

CHAPTER 48**EXCLUSION OF PERSONS****Authority**

N.J.S.A. 5:12-63c, 69a and 71.

Source and Effective Date

R.1993 d.462, effective August 20, 1993.
See: 25 N.J.R. 2661(a), 25 N.J.R. 4510(b).

Executive Order No. 66(1978) Expiration Date

Chapter 48, Exclusion of Persons, expires on August 15, 1998.

Chapter Historical Note

Chapter 48, Exclusion of Persons, became effective on October 16, 1978 as R.1978 d.362. See: 10 N.J.R. 407(d), 10 N.J.R. 522(b). Pursuant to Executive Order No. 66(1978), chapter 48 was readopted as R.1983 d.475, effective October 13, 1983. See: 15 N.J.R. 1466(a), 15 N.J.R. 1874(c). Pursuant to Executive Order No. 66(1978), chapter 48 was readopted as R.1988 d.525. See 20 N.J.R. 2252(a), 20 N.J.R. 2802(b). Pursuant to Executive Order No. 66(1978), chapter 48 was readopted as R.1993 d.462. See Source and Effective Date. See, also, section annotations for specific rulemaking activity.

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SUBCHAPTER 1. GENERAL PROVISIONS**19:48-1.1 Definitions**

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

"Candidate" means any person whose name is included in a petition to place such person on the exclusion list pursuant to section 71 of the Act and these regulations.

"Career or professional offender" means any person whose behavior is pursued in an occupational manner or context for the purpose of economic gain, utilizing such methods as are deemed criminal violations of the public policy of this state.

"Cheat" means any person whose act or acts in any jurisdiction would constitute any offense under Sections 113, 114, and 115 of the Act, if prosecuted under New Jersey law.

"Excluded person" means any person who has been placed upon the list by preliminary or final order of the Commission and who pursuant to section 71 of the Act and these regulations is required to be excluded or ejected from a casino hotel facility.

"List or exclusion list" means a list of names of persons who, pursuant to Section 71 of the Act and the Commission's regulations, are required to be excluded or ejected from casino hotel facilities.

"Occupational manner or context" means the systematic planning, administration, management, or execution of an activity for financial gain.

As amended, R.1982 d.359, effective October 18, 1982.

See: 14 N.J.R. 904(a), 14 N.J.R. 1167(a).

Amended definition of "candidate" and "excluded person".

Amended by R.1994 d.32, effective January 18, 1994.

See: 25 N.J.R. 4739(a), 26 N.J.R. 487(a).

Case Notes

Finding of being inimical to interest of State or licensed gaming. Div. of Gaming Enforcement v. Merlino, 8 N.J.A.R. 126 (1985).

19:48-1.2 Maintenance and distribution of list

(a) The Commission shall maintain a list of persons to be excluded or ejected from a licensed casino establishment.

(b) The list shall be open to public inspection and shall be distributed to every casino licensee within this State, who shall acknowledge receipt thereof in writing.

(c) Each casino licensee shall have the responsibility to distribute copies of the list to its employees.

Case Notes

Authority of commission. Uston v. Resorts Intern. Hotel, Inc., 179 N.J.Super. 223, 431 A.2d 173 (App.Div.1981), affirmed 445 A.2d 370.

19:48-1.3 Criteria for exclusion

(a) The exclusion list may include any person who meets any of the following criteria:

1. A career or professional offender whose presence in a licensed casino establishment would be inimical to the interest of the State of New Jersey or of licensed gaming therein;

2. An associate of a career or professional offender whose association is such that his or her presence in a licensed casino establishment would be inimical to the

interest of the State of New Jersey or of licensed gaming therein;

3. Any person who has been convicted of a criminal offense under the laws of any State, or of the United States, which is punishable by more than six months in prison, or who has been convicted of any crime or offense involving moral turpitude, and whose presence in a licensed casino establishment would be inimical to the interest of the State of New Jersey or of licensed gaming therein; or

4. Any person whose presence in a licensed casino establishment would be inimical to the interest of the State of New Jersey or licensed gaming therein, including, but not limited to:

i. Cheats;

ii. Persons whose privileges for licensure have been revoked;

iii. Persons who pose a threat to the safety of the patrons or employees of a casino licensee;

iv. Persons with a documented history of conduct involving the undue disruption of the gaming operations of casino licensees; and

v. Persons subject to an order of the Superior Court of New Jersey excluding such persons from all casino hotel facilities.

(b) For purposes of (a) above:

1. A person's presence may be considered "inimical to the interest of the State of New Jersey or of licensed gaming therein" if known attributes of such person's character and background:

i. Are incompatible with the maintenance of public confidence and trust in the credibility, integrity and stability of licensed casino gaming;

ii. Could reasonably be expected to impair the public perception of, and confidence in, the strict regulatory process created by the Act; or

iii. Would create or enhance a risk of the fact or appearance of unsuitable, unfair or illegal practices, methods or activities in the conduct of gaming or in the business or financial arrangements incidental thereto.

2. A finding of inimicality may be based upon the following:

i. The nature and notoriety of the attributes of character or background of the person;

ii. The history and nature of the involvement of the person with licensed casino gaming in New Jersey or any other jurisdiction, or with any particular casino licensee or licensees or any related company thereof;

iii. The nature and frequency of any contacts or associations of the person with any casino licensee or licensees, or with any employees or agents thereof; or

iv. Any other factor reasonably related to the maintenance of public confidence in the efficacy of the regulatory process and the integrity of gaming operations, the casino industry and its employees.

(c) Race, color, creed, national origin or ancestry, or sex shall not be a reason for placing the name of any person upon such list.

Amended by R.1994 d.32, effective January 18, 1994.
See: 25 N.J.R. 4739(a), 26 N.J.R. 487(a).

Law Review and Journal Commentaries

Casinos-Blackjack-Card Counters-Contracts-Discrimination-Jurisdiction. P.R. Chenoweth, 137 N.J.L.J. No. 6, 59 (1994).

Case Notes

Independent authority to exclude persons. *Campione v. Adamar of New Jersey, Inc.*, 274 N.J.Super. 63, 643 A.2d 42 (L.1993).

Failure to prove that individual was a career offender, or an associate of such. *Division of Gaming Enforcement v. Staluppi*, 94 N.J.A.R.2d (CCC) 32.

Exclusion; lack of evidence. *Division of Gaming Enforcement v. Staluppi*, 94 N.J.A.R.2d (CCC) 30.

Finding of being a career criminal offender, being an associate of a career or professional offender and being inimical to interest of State or licensed gaming. *Div. of Gaming Enforcement v. Merlino*, 8 N.J.A.R. 126 (1985).

Grounds for exclusion. *Div. of Gaming Enforcement v. Merlino*, 8 N.J.A.R. 126 (1985).

19:48-1.4 Duties of the Division of Gaming Enforcement

(a) The Division shall, on its own initiative, or upon referral by the Commission, investigate any individual who would appear to be an appropriate candidate for placement on the exclusion list.

(b) If, upon completion of an investigation, the Division determines that an individual should be placed on the exclusion list, the Division shall file a petition for exclusion with the Commission, identifying the candidate and setting forth a factual basis why the Division believes the candidate satisfies the criteria for exclusion established by section 71 of the Act and this chapter.

(c) The Division files a complaint alleging a violation of section 71d of the Act and N.J.A.C. 19:48-1.7(a)2 against any licensee, the Division shall file simultaneously a petition to exclude the person alleged in the complaint to meet the criteria for exclusion in N.J.A.C. 19:48-1.3.

(d) If, upon completion of an investigation undertaken upon referral by the Commission, the Division determines that an individual should not be placed on the exclusion list, the Division shall so state in writing to the Commission.

As amended, R.1982 d.359, effective October 18, 1982.
See: 14 N.J.R. 904(a), 14 N.J.R. 1167(a).

Grammatical changes. Also changed Division's duties from recommending and submitting a report on excluding a person to making a determination of exclusion and filing a petition with supporting affidavits.

Amended by R.1988 d.525, effective November 7, 1988.
See: 20 N.J.R. 2252(a), 20 N.J.R. 2802(b).

Substituted "this chapter" for "these regulations".
Amended by R.1994 d.32, effective January 18, 1994.

See: 25 N.J.R. 4739(a), 26 N.J.R. 487(a).

Amended by R.1997 d.36, effective January 21, 1997.

See: 28 N.J.R. 4411(a), 29 N.J.R. 378(a).

In (c), amended N.J.A.C. reference.

Case Notes

Admission of undesirable patron; immediate notification to agency.
Division of Gaming Enforcement v. Boardwalk Regency Corporation, 94 N.J.A.R.2d (CCC) 37.

19:48-1.5 Procedure for entry of names

(a) The Commission may place a person on the exclusion list as follows:

1. Upon petition of the Division in accordance with the procedures set forth at N.J.A.C. 19:42-4; or
2. Upon receipt of an order of the Superior Court of New Jersey excluding such person from all casino hotel facilities. The Commission shall consider such action forthwith upon receipt of the court order, with at least 15 days notice to the Division and to such person by certified mail at his or her last known address.

As amended, R.1982 d.359, effective October 18, 1982.
See: 14 N.J.R. 904(a), 14 N.J.R. 1167(a).

Recodified from N.J.A.C. 19:43-1.5. Deleted old text and added new text.

New Rule, R.1988 d.525, effective November 7, 1988.
See: 20 N.J.R. 2252(a), 20 N.J.R. 2802(b).

Old text was repealed and new text inserted.

Repeal and New Rule, R.1994 d.32, effective January 18, 1994.

See: 25 N.J.R. 4739(a), 26 N.J.R. 487(a).

Case Notes

Exclusion proceedings. Div. of Gaming Enforcement v. Merlino, 8 N.J.A.R. 126 (1985).

19:48-1.5A Application for preliminary placement of candidate on list

(a) In addition to filing a petition for exclusion, the Division may, in its discretion, file an application with the Commission seeking preliminary placement of the candidate on the exclusion list pending completion of the plenary hearing on the petition for exclusion. An application for preliminary placement on the list shall be supported by reliable documentary or other evidence. Upon receipt of an application for preliminary placement on the list, the Commission shall schedule a preliminary exclusion hearing and notify the candidate in accordance with the provisions of N.J.A.C. 19:42-4.

(b) If, upon completion of the preliminary exclusion hearing, the Commission determines that the reliable documen-

tary or other supporting evidence establishes a reasonable possibility that the candidate satisfies the criteria for exclusion established by section 71 of the Act and this chapter, the Commission shall issue a preliminary order placing the candidate on the exclusion list pending the issuance of a final order in accordance with the provisions of N.J.A.C. 19:48-1.5. A preliminary order designating a candidate as an excluded person shall be effective as to a particular casino licensee upon its service upon that casino licensee.

(c) The preliminary placement of a candidate on the exclusion list pursuant to section 71 of the Act, N.J.A.C. 19:42-4 and this chapter shall have the effect of requiring the exclusion or ejection of the excluded person from any casino hotel facility.

New Rule, by R.1988 d.525, effective November 7, 1988.

See: 20 N.J.R. 2252(a), 20 N.J.R. 2802(b).

Amended by R.1997 d.36, effective January 21, 1997.

See: 28 N.J.R. 4411(a), 29 N.J.R. 378(a).

In (a) and (c), amended N.J.A.C. reference.

19:48-1.6 Information contained on list

(a) The following information and data shall be provided for each excluded person:

1. The full name and all aliases the person is believed to have used;
2. A description of the person's physical appearance, including height, weight, type of build, color of hair and eyes and any other physical characteristics which may assist in the identification of the person;
3. Date of birth;
4. The effective date of the order mandating the exclusion or ejection of the person named therein;
5. A photograph, if obtainable, and the date thereof;
6. Such other miscellaneous information as is deemed necessary by the Commission for the enforcement of this regulation.

19:48-1.7 Duty of casino licensee

(a) A casino licensee shall exclude or eject the following persons from its casino hotel facility:

1. Any excluded person; or
2. Any person known to the casino licensee to satisfy the criteria for exclusion set forth in section 71 of the Act and N.J.A.C. 19:48-1.3(a).

(b) If an excluded person enters, attempts to enter, or is in a casino hotel facility and is recognized by the casino licensee, the casino licensee shall immediately notify the Commission and Division of such fact.

(c) The Commission may, upon request of any casino licensee or any person who has been excluded or ejected from a casino hotel pursuant to (a)2 above, refer a matter to

the Division for investigation to determine whether such person meets the criteria for exclusion provided in N.J.A.C. 19:48-1.3.

(d) It shall be the continuing duty of a casino licensee to inform the Commission and Division in writing of the names of persons it believes are appropriate for placement on the exclusion list.

Amended by R.1994 d.32, effective January 18, 1994.
See: 25 N.J.R. 4739(a), 26 N.J.R. 487(a).

Law Review and Journal Commentaries

Casinos-Blackjack-Card Counters-Contracts-Discrimination-Jurisdiction. P.R. Chenoweth, 137 N.J.L.J. No. 6, 59 (1994).

19:48-1.8 Petition to remove name from exclusion list

(a) An excluded person may petition the Commission to request a hearing concerning his or her removal from the list at any time after five years from the placement by the Commission of such person on the list.

(b) The petition shall be verified, with supporting affidavits, and shall state with particularity the grounds believed by the petitioner to constitute good cause for his removal from the list. Upon receipt of such petition, the Division shall be given an opportunity to state its position in writing.

(c) The Commission may decide the petition on the basis of the documents submitted by the parties. The Commission may summarily deny the petition or may grant the petition and direct that a hearing be held in accordance with N.J.A.C. 19:42-4. The Commission shall grant the petition only upon a finding that there is new evidence which is material and necessary, or that circumstances have changed since the placement of the excluded person on the list, and that there would be a reasonable likelihood that the Commission would alter its previous decision.

(d) Any excluded person who is barred from requesting a hearing concerning his or her removal from the list by (a) above may petition the Commission for early consideration at any time; provided, however, that no excluded person may, within the five-year period of exclusion, file more than one such petition. Such petition shall be verified, with supporting affidavits, and shall state with particularity any grounds upon which exclusion was based, and the facts and circumstances which warrant the relief sought. Upon receipt of such petition, the Division shall be given an opportunity to state its position in writing. The Commission may decide the petition on the basis of the documents submitted by the parties. The Commission may summarily deny the petition or may grant the petition and direct that a hearing be held in accordance with N.J.A.C. 19:42-4. The Commission shall grant the petition:

1. Upon a finding that there exist extraordinary facts and circumstances warranting early consideration of the excluded person's request for removal from the list; or
2. If exclusion was pursuant to N.J.A.C. 19:48-1.5(a)2, upon a finding that the excluded person has completed the period of probation or otherwise satisfied the terms of any court-ordered exclusion.

As amended, R.1982 d.359, effective October 18, 1982.
See: 14 N.J.R. 904(a), 14 N.J.R. 1167(a).

Deleted old text and added new text.

Amended by R.1988 d.525, effective November 7, 1988.
See: 20 N.J.R. 2252(a), 20 N.J.R. 2802(b).

Substituted "plenary" for "final"; changed cross reference from "4.7" to "4.5" and added "or she".

Amended by R.1994 d.32, effective January 18, 1994.
See: 25 N.J.R. 4739(a), 26 N.J.R. 487(a).

Amended by R.1997 d.36, effective January 21, 1997.

See: 28 N.J.R. 4411(a), 29 N.J.R. 378(a).

In (c) and (d), amended N.J.A.C. reference.