

**COMMENTS AND RESPONSES FOR PROPOSED REGULATIONS**  
**INTERIM GAMBLING LICENSES**  
(CHAPTER 233, STATUTES OF 2009; AB 293, MENDOZA)  
CGCC-GCA-2011-      -R

**INFORMAL COMMENT PERIOD ENDING JUNE 6, 2011**

The following written comments/objections/recommendations were made regarding the proposed action during the informal comment period that started on May 19, 2011 and ended on June 6, 2011:

1. Section 12349(a)(4) would define a qualifying event as a death, insolvency, foreclosure, receivership, or incapacity of an owner-licensee that results in a complete change in the ownership of a gambling enterprise and prevents the gambling enterprise from conducting gambling operations because the new owner does not hold a valid gambling license. Section 12349(b) would permit the Commission to issue an interim license as a result of a qualifying event where the new owner is not licensed.
  - a. David Fried – California Gaming Association (CGA): The definition of a qualifying event should be broader to include events that result in a partial ownership change rather than just a complete ownership change. Business and Professions Code section 19841(s) contemplates a broader application of the interim license by using the term “but not limited to” when describing the events.
  - b. Alan Titus – Artichoke Joe’s: The definition of a qualifying event should include events that result in a partial ownership change, such as when there are multiple owners and one dies. The limiting of an interim license to a complete ownership change should be deleted from subsections (a) and (b).
  - c. Mark Kelegian – Ocean’s Eleven: Suggest changing the word “complete” to “100%” or “total.”

**Recommended Response (a – c):** These comments were accepted in part and the regulation amended to delete the word “complete” when referring to an ownership change. The description of the events was also changed to merely reference as examples those described in Business and Professions Code section 19841(s). However, changes were also made that would describe these events as “unforeseen” and the resulting ownership changes as “unexpected.” The intent behind this regulation is to permit gambling operations to continue after events that were *unplanned*, that *unexpectedly* threaten to shut down gambling operations because of a licensing issue.

The Gambling Control Act (Act) requires that a gambling enterprise obtain approval from the California Gambling Control Commission (Commission) *prior* to consummating a transaction that would require the licensing of any person who would have the power to

exercise a significant influence over the gambling operation.<sup>1</sup> As a result, proposed regulations are currently in the draft stages that will introduce procedures and criteria for obtaining *prior* Commission approval for these *planned* transactions. A planned transaction that requires *prior* Commission approval would not require the issuance of an interim license because the prior approval process would include a background check of any new owners who would need to be licensed if the transaction were approved. Gambling operations would continue during the prior approval process because the transaction is not yet completed.

As a result of these comments, subsection (b) of proposed Section 12349 was deleted from these proposed regulations. Subsection (b) was determined to be unnecessary and redundant to Business and Professions Code section 19841(s). As a result of the deletion of subsection (b), subsequent subsections within Section 12349 were renumbered accordingly.

2. Section 12349(c) would permit gambling operations to continue after a qualifying event only if a new owner assumes control and oversight of the gambling enterprise, notifies the Commission within five days, and submits a request for an interim gambling license within 30 days.

a. Alan Titus – Artichoke Joe’s: Not all owners have control and oversight of the gambling enterprise. Also, the five-day notice requirement is unrealistic. In some circumstances, the death of an owner may not be known for days, and the consultation with an attorney for days after that.

b. Mark Kelegian – Ocean’s Eleven: Suggest that the new owner be required to notify the Commission, the Bureau of Gambling Control, local authorities, and other interested parties immediately upon a qualifying event. There could be disputes over who has control of the gambling enterprise. State and local agencies should be notified in order to protect the welfare of the public.

**Recommended Response (a & b):** These comments were accepted in part, and the regulation amended to simply require that an owner have control of the gambling operation, and that the Commission be advised within 10 days of the qualifying event, rather than five days. Given the severe nature of many of these unexpected events, it is reasonable to assume that time must be allowed for grief and a settling of affairs. However, as with any business, it is important that someone with ownership interests assumes control.

The comment that the Commission and other agencies be notified *immediately* was rejected, as it is not reasonable to expect that such notification is either possible or appropriate, given the possible nature of the event.

3. Section 12349(e) would require that a request for an interim gambling license be ancillary to, and concurrent with, an application for a regular gambling license. This section also sets various time frames for the processing of a request for an interim license and requires that the request be denied if the applicant meets any of the disqualifying criteria in section 19859 of the Business and Professions Code.

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<sup>1</sup> Business and Professions Code, sections 19853, subdivision (a), paragraph (6), and 19902

a. Mark Kelegian – Ocean’s Eleven: This section fails to allow for the possibility that another new owner may be willing and capable of taking control in the event that an applicant’s request for an interim license is denied or abandoned.

**Recommended Response:** This comment was rejected. These proposed regulations do not prevent multiple new owners of the same gambling enterprise from applying for an interim license as a result of a qualifying event. Further, proposed Section 12349(c) requires gambling operations to cease if an applicant’s request is denied or abandoned, *but only if no other person holds a gambling license*. This acknowledges that there may be more than one new owner. Finally, proposed Section 12349(h) allows for a new owner to sell their interest in the gambling enterprise to another person.

For clarification purposes, the words “interim or regular” were added to Section 12349(c) when referring to another person that holds a valid *gambling license*.

4. Section 12349(g)(7) would prohibit the approval of additional temporary or permanent tables during the term in which a gambling enterprise is operating under an interim gambling license.

a. David Fried – CGA: Cardrooms operating under an interim license should be allowed to add additional temporary tables for periodic tournaments, or permanent tables when adding a new game. The interim license is supposed to be designed to allow for continued operation, which often times involves adding new tables.

b. Mark Kelegian – Ocean’s Eleven: It may be necessary for cardrooms operating under an interim license to add more tables in order to meet demands and remain competitive. The additional table restriction should only be in place until the interim license is issued.

**Recommended Response (a & b):** These comments were accepted in part, and the proposed regulation amended to only prohibit additional *permanent* tables during the term of the interim license. Additional tables on a temporary basis for periodic tournaments would be allowed.

Another condition for an interim license, paragraph (10), prohibits the new owner from receiving any of the proceeds from the gambling enterprise until a regular gambling license is issued. If the proceeds of the gambling operation are to be held in escrow until the Commission approves, then it is reasonable to expect that the gambling operation should not expand until the Commission determines that the holder of an interim gambling license is qualified to operate a gambling enterprise. California law prohibits a person from receiving any compensation or reward from the conduct of a controlled game unless that person holds a gambling license.<sup>2</sup>

5. Section 12349(g)(10) would set as a condition of an interim license that any proceeds from the gambling operation that would otherwise be payable to a new owner be held in escrow

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<sup>2</sup> Business and Professions Code, sections 19850, 19853, subdivision (a), paragraph (1), and 19879, subdivision (a); Penal Code, section 337j, subdivision (a), paragraph (2)

until the disposition of ownership interest has received Commission acknowledgement and a regular gambling license is approved. An exception would be allowed for the payment of any taxes, operating expenses, preexisting obligations or preexisting dependant support.

a. David Fried – CGA: Preexisting dependant support sounds like child support as a result of a divorce. This means that spouses, minor children of parents who are not divorced, and college kids get nothing until a permanent license is issued. The Commission should be allowed to determine that an interim license qualifies a new owner to receive proceeds from the gambling operation.

b. Alan Titus – Artichoke Joe's: The term proceeds is vague and undefined. Could the new owner receive a salary or bonus? Would monies be available for the support of a disabled child? Suggest this regulation be amended to allow the Commission to approve distributions on a case-by-case basis.

c. Mark Kelegian – Ocean's Eleven: Suggest changing the word "proceeds" to "profits." The new owner should be entitled to a reasonable wage for services rendered.

**Recommended Response (a – c):** These comments were accepted in part and the regulation amended to allow the Commission to approve other distributions of proceeds.

The exemption for *preexisting dependant support* is intended to include a spouse and minor children of parents who are not divorced. The regulation does not require that preexisting dependant support be in the form of a formal agreement or judgment, such as in the case of a divorce.

The comment that the word "proceeds" be changed to "profits" was rejected, as the word *profit* could be interpreted to apply to only those monies that are left after all expenses have been paid. The distribution of proceeds may occur long before a profit or loss is determined for the business.

6. Section 12349(g)(12) would set as a condition of an interim license that the applicant make no argument challenging the conditions.

a. David Fried – CGA: This regulation would grant the Commission unlimited unchecked powers. It is possible that the Commission may impose conditions that may violate the law or exceed its authority. This regulation should be deleted.

b. Alan Titus – Artichoke Joe's: If a state agency acts illegally, those affected have the right to seek redress.

**Recommended Response (a & b):** These comments were accepted and this provision deleted from these proposed regulation.

7. Section 12349(h) would require that a the new owner of a gambling enterprise immediately notify the Commission if he or she intends to sell their interest in the gambling enterprise

without first obtaining an interim or regular gambling license.

a. Mark Kelegian – Ocean’s Eleven: Suggest adding various provisions that would address the responsibilities of the new owner and the purchaser. There may be many questions and issues. Does the new owner still complete an application and stay in control? Can the purchaser apply for an interim license and assume control at that time? What happens if the purchaser does not complete the sale or obtain licensing?

**Recommended Response:** This comment was rejected. This regulation cannot address every possible circumstance that may arise when a person unexpectedly becomes the new owner of a gambling enterprise and chooses to sell their interest. This regulation can only require that the person advise the Commission so that the specific circumstances can be addressed in accordance with the law.

8. Additional issues.

a. David Fried – CGA: A provision should be added to Section 12349 which would allow for an abbreviated process for those new owners that have already gone through a similar background check, such as in the case of a financial interest holder or key employee. These persons should be allowed to submit a short form that requests a change in license category. An interim license may not be necessary, and the Commission could simply approve a regular gambling license.

**Recommended Response:** This comment was rejected. Gambling licenses and key employee licenses are different license types, as dictated by the Act.<sup>3</sup> A gambling license authorizes the holder to conduct a gambling operation, whereas a key employee is employed by a gambling enterprise and performs in a supervisory capacity. Current regulations require separate application processes and criteria. Further, the Commission currently requires a complete new application and fees from those persons wishing to change license types.<sup>4</sup> Likewise, the Bureau conducts a separate background investigation for each license type.

After conducting their background investigations, the Bureau has the responsibility to make recommendations to the Commission on whether or not to issue a license.<sup>5</sup> As a result, the Bureau does have the discretion to make a recommendation to the Commission regarding a person’s suitability for licensure. The Bureau could make this recommendation partly based on information already on file, provided that it considers the information to be current. This could reduce the time necessary for the Bureau to make a recommendation to the Commission regarding a license application.

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<sup>3</sup> Business and Professions Code, section 19805, subdivisions (p) and (x)

<sup>4</sup> California Code of Regulations, Title 4, Sections 12341, 12342 and 12350

<sup>5</sup> Business and Professions Code, section 19826, subdivision (a)

**DRAFT****CHANGES IN RESPONSE TO INFORMAL COMMENTS**

1 CALIFORNIA GAMBLING CONTROL COMMISSION  
2 SPECIFIC LANGUAGE OF PROPOSED REGULATIONS

3 INTERIM GAMBLING LICENSES

4 CGCC-GCA-2011-    -R

5 TITLE 4. BUSINESS REGULATIONS.

6 DIVISION 18. CALIFORNIA GAMBLING CONTROL COMMISSION.

7 CHAPTER 6. GAMBLING LICENSES AND APPROVALS FOR GAMBLING ESTABLISHMENTS AND  
8 OWNERS; PORTABLE KEY EMPLOYEE LICENSES.

9  
10 ARTICLE 2. GAMBLING LICENSES.

11 **§ 12349. Interim Licenses for Continued Operation Following Qualifying Events; Criteria;**  
12 **Processing Times; Conditions.**

13 (a) For the purposes of this section, the following definitions apply:

14 (1) “Applicant” means a new owner of a gambling enterprise who makes application to the  
15 Commission for an interim gambling license, pursuant to subsection ~~(d)~~(c).

16 (2) “Interim gambling license” means a license issued by the Commission which permits the  
17 interim operation of a gambling enterprise following a qualifying event, during which time the  
18 Commission processes and considers an application for a regular gambling license from a new  
19 owner.

20 (3) “New owner” means a person who is a receiver, trustee, beneficiary, executor,  
21 administrator, conservator, successor in interest, or security interest holder, as specified in  
22 Business and Professions Code Section 19841, subdivision (s), that becomes the owner of a  
23 gambling enterprise as a result of a qualifying event.

24 (4) “Qualifying event” means an unforeseen event, such as those specified in Business and  
25 Professions Code Section 19841, subdivision (s), ~~specified in subsection (b)~~ that unexpectedly  
26 results in a ~~complete~~ change in the ownership of a gambling enterprise and prevents the  
27 gambling enterprise from conducting gambling operations because the new owner does not hold  
28 a valid gambling license for that gambling enterprise, as required by Business and Professions  
29 Code sections 19850, 19851, 19852 or 19855.

30 (5) “Regular gambling license” means a gambling license issued by the Commission

Double blue underline denotes added text/~~Double red strike-out~~ denotes deleted text.

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1 pursuant to Section 12342.

2 ~~(b) Pursuant to Business and Professions Code Section 19841, subdivision (c), the~~  
3 ~~Commission may consider the issuance of a interim gambling license in the event that a death,~~  
4 ~~insolvency, foreclosure, receivership, or incapacity of an owner licensee results in a complete~~  
5 ~~ownership change of the gambling enterprise and prevents the lawful conduct of gambling~~  
6 ~~operations because the new owner of the gambling enterprise does not hold a valid gambling~~  
7 ~~license for that gambling enterprise, as required by Business and Professions Code sections~~  
8 ~~19850, 19851, 19852 or 19855.~~

9 ~~(e)~~(b) Subject to the provisions of the Act, this division and Title 11 of the California Code of  
10 Regulations, a gambling enterprise may continue gambling operations following a qualifying  
11 event only if ~~a new owner assumes~~ an owner of the gambling enterprise has control ~~and~~  
12 oversight of the gambling ~~enterprise~~ operation, notifies the Commission of the qualifying event  
13 within ~~five~~ 10 calendar days of that event, and submits a request for an interim gambling license  
14 to the Commission within 30 calendar days of that event. Gambling operations shall be  
15 immediately terminated if the Commission denies an applicant's request for an interim gambling  
16 license, or approves an applicant's request to withdraw that application, and no other person  
17 holds a valid interim or regular gambling license for that gambling enterprise.

18 ~~(d)~~(c) In order to be considered for an interim gambling license, a new owner must submit all  
19 of the following within 30 calendar days of a qualifying event:

20 (1) All forms, fees, and deposits for a regular gambling license application required by  
21 Sections 12341, 12342, and Title 11, CCR, Section 2037;

22 (2) A signed written request for an interim gambling license that describes the qualifying  
23 event and identifies the person who will control and oversee gambling operations; and

24 (3) A copy of any document that evidences the succession to the owner-licensee's interest in  
25 the gambling enterprise, which may include, as applicable, any of the following:

26 (A) In the case of the death of an owner-licensee, a copy of the death certificate; or

27 (B) In the case of the incapacity of an owner-licensee, a copy of any document that evidences  
28 the owner-licensee's incapacity; or

29 (C) In the case of insolvency, foreclosure or receivership of a gambling enterprise, a copy of  
30 any pertinent agreement, note, mortgage, lease, deed of trust, and any document, notice or order

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1 that evidences the insolvency, foreclosure or receivership.

2 ~~(d)~~ (d) A request for an interim gambling license shall be ancillary to and concurrent with an  
3 application for a regular gambling license. The application for a regular gambling license shall  
4 be processed in accordance with Section 12342. The request for an interim gambling license  
5 shall be processed as follows:

6 (1) The maximum time within which the Executive Director shall notify the applicant in  
7 writing that a request for an interim gambling license is complete and accepted for filing, or that  
8 a request is deficient and identifying what specific additional information is required, is 10  
9 calendar days after receipt of the request. If additional information is required, the Executive  
10 Director shall allow the applicant 10 calendar days to submit the additional information. If the  
11 requested information is not supplied within 10 calendar days, the request for an interim  
12 gambling license shall be considered abandoned and no further action shall be taken on the  
13 request. A gambling enterprise shall immediately terminate gambling operations if a request for  
14 an interim gambling license is abandoned by the applicant and no other person has applied for or  
15 been granted an interim or regular gambling license for that gambling enterprise.

16 (2) Once the Executive Director determines that a request for an interim gambling license is  
17 complete, the matter shall be set for consideration at a noticed Commission meeting. Pursuant to  
18 the provisions of the Act and this division, the Commission shall grant or deny the request for an  
19 interim gambling license within 60 calendar days after receipt of the request. A request for an  
20 interim gambling license shall be denied by the Commission if the applicant meets any of the  
21 disqualifying criteria in section 19859 of the Business and Professions Code.

22 ~~(e)~~ (e) All of the following criteria shall apply to a request for an interim gambling license:

23 (1) In the event a regular gambling license is issued to an applicant prior to action by the  
24 Commission on any related request for an interim gambling license, the request for an interim  
25 gambling license shall be deemed withdrawn and no further action shall be taken on that request.

26 (2) If a request for withdrawal of an application for a regular gambling license is submitted  
27 before the Bureau's recommendation is made regarding that application, any related request for  
28 an interim gambling license shall be deemed withdrawn and no further action shall be taken on  
29 that request.

30 (3) Denial of a request for an interim gambling license, or cancellation of an interim

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1 gambling license, shall not suspend or otherwise affect the processing and review of the related  
2 application for a regular gambling license.

3 ~~(e)~~(f) All of the following conditions shall apply to an interim gambling license granted by  
4 the Commission:

5 (1) Upon issuance or denial of a regular gambling license, any related interim gambling  
6 license shall become invalid.

7 (2) The term of an interim gambling license shall be determined by the Commission and shall  
8 be based in part on the time necessary to process and consider the application for a regular  
9 gambling license.

10 (3) Issuance of an interim gambling license does not prejudice or obligate the Commission to  
11 grant a regular gambling license. Issuance of a regular gambling license is subject to the results  
12 of a complete background investigation by the Bureau, the conduct of the applicant during the  
13 term of the interim gambling license, and final approval of the Commission pursuant to Sections  
14 12342 and 12346.

15 (4) Issuance of an interim gambling license does not create a vested right in the holder to  
16 either an extension of the interim gambling license or the issuance of a regular gambling license.

17 (5) Issuance of an interim gambling license does not change the qualification, or  
18 disqualification, requirements for a regular gambling license under the Act or this division.

19 (6) The holder of an interim gambling license shall provide the Commission and the Bureau  
20 with the name of any newly-appointed key employee within 30 days following the appointment  
21 of that key employee. Within 30 days of its occurrence, the holder of an interim gambling license  
22 shall also provide the Commission and the Bureau with the name of any person who provides  
23 any service or property to the gambling enterprise under any arrangement whereby the person  
24 receives payment based on the earnings, profits or receipts of the gambling enterprise.

25 (7) The holder of an interim gambling license shall not be eligible to obtain approval for  
26 additional ~~temporary or~~ permanent tables, pursuant to Section 12359, during the term of the  
27 interim license. Action on any application for additional ~~temporary or~~ permanent tables shall be  
28 deferred until issuance of a regular gambling license.

29 (8) The holder of an interim gambling license shall pay all applicable annual fees associated  
30 with a regular gambling license.

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1       (9) The holder of an interim gambling license shall comply with the provisions of the Act,  
2 this division and Title 11 of the California Code of Regulations.

3       (10) ~~Any~~ During the term of an interim gambling license, any proceeds derived from the  
4 operation of the gambling enterprise that would otherwise be payable to a new owner shall be  
5 held in an escrow account and not disbursed until the disposition of ownership interest has been  
6 resolved and received Commission-~~acknowledgement~~ approval and all owners of the gambling  
7 enterprise have been approved by the Commission for a regular gambling license pursuant to  
8 Section 12342. This paragraph shall not prevent the payment of any taxes, operating expenses,  
9 preexisting obligations, ~~or~~ preexisting dependant support or any other distribution of proceeds  
10 that is approved by the Commission.

11       (11) The Commission, in its sole discretion and on an individual case-by-case basis, may  
12 impose any additional conditions necessary to address particular factual situations related to a  
13 request for an interim gambling license.

14       (12) In requesting an interim gambling license, the applicant agrees to the conditions set forth  
15 in this subsection-~~and acknowledges that he or she shall make no argument challenging the~~  
16 ~~validity of any condition in any future proceedings concerning the interim gambling license.~~

17       ~~(h)~~(g) If, as a result of a qualifying event, a new owner intends to sell his or her interest in the  
18 gambling enterprise without first obtaining an interim or regular gambling license, he or she shall  
19 immediately provide written notification to the Commission of that intent.

20       ~~(h)~~(h) If, during the term of an interim gambling license, the Executive Director determines  
21 that the holder of that license is disqualified for any of the reasons set forth in Business and  
22 Professions Code section 19859, or may have violated one or more of the conditions under which  
23 the interim gambling license was issued, the Executive Director shall prepare and serve on the  
24 license holder an order to show cause as to why the interim gambling license should not be  
25 cancelled. The holder of the interim gambling license shall be given 30 days to respond in  
26 writing. After receipt of the license holder's response, or if the license holder fails to respond  
27 within the specified time, the matter shall be set for consideration at a noticed Commission  
28 meeting. The interim license holder may address the Commission by way of an oral or written  
29 statement, or both, at the Commission meeting. If the Commission acts to cancel the interim  
30 gambling license, the license holder may request an evidentiary hearing, in writing, either at that

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1 meeting or within 10 calendar days following that meeting. Any evidentiary hearing shall be  
2 conducted in accordance with the applicable provisions of subsection (b) of Section 12050 of this  
3 division.

4 ~~(i)~~ (i) This section shall not preclude the Commission from issuing temporary licenses  
5 pursuant to Business and Professions Code section 19824, subdivision (f).

6 Note: Authority cited: Sections 19811, 19823, 19824, 19825, 19826, 19840, 19841, 19850, 19851, 19853, 19855,  
7 19857, 19859, 19869 and 19870, Business and Professions Code. Reference: Sections 19824, 19841(s) and  
8 19870(b), Business and Professions Code.

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