

CALIFORNIA GAMBLING CONTROL COMMISSION  
**INITIAL STATEMENT OF REASONS**

CGCC-GCA-2010-01-R

**HEARING DATE:** August 19, 2010

**SUBJECT MATTER OF PROPOSED REGULATIONS:** Surrender of State Gambling Licenses  
Abandonment of State Gambling Licenses  
Reactivation of Expired State Gambling License

**SECTIONS AFFECTED:** California Code of Regulations, Title 4, Division 18:  
Sections 12002, 12345, 12347, and 12348

**SPECIFIC PURPOSE OF REGULATORY PROPOSAL:**

The California Gambling Control Commission (Commission) is proposing to adopt regulations to provide guidelines and procedures for the surrender or abandonment of state gambling licenses, and the reactivation of specified expired state gambling licenses. The proposed regulations establish the following:

1. A consequence for late submittal of an application for renewal of a state gambling license;
2. Definitions and procedures for the surrender or abandonment of a state gambling license; and,
3. A mechanism to reinstate state gambling licenses that were previously surrendered or had expired without being renewed, subject to specified conditions.

**Part 1: Consequence for Late Submittal of Renewal Applications**

Business and Professions Code<sup>1</sup> section 19876 requires applications for a renewal of a state gambling license to be filed with the Commission no later than 120 calendar days prior to the expiration of the current license. Licenses are issued for a 24-month term, and the Commission's current practice is to send a letter 150 days in advance of the expiration date of a license to remind the licensee about the upcoming deadline. Title 4, CCR, Section 12345 also specifies that a complete renewal application is due 120 days in advance of the expiration of the current

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

license, and defines a complete application as including all required fees. However, no consequences currently exist for failing to submit a timely application. This proposed action would implement a consequence for a late submittal as follows:

- *Section 12345, subsection (g)*: If a licensee fails to submit a complete renewal application at least 120 days in advance of the date of expiration, and consequently, the Bureau of Gambling Control (Bureau) and the Commission cannot complete their review and approval of the application prior to the expiration date, the licensee must cease gambling operations as of the expiration date of the license. Gambling operations may not resume until the Commission approves the renewal of the license.

This consequence is explicitly authorized by subsection (e) of section 19876, which states “[i]f an owner licensee fails to renew the gambling license as provided in this chapter, the commission may order the immediate closure of the premises and a cessation of all gambling activity therein until the license is renewed.” Current Commission practice extends the license for licensees whose renewal applications have not been fully reviewed by Bureau and Commission staff prior to the expiration date. This practice applies both to licensees who submitted their application on time (and therefore are not responsible for the delay in review) and those who fail to submit renewal applications by the statutory deadline. This regulation will not apply to those licensees who submit their renewal applications at least 120 days in advance of the license expiration. In such cases, if Bureau staff cannot complete their review of the application, the Commission will continue to extend the license for the period of time the Bureau estimates will be required to complete the investigation.

During the development of this regulation, the Commission considered imposing a monetary penalty for late submittal of applications; however, it is unclear whether such a penalty would be authorized by statute. Furthermore, a monetary penalty for late renewal application submittal does not provide nearly as strong an incentive for timely submittal as the threat of closure. In 2009, 34 licensees submitted renewal applications after the 120-day deadline, ranging from one day to 119 days past the statutory deadline (that is, submitted 119 days in advance of the license expiration to the day before expiration). The average late submittal was 23 days after the 120-day deadline. However, only three applications required an extension of the previous license in order to give the Bureau and the Commission sufficient time to complete their reviews. Allowing extensions of the license imposes a significant administrative burden on the Commission staff, as reports for Commission meetings need to be created twice – once for a Commission agenda item extending the license, and again for an agenda item approving or denying the renewal. Establishing a strong incentive to submit timely renewal applications should decrease the administrative burden.

More importantly, the Commission is charged with ensuring that gambling establishments are not inimical to public health, safety, and welfare, and that operations are not conducted in a manner that will undermine public trust. The Commission and the Bureau review each renewal application to make such determinations. If a gambling establishment owner does not submit a timely renewal application, and Commission and Bureau staff cannot complete their reviews, the Commission cannot carry out its assigned duty to ensure public health, safety, welfare, and trust.

Part 2: Surrender or Abandonment of a State Gambling License (FUTURE)

The Gambling Control Act<sup>2</sup> (Act) contemplates the possibility of a license surrender. Section 19877 states, in part, that “the failure of an owner licensee to file an application for renewal before the date specified in this chapter may be deemed a surrender of the license.” This is the only mention of “surrender” in the Act. Under the Commission’s broad rulemaking authority, we have the ability to implement regulations providing procedures for surrendering a license, and specifying the consequences of doing so. The proposed regulation also provides the Commission with the authority and discretion to reject a proposed surrender. Defining the process for and consequences of a surrender will give clear guidance to both the Commission and the regulated industry. Specifically, the proposed action would do the following:

- Section 12002, subsection (j) adds a definition of “surrender” to the general definitions to state that “surrender means to voluntarily give up all legal rights and interests in a license, permit, registration, or approval.”
- Section 12345, subsection (h) deems a state gambling license “abandoned” if a renewal application has not been received within 10 days after the expiration date of the previous license. As previously mentioned, licensees are provided with ample notice of the upcoming expiration of a license. Failure to submit a timely renewal application places a significant administrative burden on the Bureau and the Commission, and can cause a delay in the processing of other applications that were submitted on time. Allowing the Commission to deem a license abandoned after a certain time period will reduce the administrative burden.
- Section 12347, subsection (a) allows an owner-licensee to propose to surrender the license any time prior to expiration. A surrender must be requested in writing, and the matter considered before the full Commission at a properly-noticed, public hearing. A proposed surrender must be approved by the Commission in order to be effective. The Commission may reject a surrender if the surrender is not considered to be “in the public interest,” which will be determined on a case-by-case basis, on the merits of each individual request. Depending on the circumstances, it may be that the Commission wishes to deny a request for license surrender in a case in which disciplinary actions are pending. Rather than tie the

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<sup>2</sup> Business and Professions Code, Division 8, Chapter 5, Section 19800 et seq.

Commission's hands, this regulation retains the discretionary authority entrusted to the Commission under the Act.

- *Section 12347, subsection (b)* describes the consequences of surrendering or abandoning a gambling license, as follows:
  - *Paragraphs (1) and (2)* prohibit the license from being reactivated or used to operate any gambling establishment in the state. Allowing a license to be surrendered or deemed abandoned is intended to provide clarity and finality regarding the status of the license and the gambling establishment in light of the moratorium provision of the Act<sup>3</sup>. By explicitly prohibiting the reinstatement of a surrendered or abandoned license, the Commission hopes to prevent the type of confusion that currently surrounds gambling establishments that are no longer in operation.
  - *Paragraph (3)* prohibits the license holder from selling the gambling business. The Act prohibits the sale or transfer of a license; however, the Commission's current practice is to approve the sale of the business with the stipulation that the buyer apply for and receive a gambling license. The Act provides no guidance as to whether a license must be active in order for the business to be sold, leading to uncertainty in the Commission and the regulated industry. This regulation will provide clarity and, again, prevent the confusion that surrounds closed gambling establishments. It should be noted that this provision is not intended to prohibit the sale of the assets of the business, such as gaming tables, equipment, or any real property; it is intended to prevent the future operation of the business as a cardroom licensed by the state.
  - *Paragraph (4)* explicitly applies the moratorium provision of the Act to any gambling establishment whose owner surrenders or abandons the license. As discussed in further detail in the section below, the Commission and the industry have had a great deal of confusion over the meaning of section 19963. Paragraph (4) will help to eliminate that confusion with regard to future license surrenders or abandonments.

### *Part 3: Reinstatement of Surrendered or Expired Gambling Licenses (PAST)*

After the passage of the Act in 1998, all gambling establishments registered with the then-Division of Gambling Control within the Department of Justice (now referred to as the Bureau of Gambling Control) to conduct controlled gambling were required to apply for state gambling licenses issued by the Commission, although the Commission was not yet operational. During the interim between the passage of the Act and the establishment of the Commission in 2001, owners of gambling establishments were issued a "provisional license." Provisional licenses were then converted to state gambling licenses through a process established in regulation.

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<sup>3</sup> Business and Professions Code section 19963

During the conversion to state gambling licenses, numerous gambling establishments ceased operations. Many owners either failed to submit an application for a state gambling license; submitted an application, but subsequently withdrew it; or received a state gambling license and allowed the license to lapse.

Typically, allowing a license to lapse or withdrawing an application would not be of serious concern to a regulatory agency or the regulated industry. However, in 2000, the Legislature instituted a moratorium on the approval of new cardrooms (AB 1416, Wesson, Chapter 1023, Statutes of 2000). Specifically, AB 1416 added section 19963 to state:

(a) In addition to any other limitations on the expansion of gambling imposed by Section 19962 or any provision of this chapter [the Act], the commission may not issue a gambling license for a gambling establishment that was not licensed to operate on December 31, 1999, unless an application to operate that establishment was on file with the department [Department of Justice] prior to September 1, 2000.

It is critical to note that this provision cannot be interpreted literally, because, under the Act, owners (either natural persons or business entities) are licensed, not gambling establishments (a “gambling establishment,” by statutory definition,<sup>4</sup> is a building). Traditionally, when faced with an unclear statute with multiple interpretations, state agencies turn to the legislative history of the implementing legislation. In the case of section 19963, no published legislative history (in the form of information in a contemporaneous legislative bill analysis or letter to the Daily Journal, for example) exists to guide the Commission in its interpretation of the statute. The Commission is left to determine, under its broad regulatory authority, exactly what the statute prohibits or allows.

One possible interpretation of section 19963 is that a license cannot be issued to operate a gambling establishment unless *that establishment had a licensed owner* as of December 31, 1999, or an owner whose application was on file with the Department of Justice prior to September 1, 2000. While this interpretation clearly prohibits entirely new gambling establishments from opening, the status of gambling establishments that met the statutory deadline but have since ceased operations is not addressed. Should a gambling establishment be considered wholly independent of its licensed owner and the statute interpreted to mean that any person can apply to open any gambling establishment, as long as that establishment had a licensed owner as of the required date? Or are the establishment and the licensed owner more closely intertwined?

Further complicating matters, the term “gambling establishment” has long been defined in the Act as “one or more rooms where any controlled gambling or activity directly related thereto occurs,” clearly referencing the physical space used in controlled gambling. Prior to the passage of AB 293 (Mendoza, Chapter 233, Statutes of 2009), the term “gambling enterprise” was not defined in the Act; however, the term was used numerous times throughout the Act to refer to, as it is now defined, an entity that conducts controlled gambling. The term “gambling

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<sup>4</sup> Business and Professions Code section 19805(o)

establishment,” while defined as a building, was also used to refer to the entity licensed to conduct controlled gambling, as well as the physical location of controlled gambling. For example, section 19844 provides for “the formulation of a list of persons who are to be excluded or ejected from any *gambling establishment*” (emphasis added) – clearly a reference to the physical location. However, section 19846 stated that “a *gambling establishment* that ejects or excludes an individual...is not subject to civil liability....” As a building cannot be held civilly liable, this is a clear reference to the business entity, rather than the building. With this example as precedent, section 19963 should be interpreted to mean “...the commission may not issue a gambling license for a gambling *enterprise* that was not licensed as of...”

The Commission has decided upon an interpretation of section 19963 that combines the two factors previously discussed. A *gambling enterprise* that was licensed as of December 31, 1999, or had a license application on file prior to September 1, 2000, may apply to reactivate the license to operate the gambling establishment with which it was associated on December 31, 1999. The proposed action will allow a very limited opportunity to reactivate a state gambling license and reopen the associated gambling establishment. A license can only be “reactivated” by its last holder, and the applicant to reactivate a license has very strict timelines and criteria to meet in order for the application to be considered. Specifically, the proposed regulatory action includes the following elements:

- Section 12348, subsection (a) provides that a state gambling license, which includes a provisional license as well as a license issued by the Commission, that was surrendered or had expired without being renewed *prior to* the effective date of this section can be reactivated within the following guidelines:
  - Paragraph (1): Limits the ability to reactivate the license to the last licensed owner of a gambling establishment that meets the requirements of section 19963.
  - Paragraph (2): Requires the interested applicant to notify the Commission within 30 days of the effective date of the regulation of their intent to apply for reinstatement of the license. Issuance of an initial license is time-consuming for Commission and Bureau staff. In order to accurately plan upcoming workload obligations, the Commission and Bureau need to be aware of the approximate number of applications that may be generated by this regulation. Furthermore, the local community and businesses nearby the proposed location for a reopened gambling establishment need to be able to make planning decisions which may be affected by the re-establishment of a cardroom.
  - Paragraph (3): Requires the applicant to have all required forms, fees, and documentation submitted to the Commission within 12 months of the effective date of this section. For the same reasons as listed above regarding Paragraph (2), a final date to apply to reopen a closed gambling establishment is critical. The Commission, the Bureau, local governments, and nearby businesses need to be able to engage in planning that takes into account the possibility of a reopened gambling establishment.

- Section 12348, subsection (b) specifies the documentation that is required to be submitted in addition to the initial application forms and fees:
  - Paragraph (1): A copy of the last state license issued, whether provisional or a state gambling license, or other documentation satisfactory to the Commission proving that the applicant is the last licensed owner of the establishment. Pursuant to Section 19856, the burden of proving his or her qualifications to receive any license is on the applicant. This paragraph requires the applicant to prove eligibility for licensure under this section.
  - Paragraph (2): A written document addressing the circumstances under which the previous license was surrendered, abandoned, or allowed to expire without being renewed, and the applicant's prior efforts, if any, to have the license renewed. The Commission does not intend to establish circumstances that absolutely disqualify an applicant for licensure (unless, of course, those circumstances establish grounds for mandatory denial under section 19859); nor does the Commission intend to disqualify any applicant that has not attempted to renew the license in the intervening time. However, the totality of the circumstances surrounding the surrender, expiration, or abandonment of the prior license, and any efforts to renew the license, can provide useful information to the Commission in deciding whether the reactivation of the license is in the public interest. Any decisions made pursuant to this paragraph will be made on an individual, case-by-case basis according to the particular circumstances and merits of each application.
  - Paragraphs (3) and (4): A copy of the current applicable local gambling ordinance and an opinion from the chief legal counsel of the local jurisdiction, certifying that the reopening of the gambling establishment is authorized by local ordinance. The Commission has the responsibility to only approve gambling establishments in local jurisdictions with gambling ordinances that meet certain guidelines (section 19860). The burden rests with the applicant to prove that the local gambling ordinance meets the requirements of the Act.
  - Paragraphs (5) and (6): Proof from the local governing body (e.g. city council or county board of supervisors) and the chief law enforcement officer of the local jurisdiction (e.g., the Chief of Police or County Sheriff) affirming support for the gambling establishment's reopening. In many jurisdictions, the law enforcement body and the governing body have shared responsibilities regarding licensing and oversight of gambling establishments. These paragraphs are intended to ensure the support of both affected parties. Furthermore, the signed statements are to be dated no earlier than the effective date of this section so that the indicated support reflects the opinion of the *current* governing body and law enforcement officer.

- Paragraph (7): An economic feasibility study that demonstrates that the proposed gambling establishment will be economically viable, and that the owners have sufficient resources to enable them to comply with all laws and regulations. This requirement is based upon section 19862(a)(2), which states that the Commission may deny a license to an “applicant that fails to conduct an economic feasibility study that demonstrates ...that the proposed gambling establishment will be economically viable, and that the owners have sufficient resources to make the gambling establishment successful.” A cardroom that does not comply with regulatory requirements and tax laws creates a significant administrative burden for the Commission, the Bureau, and local jurisdictions. Prior to approving a license, the Commission wants to ensure that the owner has the financial resources to comply with all laws.
- Section 12348, subsection (c) requires that the Commission consider specified factors when deliberating on an application to reactivate a license and reopen a closed gambling establishment. Specifically, the Commission would be required, but not limited, to consider the following:
  - Paragraph (1): Generally, whether the issuance of the license is inimical to public health, safety, or welfare, and whether issuance of the license will undermine public trust in gambling operations. The Act, in section 19856(c), explicitly requires this consideration.
  - Paragraph (2): The circumstances under which the previous license was surrendered or allowed to expire without being renewed, including (A) any extenuating circumstances; (B) whether the surrender may have been an attempt to avoid adverse action against the license; (C) whether the surrender was voluntary; (D) any prior efforts by the applicant to have the license renewed or reinstated. We do not intend to set up any criteria in this section which would mandate that the Commission act in a certain manner. Rather, this information is intended to provide the Commission with a clearer picture of the totality of the circumstances of the applicant’s prior conduct during and after the active license period, and the information will be considered on an individual, case-by-case basis.
  - Paragraph (3): Any changes in the legal status or composition of the previously-licensed entity. The policy set forth in this proposed regulation is to allow the last holder of a surrendered or expired license a limited opportunity to reactivate that license. The overwhelming majority of those licenses were held by sole proprietors; fewer than 10 were held by corporations or partnerships. In order to ensure that the applicant to reactivate a license is, in fact, the *same* person that previously held the license, the Commission needs to be able to consider any changes to the status or composition of a corporation or partnership.

- Paragraph (4): The potential effect a reopened gambling establishment may have on the incidence of problem gambling. Problem gambling is a major concern of the Commission. If sufficient evidence is presented to the Commission that indicates the reopened gambling establishment may exacerbate problem gambling issues in the community, the Commission may decide to deny the license.
- Paragraph (5): The potential impact a reopened gambling establishment may have on the local economy, including revenues to the local jurisdiction and the number of jobs that may be created. California is in the middle of a serious economic crisis, which has resulted in high levels of job loss and sharp declines in local revenue. Even a small gambling establishment provides employment opportunities and creates revenue for the local jurisdiction and the state. In addition to any negative consequences a reopened gambling establishment may pose, the Commission also wishes to consider the *positive* aspects.
- Paragraph (6): The economic impact on existing gambling establishments within a 20-mile radius of the proposed location for the reopened establishment. Section 19811(d) provides the Commission with authority over, among other things, the concentration of gambling establishments, and in allowing a gambling establishment to reopen, the Commission does not wish to cause harm to an existing establishment. Many of the now-closed establishments are located in jurisdictions that are not located near a large population center that could support several gambling establishments. To the extent that the addition of another gambling establishment may seriously impact the revenues of an existing establishment, the Commission may wish to deny the license.

The decision to set the distance at 20 miles was based upon a provision in section 19605, prohibiting a satellite wagering facility from being located closer than 20 miles from any other satellite wagering facility. This provision of law indicates that gambling facilities may have an adverse impact on other facilities closer than 20 miles away. The Commission is not prohibited from considering the economic impact on gambling establishments further than 20 miles away, but would not be required to take them into consideration.

- Section 12348, subsection (d) requires the reopened gambling establishment to be located in the same local jurisdiction in which it was previously licensed. Current practice of the Commission is to disallow the movement of gambling establishments between jurisdictions, based on the moratorium provisions of section 19962.
- Section 12348, subsection (e) prohibits the issuance of temporary licenses to applicants under this section. Temporary licenses are issued prior to the receipt of a full background investigation of the applicant by the Bureau, and are intended to be issued only in circumstances in which the issuance of a temporary license is necessary to continue the operation of an existing, active gambling establishment. The Commission intends to conduct a full examination of the application to renew or reinstatement an inactive

gambling license. Issuance of a temporary license prior to the completion of the full review would be incompatible with the intent of this section.

- *Section 12348, subsection (f)* declares that any license that is eligible for reactivation under this section for which a complete application is not submitted within the required deadlines shall be deemed abandoned and shall be subject to the provisions of Section 12347(b). The issue of the status of gambling establishments that had a licensed owner as of December 31, 1999, but have subsequently closed, has been on-going for several years. It is time to lay the issue to rest and provide finality to owners of existing gambling establishments and to local jurisdictions.

**Underlying Data:**

Technical, theoretical or empirical studies or reports relied upon:  
None.

**REQUIRED DETERMINATIONS:**

**Business Impact:**

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

These regulations will allow specified closed cardrooms, primarily small cardrooms, to reopen, potentially creating jobs and revenue for the local jurisdiction and the state. To the extent that these regulations would allow a cardroom to reopen in the same jurisdiction as an existing cardroom, the existing cardroom might experience some revenue loss. However, as the cardrooms that may be eligible to reopen are primarily small cardrooms, we expect the impact on neighboring cardrooms to be minor. Furthermore, in determining whether to allow a closed cardroom to reopen, the Commission will specifically consider the economic impact the reopened cardroom may have on any existing cardrooms within a 20-mile radius.

**Specific Technologies or Equipment:**

These regulations do not mandate the use of specific technologies or equipment.

**Consideration of Alternatives:**

No reasonable alternative to the proposed regulations 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 the affected private persons than the proposed regulations.

Set forth below are the alternatives that were considered and the reasons each alternative was rejected:

In order to decide the most appropriate course of action regarding closed cardrooms, the Commission has held numerous public workshops. Two public workshops were held by staff in 2008, one in southern California and one in Sacramento. In 2009 and early 2010, the Commission presided over five public hearings at which several possible policies were presented and public input, both written and oral, was solicited and received. The workshops led to two primary alternatives:

1. Once expired, a license cannot be reactivated / Once closed, a gambling establishment cannot reopen

During the lengthy, informal public comment and review periods, many members of the regulated industry espoused the view that once a license has expired or is surrendered, and the associated gambling establishment has ceased operation, the license cannot be reactivated or renewed and the gambling establishment cannot be reopened. Several of these statements cited the fact that the Act does not *explicitly* authorize the reactivation of an expired license, and, therefore, without explicit authorization to allow it, the Commission is required to prohibit it. However, explicit statutory authority is not required in order for an agency to adopt regulations, as long as the regulations are not in conflict with the statute and are reasonably necessary to carry out the purposes of the statute. (Government Code section 11342.2) In addition, an Office of Administrative Law regulation, Title 1, CCR, Section 14(a)(2), includes in an agency's authority to adopt a regulation any "statutory power that grants a power to the agency which impliedly permits or obligates an agency to adopt, amend, or repeal the regulation in order to achieve the purpose for which the power was granted." (emphasis added) Section 19876(e) allows the Commission to order the immediate closure of any premises if the owner licensee fails to renew the license, and to order the cessation of all gambling activity *until the license is renewed*. This subsection provides the necessary implied authority for the Commission to adopt the proposed regulation allowing expired licenses to be renewed.

After determining that this interpretation was not *required*, the Commission next examined whether it was *desirable*. A blanket prohibition on the reactivation of an expired license, and therefore a prohibition on reopening a closed gambling establishment, would retroactively assign a legal consequence that was not in effect at the time of the surrender of or failure to renew the license. State agencies cannot adopt regulations with a retroactive effect, and this interpretation was rejected.

2. A closed gambling establishment can be reopened by any interested party

Another commonly-held opinion voiced during the informal public comment and review period was that section 19963 simply provides a "cap" on the number of gambling establishments allowed in the state; as long as the total number of gambling establishments in the state did not exceed the number as of December 31, 1999, any person could reopen any closed establishment. The Commission rejected this view due to the intertwined nature of a gambling establishment and its licensed owner, as previously discussed.