

TITLE 4.
CALIFORNIA GAMBLING CONTROL COMMISSION

**NOTICE OF PROPOSED REGULATORY ACTION AND PUBLIC HEARING
CONCERNING
REACTIVATION OF EXPIRED GAMBLING LICENSES; SURRENDER;
ABANDONMENT
CGCC-GCA-2010-01-R**

NOTICE IS HEREBY GIVEN that the California Gambling Control Commission (Commission) is proposing to take the action described in the Informative Digest. Any interested person, or his or her authorized representative, may present statements or arguments orally or in writing relevant to the proposed regulatory action at a public hearing to be held at **10:00 a.m. on August 19, 2010**, at 2399 Gateway Oaks Drive, Suite 100, Sacramento, CA 95833.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Commission at any time during the 45-day public comment period, which closes on July 19, 2010. Written comments will also be accepted at the above referenced hearing.

Written comments relevant to the proposed regulatory action, including those sent by mail, facsimile, or e-mail, may be submitted to the Commission at any time during the public comment period. To be eligible for the Commission's consideration, all written comments must be **received at its office no later than 5:00 p.m. on July 19, 2010**, or provided to the Commission at the above referenced hearing. Written comments should be directed to one of the individuals designated in this notice as a contact person. **Comments sent to persons and/or addresses other than those specified under Contact Persons, or received after the date and time specified above, will be included in the record of this proposed regulatory action, but will not be summarized or responded to regardless of the manner of transmission.**

ADOPTION OF PROPOSED ACTION

After the close of the public comment period, the Commission, upon its own motion or at the instance of any interested party, may thereafter formally adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit oral or written testimony related to this proposal or who have requested notification of any changes to the proposal.

AUTHORITY AND REFERENCE

Pursuant to the authority vested by sections 19800, 19811, 19824, 19840, 19841, 19951, and 19963 of the Business and Professions Code, and to implement, interpret or make specific

sections 19876, 19877, and 19963 of the Business and Professions Code,¹ the Commission is proposing to adopt the following changes to Chapters 1 and 6 of Division 18 of Title 4 of the California Code of Regulations:

INFORMATIVE DIGEST AND POLICY STATEMENT OVERVIEW

INTRODUCTION:

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.

SPECIFIC PROPOSAL:

The proposed action would amend sections in Chapter 1 and Chapter 6 of Division 18 of Title 4 of the California Code of 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.

EXISTING LAW:

Business and Professions Code 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 license, and defines a complete application as including all required fees. However, no consequence currently exists for failing to submit a timely application. This proposed action would implement consequence for late submittals.

Second, the Gambling Control Act² (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." The proposed action implements regulations providing procedures for surrendering a license, and specifying the consequences of doing so.

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

² Business and Professions Code, Division 8, Chapter 5, Section 19800 et seq.

Finally, section 19963 provides a “moratorium” on the approval of new cardrooms. The proposed action provides an interpretation of the moratorium provision.

EFFECT OF REGULATORY ACTION:

This proposed action would make the following specific changes to Chapter 1 and Chapter 6 of Division 18 of Title 4 of the California Code of Regulations:

- Section 12002, subsection (j) adds a definition of “surrender” to the general definitions.
- Section 12345, subsection (g) states that 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.
- 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.
- 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.
- 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.
 - Paragraph (3) prohibits the license holder from selling the gambling business.
 - Paragraph (4) explicitly applies the moratorium provision of the Act to any gambling establishment whose owner surrenders or abandons the license.
- 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.

- *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.
- *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.
 - *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.
 - *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.
 - *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.
 - *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.
- *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.
 - *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.

- *Paragraph (3)*: Any changes in the legal status or composition of the previously-licensed entity.
 - *Paragraph (4)*: The potential effect a reopened gambling establishment may have on the incidence of problem gambling.
 - *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.
 - *Paragraph (6)*: The economic impact on existing gambling establishments within a 20-mile radius of the proposed location for the reopened establishment
- *Section 12348, subsection (d)* requires the reopened gambling establishment to be located in the same local jurisdiction in which it was previously licensed.
 - *Section 12348, subsection (e)* prohibits the issuance of temporary licenses to applicants under 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).

FISCAL IMPACT ESTIMATES

FISCAL IMPACT ON PUBLIC AGENCIES INCLUDING COSTS OR SAVINGS TO STATE AGENCIES OR COSTS/SAVINGS IN FEDERAL FUNDING TO THE STATE:

To the extent this regulation results in the submittal of additional applications, a minor workload cost may be imposed upon the Commission and the Bureau. This cost is expected to be offset by the collection of fees and deposits.

NON-DISCRETIONARY COST OR SAVINGS IMPOSED UPON LOCAL AGENCIES:

None.

MANDATE IMPOSED ON ANY 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 LOCAL AGENCY OR SCHOOL DISTRICT FOR WHICH PART 7 (COMMENCING WITH SECTION 17500) OF DIVISION 4 OF THE GOVERNMENT CODE REQUIRES REIMBURSEMENT:

None.

IMPACT ON BUSINESS:

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

The following studies/relevant data were relied upon in making the above determination:

During a review of the previously-held licenses that may be eligible for reactivation under this regulation, Commission staff has made a determination that few licenses are likely to be reactivated, probably no more than 10. The reopening of a cardroom may have an impact on neighboring cardrooms, but the Commission does not expect a significant, statewide impact to cardroom businesses. In determining whether to reactivate a license, the Commission must consider the economic impact on cardrooms within a 20-mile radius. This regulation will not affect the ability of California businesses to compete with businesses in other states, as cardroom businesses are generally not in direct competition with such businesses.

IMPACT ON JOBS/NEW BUSINESSES:

The Commission has determined that this regulatory proposal will not have a significant impact on the creation of new jobs or businesses, the elimination of jobs or existing businesses, or the expansion of businesses in California

COST IMPACT ON REPRESENTATIVE PRIVATE PERSON OR BUSINESS:

The Commission is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

EFFECT ON HOUSING COSTS:

None.

EFFECT ON SMALL BUSINESS:

The Commission has determined that the proposed regulatory action may affect small businesses, if any resulting new cardroom or any affected existing cardroom would qualify as a small business.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5(a)(13), the Commission must determine that no reasonable alternative considered by the Commission or that has otherwise been

identified and brought to the attention of the Commission 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 affected private persons than the proposed action described in this Notice.

INITIAL STATEMENT OF REASONS, INFORMATION AND TEXT OF PROPOSAL

The Commission has prepared an Initial Statement of Reasons and the exact language for the proposed action and has available all the information upon which the proposal is based. Copies of the language and of the Initial Statement of Reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the Commission at 2399 Gateway Oaks Drive, Suite 220, Sacramento, CA 95833-4231.

AVAILABILITY AND LOCATION OF THE RULEMAKING FILE AND THE FINAL STATEMENT OF REASONS

All the information upon which the proposed action is based is contained in the Rulemaking File that will be available for public inspection and copying at the Commission's office throughout the rulemaking process. Arrangements for inspection and/or copying may be made by contacting the backup contact person named below.

Upon its completion, the Final Statement of Reasons will also be available. A copy of the Final Statement of Reasons may be obtained, once it has been prepared, by making a written request to one of the contact persons named below or by accessing the Commission's Web site listed below.

CONTACT PERSONS

All comments and inquiries concerning the substance of the proposed action should be directed to the following **primary** contact person:

James B. Allen, Regulatory Actions Manager
California Gambling Control Commission
2399 Gateway Oaks Drive, Suite 220, Sacramento, CA 95833-4231
Telephone: (916) 263-4024
Fax: (916) 263-0452
E-mail: Jallen@cgcc.ca.gov

Requests for a copy of the Initial Statement of Reasons, proposed text of the regulation, modified text of the regulation, if any, or other technical information upon which the proposed action is based should be directed to the following **backup** contact person:

Shannon George, Associate Governmental Program Analyst
California Gambling Control Commission
2399 Gateway Oaks Drive, Suite 220, Sacramento, CA 95833-4231
Telephone: (916) 263-4904
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WEB SITE ACCESS

Materials regarding this proposed action are also found on the Commission's Web site at www.cgcc.ca.gov.