

CALIFORNIA GAMBLING CONTROL COMMISSION
FINAL STATEMENT OF REASONS
CGCC-GCA-2009-07-R

HEARING DATE: August 20, 2009

SUBJECT MATTER OF PROPOSED REGULATIONS: Third-Party Providers of Proposition Player Services (TPPPS) and Gambling Businesses; Conversion from Registration to License and License Renewal; Extension of TPPPS Contract Term Limit; and Approval of Amended Playing Book Forms.

SECTIONS AFFECTED: **California Code of Regulations, Title 4, Division 18, Chapter 2.1:** §§ 12200.9, 12200.10A, 12200.11, 12200.13, 12203.2, 12205.1, 12218, 12218.7, 12218.8 and 12218.9; and **Chapter 2.2:** §§ 12220.13, 12220.18, 12220.23, 12225.1, 12233, 12235, 12238 and 12239.

UPDATED INFORMATION:

The Initial Statement of Reasons published July 3, 2009 is included in the file and is incorporated by reference as if fully set forth herein. The information contained therein is complete and, except as described below, no changes have been made in the proposed action that would warrant any changes in that information.

Specific Purpose of Regulatory Proposal:

The proposed regulatory action is intended to accomplish the following:

- Implement an ongoing license renewal program for TPPPS, Gambling Businesses and their supervisors, players and other employees.
- Establish provisions for the review and approval of periodic amendments to playing book forms for both TPPPS and gambling businesses.
- Extend the maximum term of a TPPPS contract from one year to two years.

Factual Basis/Rationale:

Background:

Business and Profession Code section 19980 was enacted in September of 2000. It required the

Division of Gambling Control (now the Bureau) to adopt emergency regulations that would establish a licensing or registration program for TPPPS.¹ In September of 2002, section 19980 was renumbered as section 19984 and amended to require that the *Commission* establish these emergency regulations.² In November of 2003, the Commission adopted emergency regulations requiring TPPPS and Gambling Businesses to register with the Commission by March 5, 2004.³ In March 2004, the emergency regulations were readopted and the registration deadline for TPPPS was extended to March 31, 2004. In December of 2004, the Commission adopted additional regulations that required TPPPS and Gambling Businesses to transition to a license, rather than a registration.⁴ This transition includes provisions that require TPPPS and Gambling Business registrants to submit a request for conversion of a registration to a license when summoned to do so by the Bureau.

In contrast to a registration, a license requires a more complete background investigation on the applicant. Conducted by the Bureau, this background investigation helps determine the applicant's general character, integrity, and ability to participate in, engage in, or be associated with, controlled gambling.⁵ To help initiate this investigation, the Bureau requires license applicants to complete and submit a supplemental form which requires details about the applicant's personal history, habits, character, criminal record, business activities, financial affairs, and business associates, covering at least a 10-year period immediately preceding the date of the application.⁶

Based on the results of the background investigation, and the information and documents submitted, the Commission cannot approve a license unless it is satisfied that the applicant is a person of good character, honesty, and integrity, and whose prior activities, criminal record, if any, reputation, habits, and associations do not pose a threat to the public interest, or to the effective regulation of controlled gambling, nor create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in the conduct of controlled gambling.⁷

Authority:

The Commission, in conjunction with the Department of Justice, Bureau of Gambling Control, is charged with the administration and implementation of the California Gambling Control Act (Act).⁸ As part of the Act, the Commission has the responsibility to insure that no person is involved in a gambling operation that may threaten public health, safety or welfare.⁹ Further, the Commission must adopt regulations that *restrict, limit or otherwise regulate any activity that is related to the conduct of controlled gambling*.¹⁰ In the performance of these duties, the

¹ Assembly Bill 1416 (2000 Stat. Ch. 1023)

² Assembly Bill 2431 (2002 Stat. Ch. 738)

³ California Code of Regulations, Title 4, Sections 12201 and 12221.

⁴ California Code of Regulations, Title 4, Sections 12205.1 and 12225.1.

⁵ Business and Professions Code, subdivision (b) of section 19856.

⁶ Business and Professions Code, section 19865.

⁷ Business and Professions Code, section 19857.

⁸ Business and Professions Code, Division 8, Chapter 4, section 19800 *et seq.*

⁹ Business and Professions Code, subdivision (a) of section 19823.

¹⁰ Business and Professions Code, subdivision (o) of section 19841.

Commission is authorized to adopt regulations requiring the licensure of TPPPS¹¹ and Gambling Businesses.¹²

TPPPS, Gambling Businesses and their owners, supervisors, players and other employees play a pivotal role in the conduct of a controlled game. They primarily participate in controlled games that feature a player-dealer position in which participants are afforded the temporary opportunity to wager against multiple players at the same table.¹³ For this reason, the Commission has made the determination that TPPPS, Gambling Businesses and their owners, supervisors, players and other employees should be licensed, rather than registered. In reviewing an application for any license, the Commission must consider whether issuance of the license is inimical to public health, safety, or welfare, and whether issuance of the license will undermine public trust that gambling operations are free from criminal and dishonest elements.¹⁴

Proposed Action:

Currently, TPPPS and Gambling Businesses are required to *register* with the Commission, and make a request for conversion to a *license* when requested to do so by the Bureau. The Commission is proposing regulations that will establish a license renewal program for TPPPS, Gambling Businesses and their owners, supervisors, players and other employees.

TPPPS playing book forms are currently reviewed and approved by the Bureau with the initial submission of a contract to provide third-party proposition player services to a gambling establishment. There is no provision for approval of amendments to a form once it has been approved. Current regulations also require gambling businesses to have their proposed playing book form approved in advance by the Bureau; however, there is no established process to obtain the initial approval and no provision for approval of amendments of their form once it has been approved. The Commission is proposing regulations that include provisions for the initial approval of playing book forms for gambling businesses, and for the periodic review and approval of amendments to playing book forms for both TPPPS and gambling businesses.

Current regulation establishes the maximum term of a TPPPS contract at one year. The Commission is proposing a regulation amendment that extends the maximum term of a TPPPS contract from one year to two years.

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

1. Within Chapters 2.1 and 2.2, this regulatory action amends Sections 12200.09, 12200.10A, 12200.11, 12200.13 and 12220.13 to: establish a two-year term, rather than a one-year term, for TPPS contracts; change the contract application/extension fee from \$500 to \$1000 to conform to the two-year term; and add new requirements for play book forms.

¹¹ Business and Professions Code, section 19984.

¹² Business and Professions Code, subdivisions (a) and (d) of section 19824, and subdivision (a) of section 19853.

¹³ Business and Professions Code, subdivisions (c) and (af) of section 19805, and California Code of Regulations, Title 4, Paragraph (28), subsection (b) of Section 12200(b) and Paragraph (11), subsection (b) of Section 12200.

¹⁴ Business and Professions Code, subdivision (c) of section 19856.

The change in the contract length and application fee would align TPPPS contract criteria to the two-year term of the TPPPS license, making it easier for the industry to renew the contracts. The new requirements for playing book forms would establish a Bureau review process for the amendment of playing book forms within the term of a TPPPS contract. Current regulations do not accommodate the changes to these forms after their initial approval. Even with contracts being valid for only one year, this has occasionally been a problem. Therefore, this change is needed to accommodate anticipated increases in the frequency of requests for approval of amendments, after initial approval, during the extended two-year term of a contract. This new playing book change process would also include a nominal Bureau fee of \$75 to offset expenses incurred in processing the application and reviewing the new form.

In addition to several nonsubstantive conforming revisions to the form Application for Contract Approval to Provide Proposition Player Services, BGC-APP-030 (Rev 05/09) which is incorporated in Section 12200.9, the fee for a contract amendment approval is being added to the list of forms, documents and fees that may be required to be submitted to the Bureau in order to obtain one of the various types of contract approval. The fee for a contract amendment approval application is currently established in subsection (a) of Section 12200.10B at \$500 and is non-refundable. Reference to this fee was inadvertently omitted in previous revisions to this form. This amendment is being made for consistency and clarification.

2. Within Chapter 2.1, this regulatory action amends Section 12203.2 to update the subsection referenced.

These changes are being proposed to clarify the subsection. During a Section 100 change to these regulations, Section 12203.3 was changed for clarity; however, the subsection in the preceding section referencing Section 12203.3 was not changed.

3. Within Chapter 2.2, this regulatory action amends Section 12220.18 to add the word licensee to the revocation section and correct the referenced sections listed.

The addition of the word licensee is necessary to conform this section to reflect the industry as there are now licensed individuals and entities.

4. Within Chapter 2.2, this regulatory action amends Section 12220.23 to add the words *license*, *licensed* or *temporary* where appropriate.

The addition of the words license, licensee or temporary is necessary to conform this section to reflect the industry as there are now licensed individuals and entities.

5. Within Chapters 2.1 and 2.2, this regulatory action amends Sections 12205.1, 12218, 12218.7, 12225.1, 12233 and 12235, and adopts Sections 12218.8, 12218.9, 12238 and 12239, to change the forms required to convert a registration to a license, establish a renewal process, incorporate the license applications and to put into practice the charging of the license application fees.

This proposed action amends Section 12205.1(a) and (c), and Section 12225.1(a) and (b), to incorporate by reference four new application forms to be used to transition from registration to licensure, and to establish an initial license application fee. The new forms are as follows:

- Application for Third-Party Proposition Player Services License for Business Entities and Owners, CGCC-433 (New 05/09)
- Application for Third-Party Proposition Player Services License for Supervisors, Players, or Other Employees, CGCC-434 (New 05/09)
- Application for Gambling Business License for Business Entities and Owners, CGCC-533 (New 05/09)
- Application for Gambling Business License for Supervisors, Players, or Other Employees, CGCC-534 (New 05/09)

In this proposed action, Sections 12218, 12218.8, 12233 and 12238 all make reference to the form Trust Supplemental Background Investigation Information, BGC-APP-143 (Rev 05/08), which is currently incorporated by reference in Section 12342 of Chapter 6 of Division 18. That form has been readily accessible on both the Commission's and the Bureau's Web sites, and was continually available during this rulemaking and a copy would have been provided to anyone had a request been made.

6. Within both Chapters 2.1 and 2.2, this regulatory action also includes several nonsubstantive conforming, grammatical or editorial changes which have no regulatory effect.

REQUIRED DETERMINATIONS:

Local Mandate:

A mandate is not imposed on local agencies or school districts.

Business/Small Business Impact:

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

TPPPS and Gambling Business registrants are already required to transition to a license, but the TPPPS and Gambling Business registrants will now have to pay an initial license fee that they currently do not pay. These proposed regulations would also implement a license renewal process, including an additional license renewal fee. While the regulations do impose additional costs, those costs are reasonable and necessary, and do not impose a significant adverse economic impact as evidenced by the lack of any comment or objection from affected individuals or entities. Furthermore, these regulations do not impose any performance standards, prescribe the use of any specific technologies or equipment, or mandate specific actions or procedures.

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.

OBJECTIONS OR RECOMMENDATIONS / RESPONSES:

The following comments/objections/recommendations were made in writing during the public comment period regarding the proposed action:

A. 45-Day Comment Period Ending August 20, 2009**1. Norm Pierce, Assistant Bureau Chief, California Department of Justice, Bureau of Gambling Control, in a letter dated August 19, 2009, offered the following comments and recommendations:**

- a. Mr. Pierce's letter included several recommendations for amendments to the Initial Statement of Reasons for this proposed action, as published July 3, 2009. The changes were requested to better describe the proposed action and to correct a minor inaccuracy in the background information.

These comments/recommendations were accepted, in part. While the Initial Statement of reasons cannot be amended, the recommendations are accommodated, where necessary and appropriate, in the Updated Information section of this Final Statement of Reasons and in the Updated Informative Digest for this rulemaking file.

- b. Mr. Pierce suggested adding the phrase "that complies with this section" to Section 12200.13 (c)(1)(B) to clarify that a request to approve an amended playing book form is not deemed complete until the provided sample complies with the regulatory requirements.

This comment/recommendation was accepted and the proposed action was modified to accommodate it in a 15-day change distributed September 3, 2009.

- c. Mr. Pierce suggested changing the phrase "as applicable, an" to "the applicable" in Section 12205.1(a) and (c) to clarify that an Application for Third-Party Proposition Player Services License for Business Entities and Owners (CGCC-433, (New 05/09)) or an Application for Third-Party Proposition Player Services License for Supervisors, Players or Other Employees (CGCC-434, (New 05/09)) is required,

without exception, and to clarify the directive to complete a new application in subsection (c).

This comment/recommendation was accepted and the proposed action was modified to accommodate it in a 15-day change distributed September 3, 2009.

- d. Mr. Pierce suggested striking the phrase “as applicable, an” and the word “an” in Section 12218(c)(1). “As applicable” can be interpreted to mean to submit the appropriate application of the two listed or to only submit an application if it is “applicable” or required under these circumstances. Removing the words provides a clear directive to submit an application.

This comment/recommendation was accepted and the proposed action was modified to accommodate it in a 15-day change distributed September 3, 2009.

- e. Mr. Pierce suggested removing the phrase “as applicable,” and the word “an” in Section 12218.8(a)(1). “As applicable” can be interpreted to mean to submit the appropriate application of the two listed or to only submit an application if it is “applicable” or required under these circumstances. Removing the words provides a clear directive to submit a renewal application.

This comment/recommendation was accepted and the proposed action was modified to accommodate it in a 15-day change distributed September 3, 2009.

- f. Mr. Pierce suggested adding a new paragraph (4) in Section 12218.9(b) to the list of situations when application processing times may be exceeded. The purpose is to take into consideration the delays caused by the applicant in providing the Commission with an application that meets the criteria for being deemed complete and for submitting late renewal applications. The proposed language was “(4) The Bureau receives the completed application from the Commission less than 90 days prior to the expiration of the current license.” With the requirement that the Bureau submit a report for any conducted renewal investigation to the Commission 45 days prior to the expiration date of the current license, the 90 days noted in the new subsection (4) only provides the Bureau 45 days in which to conduct its investigation. This is a very limited time and anything less may hinder the Bureau’s ability to timely complete a renewal investigation.

This comment/recommendation was accepted, in part, and the proposed action was modified, as follows, to accommodate it in a 15-day change distributed September 3, 2009:

Rather than adding a new paragraph (4) to subsection (b), to accommodate this recommendation the Commission is adding a qualifying phrase at the end of paragraph (4) of subsection (a) of Section 12218.9, to read as follows: “..., unless that application is filed with the Commission less than the 120 days prior to the expiration of the current license.”

- g. Mr. Pierce suggested to add the phrase “that complies with this section” to Section 12220.13(c)(1)(B) to clarify that a request to approve an amended playing book form is not deemed complete until the provided sample complies with the regulatory requirements.

This comment/recommendation was accepted and the proposed action was modified to accommodate it in a 15-day change distributed September 3, 2009.

- h. Mr. Pierce suggested changing the phrase “as applicable, an” to “the applicable” in Section 12225.1(a) and (b) to clarify that an Application for Gambling Business License for Business Entities and Owners (CGCC-533, (New 05/09)) or an Application for Gambling Business License for Supervisors, Players or Other Employees (CGCC-534, (New 05/09)) is required, without exception, and to clarify the directive to complete a new application in item (c).

This comment/recommendation was accepted and the proposed action was modified to accommodate it in a 15-day change distributed September 3, 2009.

- i. Mr. Pierce suggested striking the word “an” in Section 12233(c)(1) to correct a grammatical error.

This comment/recommendation was accepted and the proposed action was modified to accommodate it in a 15-day change distributed September 3, 2009.

- j. Mr. Pierce suggested striking the phrase “as applicable” in Section 12238 (a)(1). “As applicable” can be interpreted to mean to submit the appropriate application of the two listed or to only submit an application if it is “applicable” or required under these circumstances. Removing the words provides a clear directive to submit an application.

This comment/recommendation was accepted and the proposed action was modified to accommodate it in a 15-day change distributed September 3, 2009.

- k. Mr. Pierce suggested adding a new paragraph (4) in Section 12239(b) to the list of situations when application processing times may be exceeded. The purpose is to take into consideration the delays caused by the applicant in providing the Commission with an application that meets the criteria for being deemed complete and for submitting late renewal applications. The proposed language was “(4) The Bureau receives the completed application from the Commission less than 90 days prior to the expiration of the current license.” With the requirement that the Bureau submit a report for any conducted renewal investigation to the Commission 45 days prior to the expiration date of the current license, the 90 days noted in the new subsection (4) only provides the Bureau 45 days in which to conduct its investigation. This is a very limited time and anything less may hinder the Bureau’s ability to timely complete a renewal investigation.

This comment/recommendation was accepted, in part, and the proposed action was modified, as follows, to accommodate it in a 15-day change distributed September 3, 2009:

Rather than adding a new paragraph (4) to subsection (b), to accommodate this recommendation the Commission is adding a qualifying phrase at the end of paragraph (4) of subsection (a) of Section 12239, to read as follows:

“..., unless that application is filed with the Commission less than the 120 days prior to the expiration of the current license.”

There were no further comments, objections, or recommendations received regarding the proposed action at the August 20, 2009 public hearing or within the initial 45-day public comment period.

B. 15-Day Change Comment Period Ending September 18, 2009

There were no comments, objections, or recommendations received regarding the modifications to the proposed action within the 15-day public comment period ending September 18, 2009.