TITLE 4.
CALIFORNIA GAMBLING CONTROL COMMISSION

CGCC-GCA-2009-03-E

STATEMENT CONCERNING EMERGENCY REGULATIONS FOR THE IMPLEMENTATION OF THE CALIFORNIA REMOTE CALLER BINGO ACT

CHAPTER 748, STATUTES OF 2008 (SB 1369, Cedillo and Battin et al.)

ASSISTANCE TO BINGO PLAYERS WITH DISABILITIES

Pursuant to its authority under Penal Code Section 326.5(p)(6) and in light of pending litigation, which alleges that certain portions of SB1369 are invalid because they violate the Americans with Disabilities Act, the California Gambling Control Commission (Commission) is proposing to adopt emergency regulations that will establish means by which the operator of a bingo game shall offer assistance to players with disabilities. The proposed emergency regulations will provide reasonable accommodations for disabled players. At the same time, the proposed emergency regulations will not impose undue hardship on the operator of a bingo game because they do not require significant difficulty or expense. The emergency adoption of the proposed regulations will implement one element of the California Remote Caller Bingo Act (CRCBA),[1] as mandated by Penal Code section 326.5.

DEEMED EMERGENCY

The Commission has been specifically directed, pursuant to Business and Professions Code section 19850.6, subdivision (a), to adopt emergency regulations to implement the CRCBA as soon as possible. Subdivision (a) also expresses the intent of the Legislature to "provide the Commission with full authority and sufficient flexibility to adopt all needed regulations," and "finds and declares that it is necessary to provide the Commission with limited exemption from normal rulemaking procedural requirements" for reasons specified. Pursuant to subdivision (b) of section 19850.6, the adoption, amendment, or repeal of a regulation implementing the CRCBA is deemed to address an emergency for the purposes of sections 11346.1 and 11349.6 of the Government Code. Further, subdivision (b) of section 19850.6 provides the Commission an express exemption from the requirements of subdivision (b) of section 11346.1.

AUTHORITY AND REFERENCE

Pursuant to the authority vested by sections 19840, 19850.5, and 19850.6 of the Business and Professions Code, and sections 326.3, 326.4, and 326.5 of the Penal Code; and to implement, interpret or make specific Sections 19850.5 and 19850.6 of the Business and Professions Code, and sections 326.3, 326.4, and 326.5 of the Penal Code; the Commission is proposing to adopt the following amendments to Chapter 8 of Division 18 of Title 4 of the California Code of Regulations:

[1] Chapter 748, Statutes of 2008 (SB 1369, Cedillio and Battin, et al.)

INFORMATIVE DIGEST AND POLICY STATEMENT OVERVIEW

INTRODUCTION:
Senate Bill (SB) 1369 authorizes "remote caller bingo" as a game that would allow specific nonprofit organizations to use audio or video technology to remotely link designated in-state facilities to conduct live bingo games, if authorized pursuant to a local ordinance and approved by the Commission. The Commission is required to regulate remote caller bingo, including but not limited to, the development of regulations for licensure and registration of persons who conduct remote caller bingo games, or who manufacture and distribute remote caller bingo equipment, supplies, and bingo card-minding devices. This bill created several entirely new regulatory programs with major elements to be developed by the Commission in the rulemaking process.

The bill directs the Commission to adopt appropriate emergency regulations as soon as possible, with the initial regulatory action to be filed with the Office of Administrative Law (OAL) by May 1, 2009. The initial regulatory action was filed with OAL on December 18, 2008 for the interim approval of bingo card-minding devices. SB 1369 provides a partial exemption from certain provisions of the Administrative Procedure Act through December 31, 2009 and authorizes the Commission to adopt regulations in a series of subsequent regulatory actions. The authority to adopt emergency regulations is necessary to implement the program in a timely manner.

According to the author, SB 1369 is intended to provide nonprofit organizations an opportunity to increase their fundraising ability by authorizing remote caller bingo, which will allow charities across the State to combine their games and offer larger prizes than allowed under current law. The author states, "The demand for services from California charities is increasing due to the economy, unemployment and our state budget cuts. At the same time, charitable donations are down and charities are faced with turning away people for whom it is their mission to serve. Charities desperately need new tools to increase their ability to raise funds to keep up with the demand for their services."

EXISTING LAW:
Effective January 1, 2009, Penal Code section 326.5, subdivision (o), provides that electronic or video displays shall not be used in connection with the game of bingo, except in connection with the caller's drawing of the numbers or symbols, public display of that drawing, and except in connection with the use of hand-held, portable card-minding devices used by players who are physically present at a bingo game. Subdivision (p) provides that players who are physically present at a bingo game may use hand-held, portable card-minding devices that meet specified requirements to assist in monitoring the numbers or symbols announced in a live game. This subdivision also requires that the Commission approve any card-minding device in advance of its use. Paragraph (6) of subdivision (p) provides that the Commission may adopt regulations specifying the means by which the operator of a bingo game may offer assistance to players with disabilities in order to enable those players to participate in a bingo game. This paragraph further specifies that the means of providing assistance shall not be through any electronic, electromechanical, or other device or equipment that accepts the insertion of any coin, currency, token, credit card, or other means of transmitting value, and does not constitute or is not a part of

a system that constitutes a video lottery terminal, slot machine, or devices prohibited by Chapter 10 (commencing with Section 330)

Title 4, California Code of Regulations, Section 12486, currently establishes requirements for the interim approval of card-minding devices, and any modifications to approved devices, as well as the use of those devices in the play of bingo.

EFFECT OF REGULATORY ACTION:
This proposed action will add Section 12482 to Article 1 of Chapter 8 of Division 18 of Title 4 of the California Code of Regulations, as follows:

- Subsection (a) of Section 12482 clarifies the statutory authority and purpose for the proposed regulation and requires the operator of a bingo game to provide certain reasonable accommodations for players with disabilities consistent with definitions set forth in the Americans with Disabilities Act (ADA), when those disabilities would affect their ability to participate in the play of bingo games. These provisions are intended to allow players with disabilities an equal opportunity to participate in a bingo game, as follows:

  1. Paragraph (1) of subsection (a) lists the means by which the operator of a bingo game shall accommodate players with disabilities that affect their ability to mark bingo cards. These means include the use of card-minding devices, the waiver of fees, and alternative methods for claiming prizes. Specifically, those accommodations include the following:

     (a) Subparagraph (A) requires that a minimum of two card-minding devices be reserved for use by players with disabilities. This is designed to assist players with those types of disabilities who may have difficulties playing paper bingo by ensuring that at least two card-minding devices are reserved for their use. The use of these devices will allow these individuals an equal opportunity to participate in a bingo game. If there are no requests for use of the devices by players with disabilities prior to fifteen minutes before the scheduled start of a session, the operator may make the reserved card-minding devices available for use by any player. If there are no requests for use of the reserved card-minding devices by players with disabilities, there is no harm in allowing the operator to make these devices available for use by any player.

     (b) If the operator of a bingo game charges a fee for the use of the card-minding devices, subparagraph (B) requires the operator to waive the fee and to waive any minimum purchase requirement imposed on all players utilizing card-minding devices, for players with disabilities described in paragraph (1). The requirement to waive the rental fee and any minimum purchase requirement is intended not only to assist players with disabilities by allowing them to use the card-minding devices and therefore participate in a game of bingo, but also to remove any financial barrier resulting from the limitation in their choices of the manner of play. Because of the limitations resulting from a particular disability, a player may have no other option for play but the use of a card-minding device. Thus, requiring the payment of a fee or imposing a minimum purchase requirement may be viewed as discriminatory. Without being subject to additional fees and minimum purchase requirements, disabled players will be afforded an equal opportunity to participate in the play of bingo games.

(c) Subparagraph (C) requires the operator of a bingo game to allow players with disabilities described in paragraph (1) to present a print out of winning cards from the card-minding devices, or other evidence of a winning card approved by the Commission, in order to claim a prize. This is intended to assist players with disabilities who have difficulties marking tangible paper cards. Those players with disabilities are allowed to present a print out of winning cards from the card-minding devices, or other evidence of a winning card approved by the Commission, in lieu of marked tangible cards, to claim a prize.

2. Paragraph (2) requires the operator of a bingo game to allow players with disabilities consistent with definitions set forth in the ADA, when such disabilities would restrict their ability to verbally announce "BINGO," to utilize a form of visual or audible signaling to notify the operator of a winning pattern or "bingo," which may include a flag, paddle, light, horn, bell or whistle, or other means approved by the Commission. The use of a form of visual or audible signaling device to notify the operator of a winning pattern or "bingo" allows players with disabilities to announce "BINGO" when they are unable to do so verbally.

3. Paragraph (3) requires the operator of a bingo game to allow players with disabilities consistent with definitions set forth in the ADA, when such disabilities would restrict their ability to mark cards, or announce "BINGO," to bring another individual to assist them in playing bingo. The assisting individual shall not count towards the 750-player maximum applicable to remote caller bingo provided in Penal Code section 326.3(i). This is intended to assist players with disabilities by allowing them to bring another individual to assist them in playing bingo. The assisting individual may help players with disabilities to recognize the numbers or symbols called, mark cards, push buttons on the card-minding devices, announce "BINGO," or claim a prize, when the players with disabilities have difficulties doing so themselves. The exclusion of the assisting individual from the 750-player maximum applicable to remote caller bingo is designed to eliminate a potential reason for denying entry of an individual to provide assistance to a disabled player.

- Subsection (b) provides that organizations not using card-minding devices as of the effective date of this regulation shall have up to six months to comply with the provisions of paragraph (1) of subsection (a). A six-month delay in compliance with the provision requiring reservation of at least two card-minding devices for players with disabilities for organizations that currently do not utilize card-minding devices is designed to alleviate any undue hardship on these organizations by giving them sufficient time to obtain the card-minding devices and to comply with the provision.

FISCAL IMPACT ESTIMATES

MANDATE IMPOSED ON LOCAL AGENCY OR SCHOOL DISTRICT FOR WHICH PART 7 (COMMENCING WITH SECTION 17500) OF DIVISION 4 OF THE GOVERNMENT CODE REQUIRES REIMBURSEMENT: None.

COST TO ANY STATE OR LOCAL AGENCY OR SCHOOL DISTRICT FOR WHICH PART 7 (COMMENCING WITH SECTION 17500) OF DIVISION 4 OF THE GOVERNMENT CODE REQUIRES REIMBURSEMENT: None.

FISCAL IMPACT ON PUBLIC AGENCIES INCLUDING COSTS OR SAVINGS TO STATE AGENCIES OR COSTS/SAVINGS IN FEDERAL FUNDING TO THE STATE: The Commission has determined that this regulatory proposal will not have a significant fiscal impact on state agencies.