

1 CALIFORNIA GAMBLING CONTROL COMMISSION

2 **Final Text of Proposed Regulations**

3 **MINIMUM INTERNAL CONTROL STANDARDS (MICS) FOR GAMBLING ESTABLISHMENTS:**

4 **EXTENSION OF CREDIT AND CHECK CASHING**

5 CGCC-GCA-2009-05-R

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7 TITLE 4. BUSINESS REGULATIONS.

8 DIVISION 18. CALIFORNIA GAMBLING CONTROL COMMISSION.

9 CHAPTER 7. CONDITIONS OF OPERATION FOR GAMBLING ESTABLISHMENTS.

10 ARTICLE 3. MINIMUM INTERNAL CONTROL STANDARDS (MICS) FOR GAMBLING  
11 ESTABLISHMENTS.

12  
13 **§ 12388. Extension of Credit, Check Cashing, and Automatic Teller Machines (ATMs).**

14 (a) A licensee may extend credit to a patron if, prior to extending credit to the patron, the  
15 licensee determines that an extension of credit is not prohibited by any statute, law, regulation, or  
16 local ordinance. A licensee ~~may~~ shall not extend credit to an owner, supervisor, player or other  
17 employee of a gambling business (as defined in Title 4 CCR sSection 12220) ~~or that is~~  
18 occupying a player-dealer position in any game at any gambling establishment owned by the  
19 licensee. A licensee shall not extend credit to an owner, supervisor, player or other employee of  
20 a third-party provider of proposition player services (as defined in Title 4 CCR sSection 12200)  
21 that is occupying a party to a contract with the licensee to provide third party proposition player  
22 services in a game with a player-dealer position in any gambling establishment owned by the  
23 licensee. A licensee may not extend credit to an employee of the licensee to act as a “house prop  
24 player” or “public relations player.” in any controlled game. In addition to complying with all  
25 laws regarding the issuance of credit, a licensee that extends credit to a patron shall address, in  
26 written policies and procedures and credit application form(s), the following requirements for the  
27 extension and collection of credit:

28 (1) Establish a method for determining the maximum amount which will be advanced to a  
29 patron, changes in the credit amount, the maximum time an extension of credit will be  
30 outstanding, and repayment terms.

Changes are shown in blue underline for additions and ~~red strike-out~~ for deletions.

1 (2) Prior to extending credit to a patron for the first time, ensure that the person requesting  
2 the credit is ~~positively~~ identified by examining the patron's unexpired government-issued form  
3 of identification evidencing residence and bearing a photograph of the patron, such as a driver's  
4 license or passport. ~~In addition,~~

5 (3) ~~e~~Ensure that the patron is credit worthy through an assessment of one of the following:

6 (A) Receipt of patron information on a credit application form which includes the patron's  
7 name and signature, current address, telephone number, social security number, bank and/or  
8 trade references, employment information and income information, ~~to which shall be verified~~  
9 and used to form an assessment of the patron's financial situation, and collateral circumstances  
10 and credit worthiness of the patron.

11 (B) Receipt of a signed and dated authorization from the patron to access their consumer  
12 credit report from a bona fide credit-reporting agency to show the patron has an established  
13 credit history consistent with approved credit policies and ~~or~~ receipt of information from a bona  
14 fide credit-reporting agency that the patron has an established credit history consistent with  
15 approved credit policies.

16 (C) If any previous credit transactions exist between the patron and the gambling  
17 establishment, an Examination of those records of previous credit transactions with the patron,  
18 if any, showing that the patron has paid in a timely manner all credit instruments and/or  
19 otherwise documenting that it has there is a reasonable basis for extending the credit amount to  
20 the patron.

21 (34) An owner or designated key employee other than a dealer must approve any credit  
22 application.

23 (45) No credit may be extended to any patron who has signed a self-exclusion form (Title 4  
24 CCR sSection 12464) or has self-restricted access to credit (Title 4 CCR sSection 12463) for the  
25 time period of the exclusion or restriction.

26 (56) Notify the patron of the issuance or denial of credit. The notification for issuing credit  
27 shall include the date of issuance, terms of repayment, and interest charges, if applicable. If a  
28 patron is denied credit, and the denial is based, in whole or part, on any information contained in  
29 a consumer credit report, the licensee shall comply with Civil Code section 1785.20.

1       ~~(67)~~A If a patron is approved for credit pursuant to subparagraph (B) of paragraph (3), a  
2 copy of ~~any~~ the patron's consumer credit report obtained by the licensee shall be kept on file  
3 with the cardroom for as long as that patron's credit account is open.

4       ~~(78)~~ Written or electronic records shall be maintained on each attempt to collect on  
5 delinquent credit accounts.

6       ~~(89)~~ For each patron issued credit, the licensee shall maintain a record of the patron's credit  
7 limit, payment schedule, outstanding credit balance, and the patron's signature on a credit  
8 agreement.

9       (b) For each patron that is issued credit for the first time, the following information shall be  
10 collected and maintained:

11       (1) Patron's name, current address and telephone number;

12       (2) A photocopy of the patron's unexpired government-issued form of identification  
13 evidencing residence and bearing a photograph of the patron, such as a driver's license or  
14 passport;

15       (3) Basis upon which credit verified, as listed in subsection ~~(a)(2)~~(3);

16       (4) Documentation of authorization by a person designated by management to approve credit.

17       (c) If payment upon an extension of credit is delinquent for more than 90 days, as determined  
18 by the original credit agreement, the person to whom credit was extended shall be prohibited  
19 from obtaining additional credit until the amount owed is paid in full.

20       (d) No gambling enterprise shall cash any check if cashing such a check is prohibited by any  
21 statute, regulation, or ordinance. No gambling enterprise employee shall be permitted to cash  
22 any check drawn against any federal, state, county, or other government fund, including, but not  
23 limited to, social security, unemployment insurance, disability payments, or public assistance  
24 payments, as outlined in Business and Professions Code section 19841, subdivision (q), unless  
25 the check is for wages or payment for goods or services.

26       (e) A licensee who does not deposit a patron's check within three banking days after receipt  
27 shall be considered to have extended credit to that patron.

28       ~~(f)~~(1) A licensee shall not allow a patron to replace, redeem, reclaim or repurchase ~~an un-~~  
29 ~~deposited~~ a personal check with a subsequent personal check, unless that patron has been  
30 approved for an extension of credit as provided in this Article and the amount of the check or  
31 checks to be replaced is within the patron's approved credit limit.

Changes are shown in blue underline for additions and ~~red strike-out~~ for deletions.

1       (2) A subsequent personal check used by a patron to replace a previous personal check may  
2 not be replaced with another personal check at any time after receipt by the licensee.

3       (3) Paragraph (1) of this subsection shall not apply to a personal check that has not been  
4 deposited by a licensee within three banking days after receipt, or to a dishonored check.

5       (g) A licensee that cashes checks for a patron shall address, in written policies and  
6 procedures, the following requirements for the cashing of checks:

7       (1) Prior to cashing a check for a patron, the designated employee shall determine that:

8       (A) The licensee's records do not contain information reflecting that the patron presenting the  
9 check has signed a self-exclusion form or self-restricted access to check cashing for the time  
10 period of the exclusion or restriction,

11       (B) Cashing such check is not prohibited,

12       (C) Cashing such check conforms to the licensee's approval process,

13       (D) The check is for a specific amount and within the patron's established check cashing  
14 amount limit, and, in the case of a personal check, includes the current date, and,

15       (E) ~~The check is payable to the gambling establishment, or in~~ In the case of a third party  
16 check, the check is endorsed over to the gambling establishment.

17       (2) If personal checks, cashier's checks, or payroll checks are cashed, the licensee or  
18 designated employee shall examine and, if the patron is not approved for credit or check cashing,  
19 record an unexpired government-issued form of identification evidencing residence and bearing  
20 a photograph of the patron, such as a driver's license or passport. If the patron's identification  
21 information is already on file with the licensee, ~~which includes a photo of the patron,~~ then  
22 retrieval and examination of this identification file by the licensee or designated employee shall  
23 satisfy the provisions of this paragraph.

24       (3) Records of all returned checks shall be maintained by the gambling establishment and  
25 shall include, at a minimum, the following:

26       (A) Date on the check.

27       (B) Name of the customer presenting the check.

28       (C) Amount of the check.

29       (D) Date(s) the check was dishonored.

30       (E) Date(s) and amount(s) of any collection received on the check after being returned by a  
31 bank.

1 (4) If a check is dishonored, the person who proffered the check shall be prohibited from  
2 cashing additional checks until the amount owed is paid in full, but may replace a dishonored  
3 check in accordance with the policies of the licensed gambling establishment.

4 (5) The licensee shall include written procedures for the collection of checks dishonored for  
5 non-sufficient funds (NSF), including a point in time that the NSF check will be written off as a  
6 bad debt.

7 (h) If a licensee that cashes checks for a patron charges a check-cashing fee, the licensee  
8 shall obtain and maintain an unexpired California Department of Justice Check Cashing Permit  
9 pursuant to Civil Code section 1789.37.

10 (i) Checks accepted or credit instruments completed in accordance with this Article are valid  
11 and enforceable instruments.

12 (j) A licensed gambling establishment shall not have an ATM (automatic teller machine or  
13 cash- or voucher- dispensing machine) accessible by an individual while physically seated at a  
14 gaming table, unless otherwise required under the Americans with Disabilities Act.

15 (k) ATMs shall be configured to reject Electronic Benefit Transfer cards (EBTs) issued by  
16 the State of California or by any city, county, or city and county therein.

17 Note: Authority cited: Sections 19811, 19823, 19840, 19841(g), 19841(o), 19841(q), 19901, 19905 and 19920,  
18 Business and Professions Code. Reference: Sections 19801, 19841(g), 19841(o), 19841(q), 19901, 19905 and  
19 19920, Business and Professions Code.

# COMMENTS AND RESPONSES FOR PROPOSED REGULATIONS

## MINIMUM INTERNAL CONTROL STANDARDS (MICS) FOR GAMBLING ESTABLISHMENTS: EXTENSION OF CREDIT AND CHECK CASHING CGCC-GCA-2009-05-R

### A. 45-Day Comment Period Ending July 21, 2009

The following comments/objections/recommendations were made regarding the proposed action, either in writing during the 45-day comment period that ended on July 21, 2009, or orally at the public hearing that was held on July 21, 2009.

1. Regarding these proposed regulations in general:

- a. David Fried – California Gaming Association (CGA): The CGA is in agreement with the proposed regulations, and appreciates staff's efforts to simplify the regulations and make them easier to implement.

**Response:** This expression of support was accepted and considered in the adoption of the proposed action.

- b. Alan Titus – Artichoke Joe's: The Act expresses concern with gambling addiction.<sup>1</sup> The Act also requires the Commission to adopt regulations on the extension of credit.<sup>2</sup> The proposed regulations fail to place limits on credit.

**Response:** This comment was rejected. Section 12388 is already established in law. It prohibits or restricts credit to various types of players and licensees, it establishes credit application criteria, and considers various types of check cashing as extensions of credit. These proposed changes to section 12388 are meant only to refine this existing regulation.

2. As amended by this action, Section 12388(a) would prohibit a licensee from extending credit to an *owner, supervisor, player or other employee* of a gambling business or provider of third-party proposition player services (TPPS) to play a game that has player-dealer position. These changes would also apply this credit restriction to a TPPS only when the TPPS is under *contract* with the cardroom. Finally, these changes would specify that a cardroom cannot extend credit to a "house prop player" or "public relations player" when the credit is to be used in a game with a *player-dealer position*.

- a. Bureau of Gambling Control (Bureau): As a result of a recent investigation, the Bureau recommends that credit not be extended to "house prop players," for use in

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<sup>1</sup> Business and Professions Code, subdivision (c) of section 19801.

<sup>2</sup> Business and Professions Code, paragraph (1), subdivision (g) of section 19841.

any controlled game. The current language of this regulation only pertains to controlled games with a player-dealer position, which would exclude poker games. The recent investigation involved a key employee being allowed to use house money to play poker, resulting in a house banking allegation. To avoid these house banking issues, the regulation should prohibit the extension of credit to employees to act as a "house prop player" or "public relations player."

- b. David Fried- CGA: "House prop players" play poker games. Poker is not a banking game, has no player-dealer position, and as such, presents no opportunity for house banking. Like regular patrons, the extension of credit to "house prop players" can help prevent problems such as follow-home robberies.

**Response (a. & b. above):** The Bureau's comment was accepted, and the proposed regulation amended to prohibit a licensee from extending credit to an employee to act as a "house prop player" or "public relations player," for use in *any* game.

- c. Alan Titus – Artichoke Joe's: The proposed amendment clarifies that the licensee cannot lend monies to an owner, supervisor, player or other employee of a gambling business that is occupying a player-dealer position; however, the present tense "is occupying" is not clear. Does this apply only while the gambling business employee is actually seated at the table? We think the regulation should simply prohibit any and all loans from the cardroom to any licensed gambling business, the same as with TPPS.

**Response:** This comment was rejected. The fundamental difference between a gambling business and TPPS is that a TPPS is a party in a contract with the cardroom. In contrast, a gambling business may enter the cardroom with little or no notice to, or prior knowledge of, the cardroom employees. As a result, the language that restricts credit to these different types of licensees is tailored to their particular circumstances. The gambling business restriction is worded more in the present tense, whereas the TPPS language acknowledges a prior contract.

Further, this proposed regulation has the same restriction on credit to a gambling business as it does for a TPPS. In either case, a licensee cannot provide them credit to play a game that has a player-dealer position.

3. Section 12388(a)(1) requires the licensee to establish a method for determining the maximum amount which will be advanced to a patron, changes in the amount of credit, the maximum time an extension of credit will be outstanding, and repayment terms.
- a. Alan Titus – Artichoke Joe's: Nothing in this regulation or in any other regulation requires that a licensee actually set maximum credit limits, maximum times for repayment, or repayment terms.

**Response:** This comment was rejected. No changes have been proposed for paragraph (1) of subsection (a) as this section already requires licensees to establish

applicant standards for the extension of credit, changes in the credit amount, the maximum time an extension of credit will be outstanding, and repayment terms.

Further, specific repayment requirements to the degree preferred by this commenter may not be flexible enough for the business model of many cardrooms. These regulations require credit restrictions and procedures for California cardrooms *for the first time*. This initial effort is meant to be less intrusive upon the business practices of cardrooms until such time as the Commission determines that more restrictive regulations should be established. At this time, more restrictive regulations may not be necessary or justified.

4. Section 12388(a)(2) requires cardrooms to *verify* applicant information and *assess* the applicant's credit worthiness before granting credit to a patron. Changes to this section also allow a cardroom to use information from previous credit transactions *only* when a patron actually has a credit history with that cardroom. Finally, these proposed changes would delete the word "*positively*," as it is unnecessary when referring to the requirement that the cardroom identify credit applicants.
  - a. Alan Titus – Artichoke Joe's: This regulation appears to require that prior to extending credit to a patron for the first time, certain steps are undertaken to ensure that the person is creditworthy. We think application of the regulation only to patrons extended credit for the first time is too limited.

**Response:** This comment was accepted and amendments made that will separate *patron identification* requirements for first time credit applicants from the *creditworthiness assessment* for all credit applicants, making the two separate paragraphs within Subsection (a). This change would make the second sentence of paragraph (2) a separate paragraph (3), clarifying the fact that subparagraphs (A), (B) and (C) apply to all credit applicants.

The second sentence of paragraph (2) has always been independent of the first sentence and is meant to apply to all credit applicants, as evidenced by the introductory words *in addition*, and further evidenced by subparagraph (C) which can only apply to *non-first-time* credit applicants.

5. Section 12388(a)(2)(A) clarifies that the cardroom must obtain and verify certain patron information and use the information to assess the patron's financial situation and credit worthiness.
  - a. Alan Titus – Artichoke Joe's: The regulation fails to require that certain vital information be obtained. Credit applications commonly request bank information. Moreover, income information is meaningless without information about financial debts and obligations.

**Response:** This comment was rejected. Subparagraph (A) already requires bank information. Further, these regulations require the licensee to establish the method by

which they determine creditworthiness. More specific detailed information to the degree preferred by this commenter may not be flexible enough for the business model of many cardrooms. These proposed regulations require cardrooms to establish credit application procedures *for the first time*. This initial effort is meant to be less intrusive upon the business practices of cardrooms until such time as the Commission determines that more restrictive regulations should be established. At this time, more restrictive regulations may not be necessary or justified.

6. Section 12388(a)(2)(C) allows a cardroom to use the *previous credit transactions* method of credit approval *only* when a patron actually has a credit history with that cardroom. Prior transactions between the cardroom and the patron must be reviewed to determine if the patron has paid timely and there is a reasonable basis for extending the credit amount.
  - a. Alan Titus – Artichoke Joe’s: This subsection seems to contradict section 12388(a)(2), which applies only when credit is being extended to a person for the first time. We suggest changing section 12388(a)(2) and leaving this section as proposed.

**Response:** This comment was accepted. See response 4.a. above for Section 12388(a)(2).

7. Section 12388(c) requires that a determination of payment delinquency be based on the terms of the original credit agreement, preventing the cardroom from changing the terms to avoid a delinquency. This section also prohibits additional credit for persons who are delinquent on their payments for more than 90 days.
  - a. Alan Titus – Artichoke Joe’s: Instead of 90 days, if a borrower is delinquent on a loan repayment, even for just a few days, they should not be allowed further credit. Further, these regulations should prohibit demand notes and require that loans be repaid through a payment schedule or on dates certain.

**Response:** These comments were rejected. There may be many understandable circumstances that could result in a payment delinquency of just a few days, including illnesses, vacations, etc. Further, specific repayment requirements to the degree preferred by this commenter may not be flexible enough for the business model of many cardrooms. These regulations require credit restrictions and procedures for California cardrooms *for the first time*. This initial effort is meant to be less intrusive upon the business practices of cardrooms until such time as the Commission determines that more restrictive regulations should be established. At this time, more restrictive regulations may not be necessary or justified.

8. Section 12388(f) prohibits a cardroom from allowing a patron to, three or more banking days after receipt, redeem, reclaim or repurchase a personal check and replace it with another personal check, unless the patron is approved for credit and the amount of the check to be replaced is within the patrons approved credit limit.

- a. Commission Chairman Shelton/Commissioner Vuksich: Patrons should be prohibited from replacing one bad check with another, over and over again.
- b. David Fried- CGA: The CGA has previously recommended that patrons be allowed to replace a check at least once. However, cardrooms should be allowed to accept a check that is intended to replace a dishonored check as many times as is necessary to clear the dishonored check.

**Response (a. & b. above):** These comments were accepted in part, and Section 12388(f) amended to allow a patron to replace a personal check only once.

#### **B. First 15-Day Change Comment Period Ending August 17, 2009**

The following comments/objections/recommendations were made regarding the proposed action, during the first 15-day change comment period that ended on August 17, 2009.

1. Section 12388(a) on page 1, line 23 prohibits a cardroom from extending credit to an employee to act as a "house prop player" or "public relations player" in any controlled game.
  - a. David Fried- CGA: The Bureau's arguments about game strategy and play are misplaced. There is no legal reason why a cardroom cannot extend credit to a "house prop player" for use in a poker game. "House prop players" are there to keep a game going that may otherwise end because of too few players. Once a game is "active," the "house prop player" will withdraw from the game. Contrary to the Bureau's notions, "house prop players" do not have unlimited funds available to them from the cage. "House prop players" usually play in poker games that have a wager limit, so chip counts are not as decisive as may be the case in other games. Further, playing recklessly with large sums of money would only serve to excite other players, not intimidate them.

**Response:** Staff recommends that this comment be rejected. Whether in a poker game or in a game with a player-dealer position, it is important that patrons do not have the perception that the house is participating in the game. Business and Professions Code section 19984(a), prohibits the house from banking games through a licensed Third-Party Provider of Proposition Player Services, by stating in part:

*"... in no event shall a gambling establishment or the house have any interest, whether direct or indirect, in funds wagered, lost, or won."*

To help reinforce this provision, in accordance with Business and Professions Code section 19984(c), the Commission has established California Code of Regulations, Title 4, Section 12200.7(e), which states, in part:

*“(e) A proposition player contract shall be consistent with the provisions of Business and Professions Code section 19984, subdivision (a), prohibiting a gambling establishment or the house from having any interest, whether direct or indirect, in funds wagered, lost, or won. No proposition player contract shall be approved that would permit the house to bank any game in the gambling establishment.”*

These laws and regulations do not specify what *type* of game being played, whether it is poker or a game with a rotating player-dealer position. In fact, Section 12200.7(e) prohibits the house from banking *any* game being played in the cardroom.

Although the statutes and regulations noted above apply only to *licensed* Third-Party Providers of Proposition Player Services, they are clear attempts to avoid any inference to the public that the house may be banking games through other players, which is prohibited by Penal Code section 330 and Business and Professions Code section 19806. These third party laws and regulations provide the Commission with the necessary guidance to establish additional regulations which would insure that cardrooms are not banking games through their own employees. If the legislature was clear in their intention to not allow cardrooms to bank games through a third party, then surely they would object to cardrooms banking games through their own employees (i.e. house prop players).

Section 12388(a) was established, and is now being amended, under the broad authority provided by Business and Professions Code sections 19840 and 19841(g). The guidance provided by the third party laws and regulations noted above prohibit even an *indirect* interest in the funds wagered at the gambling table. There may be a myriad of ways that a cardroom could provide or loan money to a house prop player in an effort to disguise the house’s financial interest in the game. As a result, these amendments to Section 12388(a) prohibit credit to employees to act as a house prop player in any controlled game.

2. Section 12388(f) on page 3, line 28 prohibits a cardroom from allowing a patron to redeem, reclaim or repurchase a personal check with another personal check, unless the patron is approved for credit and the amount of the check to be replaced is within the patrons approved credit limit. This restriction does not apply to personal checks that have not been deposited within three banking days of receipt, or dishonored checks. Finally, a subsequent personal check used by a patron to replace a previous personal check may not be replaced with another personal check at any time after receipt by the licensee.
  - a. Charles Bates- Bay 101: At the end of play, a patron should be allowed to redeem a personal check written earlier with a combination of their winnings, chips and a smaller check for the balance. This is a sound business practice, since it reduces the chances of a bounced check. It also represents sound money management on the part of the patron. The redemption of a personal check with another personal check should be allowed if it reduces the cardroom’s outstanding liability.

- b. David Fried- CGA: There is no authority for the Commission to restrict legal efforts by cardrooms to collect on dishonored checks. Cardrooms should be able to accept a personal check that is meant to clear a bad check. Further, cardrooms should be allowed to enter into an installment payment agreement with a patron that is short of funds. In this case, the patron would pay down the debt by writing monthly payment checks to replace the bounced check.

**Response (a. & b. above):** Staff recommends that this comment be rejected. In response to the first issue, Section 12388(f) already allows patrons to replace a personal check that was written to the cardroom at the beginning of play, with another personal check, as long as the original check has not yet been deposited by the cardroom and three banking days have not elapsed. In response to the second issue, this section does not prohibit a cardroom from allowing patrons to replace a dishonored check with another personal check, or multiple personal checks. The only condition to either of these scenarios is that the *replacement* check(s) cannot *again* be replaced later with another personal check. This condition was introduced during the first 15-day change so that a cardroom cannot allow a patron to replace one check with another, over and over again, in an effort to avoid having the overall transaction considered as an extension of credit. Some local jurisdictions do not allow cardrooms to extend credit.

### **C. Comments Made Outside the Public Comment Periods**

The following written comments were received after the close of the first 15-day change public comment period. Although these comments are included in the file without a response, they are generally reiterations of comments made during the first 15-day change public comment period. As a result, responses have already been provided.

1. William Zender – Last Resort Consulting: Extending credit to “house prop players” to use in poker games does not give the house an interest in the game, it does not affect the strategy or odds of the game for other players, and it does not intimidate other players. “House prop players” are used to keep the game going when a table drops to six or less players.
2. David Fried- CGA: Cardrooms should be allowed to resolve bad checks through installment payments, even if one of the installment payment checks later bounces. We would like the administrative record clarified to reflect that the Commission does not intend to hinder installment payment plans where the patron has made payments on the balance.

The laws cited in the response to our August 17<sup>th</sup> comment about prohibiting credit to house prop players are applicable only to a licensed TPPS, not an employee of the cardroom (i.e. house prop player). Further, there is no banking in poker games because all players wager into a common pool rather than against a single participant.