

CALIFORNIA GAMBLING CONTROL COMMISSION
INITIAL STATEMENT OF REASONS
CGCC-GCA-2008-R-1

HEARING DATE: *(No Hearing Scheduled)*

SUBJECT MATTER OF PROPOSED REGULATIONS: Two-Year License Fees, and Two-Year TPPS and Gambling Business Licenses.

SECTIONS AFFECTED: **California Code of Regulations, Title 4, Division 18:** Adding Section 12008; Amending Sections 12122, 12200.14, 12200.20, 12202, 12203A, 12203.2, 12205.1, 12218.13, 12220.14, 12220.20, 12220.20A, 12222, 12237, 12301, 12342, 12343, 12344, and 12345.

SPECIFIC PURPOSE OF REGULATORY PROPOSAL:

The California Gambling Control Commission (Commission) is proposing regulations that would implement provisions of Senate Bill 730 (2007 Stat. Ch. 438) by establishing two-year license application fees for Gambling Establishments, Key Employees, providers of Third-Party Proposition Player Services (TPPS) and Gambling Businesses. As a result of SB 730, these proposed regulations would also establish two-year license terms for TPPS and Gambling Businesses.

These proposed regulations would establish a new section in Chapter 1 of Division 18 that contains the initial and renewal application fee schedule for all licenses, registrations and permits issued by the Commission. Accordingly, the application fee amounts stated in all other chapters of Division 18 would be deleted, and the fee amount referenced to this new single section within Chapter 1.

The license application fee amounts stated in this new section would reflect an adjustment from one-year (annual) licenses to two-year (biennial) licenses for gambling establishments, key employees, TPPS and gambling businesses. The Commission recently established two-year license terms for gambling establishments and key employees.¹ As a result of SB 730, these proposed regulations would further establish two-year license terms for TPPS and gambling businesses.

¹ California Code of Regulations, subsection (c) of section 12340, established in rulemaking file # CGCC-GCA-2007-R-3 (OAL Notice # Z-07-0626-01)

This proposed action would make the following specific changes within Division 18 of Title 4 of the California Code of regulations:

1. Within Chapter 1, these regulations would establish a new section (12008), which would prescribe the initial and renewal application fees for all licenses, registrations and permits issued by the Commission. SB 730 requires the Commission to adopt, by regulation, license application fees no later than January 1, 2009.² The adoption of section 12008 will place all application fees in one easily referenced regulation.

Prior to SB 730, the Gambling Control Act (Act)³ set the license application fee at \$500.⁴ This and other fees have been set with the intention that they offset Commission and Bureau of Gambling Control (Bureau) costs in administering the various provisions of the Act.⁵ The license application fee amounts set by these proposed regulations are either the same or lower than that which existed prior to SB 730.

The application fee amounts for registrations and permits are unchanged from current regulation; the existing fee amounts were merely transferred to the new section 12008. The application fee amounts for licenses have been adjusted from one-year to a two-year license term.

For primary owners and owners of gambling establishments, TPPS and gambling businesses, the license application fee amounts have been adjusted from an annual to a biennial payment schedule (\$500 annual amount adjusted to \$1000 biennial amount). Except for this annual to biennial payment schedule adjustment, the fee amounts are unchanged from current regulation (\$500 x 2 = \$1000).

For key employees of gambling establishments, and supervisors of TPPS and gambling businesses, the payment schedules for the license application fees have been adjusted for the new two-year license term and the fee amount actually lowered in the process. Rather than doubling the current annual license application fee of \$500, the Commission proposes to establish a two-year fee of \$750. This action would lower the fee by 25% (\$500 x 2 = \$1000 - \$750 = \$250 reduction).

The Commission has determined that a doubling of the current annual license application fee for key employees may not be necessary, and could be overly burdensome upon these licensees. SB 730 includes a provision that will establish portable key employee licenses that are independent of a specific gambling establishment. Prior to SB 730, key employee licenses were endorsed upon the gambling establishment's license, and key employee renewal applications were required to be included with those of the gambling establishment, as a single package. As a result, state law required that the key employee's license application fee be assessed against the gambling license issued to the owner of the gambling

² Business and Professions Code, subdivision (a) of section 19951, as amended by SB 730 (2007 Stat. Ch. 438)

³ Business and Professions Code, sections 19800 through 19987

⁴ Business and Professions Code, subdivision (a) of section 19951, as written prior to SB 730 (2007 Stat. Ch. 438)

⁵ Business and Professions Code, subdivision (g) of section 19826, subdivision (a) of section 19867, subdivision (a) of section 19950, subdivisions (b) and (c) of section 19984, and subdivision (j) of section 19986

establishment.⁶ Under SB 730, key employees will be renewing their licenses independent of the gambling establishment within which they work. As a result, key employees will no longer have their license fees paid by the gambling establishment.⁷ Although key employees have supervisory and/or decision making responsibilities, they are still employees, and as such, should not carry the same licensing burden as the owners of the gambling establishment in which they work. Reducing the key employee license application fee by 25% should help to ease the transition for key employees with the new burden of having to pay the fee themselves.

Prior to SB 730, a new license and application fee was required each time a key employee changed from one employer to another. Under SB 730, the license application fee reduction noted above is further enhanced by the new portability of the key employee license, where key employees will carry the same license from job-to-job, without paying another license application fee.

Players and other employees of TPPS and gambling businesses already have a two-year license term. As a result, these proposed regulations would retain the current two-year license application fee of \$500.

Overall, these proposed regulations will help to reduce the burden upon the licensee, by requiring payment of the application fee only once every two years, rather than annually. Further, in the case of key employees of gambling establishments, and supervisors of TPPS and gambling businesses, license application fees would be reduced by 25%.

This license application fee reduction for key employees and supervisors of TPPS and gambling businesses will produce a projected annual revenue loss to the Gambling Control Fund of \$69,125. This is based on a total of 553 licensed key employees, and supervisors of TPPS and gambling businesses. A two-year license application fee of \$1000 would produce a total of \$553,000, whereas a two-year fee of \$750 would produce \$414,750. The difference over a two-year period is \$138,250, or an annual revenue loss of \$69,125.

This revenue loss represents only 0.5% of the total annual budget expenditures for the Commission and the Bureau.⁸ As a result, this revenue loss is absorbable within existing resources, having a minimal and manageable fiscal impact upon the Commission and the Bureau.

2. Within Chapters 2, 2.1, 2.2 and 4, these regulations would amend Sections 12122(a), 12202(b)(1), 12203(A), 12203.2(a), 12205.1(c), 12222(b)(1) and 12301(b)(10) to transfer existing registration and permit application fees to the proposed section 12008. The application fee amounts for these registrations and permits would not be changed by these proposed regulations.

⁶ Business and Professions Code, subdivision (b) of section 19951, as written prior to SB 730 (2007 Stat. Ch. 438)

⁷ Business and Professions Code, subdivision (b) of section 19951, as amended by SB 730 (2007 Stat. Ch. 438)

⁸ Estimated annual expenditures are \$12,421,000 in the Gambling Control Fund Condition Statement, 2008-09 Governor's Budget

These changes are being proposed for clarity and editorial reasons, so that all application fees can easily be referenced in one regulation.

3. Within Chapters 2.1, 2.2 and 6, these regulations would amend Sections 12220.20A, 12343(a)(1), 12344(a), 12344(b) and 12345(a)(2) to delete current license application fee amounts, and reference the fee amount to the proposed section 12008. The move of these license application fees to section 12008 would include an adjustment of the fee amount to reflect a two-year license term. In the case of primary owners and owners of gambling establishments, TPPS and gambling businesses, the fee would be adjusted from \$500 annually to \$1000 biennially. In the case of key employees of gambling establishments and supervisors of TPPS and gambling businesses, the fee would be adjusted from \$500 annually to \$750 biennially. In the case of players and other employees of TPPS and gambling businesses, the fee would remain at \$500 biennially, since these licensees are already on a two-year renewal cycle.

Please refer to number 1 above for an explanation as to the reasons for these changes.

4. Within Chapters 2.1 and 2.2, these regulations would amend Sections 12218.13 and 12237 to establish a two-year term for all types of TPPS and gambling business licenses.

SB 730 requires that all licenses renewed on or after August 1, 2008 shall expire 24 months after the date of the approval of the renewal application or after the expiration of the prior license, whichever is later.⁹ The Commission recently established two-year license terms for gambling establishments and key employees in another recently adopted regulation package. This proposed action would further comply with SB 730, by also establishing two-year terms for TPPS and Gambling Business licenses.

These proposed regulations will benefit business by reducing the frequency of license renewal. The Commission and the Bureau have established license application and renewal processes that include detailed application forms and extensive applicant background investigations. Although necessary, these processes can be burdensome for the applicant. As a result of the two-year license term proposed by these regulations, the applicant's burden of license renewal will be reduced by 50%.

This biennial, rather than annual, license renewal cycle will also benefit the Commission and the Bureau by helping to free-up personnel resources, allowing them to refocus on other priority concerns. These personnel resources are needed at the Commission to help handle additional workload associated with the following functions, for which no budget augmentation has been provided:

- A. An independent licensing program for Key Employees (mandated by SB 730).
- B. Establishment of a licensing program for gambling equipment manufacturers and distributors.
- C. Implementation of minimum internal control standards for gambling establishments.

⁹ Business and Professions Code, subdivision (a) of section 19876, as amended by SB 730 (2007 Stat. Ch. 438)

At the Bureau, the personnel resources would be diverted to help handle workload associated with the following functions, for which no budget augmentation has been provided:

- A. Thorough and timely background investigations for applicants of all license types.
 - B. The additional applicant background investigations resulting from the registration-to-license conversion of TPPS and gambling businesses.
 - C. The additional applicant background investigations resulting from a new licensing program for gambling equipment manufacturers and distributors.
5. Within Chapters 2.1 and 2.2, these regulations would amend Sections 12200.14 and 12220.14 to require that the primary owner of a licensed TPPS or gambling business submit an employee report form on the same annual schedule as specified for the payment of the annual fee, as specified in sections 12200.20(a) or 12220.20(a). These employee report forms are currently established in regulation as follows:
- Third Party Proposition Player Services Employee Report (CGCC-440, Rev. 09/04)
 - Gambling Business Employee and Independent Contractor Report (CGCC-540, Rev. 09/04)

The submission due date for these forms is currently tied to the annual expiration of the license. Since this proposed action would extend the term of these licenses to two years, these sections would be amended to change the form submission due date to be the same as that specified for the annual fee (i.e., September 1 of each year). It is necessary for this form to be submitted at the same time as the payment of the annual fee, as the amount of this fee is based upon the total number of licenses affiliated with the owner. These employee report forms help the primary owner and the Commission calculate the fee amount.

These sections would also be amended by these regulations to delete the requirement that these forms and updated organizational charts be forwarded to both the Bureau and the Commission. Instead, these forms and charts would be forwarded to only the Commission, and then electronically shared with the Bureau, eliminating the need for the registrant or licensee to send them to both. The Commission and the Bureau have recently implemented a computer database where imaged documents can be electronically shared between the two agencies. This new system allows the Commission to lessen the burden upon the registrant or licensee by eliminating the need for the documents to be sent to two separate state agencies.

6. Within Chapters 2.1 and 2.2, these regulations would amend Sections 12200.20(a) and 12220.20(a) to prescribe a new due date for payment of the annual fee that is currently required from the primary owners of licensed TPPS and gambling businesses. The payment due date for this fee is currently tied to the annual expiration of these licenses. Since this proposed action would extend the term of these licenses to two years, a new annual payment due date must be established that is not tied to the renewal of the license. These sections would be amended to change the annual fee payment due date to be September 1 of each year, the same as what is currently required of registered TPPS and gambling businesses.

These amendments would retain the current annual payment of this fee, even though the term of these licenses has been extended to two years.

7. Within Chapter 6, these regulations would amend Sections 12342(a)(1), 12342(a)(2), 12342(a)(8), 12342(a)(17), 12343(a)(1), 12344(a)(1) and 12345(a)(2) to change the revision date as follows for the license application forms incorporated by reference therein:
- Application for State Gambling License, CGCC-030 (Rev. 05/08)
 - Application for Gambling Establishment Key Employee License, CGCC-031 (Rev. 05/08)
 - Trust Supplemental Background Investigation Information, BGC-APP-143 (Rev. 05/08)
 - Instructions to Applicant's Spouse, BGC-APP-010 (Rev. 05/08)

In the case of forms CGCC-030 and CGCC-031, the license application fee amounts printed on the forms would be changed for conformity reasons to reflect the two-year license terms, as stated in numbers 1 and 3 above. In the case of forms BGC-APP-143 and BGC-APP 010, the reference to forms CGCC-030 and CGCC-031 printed on the forms would be changed to reflect the amended revision date.

Incorporation by Reference:

The incorporation by reference in sections 12342(a)(1), (2), (8) and (17), 12343(a)(1), 12344(a)(1) and 12345(a)(2) of forms CGCC-030, CGCC-031, BGC-APP-143 and/or BGC-APP-010 is appropriate since publishing these documents in the California Code of Regulations would clearly be cumbersome, unduly expensive, impractical and unnecessary. These documents consist of multiple pages of text, tables and charts. They are designed to be completed electronically, then printed and mailed to the Commission. It is unnecessary to print this information in the text of the regulation itself. Forms CGCC-030, CGCC-031, BGC-APP-143 and BGC-APP-010 are available for viewing on the Commission's website, and are also available to anyone upon request to the Commission. These forms will also be available for review throughout this rulemaking process.

FACTUAL BASIS:

The Act provides the Commission with jurisdiction over the operation of gambling establishments in California.¹⁰ The Act assigns the Commission with the responsibility of assuring that gambling licenses are not issued to, or held by, unqualified or disqualified persons, or by persons whose operations are conducted in a manner that is inimical to the public health, safety, or welfare.¹¹ The Act directs the Commission to issue licenses only to those persons of good character, honesty and integrity, whose prior activities, criminal record, if any, reputation, habits and associations do not pose a threat to the public interest of this state.¹²

¹⁰ Business and Professions Code, section 19811

¹¹ Business and Professions Code, section 19823

¹² Business and Professions Code, section 19857

In carrying out this mission, the Commission must deny a gambling license to any applicant who is disqualified under a list of various criteria that include felony convictions, misdemeanor convictions involving dishonesty or moral turpitude within a preceding 10-year period, and associations with criminal profiteering activity or organized crime.¹³ As a result, the Commission and the Bureau have established license application and renewal processes that include detailed application forms and extensive applicant background investigations.¹⁴ Although necessary, these processes can be burdensome for the license applicant, and time consuming for the Commission and Bureau. As a result, to renew a license, the licensee is required to file a renewal application with the Commission no later than 120 days prior to the expiration of the license.¹⁵

Prior to SB 730, the Act established that a license must be renewed annually, or for a longer period set by the Commission, not to exceed two years.¹⁶ Also prior to SB 730, the Act set the license application fee at \$500.¹⁷

Introduced by Senator Florez, SB 730 was passed by the Legislature on September 12, 2007 and signed by the Governor on October 10, 2007. SB 730 became effective on January 1, 2008. Among other things, SB 730 mandates that the Commission establish two-year license terms no later than August 1, 2008.¹⁸ SB 730 also requires the Commission to adopt by regulation license application fees by no later than January 1, 2009.¹⁹

Underlying Data:

Senate Bill 730 (2007 Stat. Ch. 438), authored by Senator Florez, is the main document relied upon during the drafting of these proposed regulations. SB 730 requires that the Commission establish a two-year license term and that license application fees be established in regulation.²⁰

Business Impact:

These regulations will not have a significant adverse economic impact on businesses. This initial determination is based on the following facts or evidence/documents/testimony:

The cost to do business is the same, with or without these proposed regulations. These proposed regulations would impose a \$1000 license application fee every two years, rather than a \$500 fee every year. As a result, there is no net difference in fees. Further, these proposed regulations may benefit business by reducing the burden of license renewal by 50%. As a result, this proposed action does not impose any requirement upon or require any

¹³ Business and Professions Code, section 19859

¹⁴ California Code of Regulations, Title 4, sections 12342, 12343, 12344 and 12345

¹⁵ Business and Professions Code, subdivision (b) of section 19876

¹⁶ Business and Professions Code, subdivision (a) of section 19876, as written prior to SB 730 (2007 Stat. Ch. 438)

¹⁷ Business and Professions Code, subdivision (a) of section 19951, as written prior to SB 730 (2007 Stat. Ch. 438)

¹⁸ Business and Professions Code, subdivision (a) of section 19876, as amended by SB 730 (2007 Stat. Ch. 438)

¹⁹ Business and Professions Code, subdivision (a) of section 19951, as amended by SB 730 (2007 Stat. Ch. 438)

²⁰ Business and Professions Code, subdivision (a) of section 19876, and subdivision (a) of section 19951, as amended by SB 730 (2007 Stat. Ch. 438)

action by any business. There is no reporting or recordkeeping requirement mandated, nor are there any performance standards imposed, technologies or equipment specified, nor specific actions or procedures prescribed.

Specific Technologies or Equipment:

These regulations do not mandate the use of specific technologies or equipment.

Consideration of Alternatives:

The purpose of these regulations is to implement the requirements of SB 730. No reasonable alternative to these regulations 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:

1. Simply double all current license application fees to accommodate the change from a one-year to a two-year license renewal cycle.

Reason for Rejection: Although a doubling of the license application fee would seem to be the most non-impacting upon business, the same may not be true for individuals such as key employees of gambling establishments or supervisors of TPPS and gambling businesses. As a result of SB 730, key employees will now be required to pay the license application fee themselves, whereas in the past, the owner of the gambling establishment was required to pay the fee. A 25% reduction in the license application fee for these individuals was viewed as the better alternative, since it helps to ease this new financial burden upon key employees, without creating an unmanageable fiscal impact upon the Commission.

2. Establish a two-year license term, but keep license application fees at their current levels, thus reducing license fees by 50%.

Reason for Rejection: The Commission has determined that this alternative would result in an adverse fiscal impact, which would keep the Commission from carrying out its responsibility of assuring that gambling licenses are not issued to, or held by, unqualified or disqualified persons, or by persons whose operations are conducted in a manner that is inimical to the public health, safety, or welfare.