TITLE 4.
CALIFORNIA GAMBLING CONTROL COMMISSION
CGCC-GCA-2009-04-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.)

EQUIPMENT APPROVAL; STANDARDS OF PLAY; AUDITS

The California Gambling Control Commission (Commission) is proposing to adopt emergency regulations that will implement several elements of the California Remote Caller Bingo Act (CRCBA),[1] as mandated by Business and Professions Code section 19850.6 and Penal Code section 326.3. The proposed action will establish audit requirements, implement an interim equipment approval process, and describe requirements for organizations, standards of play, and cosponsor requirements for remote caller bingo. The action will also amend definitions used in Chapter 8 of Division 18 of Title 4 of the California Code of Regulation.

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 amendment, adoption 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 section 326.3 of the Penal Code; and to implement, interpret or make specific Sections 19850.5 and 19850.6 of the Business and Professions Code, and section 326.3 of the Penal Code; the Commission is proposing the following changes 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:
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 cosponsor 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, approving bingo equipment, auditing books and records, and providing standards of play.

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 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 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.

EXISTING LAW:
Effective January 1, 2009, Penal Code section 326.3, provides the authority and requirements for charitable organizations to conduct remote caller bingo games; the authority and requirements for organizations to cosponsor remote caller bingo games; and the requirements for standards of play. This section further directs these organizations to submit to the Commission the controls, methodology, and standards of game play for approval by the Commission, provided that the controls shall be deemed approved by the Commission after 90 days from the date of submission unless disapproved. Pursuant to Penal Code section 326.3, the Commission is also directed to conduct audits of organizations engaged in remote caller bingo and to approve, in advance, the equipment used in remote caller bingo games.

EFFECT OF REGULATORY ACTION:
This proposed action will amend Articles 1 and 2 and add Articles 5 and 6 to Chapter 8 of Division 18 of Title 4 of the California Code of Regulations, as follows:

- Amend Section 12480 "Definitions" of Article 1 as follows:

    a) Amend the definition of "authorized organization" or "organization" to more accurately reflect the definition included in Penal Code section 326.3.

    b) Include definitions from Section 12486(f) for purposes of clarity and consistency.

    c) Include additional definitions to clarify terminology used in Penal Code sections 326.3 and 326.5 and in these regulations.

- Amend Section 12486 "Approval of Card-Minding Devices" as follows:

a) Delete subsection (f) for purposes of clarity and consistency. The definitions in this subsection have been moved to Section 12480.

- Add section 12488 in Article 2 to reflect the title "Approval of Remote Caller Bingo Equipment."

  a) Subsection (a) clarifies that section 12488 does not apply to card-minding devices, which are governed by section 12486.

  b) Subsection (b) stipulates that beginning the effective date of this section, all equipment used to conduct remote caller bingo games must be approved by the Commission in advance, pursuant to Penal Code section 326.3(s)(1), and states that an interim approval process is established to avoid disruption of fundraising efforts by non-profit organizations as expressed in Business and Professions Code section 19850.6 until specific procedures are established by the Commission through the regular rulemaking process.

  c) Subsection (c) provides a process for interim approval of remote caller bingo equipment. This subsection states that any authorized organization planning to conduct or cosponsor a remote caller bingo game must submit a written list of all equipment to be used during the game to the Commission 30 days in advance. This includes any equipment used to transmit or receive the live remote caller bingo game. The list must include: 1) the make and model numbers of the equipment; and, to the extent feasible, 2) the name of the manufacturer, distributor, or vendor from which the equipment was purchased, leased or acquired from. Unless disapproved by the Executive Director, the equipment shall be considered approved after 30 days. This process will provide minimal disruption to fundraising efforts and avoid requiring organizations to replace equipment by grandfathering in equipment already in use. In addition, submitting a list of equipment used will provide the Commission with a greater knowledge of the equipment in use as we prepare for the regular rulemaking process.

  d) Subsection (d)(1) states that remote caller bingo equipment, except for audio and video equipment, purchased, leased, or acquired after the effective date of this section must be manufactured by a Commission licensed manufacturer and distributed through a Commission licensed distributor. Penal Code section 326.3(p)(1)(B) requires any person who manufactures, distributes, supplies, vends, or leases any remote caller bingo equipment to be licensed by the Commission. Section 12492 establishes a licensing process for manufacturers and distributors. In order to be consistent with the requirements that manufacturers and distributors be licensed and that all equipment be approved in advance, the Commission is requiring all equipment acquired after the effective date of these regulations to be acquired from a licensed manufacturer or distributor.

  e) Subsection (d)(2) states that audio and video equipment purchased after the effective date of this section which is used to transmit a live remote caller bingo game to a satellite location must either be:

1) Manufactured by a Commission-licensed manufacturer and distributed through a Commission-licensed distributor; or,

2) Be commercially available and able to transmit a live game from the host site to satellite locations in a secure, accurate, and simultaneous manner.

The existing technology that can be used for transmission of a bingo game, including cable, Internet, satellite, broadband, or telephone technology, is very expansive. The Commission does not want to unnecessarily burden organizations by requiring them to wait for purveyors of commercially available audio and video technology to have their equipment approved.

f) Subsection (e) provides a one-year interim approval of remote caller bingo equipment. Provisions clearly establish that an interim approval does not guarantee an extension of the approval or the issuance of a regular approval, nor has it any bearing on whether the equipment and supplies will meet standards later established by the Commission through the regular rulemaking process. Section 12486 "Approval of Card-Minding Devices" includes similar language, which is intended to clarify that issuance of interim approval does not create any right to issuance of regular approval.

- Add Article 5 to reflect the title " Standards of Play," which describes the requirements for organizations participating in remote caller bingo, requirements for cosponsoring remote caller bingo games, and standards of play required for remote caller bingo games.

- Add section 12508 in Article 5 to reflect the title "Requirements for Organizations," which describes the requirements organizations participating in remote caller bingo must follow.

a) Subsection (a) organizes the requirements of Penal Code sections 326.3 in one place to allow organizations to more easily follow the law [paragraphs (1), (2), (3), (4), (8), (9), and (10)]. This subsection also adds the following requirements:

1) Paragraph (5) requires organizations to maintain full and accurate records of income received and expenses disbursed in connection to the conduct of remote caller bingo, and sets the requirement that records be maintained in accordance with generally accepted accounting principles. This paragraph is intended to ensure that complete records are available to the Commission for auditing purposes, as required by statute.

2) Paragraph (6) requires organizations to retain records in connection with remote caller bingo games for five years, and to locate the records in California. Paragraph (7) requires the records to be maintained in English. These paragraphs are intended to ensure the records are available to Commission staff for auditing purposes and are in a format that staff can read.

- Add Section 12510 in Article 5 to reflect the title "Cosponsor Requirements," which describes the requirements for cosponsoring a remote caller bingo game.

    a) Subsection (a) organizes the requirements of Penal Code sections 326.3 in one place to allow organizations to more easily follow the law [paragraphs (1), (2), and (3)]. This subsection also adds the following requirements:

        1) Paragraph (4) establishes a deadline of ten (10) days prior to conducting or cosponsoring a remote caller bingo game for the cosponsor agreement to be forwarded to the Commission. Submission of cosponsor agreements is required by Penal Code section 326.3(n)(4).

        2) Paragraph (5) requires cosponsor agreements to contain language requiring the cosponsors to comply with the standards of play adopted by the organization conducting the live game. This paragraph ensures that each satellite site operates under the same standards, which will assist in maintaining fairness among players at all satellite sites.

        3) Paragraph (6) adds the requirement that cosponsor agreements contain language requiring each cosponsor to comply with any regulations adopted by the Commission. This paragraph is intended to make clear that each cosponsor is responsible for complying with the law.

- Add Section 12511 to reflect the title "Standards of Play for Remote Caller Bingo." This section will specify the minimum standards of play required for remote caller bingo.

    a) Subsections (a), (b), (c), (d), (e), (f), and (g) organize the requirements of Penal Code section 326.3 in one place to allow organizations to more easily follow the law. This section also includes the following:

        1) Subsection (e), paragraph (4) mandates that only a covered or marked card possessed by a player and presented to the attendant may be used to claim a prize. Penal Code section 326.5(o) mandates that players in traditional bingo games present a tangible, marked card in order to claim a prize. The Commission is exercising its regulatory powers in applying this requirement to remote caller bingo in order to provide some consistency between remote caller bingo games and traditional bingo games.

        2) Subsection (f), paragraph (1) states that no person under the age of 18 shall be allowed to participate in remote caller bingo games. Penal Code section 326.3(f) prohibits "minors" from participating in remote caller bingo. Based on the definition of "minor" provided in Welfare and Institutions Code Section 101, the Commission has interpreted the prohibition on "minors" to include individuals under the age of 18.

3) Subsection (f), paragraph (4) prohibits a player from using a card-minding device that is not both hand-held and portable. This paragraph is needed to clarify the requirements regarding the use of card-minding devices described in Penal Code section 326.5(p)(1)(A) – (D). There has been some confusion regarding card-minding devices, as subparagraphs (A) – (D) of section 326.5 (p)(1) list mandated capabilities and features of allowable card-minding devices, but "hand-held and portable" is not included in these paragraphs. However, the requirement that card-minding devices be hand-held and portable is clearly stated in subsection (p)(1) – "Players who are physically present at a bingo game may use *hand-held, portable card-minding devices*, as described in this subdivision, to assist in monitoring the numbers or symbols announced by a live caller as those numbers or symbols are called in a live game [emphasis added]." In order to prevent any confusion, the proposed action will clearly state that any card-minding device must be hand-held and portable. This is also consistent with Section 12486.

4) Subsection (g), paragraph (1) limits the types of electronics or video displays that can be used in a remote caller bingo game to a) those used in connection with the caller's drawing of numbers or symbols, b) the public display of the caller's drawing, and c) approved card-minding devices. The Commission has included this requirement to provide consistencywith requirements of traditional bingo games pursuant to Penal Code section 326.5(o).

5) Subsection (g), paragraph (4) mandates that the winning card shall not be known prior to the game by any person. The Commission has included this requirement to ensure fairness in the game and to provide consistency with requirements of traditional bingo games, which prohibit the winning card from being known in advance pursuant to Penal Code section 326.5(o).

6) Subsection (g), paragraph (5) requires that all preprinted cards bear a preprinted legend. The Commission has included this requirement to provide consistency with requirements of traditional bingo games, which require all bingo cards to bear a preprinted legend pursuant to Penal Code section 326.5(o).

- Add Section 12514 to reflect the title "Audits." This section will describe the audit authority of the Commission and list other required audits.

  a) Subdivision (a) restates the statutory authority to conduct audits and the conditions under which audits will be conducted. This subdivision is included for the sake of clarity and consistency.

  b) Subdivision (b) authorizes the Commission to have access to any files, records, or documents related to the conduct or cosponsoring of remote caller bingo and any personnel involved in the conduct or cosponsoring of remote caller bingo, and subdivision (c) authorizes the Commission to make copies of documents as needed.

Access to records and personnel and copying of necessary records is standard procedure for conducting audits.

c) Subdivision (d) clarifies that information obtained during an audit will be exempt from disclosure pursuant to the Business and Professions Code Section 19821, which exempts all records of the Commission from disclosure under the Public Records Act.

d) Subdivision (e) restates the statutory requirement of Penal Code section 326.3(v)(2). This subdivision is included for the sake of clarity and consistency.

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.