

TITLE 4.
CALIFORNIA GAMBLING CONTROL COMMISSION
CGCC-GCA-2009-E-4

**STATEMENT CONCERNING EMERGENCY REGULATIONS FOR THE
IMPLEMENTATION OF THE CALIFORNIA REMOTE CALLER BINGO ACT
CHAPTER 748, STATUTES OF 2008 (SB 1369, Cedillo and Battin et al.)**

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

DEEMED EMERGENCY

The Commission has been specifically directed, pursuant to Business and Professions Code section 19850.6, subdivision (a), to adopt emergency regulations to implement the California Remote Caller Bingo Act (CRCBA) as soon as possible. Subdivision (a) also expresses the intent of the Legislature to "provide the Commission with full authority and sufficient flexibility to adopt all needed regulations," and finds and declares that it is necessary to provide the Commission with limited exemption from normal rulemaking procedural requirements for reasons specified. Pursuant to subdivision (b) of section 19850.6, the amendment, adoption or repeal of a regulation implementing the CRCBA is deemed to address an emergency for the purposes of sections 11346.1 and 11349.6 of the Government Code. Further, subdivision (b) of section 19850.6 provides the Commission an express exemption from the requirements of subdivision (b) of section 11346.1.

AUTHORITY AND REFERENCE

Pursuant to the authority vested by sections 19840, 19850.5, and 19850.6 of the Business and Professions Code, and section 326.5 of the Penal Code; and to implement, interpret or make specific Sections 19850.5 and 19850.6 of the Business and Professions Code, and section 326.5 of the Penal Code; the Commission is proposing to add Chapter 8 to Division 18 of Title 4 of the California Code of Regulations:

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

INFORMATIVE DIGEST AND POLICY STATEMENT OVERVIEW

INTRODUCTION:

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. This bill created several entirely new regulatory programs with major elements to be developed by the Commission in the rulemaking process.

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 by May 1, 2009. SB 1369 provides a partial exemption from the Administrative Procedure Act through December 31, 2009 and authorizes the Commission to adopt regulations in a series of subsequent regulatory actions. The authority to adopt emergency regulations is necessary to implement the program in a timely manner.

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.”

EXISTING LAW:

Effective January 1, 2009, Penal Code section 326.5, subdivision (o), provides that electronic or video displays shall not be used in connection with the game of bingo, except in connection with the caller’s drawing of the numbers or symbols, public display of that drawing, and except in connection with the use of hand-held, portable card-minding devices used by players who are physically present at a bingo game. Subdivision (p) provides that players who are physically present at a bingo game may use hand-held portable, card-minding devices that meet specified requirements to assist in monitoring the numbers or symbols announced in a live game. This subdivision also requires that the Commission approve any card-minding device in advance of its use.

Current regulations do not address the approval and use of bingo card-minding devices.

EFFECT OF REGULATORY ACTION:

This proposed action will add Chapter 8 to Division 18 of Title 4 of the California Code of Regulations, as follows:

- Chapter 8 of Division 18 will be added to provide for the interim approval of card-minding devices and the regulation of those devices. Chapter 8 will be titled “Bingo” and Section

12482 will be added to define requirements for the interim approval of card-minding devices and any modifications to approved devices, as follows:

- a. Subsection (a) of section 12482 establishes a one-year card-minding device interim approval based on the applicant's/manufacture's certification of compliance with the applicable provisions of section 326.5 of the Penal Code. Provisions are included to clearly establish that an interim approval does not guarantee an extension of this approval or the issuance of a regular approval; does not change the legal requirement that the applicant bears the burden of establishing device compliance; nor has any bearing on the registration or licensure of the manufacturer. This section also establishes a disapproval process for card-minding devices that are found, during the interim approval period, to be non-compliant. Devices found to be non-compliant will have their approval cancelled by the Commission. Manufacturers are also afforded due process and an opportunity to be heard before cancellation of an interim approval.
- b. Subsection (b) establishes the process for requesting interim approval by card-minding device manufacturers. An "Application for Interim Approval of Bingo Card-Minding Device", CGCC-615 (New 11/08), is established as the form to request interim approval of a specific model of card-minding device and its designated software version, to be approved by the Commission as specified. The application fee is established at \$50 for each device and its designated software version for which interim approval is requested. The manufacturer that developed and built the card-minding device, and maintains and modifies the software is required to certify the device's compliance with section 326.5 of the Penal Code rather than a distributor or supplier that only makes the device available for use. The manufacturers of these devices are the most knowledgeable and authoritative source to certify their compliance as they have direct knowledge as to how the devices were designed and constructed, and what their capabilities do or do not include.
- c. Subsection (c) requires a new approval of any device that has undergone a material software upgrade, as specified.
- d. 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.
- e. Subsection (e) establishes the process for review and consideration of applications for approval by the Commission. Provision for notification of the applicant of any deficiencies is also included.
- f. Subsection (f) defines "automatic daubing" for the purpose of clarifying restricted card-minding device capabilities; and defines "interim" and "regular" approval of card-minding devices.

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. The proposed interim approval process is established to further the legislative intent of avoiding disruption of fundraising efforts by nonprofit organizations. The interim approval is not intended to and does not confer any vested rights. As authorized by the CRCBA, the Commission expects to adopt additional requirements in regulation; any card-minding device used in California after the effective date of this forthcoming regulation will be required to conform to any requirement stated in the regulation.

FISCAL IMPACT ESTIMATES

MANDATE IMPOSED ON LOCAL AGENCY OR SCHOOL DISTRICT FOR WHICH PART 7 (COMMENCING WITH SECTION 17500) OF DIVISION 4 OF THE GOVERNMENT CODE REQUIRES REIMBURSEMENT: None.

COST TO ANY STATE OR LOCAL AGENCY OR SCHOOL DISTRICT FOR WHICH PART 7 (COMMENCING WITH SECTION 17500) OF DIVISION 4 OF THE GOVERNMENT CODE REQUIRES REIMBURSEMENT: None.

FISCAL IMPACT ON PUBLIC AGENCIES INCLUDING COSTS OR SAVINGS TO STATE AGENCIES OR COSTS/SAVINGS IN FEDERAL FUNDING TO THE STATE: The Commission has determined that this regulatory proposal will not have a significant fiscal impact on state agencies.