

**DESCRIPTION OF PROPOSED REGULATIONS**  
**INTERIM GAMBLING LICENSES**  
(CHAPTER 233, STATUTES OF 2009; AB 293, MENDOZA)

**INTRODUCTION:**

These proposed regulations would implement legislation<sup>1</sup> that requires the California Gambling Control Commission (Commission) to establish regulations for the issuance an interim gambling license, so that a gambling enterprise may continue to operate in the event of a death, insolvency, foreclosure, receivership, or incapacity of an owner-licensee. These proposed regulations would establish an application process, timelines, criteria and conditions for interim gambling licenses.

**BACKGROUND:**

The Gambling Control Act (Act)<sup>2</sup> provides for the licensure of specified individuals and businesses involved in gambling activities, and for the regulation of those activities, by the Commission. One of the provisions of the Act requires the *owner* of a gambling enterprise to be licensed.<sup>3</sup> If the owner is a *natural person*, then that person must hold a state gambling license.<sup>4</sup> If the owner is not a natural person, such as in the case of a *corporation*, the Act requires that specified *persons* within that corporation also be licensed.<sup>5</sup>

The objective of these licensing requirements is to insure that a gambling enterprise is operated by persons of good character and integrity, whose operations are free from criminal or corruptive elements, where games are conducted fairly, honestly, and are not inimical to public health, safety or welfare.<sup>6</sup> Toward this end, the Bureau of Gambling Control (Bureau) conducts an extensive background investigation on those persons and businesses applying for a gambling license. These investigations can understandably take time to conduct. Existing regulations allow for one year from the date an application is received to the issuance or denial of a license by the Commission.<sup>7</sup>

Recent Commission data show that over 38% of the licensed gambling establishments (cardrooms) in California have only one natural person licensed as an owner-licensee. The Act prohibits a person from conducting gambling operations without first obtaining a gambling license.<sup>8</sup> As a result, in the event of the death of an owner-licensee, a gambling enterprise may not be able to lawfully operate because the successor in ownership for the gambling enterprise is not licensed with the Commission. The cardroom could be required to close because the regular licensing process for the new owner could take up to one year; putting employees out of work and reducing the value of the gambling enterprise's assets.

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<sup>1</sup> Chapter 233, Statutes of 2009 (AB 293, Mendoza)

<sup>2</sup> Business and Professions Code, Division 8, Chapter 5, section 19800 et seq.

<sup>3</sup> Business and Professions Code, section 19851, subdivision (a)

<sup>4</sup> Business and Professions Code, section 19850

<sup>5</sup> Business and Professions Code, section 19852, subdivision (a)

<sup>6</sup> Business and Professions Code, sections 19801, subdivisions (g) and (h), 19823, subdivision (a), and 19857

<sup>7</sup> California Code of Regulations, Title 4, Section 12342, subsection (b)

<sup>8</sup> Business and Professions Code, sections 19850 and 19855

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AB 293 was passed into law in 2009. In part, it established subdivision (s) of Business and Professions Code section 19841. This new law instructs the Commission to establish an application process and criteria for interim gambling licenses. The purpose of the interim license would be to allow a gambling enterprise to continue gambling operations in cases of specified unforeseen events, such as in the death of an owner-licensee. The interim license would allow gambling operations to continue while the Commission considers the regular gambling license application of the successor in interest to the owner-licensee. Section 19841(s) requires the Commission to adopt these interim license regulations by December 31, 2011. These proposed regulations are intended to implement this portion of AB 293.

Throughout the development of these proposed interim license regulations, Commission staff has worked directly with Bureau staff in an effort to accommodate their regulatory needs. In addition, Commission staff has conducted one informal written public comment period to solicit recommendations from the cardroom industry and other interested parties. The written public comment period was conducted from May 19 through June 6, 2011. All comments and recommendations were recorded, categorized and considered in the further development and refinement of these regulations. Every effort has been taken to accommodate the needs of the cardroom industry without compromising the regulatory purpose of the Commission or the Bureau.

### **EXISTING LAW:**

Business and Professions Code section 19811, subdivision (b), provides the Commission with the primary jurisdiction over persons that conduct gambling operations within the state.

Business and Professions Code section 19823 assigns the Commission with the responsibility of assuring that gambling licenses are not issued to persons whose operations are inimical to public health, safety or welfare.

Business and Professions Code section 19824 provides the Commission with the power to require persons to apply for a gambling license, and the power to grant temporary licenses, with terms and conditions.

Business and Professions Code section 19825 allows the Commission to utilize the administrative adjudication process provisions of the Government Code to litigate the denial of gambling licenses.<sup>9</sup>

Business and Professions Code section 19826, subdivision (a), assigns the Bureau with the responsibility to investigate the qualifications of license applicants and make recommendations to the Commission regarding the issuance or denial of a gambling license.

Business and Professions Code section 19840 allows the Commission to adopt regulations for the administration and enforcement of the Act.

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<sup>9</sup> Government Code, Title 2, Division 3, Part 1, Chapter 5, section 11500 et seq.

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Business and Professions Code section 19841, subdivision (a), requires the Commission to adopt regulations that prescribe the method, form and information to be furnished in the application for a gambling license.

Business and Professions Code section 19841, subdivision (s), requires the Commission to adopt regulations (by December 31, 2011) that provide procedures, criteria and timelines for the processing and approval of temporary or interim licenses, so that a successor in interest can continue gambling operations in case of the death, insolvency, foreclosure, receivership or incapacity of a licensee.

Business and Professions Code section 19850 requires every person who owns, operates or conducts a gambling enterprise to apply for and maintain a gambling license. Further, this section requires that any person who receives any compensation or reward, or any percentage or share of the money played from a gambling operation, must apply for and maintain a gambling license.

Business and Professions Code section 19853, subdivision (a), allows the Commission to adopt regulations that require the licensure of any person who has the power to exercise significant influence over a gambling operation.

Business and Professions Code section 19855 prohibits a person from conducting gambling operations without first obtaining a gambling license.

Business and Professions Code section 19857 prohibits the issuance of a gambling license unless the Commission is satisfied that the applicant is a person of good character, honesty, integrity, and whose prior activities do not enhance the dangers of unfair gambling.

Business and Professions Code section 19859 requires the Commission to deny a license to a person who has been convicted of a felony, any misdemeanor involving dishonesty or moral turpitude within the previous 10 years, or who has been associated with criminal profiteering or organized crime.

Business and Professions Code section 19869 allows an applicant to withdraw an application for a gambling license, but allows the Commission to deny the withdrawal request and have the Bureau go forward with its investigation when it would be in the best interests of the public and the policies of the Act.

Business and Professions Code section 19870 allows the Commission to grant or deny a license application, after considering the recommendations from the Bureau. This section also allows the Commission to limit or place restrictions upon a license when it would be in the public interest and consistent with the policies of the Act.

### **PROPOSED ACTION:**

This proposed action establishes new Section 12349 in Article 2, Chapter 6, Division 18, Title 4 of the California Code of Regulations. The proposed regulations are as follows:

Section 12349. Interim Licenses for Continued Operation Following Qualifying Events; Criteria; Processing Times; Conditions.

- Subsection (a) would provide definitions for the following words and terms that are unique to Section 12349:
  - (1) “Applicant” would mean a new owner of a gambling enterprise who makes application to the Commission for an interim gambling license.
  - (2) “Interim gambling license” would mean a license issued by the Commission which permits the interim operation of a gambling enterprise following a qualifying event, during which time the Commission processes and considers an application for a regular gambling license from a new owner.
  - (3) “New owner” would mean a person who is a receiver, trustee, beneficiary, executor, administrator, conservator, successor in interest, or security interest holder for a gambling enterprise that becomes the owner of a gambling enterprise as a result of a qualifying event.
  - (4) “Qualifying event” would mean an unforeseen event, such as those specified in Business and Professions Code Section 19841, subdivision (s), that unexpectedly results in a change in the ownership of a gambling enterprise and prevents gambling operations because the new owner does not hold a valid gambling license.
  - (5) “Regular gambling license” would mean a gambling license issued by the Commission pursuant to Section 12342.

The meaning of the above noted words and terms may not be consistent with the meaning of similar words or terms used in other existing regulations. As a result, these definitions are necessary to insure that the proposed regulations are clear, concise and easy to understand.<sup>10</sup>

- Subsection (b) would allow gambling operations to continue following of a qualifying event, provided that a new owner assumes control of the gambling enterprise, notifies the Commission of the qualifying event within 10 days, and submits a request for an interim gambling license within 30 days. This regulation would require that gambling operations cease in the event that the interim license request is denied or withdrawn.

This subsection would restrict the issuance of an interim gambling license to only those instances when there is no *person* licensed as an owner-licensee, as a result of a specified unforeseen event. Business and Professions Code section 19841(s) clearly applies the interim license to situations that would threaten to shutdown gambling operations because no person holds a gambling license. This regulation is necessary in order to prevent the interim license process from being used to avoid or subvert other actions by the Commission, such as disciplinary action against an owner-licensee. Further, this regulation will prevent the interim license process from being used for other business/financial transactions that are within the control of the licensee and require *prior* approval from the Commission.<sup>11</sup>

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<sup>10</sup> Government Code, section 11349.1, subdivision (a); California Code of Regulations, Title 1, Section 16, subsection (a)

<sup>11</sup> Business and Professions Code, sections 19801, subdivision (k), 19824, subdivision (c), 19900, 19901, 19902, 19903 and 19904

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Pursuant to Business and Professions Code section 19841(s), this regulation allows a cardroom to operate continuously when specified unforeseen events occur. However, if any factor in the applicant's background dictates that the Commission deny the interim license, gambling operations must cease if no other person holds an interim or regular gambling license. The Act and penal code prohibit gambling operations if no person holds a gambling license.<sup>12</sup>

- Subsection (c) would establish the application process for an interim gambling license. The process includes a requirement that the new owner submit the following to the Commission within 30 days of the qualifying event: a complete application package for a regular gambling license; a written request for an interim license; and a document that evidences the qualifying event.

As a result of this regulation, the application process for both an interim and regular gambling license would start simultaneously. This would help to prevent a duplication of effort by the applicant and Commission/Bureau staff. Except for details about the qualifying event, all of the information needed to consider an interim license application is already requested on a regular "Application for State Gambling License" form (CGCC – 030). This regulation would also help to expedite the regular license application process, as some of the work may have already been accomplished for the interim license.

- Subsection (d) would require that a request for an interim gambling license be ancillary to, and concurrent with, an application for a regular gambling license. The interim license is only meant to allow gambling operations to continue while a more permanent solution is sought for an unforeseen licensing problem. This regulation will insure that a regular license application is being processed during the term of the interim license.

This regulation would also set up various timelines for the interim license application process. It allows Commission staff 10 days to determine the completeness of a request for an interim gambling license. If the request is incomplete, this regulation allows the applicant another 10 days to send the additional documents or information. If the applicant fails to send the requested documents or information, the application would be considered abandoned. When a request is considered complete, the Commission would have 60 days to schedule and conduct a meeting to grant or deny the request for an interim license. The issuance of an interim license is a stopgap measure with some level of urgency involved. The multiple steps and multi-staff involvement of an interim license request dictates that goals be established to insure timely processing. By listing these timelines in regulation, license applications are less apt to get bogged down during the various steps in the process.

This regulation would also require that gambling operations be terminated if an application for an interim license is abandoned by the applicant, and no other person has applied for or

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<sup>12</sup> Business and Professions Code, sections 19850 and 19855; Penal Code, section 337j, subdivision (a), paragraph (1)

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obtained an interim or regular gambling license. The Act and penal code prohibit gambling operations if no person holds a gambling license.<sup>13</sup>

This regulation would also prohibit the approval of an interim gambling license if any factor is disclosed that would disqualify the applicant for a regular license. If a factor exists that requires the Commission to deny an application for a regular license, it serves no purpose to issue an interim license to that same individual. The interim gambling license is meant to bridge the gap to a regular license.

- Subsection (e) would apply three criteria to the processing of a request for an interim gambling license. First, in the unlikely event that a regular license is issued before the interim license, then the request for an interim license would be deemed withdrawn. Second, if an applicant withdraws an application for a regular gambling license, then the request for an interim license would also be deemed withdrawn. Finally, the denial or cancelation of a request for an interim gambling license would not affect the processing of the regular license application.

These rules are necessary for the orderly processing of two concurrent license applications. For example, if an application for a regular license is withdrawn, it serves no purpose in going forward with the processing of the corresponding request for an interim license.

- Subsection (f) would apply the following conditions to the issuance of an interim gambling license:
  - (1) An interim gambling license would be invalidated upon issuance or denial of the corresponding regular license.
  - (2) The term of an interim gambling license would be determined by the Commission and based in part on the time necessary to process and consider the application for a regular gambling license.
  - (3) The issuance of an interim gambling license would not obligate the Commission to grant the regular license. Issuance of a regular license would be subject to specified criteria.
  - (4) The issuance of an interim gambling license would not create a vested right to a regular gambling license or an extension of the interim license.
  - (5) The issuance of an interim gambling license would not change the qualification requirements for a regular license.
  - (6) The holder of an interim gambling license would be required to notify the Commission within 30 days of hiring a new key employee or specified contractor.
  - (7) The authorization of *additional* permanent tables would be prohibited during the term of an interim gambling license.
  - (8) The holder of an interim gambling license would be required to pay all the applicable annual fees associated with a regular gambling license.

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<sup>13</sup> Business and Professions Code, sections 19850 and 19855; Penal Code, section 337j, subdivision (a), paragraph (1)

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- (9) The holder of an interim gambling license would be required to comply with the Act and its regulations.
- (10) The proceeds of the gambling enterprise would be required to be held in an escrow account and not disbursed until the Commission approves the ownership transfer and issues a regular gambling license to the new owner(s). The payment of taxes, operating expenses, preexisting obligations, preexisting dependent support and any other distributions approved by the Commission would be exempt from this restriction.
- (11) Allows the Commission to impose additional conditions upon individual applicants for an interim gambling license to address particular factual situations.
- (12) In requesting an interim gambling license, the applicant would agree to the foregoing conditions.

These conditions imposed on an interim gambling license are necessary in order that the license holder understands his or her obligations during the term of the license. The holder of an interim license may be new to the cardroom industry. Knowledge of the applicable provisions of the Act, and that key employees and specific service providers require licensure, is important to the success of the gambling enterprise. These conditions would insure that the holder of an interim gambling license understands that other requirements and factors may apply to the approval of their regular gambling license. These conditions would also insure that the proceeds of the gambling operation are not distributed until the holder of the interim gambling license is qualified for a regular permanent license, as California law prohibits a person from receiving any compensation or reward from the conduct of a controlled game unless that person holds a gambling license.<sup>14</sup> Finally, these conditions would help to align renewal dates and result in no excessive fees being collected from the holder of an interim gambling license.

- Subsection (g) would require the new owner of a gambling enterprise to provide the Commission with written notification if he or she intends to sell their ownership interest without first obtaining an interim or regular gambling license.

This regulation is meant to accommodate a new owner who might wish to sell their ownership interest rather than own and operate a gambling enterprise. Since gambling license requirements would apply to those that purchase that ownership interest, it is important that the Commission be immediately advised of any intent to sell. Commission staff would then help guide the purchaser(s) through the appropriate interim or regular licensing process.

- Subsection (h) would establish a process for the cancellation of an interim gambling license by the Commission when it is determined that the license holder is not qualified to hold a gambling license. The process would include an option for the license holder to request an evidentiary hearing, pursuant to existing regulations.<sup>15</sup>

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<sup>14</sup> Business and Professions Code, sections 19850, 19853, subdivision (a), paragraph (1), and 19879, subdivision (a); Penal Code, section 337j, subdivision (a), paragraph (2)

<sup>15</sup> California Code of Regulations, Title 4, Section 12050, subsection (b)

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In cases where the Executive Director determines that a person is not qualified to hold a gambling license, this regulation would provide “due process” for the license holder.

- Subsection (i) would insure that the interim gambling license process does not preclude the Commission from issuing temporary licenses, as authorized by Business and Professions Code section 19824(f).

Although this new regulation would authorize the issuance of an interim gambling license, so that gambling operations may continue following specified unforeseen events, it is necessary and proper that the Commission retain its existing authority and discretion to issue temporary licenses for other reasons.