

CALIFORNIA GAMBLING CONTROL COMMISSION

INITIAL STATEMENT OF REASONS

CGCC-GCA-2008-04-C

HEARING DATE: July 2, 2009

SUBJECT MATTER OF PROPOSED REGULATIONS: Interim Approval of Bingo Card-Minding Devices.

SECTIONS AFFECTED: Title 4, California Code of Regulations, Section 12486.

SPECIFIC PURPOSE OF REGULATORY PROPOSAL:

Introduction:

The California Gambling Control Commission (Commission) has been specifically directed, pursuant to Business and Professions Code section 19850.6, subdivision (a), to adopt regulations to implement the California Remote Caller Bingo Act (CRCBA),¹ as soon as possible. The Commission is proposing to adopt regulations that will establish a process for granting interim approval of card-minding devices used in the play of bingo games. The adoption of the proposed regulations will implement one element of the CRCBA, as mandated by Penal Code section 326.5.

Background:

SB 1369 authorizes “remote caller bingo” as a game that would allow specific nonprofit organizations to use audio or video technology to remotely link designated in-state facilities to cosponsor live bingo games, if authorized pursuant to a local ordinance and approved by the Commission. The Commission is required to regulate remote caller bingo, including but not limited to, the development of regulations for approval of card-minding devices.

According to the author, SB 1369 is intended to provide nonprofit organizations an opportunity to increase their fundraising ability by authorizing remote caller bingo, which will allow charities across the State to combine their games and offer larger prizes than allowed under current law. The author states, “The demand for services from California charities is increasing due to the economy, unemployment and our state budget cuts. At the same time, charitable donations are down and charities are faced with turning away people for whom it is their mission to serve. Charities desperately need new tools to increase their ability to raise funds to keep up with the demand for their services.”

¹ Chapter 748, Statutes of 2008 (SB 1369, Cedillio and Battin, et al.)

The bill directs the Commission to adopt appropriate emergency regulations as soon as possible, with the initial regulatory action to be filed with the Office of Administrative Law (OAL) by May 1, 2009. Effective January 1, 2009, Penal Code section 326.5(p)(3)(A) requires that any card-minding device used pursuant to the CRCBA be approved in advance by the Commission. An interim approval process has been established in Section 12482, which was adopted by the Commission as an emergency regulation to further the legislative intent expressed in the CRCBA of avoiding disruption of fundraising efforts by nonprofit organizations. The emergency adoption of Section was approved by OAL on December 22, 2008, to become effective January 1, 2009.² Minor, technical amendments, including a change to the section number, were approved by OAL and became effective April 24, 2009³. Section 12482 will remain in effect for 180 days during which time this proposed action is being pursued in order to make the regulation permanent in Section 19486.

Proposed Action:

This proposed action permanently establishes Chapter 8 in Division 18 of Title 4 of the California Code of Regulations, as follows:

- Article 2 is established to reflect the title “Bingo Equipment, Devices, and Supplies.”
- Section 12486 is established within Article 2 to reflect the title “Approval of Card-Minding Devices” to create an interim approval process for card-minding devices until such time as additional criteria for approval are established in Commission regulation. The requirement to approve card-minding devices is an entirely new responsibility for the Commission and it will take time to determine the appropriate approval criteria. In order to comply with the requirements of Penal Code sections 326.3 and 326.5, the Commission will establish an interim approval while appropriate approval criteria are ascertained. At that time, the Commission will begin the rulemaking process to establish the criteria in regulation. Subsection (a) imposes the following conditions for approval:
 - 1) Paragraph (1) sets the interim approval term at one year from the date granted or until regulations specifying additional criteria for approval become effective, whichever is later. The Commission is in the process of determining appropriate approval criteria, but as this is a new responsibility, we are unsure of the expected timeline. Setting the term of the approval at the latter of one year or the effective date of additional regulations is intended to minimize the burden on both the Commission and the device manufacturer. The manufacturer will not be required to reapply for an interim approval if the regulations are not yet established at the one-year expiration of the approval, saving time and money for the manufacturer and decreasing the workload on the Commission.
 - 2) Paragraph (2) states that an interim approval does not obligate the Commission to grant a regular approval and does not create a vested right in the holder to either an extension of an interim approval or the granting of a subsequent regular approval. This section is intended to clarify that a card-minding device that receives an interim approval will not be guaranteed to receive a regular approval. All conditions

² OAL File No. 2008-1218-06 E

³ OAL File No. 2009-0414-01 E

established by the Commission in future regulations applicable to card-minding devices will need to be met, regardless of whether or not the device has received an interim approval.

- 3) Paragraph (3) states that an interim approval does not change the legal requirement that the applicant bears the burden of establishing device compliance. This requirement is consistent with the provision in Business and Professions Code section 19856 stating that the burden of proof regarding qualifications for a license rests on the applicant.
 - 4) Paragraph (4) clarifies that interim approval of a specific card-minding device has no bearing on whether the manufacturer of the device will qualify for a Commission license, and states that an interim approval for a device will be cancelled if the manufacturer is ineligible for licensure. Pursuant to Penal Code section 326.5(p)(3)(B), any person that manufactures card-minding devices must be licensed by the Commission. Manufacturers are licensed through a separate licensing process established in Section 12492. The qualifications to receive a license to manufacture a card-minding device are unrelated to the criteria required for the device itself to be approved.
 - 5) Paragraph (5) establishes a procedure for the cancellation of an interim approval. A notice will be given to the manufacturer, by the Executive Director of the Commission, in the form of an order to show cause as to why the device's approval should not be cancelled. The manufacturer will have at least 30 days, but not more than 90 days, to respond to the order in writing. The matter will then be set for consideration at a Commission hearing, which will be conducted in accordance with applicable provisions of Section 12050(b). The process established in paragraph (5) affords due process and an opportunity to be heard before cancellation of an interim approval.
- Subsection (b) states that a specific model of card-minding devices and its designated software version shall be deemed approved if specified requirements are satisfied.
 - 1) Paragraph (1):
 - Requires the chief executive officer or other authorized representative of the entity that manufactures the card-minding device to self-certify, under penalty of perjury, that the specific card-minding device meets requirements established in statute. The approval of card-minding devices is a new program for the Commission, and it will take time for the appropriate approval criteria to be determined. Furthermore, the Commission does not have the resources at this time to preemptively examine every make and model of card-minding device used in California without serious disruption to charities' fundraising efforts. Until appropriate approval criteria are established and sufficient resources are available, the Commission must rely

on a self-certification process. If a device is later found to be non-compliant, the interim approval can be revoked.

- Provides for the use of Form CGCC-615, “Application for Interim Approval of Bingo Card-Minding Devices” (Rev. 05/09). The application form is needed in order to collect necessary information regarding the business and the types of devices manufactured, and to obtain the manufacturer’s self-certification that the device complies with all statutory requirements.

Amendments have been made to Form CGCC-615 to make specific reference to the fact that a bingo card-minding device must be both portable and hand-held in order to meet the statutory requirements for approval. The wording of the form in its original format focuses attention on requirements contained in subparagraphs (A) through (D) of paragraph (1) of subdivision (p) of section 326.5 and does not specifically mention a key requirement articulated in the portion of the text of paragraph (1) of subdivision (p) of Penal Code section 326.5, which precedes subparagraphs (A) through (D): the requirement that a card-minding device must be both “hand-held” and “portable.”

- Establishes a \$50 application fee for each model and its designated software for which approval is being requested. The \$50 fee is intended to be a nominal fee to cover the cost of processing applications, including a cursory review of the device and its software. To the extent that additional workload data becomes available, this fee may be increased once additional approval criteria are established in regulation.
- Subsection (c) requires a new approval of any device that has undergone a material software upgrade, as required pursuant to Penal Code section 326.5(p)(3)(A). Because the software is crucial to the operation of the card-minding device, a material software upgrade could significantly change the performance of the device.
- Subsection (d) requires that players, when using a card-minding device, manually input the numbers or symbols announced in the game into the device, and specifically prohibits automatic daubing, as defined. This subsection also requires that any card-minding device possessing automatic daubing capability have that capability disabled as a condition of approval. Penal Code section 326.5(p)(1)(B) requires that card-minding devices provide a means for bingo players to manually input each individual number or symbol, and section 326.5(p)(2) limits the functions performed by the card-minding device to those specified in statute. The Commission has interpreted these two provisions to prohibit the use of an automatic daubing feature in card-minding devices.
- Subsection (e) establishes the process for review and consideration of applications for approval by the Commission. The Commission will consider each application at a noticed meeting in order to provide transparency to the public and the manufacturer of the device. This subsection also provides that, if the application does not meet the requirements of this section, the manufacturer shall be notified of the deficiencies. A notification of deficiencies

will allow the manufacturer to correct any shortfalls in the application, rather than have the application disapproved.

UNDERLYING DATA:

Technical, theoretical or empirical studies or reports relied upon: None.

BUSINESS IMPACT:

The Commission has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

SPECIFIC TECHNOLOGIES OR EQUIPMENT:

The proposed regulatory action does not mandate the use of specific technologies or equipment.

CONSIDERATION OF ALTERNATIVES:

No reasonable alternative to the regulation would be either more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed regulation.

Set forth below are the alternatives that were considered and the reasons each alternative was rejected:

No reasonable alternative has been considered or otherwise identified and brought to the attention of the Commission.