



GAMBLING CONTROL COMMISSION

DEAN SHELTON, CHAIRMAN
SHERYL SCHMIDT
STEPHANIE SHIMAZU
ALEXANDRA VUKSICH2399 Gateway Oaks Drive, Suite 100
Sacramento, CA 95833-4231
(916) 263-0700 Phone
(916) 263-0499 Fax
www.cgcc.ca.gov

Moratorium Regulation Workshop Issue List

This document (“Issue List”) has been prepared in conjunction with two informal public workshops scheduled for April 3 and May 1, 2008, in which the California Gambling Control Commission is seeking public input concerning how to implement and interpret in regulation the moratorium provision of the Gambling Control Act, Business and Professions Code section 19963.¹

Issues have been listed for purposes of discussion only, not for the purpose of limiting public input. Participants at the workshops (and other interested parties) are encouraged to raise any moratorium-related issue of concern, whether or not the issue appears in this list. There is no preliminary regulation draft.

As noted in the Notice and Agenda of Public Workshop on Moratorium Regulations, questions have arisen concerning how to apply the statutory moratorium provision to a wide range of factual situations, for example, a change of cardroom ownership, a request to reopen a closed cardroom, and expiration of a state gambling license.

This issue list is divided into three parts. Part A lists a variety of particular situations that have raised questions, at least arguably. Part B lists several general approaches that could conceivably be taken in order to address the questions underlying the particular situations listed in Part A. These general approaches are not necessarily mutually exclusive: more than one might arguably be adopted. Part C provides more detail on one of the possible alternative approaches: recognizing successors-in-interest.

¹ Business and Professions Code section 19963 provides:

- (a) In addition to any other limitations on the expansion of gambling imposed by Section 19962 or any provision of this chapter, 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 [formerly, the division] prior to September 1, 2000.
- (b) This section shall remain in effect only until January 1, 2015, and of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2015, deletes or extends that date.

PART A—PARTICULAR SITUATIONS

The recurring question is whether regulations should be adopted governing these situations. Regulations could authorize one or more the listed actions; could authorize an action with conditions or time limits; or could prohibit the action. In some cases, specific questions have been included along with a specific situation.

1. An existing cardroom business rebuilding at the same street address following destruction of the physical premises by a fire.
2. An existing cardroom business changing its street address within its local jurisdiction (for example, due to fire, loss of lease, zoning change, eminent domain, desire to own rather than rent, etc.)
3. An existing cardroom business changing its name.
4. An existing cardroom business changing the owner-licensee from a sole proprietor to a corporation wholly owned by the individual who had been the sole proprietor, etc.
5. An existing cardroom business being sold by one sole proprietor and purchased by a different sole proprietor, etc.
6. A buyer purchasing all the shares of stock in an existing cardroom business, which is owned by a corporation (assume the corporation is the owner-licensee).
7. An existing cardroom business in which the owner-licensee is a limited partnership bringing in additional limited partners.
8. An existing cardroom business being sold, renamed, and moved to a different street address within its local jurisdiction.
9. An existing cardroom passing to an heir of the sole proprietor on the death of the sole proprietor, through the probate process.
10. An existing cardroom owned by spouse A being awarded to spouse B as part of the property settlement following dissolution of the marriage.

11. An existing cardroom business owned by A and which has been placed in a trust, passing to a child of A who had been named as a beneficiary to receive the cardroom upon the death of A.
12. An existing cardroom business closes for six months for any reason (for instance, for remodeling) but the owner keeps the license in effect, paying the customary table fees.
13. A cardroom closes, the Commission approves sale of the business to party A; party A withdraws; another sales agreement is approved involving party B; this second agreement is approved by the Commission. The buyer keeps the license in effect by paying the table fees. The cardroom is closed for more than two years.
14. An existing cardroom business closes for six months (for instance, for remodeling), but the owner requests that his license be declared inactive and that s/he does not pay table fees for the period in which the cardroom is not in operation, is not making money, and the license is inactive.

Questions: Should an “inactive” state gambling license category be created? If so, for how long a period should a license be permitted to remain inactive? Should the usual table fees be assessed? If not, what fees should be assessed?

15. A person who formerly had a state gambling license to operate a cardroom, which has closed, wants to apply for a license for the purpose of reopening and operating the now closed cardroom. The prior license has expired. Questions: Could such a person apply to have the prior license reinstated? If reinstatement were possible, within what period of time? Six months? Two years? Five years? Could such a person apply for an initial state gambling license? Would it make any difference if the former licensee had held a provisional license?

PART B—GENERAL POLICY APPROACHES

ALTERNATIVE ONE

Allow applications for a new gambling license by successors-in-interest to a gambling establishment only if the existing owner's gambling license has not expired.

ALTERNATIVE TWO

Allow applications for a new gambling license by successors-in-interest to a gambling establishment whether or not the existing owner's gambling license has expired.

ALTERNATIVE THREE

Allow applications as outlined in number two above, but within limitations on the time between the expiration of the existing owner-licensee's license and the application by the successor-in-interest.

ALTERNATIVE FOUR

Allow applications for a new gambling license, whether or not by a successor-in-interest, so long as the issuance of a license to the new owner-licensee will not result in an increase in the number of gambling establishments in the jurisdiction over the number that was in operation as of the operative dates in section 19963.

ALTERNATIVE FIVE

Deny applications for licensure if the applicant is not a successor-in-interest to a gambling establishment whose owner-licensee was licensed within the parameters of section 19963.

ALTERNATIVE SIX

Allow an owner-licensee to request permission to place a license in an inactive status while a cardroom is closed, pending for instance, completion of remodeling, relocation within a local jurisdiction, or completion of a sale of the business.

PART C—SUCCESSORS-IN-INTEREST

Under one interpretation, Business and Professions Code section 19963 seeks to limit the number of licensed gambling establishments (i.e., gambling establishments with a licensed owner) in a local jurisdiction to those that were in existence on December 31, 1999, with an exception for applications for owner licensure on file prior to September 1, 2000.

One approach to the question of how to interpret Section 19963 is to say that it does not/should not apply to a qualified “successor-in-interest.” Specifically, one could argue that the Commission may consider an application for a gambling license by a person² who is a successor-in-interest to a gambling establishment whose original owner-licensee had a license to operate the gambling establishment issued on or before December 31, 1999 or had an application for a license on file prior to September 31, 2000.

A "successor-in-interest" is defined in the law as "[o]ne who follows another in ownership or control of property. A successor-in-interest retains the same rights as the original owner, with no change in substance."³ In the context of the Gambling Control Act, a successor-in-interest is a person who has succeeded to ownership of the gambling establishment through purchase or other legal means, e.g., probate, community property settlement, or trust distribution.

For further information on this matter, contact Herb Bolz at the above address, at hbolz@cgcc.ca.gov, 916-263-0452 (fax), or 916-263-0490 (voice).

² Business and Professions Code section 19805(ad) defines “person” to include a natural person, corporation, partnership, trust, joint venture, association, or any other business organization.

³ Black's Law Dictionary (8th ed. 2004), p. 1473. The term successor in interest appears frequently in California statutes. See, for instance, Business and Professions Code section 5037 (CPA licensee or "successor in interest" generally owns documents prepared by CPA in the course of rendering services to a client, absent express agreement with client).