A person that sells, leases, offers or otherwise provides, distributes or services slot machines or associated equipment for use or play of slot machines in this Commonwealth at a licensed gaming facility.

Supplier license—A license issued by the Board authorizing a supplier to provide products or services related to slot machines or associated equipment to licensed gaming entities.

Supplier licensee—A person that holds a supplier license.

Trade secret—A private formula, pattern, device, cost study or compilation of information which is used in a business and which, if disclosed could negate an advantage over competitors who do not know or use it.

Underwriter—As defined in the Pennsylvania Securities Act of 1972.

Authority

The provisions of this § 401a.3 amended under 4 Pa.C.S. §§ 1103, 1202(b)(30), 1202.1, 1207, 1209(b), 1213, 1308, 1311, 1311.1, 1311.2, 1317(c), 1317.1(c), 1317.2, 1321, 1322, 1326, 13A02(1)—(6), 13A25, 1406, 1516.1, 1518(a)(13) and Chapter 16.

Source

The provisions of this § 401a.3 amended November 30, 2007, effective December 1, 2007, 37 Pa.B. 6265; amended October 10, 2008, effective October 11, 2008, 38 Pa.B. 5652; amended January 9, 2009, effective January 10, 2009, 39 Pa.B. 235; amended May 22, 2009, effective January 10, 2009, 39 Pa.B. 2588; amended July 10, 2009, effective July 11, 2009, 39 Pa.B. 3446; amended December 11, 2009, effective December 12, 2009, 39 Pa.B. 7010; amended August 20, 2010, effective August 21, 2010, 40 Pa.B. 4761; amended October 22, 2010, effective October 23, 2010, 40 Pa.B. 6083; corrected May 13, 2011, effective January 1, 2011, 41 Pa.B. 2439; amended May 13, 2011, effective May 14, 2011, 41 Pa.B. 2439; amended October 7, 2011, effective October 8, 2011, 41 Pa.B. 5368; corrected December 23, 2011, effective March 7, 2009, 41 Pa.B. 6881; amended May 11, 2012, effective May 12, 2012, 42 Pa.B. 2585; amended September 14, 2012, effective September 15, 2012, 42 Pa.B. 5857; amended February 1, 2012, effective February 2, 2012, 43 Pa.B. 660; amended July 19, 2013, effective July 20, 2013, 43 Pa.B. 4096. Immediately preceding text appears at serial pages (365619) to (365620), (362001) to (362006), (365621) to (365622), (363697) to (363698) and (365623).

Cross References

This section cited in 58 Pa. Code § 427a.5 (relating to responsibilities of a manufacturer); 58 Pa. Code § 429a.5 (relating to responsibilities of a manufacturer designee); 58 Pa. Code § 431a.4 (relating to responsibilities of a supplier); 58 Pa. Code § 433a.4 (relating to interests in licenses held by entities); 58 Pa. Code § 437a.2 (relating to gaming service provider registration applications); 58 Pa. Code § 437a.7 (relating to registered, certified and authorized gaming service provider responsibilities); 58 Pa. Code § 441a.7 (relating to licensing hearings for slot machine licenses); 58 Pa. Code § 465a.1 (relating to accounting records); and 58 Pa. Code § 465a.7 (relating to complimentary services or items).

§ 401a.4. Jurisdiction.

(a) The Board will have exclusive jurisdiction over all matters within the scope of its powers under the act.

(b) Nothing contained in this part shall be construed to limit the powers and duties of the Board as provided in the act.

§ 401a.5. Adjudicatory function of the Board; ex parte communications.

(a) The Board or a presiding officer acts in an adjudicatory capacity when considering any matter presented for a decision by the Board or presiding officer in relation to an on-the-record proceeding. To ensure the integrity and impartial-

ity of the Board or presiding officer acting in an adjudicatory capacity, there will be no commingling of the adjudicatory functions of the Board or presiding officer and the investigatory or prosecutorial functions of the Bureau or Office of Enforcement Counsel.

(b) When acting in an adjudicatory capacity regarding the facts at issue or merits of a matter pending before the Board or presiding officer, or which may reasonably be expected to come before the Board or presiding officer in a contested on-the-record proceeding, a member or presiding officer of the Board or an attorney from the Office of Chief Counsel who is advising the Board on the matter may not engage in an ex parte communication with any person including the Bureau or the Office of Enforcement Counsel.

(c) An ex parte communication received or engaged in by a member or presiding officer of the Board will be recorded in a log which will be available for public inspection at the Board's office during normal business hours and will be posted on the Board's web site. The log must include:

- (1) The name of the individual documenting the ex parte communication.
- (2) The date and time of the ex parte communication.
- (3) The names of all individuals involved in the ex parte communication.
- (4) The subject discussed.

(d) In addition to documenting an ex parte communication in accordance with subsection (c), notification of the substance of the communication and an opportunity to respond will be provided to all parties to the hearing or other proceeding that is the subject of the ex parte communication.

(e) A member or presiding officer of the Board may be required to recuse himself if substantial reasonable doubt exists as to the individual's ability to act objectively, independently or impartially in a hearing or proceeding as follows:

(1) A member or presiding officer of the Board who engaged in or received an ex parte communication will recuse himself from any hearing or other proceeding related to the ex parte communication if the context and substance of the ex parte communication creates substantial reasonable doubt as to the individual's ability to act objectively, independently or impartially.

(2) A member or presiding officer of the Board who engaged in or received an ex parte communication who elects not to recuse himself from a hearing or other proceeding will state his reasons for not recusing himself on the record prior to the commencement of the hearing or proceeding.

(3) A member or presiding officer of the Board who has identified any other reason which creates substantial reasonable doubt as to the individual's ability to act objectively, independently or impartially will recuse himself from any hearing or other proceeding related thereto.

(4) If a legislative appointee recuses himself from any hearing or other proceeding under this section, any qualified majority vote required under this part will consist of all of the remaining legislative appointees and at least two gubernatorial appointees.

(5) Failure of a presiding officer, for whom substantial reasonable doubt as to the individual's ability to act objectively, independently or impartially exists, to recuse himself from a hearing or other proceeding when required under paragraph (1) shall be grounds for appeal to the Board.

(6) Failure of a member, for whom substantial reasonable doubt as to the individual's ability to act objectively, independently or impartially exists, to recuse himself from a hearing or other proceeding when required shall be grounds for appeal to a court of competent jurisdiction if the Board action being appealed could not have occurred without the participation of the member.

(f) Nothing in this subsection will preclude a member of the Board from consulting with other members individually if the consultation complies with 65 Pa.C.S. §§ 701—716 (relating to Sunshine Act) or with employees or independent contractors whose functions are to assist the Board in carrying out its adjudicative functions.

Authority

The provisions of this § 401a.5 issued under 4 Pa.C.S. §§ 1202.1 and 1516.1.

Source

The provisions of this § 401a.5 adopted October 7, 2011, effective October 8, 2011, 41 Pa.B. 5368.

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