

TITLE 4.
CALIFORNIA GAMBLING CONTROL COMMISSION

**NOTICE OF PROPOSED REGULATORY ACTION AND PUBLIC HEARING
CONCERNING
DESIGNATION OF COMMISSION EMPLOYEES SUBJECT TO THE PROVISIONS OF
BUSINESS AND PROFESSIONS CODE SECTION 19981
CGCC-GCA-2008-R-5**

NOTICE IS HEREBY GIVEN that the California Gambling Control Commission (Commission) is proposing to take the action described in the Informative Digest.

NO PUBLIC HEARING SCHEDULED

At this time, the Commission has not scheduled a public hearing. Any interested person, or his or her authorized representative, may request a hearing pursuant to Government Code section 11346.8. A request for a hearing should be directed to the person(s) listed under Contact Persons no later than 15 days prior to the close of the written comment period.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Commission at any time during the 45-day public comment period, which closes on February 9, 2009.

To be considered for summary and response, written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Persons in this Notice, must be received by the Commission at its office no later than 5:00 p.m. on February 9, 2009. Comments sent to persons or addresses other than those specified under Contact Persons, or received after the date and time specified above, regardless of the manner of transmission, will be included, but will not be summarized or responded to, in the record of this proposed regulatory action.

ADOPTION OF PROPOSED ACTION

After the close of the public comment period, the Commission, upon its own motion or at the instance of any interested party, may thereafter formally adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit oral or written testimony related to this proposal or who have requested notification of any changes to the proposal.

AUTHORITY AND REFERENCE

Pursuant to the authority vested by Sections 19840, 19841 and 19981 of the Business and Professions Code; and to implement, interpret or make specific Section 19981 of the Business and Professions Code;¹ the Commission is proposing to adopt the following changes to Chapter 11 of Division 18 of Title 4 of the California Code of Regulations:

INFORMATIVE DIGEST AND POLICY STATEMENT OVERVIEW

Introduction:

The California Gambling Control Commission (Commission) is proposing to adopt a regulation that would implement a designation of effected Commission employees in accordance with subdivision (a) of section 19981. The proposed regulation is intended to assist in preserving the Commission's credibility, independence, and ability to make unbiased and objective decisions. In addition, this prohibition should eliminate, or at least lessen, even the appearance of any unfair advantage and/or undue influence affecting the outcome of proceedings before the Commission.

Background:

This statutory prohibition was originally established by the Milton Marks Public Employees Restoration Act of 1990, part of the Political Reform Act of 1974, which prohibited former employees from representing another, for compensation, for a period of one year. That prohibition was expanded to prohibit this representation for a period of three years from separation of employment in Chapter 867, Statutes of 1997 (Senate Bill 8, Lockyer)².

Specific Proposal:

The proposed regulation would establish a new section in Chapter 11 Division 18 that will designate those Commission employees who are precluded from providing representation of another, for compensation, before the Commission following separation from their employment with the Commission for a period of three years. This proposed regulation would prohibit these employees from representing licensees in any administrative action or other proceeding where the Commission has authority to issue, condition or revoke a permit, license or approval.

Existing Law:

Subdivision (a) of section 19981 provides, in pertinent part, that the Commission shall designate employees who, upon separation from employment, cannot act in certain capacities on behalf of a licensee or applicant for a period of three years.

Current regulations do not include any designation as to the Commission employees that may be subject to the provisions of section 19981.

¹ All statutory references hereafter are to the Business and Professions Code, unless otherwise specified.

² Ch. 867, Stats. 1997, established the initial 3-year prohibition with the amendment of then § 19959.5. Ch. 738, Stats. 2002 (AB-2431, Com. on Gov. Org.) renumbered that section to the current § 19981.

Effect of Regulatory Action:

This proposed action will add Section 12591 to Chapter 11 of Division 18 of Title 4 of the California Code of Regulations. Section 12591 will designate those Commission employees, in addition to Commission members and the Commission’s Executive Director, who are banned from appearances or communications before the Commission as provided in subdivision (a) of section 19981. These former Commission employees are specifically precluded from providing representation of another, for compensation, for a period of three years following separation from employment with the Commission.

FISCAL IMPACT ESTIMATES

FISCAL IMPACT ON PUBLIC AGENCIES INCLUDING COSTS OR SAVINGS TO STATE AGENCIES OR COSTS/SAVINGS IN FEDERAL FUNDING TO THE STATE: None.

NON-DISCRETIONARY COST OR SAVINGS IMPOSED UPON LOCAL AGENCIES: None.

LOCAL MANDATE: None.

COST TO ANY LOCAL AGENCY OR SCHOOL DISTRICT FOR WHICH THE GOVERNMENT CODE REQUIRES REIMBURSEMENT (Part 7 (commencing with section 17500) of Division 4, Government Code): None.

IMPACT ON BUSINESS:

The Commission has made an initial determination that the adoption of these regulations would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. This initial determination is based on the fact that the regulation being proposed for adoption does not affect businesses. The regulation is only applicable to individuals employed by the Commission, as specified, upon separation from that employment.

IMPACT ON JOBS/NEW BUSINESSES:

The Commission has determined that this regulatory proposal will not have any impact on the creation of jobs or new businesses, the elimination of jobs or existing businesses, or the expansion of businesses in the State of California.

COST IMPACT ON REPRESENTATIVE PRIVATE PERSON OR BUSINESS:

The Commission is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

EFFECT ON HOUSING COSTS: None.

EFFECT ON SMALL BUSINESS:

The Commission has determined that the proposed regulatory action would not affect small businesses. This initial determination is based on the fact that the regulation being proposed for adoption does not affect any business. The regulation is only applicable to individuals employed by the Commission, as specified, upon separation from that employment.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5(a)(13), the Commission must determine that no reasonable alternative considered by the Commission or that has otherwise been identified and brought to the attention of the Commission would either be 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 action described in this Notice.

INITIAL STATEMENT OF REASONS, INFORMATION AND TEXT OF PROPOSAL

The Commission has prepared an Initial Statement of Reasons and the exact language for the proposed action and has available all the information upon which the proposal is based. Copies of the language and of the Initial Statement of Reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the Commission at 2399 Gateway Oaks Drive, Suite 220, Sacramento, CA 95833-4231.

AVAILABILITY AND LOCATION OF THE RULEMAKING FILE AND THE FINAL STATEMENT OF REASONS

All the information upon which the proposed action is based is contained in the Rulemaking File that will be available for public inspection and copying at the Commission's office throughout the rulemaking process. Arrangements for inspection and/or copying may be made by contacting the backup contact person named below.

Upon its completion, the Final Statement of Reasons will also be available. A copy of the Final Statement of Reasons may be obtained, once it has been prepared, by making a written request to one of the contact persons named below or by accessing the Commission's Web site listed below.

CONTACT PERSONS

All comments and inquiries concerning the substance of the proposed action should be directed to the following **primary** contact person:

James B. Allen, Regulatory Actions Coordinator
California Gambling Control Commission
2399 Gateway Oaks Drive, Suite 220, Sacramento, CA 95833-4231
Telephone: (916) 263-4024
Fax: (916) 263-0452
E-mail: Jallen@cgcc.ca.gov

Requests for a copy of the Initial Statement of Reasons, proposed text of the regulation, modified text of the regulation, if any, or other technical information upon which the proposed action is based should be directed to the following **backup** contact person:

Joy Calkin, Staff Services Analyst
California Gambling Control Commission
2399 Gateway Oaks Drive, Suite 220, Sacramento, CA 95833-4231
Telephone: (916) 263-3628
Fax: (916) 263-0452
E-mail: Jcalkin@cgcc.ca.gov

WEB SITE ACCESS

Materials regarding this proposed action are also found on the Commission's Web site at www.cgcc.ca.gov.