

CALIFORNIA GAMBLING CONTROL COMMISSION

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Initial Statement of Reasons

California Code of Regulations, Title 4. Business Regulations
Division 18. California Gambling Control Commission
Chapter 7. Conditions of Operation for Gambling Establishments
Article 1. General Provisions

Statewide Involuntary Exclusion List

The Gambling Control Act¹ is “an exercise in the police power of the state for the protection of the health, safety, and welfare of the people of the State of California...”² The “Legislative Findings and Declarations” of the Gambling Control Act, Business and Professions Code, section 19801, subdivision (f), state:

Public trust that permissible gambling will not endanger public health, safety, or welfare requires that comprehensive measures be enacted to ensure that gambling is free from criminal and corruptive elements, that it is conducted honestly and competitively, and that it is conducted in suitable locations.

The Gambling Control Act requires the Gambling Control Commission (“Commission”) to provide for the creation and maintenance of a list of involuntarily excluded persons and to provide for hearings for persons placed on this list³. The proposed regulation with form implements this statutory mandate.

Many members of industry have urged the Commission to enact a regulation to provide a way to exclude persons on a statewide basis who pose a threat to the public, employees, or industry, and the form allows for a key employee or owner of a gambling establishment to petition for the exclusion of these “bad elements.” These persons could be known cheaters, habitually drunk or drugged persons, violent or threatening persons, or persons convicted of crimes involving moral turpitude.

Other states, such as Nevada, have similar lists, often referred to as “Black Lists” and known cheaters or others who threaten the public or the gaming industry are placed on these lists. This regulation provides for a method to petition for removal as well as a mechanism for removing deceased individuals so that gambling establishment employees are not burdened by reviewing unnecessary exclusion profiles. Attempts by excluded persons to enter must be communicated to the State so that trends may be noticed and proper alerts or advisories sent out.

¹ Business and Professions Code, section 19800 et seq.

² Business and Professions Code, section 19971.

³ Statutory Text Follows.

The first page of the form is modeled after the Commission's Voluntary Exclusion form, so that the information can be easily transmitted to gambling establishments in a consistent format. Information about the individual is needed to both notify the individual of exclusion as well as notify all gambling establishments with enough information to identify and exclude the individual. Photos should be able to be reproduced from surveillance cameras, or may be provided by other government agencies requesting exclusion. The form contains a proviso to complete "as much information as possible" since full names, dates of birth, or photos may not be available in all instances.

This proposed regulation clarifies that an individual may not be excluded from a gambling establishment based on protected class status.

Hearing provisions are designed to maximize due process of the individual while fulfilling the Commission's duty to protect the public. Provisions regarding presenting evidence, being represented by counsel, and burden of proof aid an individual to present his or her case. Petitions to be removed from the list after a year has passed are included in an instance where the individual can show rehabilitation or otherwise prove that he or she no longer poses a threat.

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 carrying out the mandate of an involuntary exclusion list under the Gambling Control Act.

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.

19844. Exclusion or Ejection of individuals from gaming establishments; formulation of list; distribution; petition; action against licensee

- (a) The commission shall, by regulation, provide for the formulation of a list of persons who are to be excluded or ejected from any gambling establishment. The list may include any person whose presence in the establishment is determined by the commission to pose a threat to the interests of this state or to controlled gambling, or both.
- (b) In making the determination described in subdivision (a), the commission may consider, but is not limited to considering, any of the following:
 - (1) Prior conviction of a crime that is a felony in this state or under the laws of the United States, a crime involving moral turpitude, or a violation of the gambling laws of this or any other state.
 - (2) The violation of, or conspiracy to violate, the provisions of this chapter relating to the failure to disclose an interest in a gambling establishment for which the person is required to obtain a license, or the willful evasion of fees.
 - (3) A notorious or unsavory reputation that would adversely affect public confidence and trust that the gambling industry is free from criminal or corruptive elements.
 - (4) An order of exclusion or ejection from a racing enclosure issued by the California Horse Racing Board.
- (c) The commission shall distribute the list of persons who are to be excluded or ejected from any gambling establishment to all owner licensees and shall provide notice to any persons included on the list.
- (d) The commission shall adopt regulations establishing procedures for hearing of petitions by persons who are ejected or excluded from licensed premises pursuant to this section or pursuant to Section 19845.
- (e) The commission may revoke, limit, condition, or suspend the license of an owner, or fine an owner licensee, if that licensee knowingly fails to exclude or eject from the gambling establishment of that licensee any person included on the list of persons to be excluded or ejected.

19845. Removal of Persons from Licensed Premises; Reasons

- (a) A licensee may remove from his or her licensed premises any person who, while on the premises:
 - (1) Is a disorderly person, as defined by Section 647 of the Penal Code.
 - (2) Interferes with a lawful gambling operation.
 - (3) Solicits or engages in any act of prostitution.
 - (4) Begs, is boisterous, or is otherwise offensive to other persons.
 - (5) Commits any public offense.
 - (6) Is intoxicated.
 - (7) Is a person who the commission, pursuant to regulation, has determined should be excluded from licensed gambling establishments in the public interest.
- (b) Nothing in this section shall be deemed, expressly or impliedly, to preclude a licensee from exercising the right to deny access to or to remove any person from its premises or property for any reason the licensee deems appropriate.

19846. Civil Liability

- (a) Notwithstanding any other provision of law and except as provided in subdivision (b), a gambling establishment that ejects or excludes an individual based upon Section 19844 or 19845 is not subject to civil liability for a mistake as to the grounds for ejecting or excluding a person if the ejection or exclusion was based upon a reasonable and good faith belief, after a reasonable investigation, that these sections applied to the individual in question.
- (b) Notwithstanding subdivision (a), a gambling establishment may not be relieved from liability for any damages arising from the means of ejection or exclusion.