CALIFORNIA GAMBLING CONTROL COMMISSION

INITIAL STATEMENT OF REASONS

CGCC-GCA-2008-R-#___

HEARING DATE: **Commission Workshop May 15, 2009**

SUBJECT MATTER OF PROPOSED REGULATIONS: **Limitations on the Reopening of Closed Cardrooms**

SECTIONS AFFECTED: **California Code of Regulations, Title 4, Division 18:** Section 12350

SPECIFIC PURPOSE OF REGULATORY PROPOSAL:

The California Gambling Control Commission (Commission) is proposing to adopt a regulation to provide guidelines and procedures for the implementation of Business and Professions Code Section 19963,[1] which prohibits the Commission from granting a license to operate a gambling establishment that was not licensed to operate on December 31, 1999, unless an application to operate that establishment was on file with the Department of Justice prior to September 1, 2000. The proposed regulation would establish a new section in Chapter 6 of Division 18 that will provide a process for the submittal and hearing of applications to operate a closed cardroom that is eligible to reopen under the provisions of Section 19963.

This proposed action would include the following elements:

1. Subsection (a) will allow a person that held a license to operate a gambling establishment on December 31, 1999, or had a application on file with the Department of Justice as of September 1, 2000, to apply for a state gambling license in order to operate the cardroom associated with the previously held license, even if the cardroom has subsequently closed. The ability to file an application to reopen a closed cardroom will be limited to the original licensee associated with the cardroom.

The Commission held two public workshops (April 3, 2008, in Fullerton, and May 1, 2008, in Sacramento) to receive public input concerning how to interpret and implement the moratorium provisions of Section 19963. The discussions identified four possible interpretation scenarios, which are detailed below:

[1] All statutory references are to the Business and Professions Code, unless otherwise specified.

A. Do not allow any closed cardrooms to reopen. This interpretation would hold that, once a cardroom has closed and the license has expired, it can never be operated again. However, nothing in Section 19963 requires as a prerequisite for an issuance of a license to operate a gambling license that the license be current and not expired. Consequently, the language of Section 19963 does not seem to support this conclusion and we have rejected this alternative.

B. Allow any interested person to apply for a license to operate a closed cardroom. Under this interpretation, any individual or entity could apply to reopen a closed cardroom. Without any tie to the previous owner or cardroom, the Commission would have no way of prioritizing the applications. This scenario would cause significant difficulties for the Commission and the local governing body as to which applicant to approve and, therefore, this alternative has been rejected.

C. Allow the original licensee or a successor-in-interest to apply for a license to operate a closed cardroom. This scenario would allow the original licensee or a successor-in-interest to apply to reopen a closed cardroom. Due to concerns with the legality of this option and concerns about the negative social impacts of additional opportunities for gambling, as detailed below, the Commission has rejected this interpretation.

D. Limit the ability to apply for a state gambling license to reopen a closed cardroom to the original licensee. This scenario would restrict the ability to reopen a closed cardroom to the original licensee. For reasons detailed below, the Commission has selected this alternative.

The ability to reopen a closed cardroom will be limited to the original owner-licensee. The Commission has made a policy determination to limit the ability to apply for a license to operate a closed gambling establishment to the person licensed to operate the establishment as of the required date based on Business and Professions Code section 19873 and concerns about the negative social impacts of additional gambling opportunities. Section 19873 prohibits a license from being assigned or transferred. Current Commission practice allows an owner-licensee to sell a gambling establishment, with the conditions that the Commission approve the sales agreement and the new owners apply for an initial state gambling license. However, in cases in which the cardroom has closed, there is no longer any business to sell. If there is no physical business to sell, the only item for the original owner-licensee to sell to a third party is the license, an action prohibited by law.

Furthermore, the Commission has long been concerned with increasing opportunities for gambling, due to the potential negative social costs, including crime and problem gambling. By limiting the number of potential cardrooms eligible to reopen, the Commission hopes to minimize any negative impacts.

2. Subsection (b) details the information and documentation required to be submitted to the Commission in order to be considered for licensure.

- Paragraphs (1) and (2) require the same application forms, fees, and background deposits are as required for any initial application. Many of the owners and cardrooms to which this regulation would apply were operating under a provisional license and were never issued a state gambling license. All applicants for an initial state gambling license are required to submit the same forms and fees; this requirement would provide consistency with existing law and Commission practice for all initial license applicants.
- Paragraphs (3) and (4) require the applicant to submit a copy of the last state license issued, whether provisional or a state gambling license, and a copy of the last license issued by the local jurisdiction. Pursuant to Section 19856, the burden of proving his or her qualifications to receive any license is on the applicant. These paragraphs require the applicant to prove eligibility for licensure.
- Paragraphs (5) and (6) are intended to ensure that the proposed gambling establishment will operate in accordance with the local gambling ordinance. A signed statement from the city attorney or county counsel (depending on the applicable local jurisdiction) will ensure that the jurisdiction's position regarding the legality of the operation is on record.
- Paragraphs (7) and (8) require proof from the local governing body (city council or county board of supervisors) and the chief law enforcement officer of the jurisdiction (either the Chief of Police or County Sheriff) affirming support for the gambling establishment to reopen. Support is required from both entities because of the bifurcated nature of the responsibilities of the governing body and the chief law enforcement agent.
- Paragraph (9) requires an economic viability study to be completed, similar to the requirement in Section 19862(a)(2), which states that the Commission may deny a license to an "applicant that fails to conduct an economic feasibility study that demonstrates ...that the proposed gambling establishment will be economically viable, and that the owners have sufficient resources to make the gambling establishment successful." This regulation will also require the feasibility study to demonstrate that the owner(s) has sufficient resources to fully comply with all regulatory requirements and tax laws. An owner-licensee that does not comply with regulatory requirements and tax laws creates a significant administrative burden for the Commission and the Bureau. Prior to approving a license, the Commission wants to ensure that the owner-licensee can comply with all laws. Requiring applicants to submit economic feasibility studies and to demonstrate the capacity to comply with regulations should permit the Commission to screen out marginal applicants.
- Paragraphs (10) and (11) require the applicant to submit an estimate, signed by the chief executive officer of the local jurisdiction (i.e. the city manager or the county executive officer), of the total jobs and revenue, if any, created by the reopened gambling establishment. The estimates are intended to provide the Commission with additional information on which to base the decision to grant or deny a license.
- Paragraph (12) requires the applicant sign a statement acknowledging willingness to be bound by conditions set forth in subsections (c), (d), (e), (f), and (g). This

requirement is intended to ensure that the applicant is fully aware of the requirements and restrictions related to reopening a closed cardroom.

3. Subsection (c), paragraph (1), requires the applicant to pay for a certified public accounting firm to conduct the financial background investigation required pursuant to section 19826 of the Business and Professions Code and describes the requirements the firm must meet. The Bureau of Gambling Control (Bureau) is responsible for conducting background investigations on all applicant; however, the Bureau currently has a backlog of background investigations to complete; requiring the applicant to have the financial review portion contracted to a private firm will reduce some of the burden on the Bureau and allow the review to be completed in a more timely manner. At the Bureau's request, this section includes the requirements that the firm have forensic accounting experience and prohibits the firm from having any business with the applicant within the previous five years. The firm must also be approved by the Bureau.

4. Subsection (c), paragraph (2) describes the required elements to be included in the financial background investigation. These elements were included at the Bureau's request and reflect the information that the Bureau includes in its own financial background investigations.

5. Subsection (d), paragraph (1) states the Commission will consider the application at a public hearing in accordance with all applicable law and that input from the local community and any neighboring jurisdiction that may be impacted by a gambling establishment will be considered at the hearing. In addition, any information from the applicant's previous application file and any previous administrative actions taken against the applicant by the Commission or the Bureau may be considered.

6. Subsection (d), paragraph (2) requires the applicant to provide notice to the local community regarding the potential reopening of a closed cardroom. In order to ensure that community members are aware of the Commission hearing and have the opportunity for input, this regulation will require the applicant to place a public notice in a local newspaper, in accordance with Section 6066 of the Government Code. In addition to the date of the Commission hearing, the notice must include the proposed location of the establishment, the proposed number of tables, and the planned hours of operation.

7. Subsection (e) requires all signed statements required in subsection (b) to be dated no more than 90 days prior to the date the Commission received the application. The Commission wants to ensure that the local support indicated by the required signed statements is up-to-date and reflects support by current local officials.

8. Subsection (f) states that no temporary licenses will be issued to applicants under this section. Temporary licenses are issued by the Commission under special circumstances, such as when a licensee dies and in order to keep the business running, the heir requires a temporary license while waiting for a state gambling license. Temporary licenses place a significant administrative burden on the Commission and the Bureau, and as temporary licenses would not be needed in applications submitted under this section in order to maintain continuous operation of a business, the Commission will not consider issuing one.

9. Subsection (g) requires the gambling establishment to be reopened to be located in the same local jurisdiction in which it was previously licensed to operate. Local gambling ordinances provide, among other things, for the number of tables that may be operated by a gambling establishment. If a gambling establishment were allowed to relocate to another local jurisdiction, the potential exists for an expansion of gambling. For example, if the gambling establishment was previously located in a jurisdiction that limited the number of tables to 10, and was allowed to move to a jurisdiction that limited the number of tables to 40, this would result in an overall increase in the number of tables in the state. Due to long-standing concerns with expanding opportunities for gambling, including increased negative social costs, the Commission has made a determination to require the reopened cardroom to be located in the same local jurisdiction as previously licensed.

10. Subsection (h) limits the timeframe in which a person may apply for a state gambling license under this section to six months after the effective date of these regulations. A limited timeframe is intended to minimize the uncertainty for existing gambling establishments and the local jurisdiction.

11. Subsection (i) states that this section shall not be construed to allow any person whose state gambling license was previously denied or revoked to reapply for a state gambling license. This section is intended solely to address reopening a closed cardroom.

FACTUAL BASIS:

After the passage of the Gambling Control Act in 1998, all gambling establishments registered with the Division of Gambling Control within the Department of Justice to conduct controlled gambling were required to apply for a state gambling license issued by the California Gambling Control Commission (Commission), although the Commission was not yet operational. During the interim between the passage of the Gambling Control Act and the establishment of the Commission in 2001, owners of gambling establishments were issued a "provisional license." Provisional licenses were then converted into state gambling licenses through a process established in regulation.

During the conversion to state gambling licenses, numerous gambling establishments ceased operations. Many owners either failed to submit an application for a state gambling license; submitted an application, but subsequently withdrew it; or received a state gambling license and allowed the license to lapse.

Typically, allowing a license to lapse or withdrawing an application would not be of serious concern to a regulatory agency or the regulated industry. However, in 2000, the Legislature instituted a moratorium on the approval of new cardrooms (AB 1416, Wesson, Chapter 1023, Statutes of 2000). Specifically, AB 1416 added Section 19963 to state:

> (a) In addition to any other limitations of the expansion of gambling imposed by Section 19962 or any provision of this chapter [the Gambling Control Act], the commission may not issue a gambling license for a gambling establishment that was not licensed to

> operate on December 31, 1999, unless an application to operate that establishment was on file with the department [Department of Justice] prior to September 1, 2000.

There are 48 cardrooms that were licensed to operate on December 31, 1999, which are not currently in operation.

Numerous requests to reopen a closed cardroom have been made to the Commission; however, the Commission has declined to accept applications until a regulation is in place. In early 2008, Commission staff held two public workshops to discuss issues surrounding the effect of the moratorium on the approval of new cardrooms. This proposed regulation is a result of those discussions.

Underlying Data:

None used.

REQUIRED DETERMINATIONS:

Business Impact:

These regulations will not have a significant adverse economic impact on businesses. These regulations will allow specified cardrooms, primarily small cardrooms, to reopen, potentially creating jobs and revenue for the local jurisdiction and the state. To the extent that these regulations would allow a cardroom to reopen in the same jurisdiction as an existing cardroom, the existing cardroom might experience some revenue loss. However, as the cardrooms that may be eligible to reopen are primarily small cardrooms, we expect the impact on neighboring cardrooms to be minor.

Specific Technologies or Equipment:

These regulations do not mandate the use of specific technologies or equipment.

Consideration of Alternatives:

Several alternatives to these regulations were considered. See "Specific Purpose of Regulatory Action" above for discussion and reasons for rejection.