

TITLE 4.
CALIFORNIA GAMBLING CONTROL COMMISSION
CGCC-GCA-2009-01-E

**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 amend a previously adopted emergency regulation¹ that established a process for granting interim approval of card-minding devices used in the play of bingo games. The emergency adoption of the proposed regulation will implement one element of the California Remote Caller Bingo Act (CRCBA),² 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 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 the following changes to Chapter 8 of Division 18 of Title 4 of the California Code of Regulations:

¹ See OAL File No. 2008-1218-06 E.

² Chapter 748, Statutes of 2008 (SB 1369, Cedillio 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 through 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 (OAL) 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.”

Beginning January 1, 2009, the Commission initiated an interim approval process for card-minding devices 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 the forthcoming regulation will be required to conform to any requirement stated in the regulation.

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.

Section 12482, Title 4, Division 18, Chapter 8, California Code of Regulations, currently establishes requirements for the interim approval of card-minding devices, and any

modifications to approved devices, as well as the use of those devices in the play of bingo.

EFFECT OF REGULATORY ACTION:

This proposed action will renumber Article 1 as Article 2; renumber Section 12482 as Section 12486 in Article 2; and amend and clarify Section 12482 (now Section 12486) as follows:

- a. Paragraph (5) of subsection (a) of Section 12482 establishes a disapproval process for card-minding devices that are identified, during the interim approval period, to be non-compliant. The Commission may cancel the approval of devices identified as non-compliant. Manufacturers are afforded due process and an opportunity to be heard before cancellation of an interim approval. The regulation provides that notice be given in the form of an order to show cause, and that the manufacturer be given up to 90 days in which to respond. After receipt of the response, the matter shall be set for consideration at a noticed Commission meeting. As currently written, this provision is unclear as to what effect a failure to respond may have.

The proposed amendment would provide for scheduling matters for Commission consideration in instances where the manufacturer fails to respond within the specified time. This will add clarity to the regulation.

- b. Subsection (f) includes definitions of the terms “interim approval” and “regular approval” of card-minding devices, and makes specific reference to the requirements of paragraphs (1) and (2) of subsection (p) of section 326.5 of the Penal Code. Reference is also made to these criteria in the *Application for Interim Approval of Bingo Card-Minding Device*, form CGCC-615 (New 11/08),³ and a question is included in that form asking if the model is a hand-held, portable device. However, no reference is made, either in the regulation or the application form, to the requirement that the devices be both portable and hand-held. This lack of specific reference could lead to misinterpretation of the provision included in subsection (p) of section 326.5 which permits players to use a hand-held, portable card-minding device, as specified.

The proposed changes to the text of paragraphs (1) and (2) of subsection (f), and the conforming changes proposed in form CGCC-615 (Rev. 02/090), are needed to clarify all of the requirements that apply to card-minding devices. The current wording of the regulation and form focuses attention on requirements contained in subparagraphs (A) through (D) of paragraph (1) of subdivision (p) of section 326.5. Section 12482 and form CGCC-615 (New 11/08) do not specifically mention a key requirement articulated in the portion of the text of paragraph (1) of subdivision (p), which precedes subparagraphs (A) through (D): the requirement that a card-minding device must be both “hand-held” and “portable.”

Penal Code section 326.5(p)(1) provides, in pertinent part:

“Players who are physically present at a bingo game may use hand-held, portable card-minding devices, as described in this subdivision, to assist in monitoring the numbers or symbols

³ Referenced in paragraph (1) of subsection (b) of Section 12482, and included in Appendix A of Chapter 8.

announced by a live caller as those numbers or symbols are called in a live game. Card-minding devices may not be used in connection with any game where a bingo card may be sold or distributed after the start of the ball draw for that game. A card-minding device shall do all of the following:

- (A) Be capable of storing in the memory of the device bingo faces of tangible cards purchased by a player.
- (B) Provide a means for bingo players to input manually each individual number or symbol announced by a live caller.
- (C) Compare the numbers or symbols entered by the player to the bingo faces previously stored in the memory of the device.
- (D) Identify winning bingo patterns that exist on the stored bingo faces.” (Emphasis added.)

The proposed changes would expressly mention this key requirement in both the regulation and the form, thus more fully reflecting the statutory requirements and providing clearer guidance to members of the regulated public.

- c. Paragraph (3) of subsection (f) makes reference to compliance with “... any specific additional criteria established by the Commission in regulation subsequent to the effective date of this section.” This proposal will delete the phrase “... subsequent to the effective date of this section.” In its review of the initial emergency adoption of Section 12482, OAL informally expressed some concern that the phrase proposed for deletion could be confusing and suggested that the Commission consider removing it in a future rulemaking. The Commission concurs with OAL’s recommendation and, therefore, is proposing this nonsubstantive change.

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.