

CALIFORNIA GAMBLING CONTROL COMMISSION  
**FINAL STATEMENT OF REASONS**  
PORTABLE PERSONAL KEY EMPLOYEE LICENSES  
CGCC-GCA-2009-08-R

**HEARING DATE:**

No public hearing was scheduled or held, and no request for a hearing was received.

**SUBJECT MATTER OF PROPOSED REGULATIONS:**

Portable Personal Key Employee Licenses.

**SECTIONS AFFECTED:**

California Code of Regulations, Title 4, Division 18: Chapter 1, amend Section 12008; Chapter 6, Article 1; amend Section 12335; Article 2, amend Sections 12340, 12342, 12343, 12344, 12345 12346, 12347 and 12348; Article 3, adopt Sections 12350, 12351, 12352, 12353, 12354 and 12355.

**UPDATED INFORMATION:**

The Initial Statement of Reasons, as published on December 4, 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 indicated below, no changes have been made to the proposed regulations that would warrant any changes in that information.

**Proposed Action:**

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

**Section 12351**

Section 12351 would be added to describe the license renewal requirements for portable personal key employee licenses, including the required forms, documents, and timeframes. There were minimal changes to the previous regulations that were located in Sections 12344 and 12345.

- Paragraphs (1) and (2) of subsection (a) indicate that an application and nonrefundable fee must be submitted to the Commission. The amount of the fee is unchanged.

- Paragraph (3) of subsection (a) indicates that the key employee submit one two inch by two inch color passport-style photograph taken no more than 30 days before the submission of the application for renewal to the Commission. This is necessary for the Commission to create the license that contains the photograph of the key employee.
- Subsection (b) provides that the Bureau may request an additional sum of money if further investigation is needed. This is consistent with the language previously located in Section 12344 and with Business and Professions Code section 19867.
- Subsection (c) provides the timeframe for processing the key employee application for a renewal of their license. There were minimal changes from the previous regulations that contained the application processing timeframes for key employees, which were located in Section 12345.
- Paragraph (1) of subsection (c) requires that the key employee submit an application for renewal no later than 120 days prior to the expiration of his or her license.
- Paragraph (2) of subsection (c) provides the Commission five working days to notify the applicant whether the application is complete or deficient. The number of days was reduced from 10 days after receipt of the application in response to public request to reduce application processing times. The five working days is adequate to notify the applicant.
- Paragraph (3) of subsection (c) provides that the Commission shall forward the application to the Bureau within five days. This is an adequate amount of time for this task.
- Paragraph (4) of subsection (c) provides that, if the Bureau conducts and investigation, it shall submit a written report concerning the renewal application no later than 45 days prior to the expiration of the current license. This also specifies that the report may include a recommendation pursuant to Business and Professions Code section 19826, subdivision (a). Provision is also included to relieve the Bureau from the 45-day submission requirement if the licensee fails to submit their application at least 120 days prior to the expiration of their license. These provisions are consistent with the current Commission/Bureau practice concerning key employee license renewal applications, and the timeframe is adequate to allow the Commission to consider the application prior to expiration of the license when renewal applications are submitted timely.

### **Section 12352**

Section 12352 would be added to describe the notification requirements when a key employee changes employers or when his/her employment status changes. In addition, this section describes the process to obtain a replacement license. The required forms, documents, and processing timeframes are also included in this section.

- Subsection (a) requires the key employee to notify the Commission within 10 days of accepting a job with a gambling enterprise or termination of employment with a gambling enterprise by submitting a new form, "Notification of Change in Employment Status, CGCC-033 (New 08/09)," which is attached in Appendix A. This requirement is needed to determine the employment status of the key employee

- to ensure the applicant is not employed by more than one gambling enterprise at any given time.
- Subsection (b) allows the holder of a valid key employee license to request a replacement license under specific circumstances.
  - Paragraph (1) of subsection (b) requires that a key employee submit a newly created form, “Request for Replacement of Key Employee License, CGCC-034 (New 08/09).” The form is needed to collect the licensee’s information in order for the Commission to issue the key employee a replacement license.
  - Paragraph (2) requires the licensee to submit a two inch by two inch color passport-style photograph.
  - Paragraph (3) requires the licensee to submit a \$25 nonrefundable application fee. The fee is adequate to process the request.
  - Subsection (c) provides that the Executive Director shall issue a replacement license as long as there is not any cause to revoke the license. This provides the Executive Director with the discretion to deny issuance of a replacement license for specific reasons in order to protect the public and integrity of gaming.
  - Subsection (d) specifies that a license issued pursuant to Section 12352 shall be valid during the unexpired term of the replaced license.
  - Subsection (e) specifies that the previously issued license shall become invalid.
  - Subsection (f) provides the timeframes for the replacement license application processing, which provides the Commission five working days to review the application for completeness and 15 working days to either grant or deny the application. These timeframes are adequate to process the application

It is necessary to have regulations establishing a process to request a replacement license in order for the employee to continue working with a valid license.

#### **Section 12354**

Section 12347 would be renumbered as Section 12354, and the title amended to read, “Interim Key Employee Licenses; Processing Times.”

Section 12354 is a separate topic and does not specifically pertain to the provisions in SB 730 in regard to the gambling license or key employee license; however, the amendments are being proposed to provide consistency and clarity to this section since it is related to key employees. This section will make the interim key employee requirements equivalent whether the employee is working for a corporate or non-corporate gambling enterprise.

- Subsection (a) would be amended to indicate that an individual holding a valid work permit may immediately begin working as an interim key employee provided that the employee provides the necessary application form and documents within 10-days of hiring.

- Paragraph (1) requires the applicant to submit a newly created form, “Application for Interim Key Employee License, CGCC-035 (New 08/09),” which is attached in Appendix A.
- Paragraph (2) requires a nonrefundable application fee of \$25. This fee is adequate to process the request and create an interim license.
- Paragraph (3) requires a copy of the employee’s valid work permit. The work permit may be issued by the local governing agency or the Commission pursuant to Business and Professions Code section 19912.
- Paragraph (4) requires the applicant to provide a two inch by two inch color passport-style photograph within 10 days of hiring. This is necessary to create the license that contains a photograph of the applicant.
- Subsection (b) provides the timeframes that the Executive Director will process the application. This subsection requires the Executive Director to notify the applicant whether the application is complete or deficient within five working days and that the interim key employee license be granted or denied within 15 working days. These processing times are reasonable and allow for the interim key employee to be issued an interim license in a short period of time after assuming key employee duties.
- Subsection (c) provides the conditions which the interim license approvals are subject to.
- Paragraph (1) requires the interim key employee to submit an application package for an initial key employee license within 30 days of assuming a key employee position. This was previously required for interim key employees.
- Paragraph (2) specifies that an interim license shall be valid for a period of two years. The processing time for an initial key employee license is typically completed within three to six months. Subsection (b) of Section 12350 specifies that the subsequently issued initial key employee license shall be for the remaining unexpired term of the interim license. This process should allow the key employee to continue working while the initial application is being processed and avoids the need to establish a separate application fee for an interim license whereas the term may fluctuate based on the processing of the initial application. The proposed \$25 application fee for an interim license covers the cost to create the license.
- Paragraphs (3) and (4) specify that the issuance of an interim license does not guarantee the issuance of any Commission permit, registration, or license, including a key employee license.
- Paragraph (5) specifies the reasons an interim key employee shall cease working in a key employee position. This includes when the initial key employee application is abandoned or denied, the interim key employee’s work permit becomes invalid, or the Executive Director notifies the applicant and the employing gambling enterprise that the interim license is cancelled pursuant to subsection (e). This is necessary to ensure protection of the public in the event any of these occur.
- Subsection (d) specifies that the interim license will become invalid upon issuance or denial of a regular key employee license.

- Subsection (h) specifies that this section applies to any individual employed in the capacity of a key employee whether employed by a non-corporate gambling enterprise or by a corporate gambling enterprise. This provides regulatory consistency for all gambling enterprises by allowing the immediate hiring and promoting of individuals. The requirement that an individual must have a government issued work permit provides a level of protection since he/she would have previously undergone a background review which assists to maintain the integrity of gaming since these individuals would have already have had a background review.

**INCORPORATION BY REFERENCE:**

The incorporation by reference in paragraph (4) of subsection (c) of Section 12350 of the form “Key Employee Supplemental Background Investigation Information,” BGC-APP. 016A (Rev. 08/09) is appropriate since publishing this document in the California Code of Regulations would clearly be cumbersome, unduly expensive, impractical and unnecessary. This document consists of multiple pages of text, tables and charts. It is designed to be completed electronically, then printed and mailed to the Commission. It is unnecessary to print this information in the text of the regulation itself. Form BGC-APP.016A is available for viewing on the Commission’s Web site, and is also available to anyone upon request to the Commission or Bureau. This form was also available for review throughout this rulemaking process.

**REQUIRED DETERMINATIONS:**

**Local Mandate:**

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

**Small Business Impact:**

The Commission has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

**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.

**COMMENTS, OBJECTIONS OR RECOMMENDATIONS / RESPONSES:**

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

**A. 45-Day Comment Period Ending January 19, 2010**

The following comments/objections/recommendations were made regarding the proposed action, in writing, during the 45-day comment period that ended on January 19, 2010:

1. As amended by this action, Section 12345, subsection (c) originally required all applications for renewal of gambling licenses for a particular gambling establishment to be submitted together as a single package to the California Gambling Control Commission. [Emphasis added.]

**Bureau of Gambling Control (Bureau):** Recent legislation now defines the term “gambling enterprise” and it should replace the term “gambling establishment” when referring to the business conducting a gambling operation. The term “gambling establishment” refers to the building/premises where gambling operations occur. Therefore, the word “establishment” should be replaced with the word “enterprise.”

**Response:** This comment was accepted and the proposed text modified to accommodate it. In the future, the Commission will be reviewing all of its regulations contained in Division 18 of Title 4, and where the terms “gambling establishment” and “gambling enterprise” are used, will make the appropriate changes in those terms to fit the context.

2. As added by this action, subsection (a) of Section 12352 originally required a licensee to notify the Commission of a change in employment at a gambling establishment. Section 12353, subsection (d), originally required key employee licenses to be presented, upon request, to anyone requesting verification of a valid license, including the employee’s gambling establishment employer. As amended by this action, Section 12354, in subsection (a); paragraph (3) of subsection (a); subparagraph (C) of paragraph (5) of subsection (c); subsection (e); paragraph (7) of subsection (e); and subsection (f), makes reference to interim key employee licenses and work permits for gambling establishments. [Emphasis added.]

**Bureau:** Recent legislation now defines the term “gambling enterprise” and it should replace the term “gambling establishment” when referring to the business conducting a gambling operation. The term “gambling establishment” refers to the building/premises where gambling operations occur. Therefore, the word “establishment” should be replaced with the word “enterprise.”

**Response:** This comment was accepted and the proposed text modified to accommodate it. In the future, the Commission will be reviewing all of its

regulations contained in Division 18 of Title 4, and where the terms “gambling establishment” and “gambling enterprise” are used, will make the appropriate changes in those terms to fit the context.

3. As added by this action, paragraph (4) of subsection (c) of Section 12351 originally provided that if the Bureau conducts an investigation, it shall submit a written report concerning the renewal application to the Commission no later than 45 days prior to the expiration of the current license, unless that application is filed with the Commission less than 120 days prior to the expiration of the current license.

**Bureau:** The Bureau suggests using the same language as is used in Section 1234[5]. It should read, “The Bureau shall submit its written report concerning the renewal application, which may include a recommendation pursuant to Business and Professions Code section 19826, subdivision (a), ...”

**Response:** This comment was accepted, in part, and the proposed text modified to accommodate it.

Section 12351, subsection (c), paragraph (4), was modified to conform to the current Bureau/Commission practice regarding reports and recommendations for key employee license renewals. Full background investigations are not generally required for key employee license renewals and no report is necessary. Only when information contained in the renewal application or obtained independently indicates a need for an investigation is one performed. A recommendation would only be made if the Bureau, through an investigation, determined that it would be appropriate to deny, limit, condition or restrict the license. However, this practice is not totally comparable to the process used in the renewal of gambling licenses; therefore, the language of Section 12345 is not appropriate in this instance.

While not specifically addressed in the Bureau’s comments regarding Section 12351, the Bureau has previously expressed concern for being held to the 45-day requirement for submission of their report when renewal applications are not submitted timely. To address this concern and the practice described immediately above, the Commission and Bureau agreed, in a separate rulemaking action concerning a different license classification, to the following language:

*“If the Bureau conducts an investigation, it shall submit a written report concerning the renewal application, which may include a recommendation pursuant to Business and Professions Code section 19826, subdivision (a), to the Commission no later than 45 days prior to the expiration of the current license, unless that application is filed with the Commission less than 120 days prior to the expiration of the current license.”*

To address the Bureau’s comments and concerns, and to conform to current practice, paragraph (4) of subsection (c) of Section 12351 was modified accordingly.

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

**B. 15-Day Change Comment Period Ending February 22, 2010**

There were no comments, objections or recommendations received within the 15-day public comment period regarding the modified text of the proposed action.