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Senate Community, Economic & Recreational Development Committee
Public Hearing
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Good Morning. My name is Frank Donaghue, Chief Counsel for the Pennsylvania Gaming Control Board. We are pleased to have been invited to address this Committee concerning the Gaming Control Board's operation and authority under the Pennsylvania Race Horse Development and Gaming Act.

The Gaming Act, in its current version, provides substantial resources to the Bureau of Investigation and Enforcement (BIE) to investigate those seeking to engage in Pennsylvania's gaming industry, both as applicants for licenses and on a continuing basis as licensees. As you will hear soon from BIE Director Kwait, the Gaming Control Board's BIE can and has effectively conducted investigations as contemplated by the Act.

As you are aware, under the Gaming Act (Act 71) as originally adopted, the Board had the ability to receive information otherwise protected under the Pennsylvania CHRIA statute for purposes of licensing and enforcement and for the purpose of background investigations.

In June 2006, BIE and the State Police entered into a further agreement solidifying expectations for the sharing of information to permit BIE and the

Board to fulfill their statutory duties. Within that agreement, the State Police pledged to provide any Pennsylvania-source investigative and intelligence information regarding any applicant upon request to BIE. If prohibited from providing the information directly from another jurisdiction's statute, the State Police would notify BIE that it had obtained the information and would provide the name and contact information of the source so that BIE could follow up and obtain whatever information was needed to properly investigate. Thus, mechanisms were plainly in place for the State Police to provide relevant information to BIE to discharge its obligations under the Gaming Act.

The legislature reemphasized its position with respect to the PGCB's receipt of state protected information on November 2, 2006 when the General Assembly passed Senate Bill 862 amending various provisions of the Gaming Act. As amended, the Gaming Act designates the BIE a "Criminal Justice Agency" with the power and duty under 18 Pa.C.S. Chapter 91 (relating to criminal history record information). The designation of BIE as a "criminal justice agency" carried significant implications regarding its ability to request and receive information protected under CHRIA. Let me state this more plainly, in November of 2006, the Legislature passed a law to make the PGCB's Bureau of Investigation and Enforcement a criminal justice agency entitled to receive protected state criminal history information. This amendment was entirely consistent with the primary objective of the Act - "to protect the public through the regulation and policing of all activities involving gaming and practices that continue to be unlawful."

BIE plainly has the authority to obtain the information needed to carry out thorough and extensive investigations of applicants for licensure in the Gaming Act and in the agreements with the State Police establishing protocol for the sharing of information as, again, authorized and provided for in the Act. To date, the State Police has acted as a partner with BIE in conducting investigations and sharing information regarding investigations and licenses.

In addition to the authority of the Board and BIE to receive state CHRIA-protected non-public information, the Gaming Act includes provisions at Section 1517(f) which already call on the State Police and the Attorney General to share and provide pertinent information regarding applicants and licensees to BIE.

The Board has taken its duty to license applicants seriously in order to fulfill the objectives of the Gaming Act, and has done so from inception to the present time. Importantly, as indicated by Colonel Miller, given the level of cooperation received by the Board from the State Police, the Board was in a position to determine an applicant's suitability for a slot machine license.

It is significant to also note that Pennsylvania law requires the Board's decisions to be based upon facts contained within the evidentiary record before the Board - not upon rumor, innuendo, or unsubstantiated speculation. In the case of each license issued by the Board, the Pennsylvania Supreme Court has upheld the licensing process engaged in by the Board and the resulting decisions from seven separate appeals which challenged nearly every conceivable legal basis for dispute. In fact, in its

July 12, 2007 Opinion involving a challenge to the procedure by a disappointed applicant, the Supreme Court specifically acknowledged the separation of functions between BIE and the Board in the conduct of BIE's investigatory role in the licensing process, as well as the Board's extensive and lengthy hearings into all aspects of the suitability of applicants and affirmed the Board's grant of Slot machine licenses. In short, the system worked with integrity and in furtherance of the primary objective of the Gaming Act: protecting the public.