

CALIFORNIA GAMBLING CONTROL COMMISSION**Updated Informative Digest**

No changes to be made. The Informative Digest in the Notice of Proposed Rulemaking is incorporated as if fully set forth in this section.

Final Statement of Reasons**A. SUMMARY OF COMMENTS RECEIVED AND RESPONSES THERETO**

Comments received during 45-day comment period, November 30, 2007 – January 17, 2008.

Bureau of Gambling Control, letter dated January 17, 2008.

Support regulations as written.

COMMISSION RESPONSE: No Commission Response required.

Harlan Goodson, Law Office of Harlan Goodson, e-mail dated January 17, 2008.

Proposed Section 12050(d) appears to provide a right of judicial review in the event of a denial by the Commission and cites Business and Professions Code, section 19870, subdivision (e) as the authority. B&P section 19870(e) provides however that judicial review may be available for a decision of the Commission denying a license or approval, *or imposing any condition or restriction on the grant of a license or approval.*

I recommend that proposed section 12050(d) be amended to include the right of judicial review in the event of imposing any condition or restriction as well as a decision to deny a license or approval.

COMMISSION RESPONSE: Suggestion accepted and change made.

Alan Titus, Robb & Ross, on behalf of Artichoke Joe's, letter dated January 15, 2008.

12047 (Withdrawal)

12047's provision for withdrawal before Bureau action does not make sense. Suggest changing statute and allow for withdrawal at any time prior to final action by Commission

COMMISSION RESPONSE: While the Commission is not in a position to change the statute at this time, the final action by the Bureau is the submission of a recommendation or report to the Commission. Therefore, once the Bureau has sent its report to the Commission, requests for withdrawal may not be considered under Business and Professions Code section 19869. No change made.

12050 Title and (a) (Hearing Procedures)

Title should be amended. Regulation should be structured chronologically. Suggest copy of full report of Division be given to applicant. Applicant should see same information given to Commissioners.

COMMISSION RESPONSE: Amended title of regulation as suggested. Revised subsection (a) to be more chronologically ordered. See final draft for language revision that includes full report.

12050(b)(2)(A)

The Commission has no authority to present a case.

COMMISSION RESPONSE: In the event of a conflict, the Bureau and perhaps the Indian and Gaming Law Section of the Attorney General's Office may not be able to present the case. Outside representation would normally be sought from one of the sections of the Attorney General's office, if time and resources permit, or from outside counsel, in extraordinary circumstances. However, Commission staff who are adequately segregated from the case may present a case.

12050(b)(2)(B)

An applicant has a right to discovery under due process principles. No documents are privileged or confidential under law. No documents should be redacted.

COMMISSION RESPONSE: Rights of discovery are indicated in Business and Professions Code section 19871, and this section (12050(b)(2)) references that the hearing will be conducted pursuant to that section. There may be information in the Bureau reports not presented as evidence which are confidential. Redaction may be a way to present information relied upon for the case in the original document format and is commonly-used vehicle in administrative hearings. If the applicant feels that the redaction has been overdone, the applicant could request that the documents be reviewed *in camera* for possible release to the applicant.

12050(b)(3)

The Commission has no authority to present a case.

COMMISSION RESPONSE: In the event of a conflict, the Bureau and perhaps the Indian and Gaming Law Section of the Attorney General's Office may not be able to present the case. Outside representation would normally be sought from one of the sections of the Attorney General's office, if time and resources permit, or from outside counsel, in extraordinary circumstances. However, Commission staff who are adequately segregated from the case may present the information on which the Commissioners determine whether to grant a license or grant a license with conditions imposed.

Comments received from (first) 15-day comment period, May 15-June 2, 2008.

Alan Titus, Robb & Ross, on behalf of Artichoke Joe's, letter dated May 23, 2008.

12050(a) (Hearing Procedures)

Suggest copy of full report of Division be given to applicant. Applicant should see same information given to Commissioners.

COMMISSION RESPONSE: Revised subsection (a) to include full report and any supplemental documents.

Comments received from (second) 15-day comment period, July 8-23, 2008,

Mark Kelegian, Crystal Casino, by e-mail dated July 8, 2008.

Section 12048 (Abandonment of Applications).

The last sentence states that an abandoned application cannot be reactivated. As phrased, it can be interpreted as a “permanent ban” to re-apply. My hunch is that the intent is that the applicant will have to re-apply and that the pending application is abandoned. I suggest that this language be clarified to state the foregoing. Alternatively, if the intent is to permanently ban the applicant from re-applying I believe this would be excessively harsh and that a fairer approach would be to require the applicant to wait a reasonable amount of time (6 months) before re-applying and that upon a showing of good cause why the applicant did not respond or complete the process, that the applicant can re-apply within a shorter period of time. After all, there may be legitimate reasons why the applicant did not respond or complete the process.

COMMISSION RESPONSE: This language was not amended in the first or second modified draft, and therefore the comment is out of scope. However, the Commission’s intent is that the application which is abandoned cannot be reactivated, but that a new application may be submitted. As stated in the Initial Statement of Reasons, an applicant may cease to be employed by a particular gambling establishment during the period of time an applicant is being investigated, and abandonment of the application is the most cost-efficient option for all parties. However, the applicant may then take a new position at the same or different establishment, and this regulation does not place any time limit before the applicant may re-apply for licensure. After consideration of this comment, the Commission has determined that no change needs to be made.

Section 12348(b)(4) (Mandatory and Discretionary Grounds for Denial of Application...)

I believe that the phrase “willfully or persistently” is inconsistent as it applies to “(A) any regulation adopted by the Commission or Bureau.” As phrased, it puts a single willful instance on the same level as persistent violations that are for some reason not deemed willful. Moreover, it excuses repeat violations that fall below the interpretation of “persistent.” I believe that the intent of the section should be to allow for discretionary denial where the applicant “*demonstrates a pattern of violations of any regulation.*” By doing so, you will not be punishing an applicant who makes a single mistake, even if willful, and you will not be excusing an applicant who regularly violates regulations.

COMMISSION RESPONSE: This language was not amended in the first or second modified draft, and therefore the comment is out of scope. However, statutorily, contumacious defiance of an official investigatory body is grounds for denial (Business and Professions Code section 19859, subdivision (f)). Similarly, repeatedly violating Commission directives or regulations may be a ground for denial in this proposed regulation, if the violation is willful or persistent. Refusal or inability to follow the law may be inimical to public health, safety, welfare, or may undermine the public trust that gambling operations are free from criminal or dishonest elements, and thus the provision is needed as a discretionary cause for denial of a gambling license. The type of violation, including severity and harm and factual circumstances, would be considered by the Commission on a case-by-case basis in deciding whether or not the violation would be cause for denial.

Comments received at the August 28, 2008 Commission Meeting.

Alan Titus appeared at the August 28, 2008 noticed public Commission meeting at which the regulation package was on the agenda for Commission adoption. Mr. Titus indicated his appreciation of the time staff has spent in resolving many of the issues he has brought forward during this process. Mr. Titus reiterated his comments upon the separation of powers (Commission and Bureau) in 12050(a), 12050(b)(2)(A), and 12050(b)(3), the due process rights of 12050(b)(2)(B) and redaction of information, as summarized above.

COMMISSION RESPONSE: See responses to Alan Titus' written comments regarding 12050(a) and (b) above.

No public hearing was requested or held.

B. UPDATE OF INITIAL STATEMENT OF REASONS

The Initial Statement of Reasons is incorporated as if fully set forth in this section. In addition, Regulation 12348, Mandatory and Discretionary Grounds for Denial of Application for a State Gambling License or Key Employee license, is revised to read:

The Gambling Control Act and other laws (such as the Family Code provision regarding nonpayment of custodial support) provide statutory directives for mandatory denials of applications for gambling establishment owner licensees or key employees. In particular, Business and Professions Code sections 19852, 19857, 19858, 19859, 19860, 19863, 19880, and 19890 mandate denials of applications concerning gambling establishment owner licensees or key employees under specified circumstance.

The Commission may also deny an application on discretionary grounds, and those are listed in subsection (b) of this proposed regulation. Because of the high scrutiny required by the Gambling Control Act for persons working in the area of controlled gambling, subsection (b)(3) contains items that point toward a person's character and trustworthiness. Unlike many other regulatory agencies, the Gambling Control Act permits denials based upon the character of an individual in order to protect the public health, safety and/or welfare and to ensure that gambling operations are free from criminal and dishonest elements and that gambling operations are conducted honestly.¹

¹ Business and Professions Code section 19856, subdivision (c).

Required Determinations

LOCAL MANDATE

These regulations do not impose a mandate on local agencies or school districts.

REASONABLE ALTERNATIVES TO THE PROPOSED REGULATIONS AND REASONS FOR REJECTING THOSE ALTERNATIVES.

The Commission is not aware of any reasonable alternatives that would as effectively achieve the regulatory purpose of processing applications or providing due process.

REASONABLE ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESSES

The Commission is not aware of any reasonable alternatives that would lessen any adverse impact on small businesses.

IMPACT ON PRIVATE PERSONS

The Commission is not aware of any reasonable alternatives that would be more effective or as effective and less burdensome to private persons.

IMPACT ON BUSINESS

The Commission has made a determination that the proposed regulatory changes will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.