

TITLE 4.
CALIFORNIA GAMBLING CONTROL COMMISSION

**NOTICE OF PROPOSED REGULATORY ACTION AND PUBLIC HEARING
CONCERNING
RENEWAL OF GAMBLING LICENSES; LATE APPLICATION FEE
NONPAYMENT OF ANNUAL FEE; TEMPORARY CLOSURE OF GAMBLING
ESTABLISHMENT
CGCC-GCA-2011-04-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 January 24, 2011**, 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 December 26, 2011. 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 December 26, 2011**, 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 19811, 19823, 19824, 19840, 19841, 19853, 19854,

19864, 19876, 19915, 19950, 19951, 19955, and 19984 of the Business and Professions Code, and to implement, interpret or make specific sections 19800, 19805, 19811, 19826, 19841, 19851, 19853, 19854, 19868, 19876, 19915, 19951, 19955, and 19984 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 do the following:

1. Implement legislation² that allows the California Gambling Control Commission (Commission) to establish regulations that provide for a delinquency fee to be paid if an application for renewal of a gambling license is not submitted in a timely manner.
2. Clarify that Section 12347 of Title 4, CCR, is applicable to licenses deemed surrendered under Business and Professions Code section 19955, instituted by AB 2596.
3. Amend existing regulations to refer to an “annual fee” rather than a “table fee,” clarify that the annual fee is based upon the number of tables at the close of the licensee’s fiscal year, and make other technical, clarifying changes to existing regulation text.

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 for the following:

1. **Delinquency Fee:**
 - a. The establishment of a delinquent renewal fee that will be imposed if a licensee does not submit the required renewal application by the statutory deadline.
2. **Annual Fees:**
 - a. The amendment of existing regulations to refer to “annual fees” rather than “table fees,” to conform to the manner in which fees are calculated;
 - b. The establishment of a date certain – the close of the licensee’s fiscal year – as the date on which annual fees are calculated;
 - c. The application of existing consequences to licenses deemed surrendered under section 19955 (the surrender of the gambling license if the licensee fails to pay the required annual fees within 90 days of the statutory deadline).

EXISTING LAW:

Business and Professions Code section 19876(c) allows the Commission to extend a license for up to 180 days in specified circumstances.

Business and Professions Code section 19876(f) allows the Commission to order the immediate closure of a gambling establishment if the owner-licensee fails to renew the license as required.

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

² AB 2596 (Portantino, Chapter 553, Statutes of 2010)

Business and Professions Code section 19876(g) allows the Commission, in the event an owner-licensee does not submit a renewal application by the statutory deadline, to assess reasonable delinquency fees not to exceed three times the usual application fee.

Business and Professions Code section 19955 allows the Commission to order the temporary closure of a gambling establishment if the licensee fails to pay the required annual fees. If the required fees are not paid within 90 days after the payment due date, the gambling license associated with the gambling establishment shall be deemed surrendered.

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:

Sections 12008 and 12345 - Late Renewal Application Delinquency Fee (Business and Profession Code §19876)

This proposed action will establish a delinquency fee of \$1,000 per application if a gambling license renewal application is deemed delinquent. This fee is authorized by Business and Professions Code section 19876(g), and is intended to provide incentive for licensees to meet their statutory obligations for timely submission of renewal applications.

Specifically, this proposal does the following:

Section 12008

- Subsection (a), paragraph (1) is added to distinguish between initial application fees and renewal application fees.
- Subsection (a), paragraph (2) establishes a delinquency fee of \$1,000 if a gambling license renewal application is deemed delinquent.

Section 12342

- The Commission's State Gambling License Application form CGCC-030 is amended to do the following:
 - Conform to the changes in Section 12345;
 - Amend the required background investigation deposits to correspond with the Bureau's newly adopted regulations;³ and
 - Make technical, clarifying changes that have no regulatory effect.

Section 12345

- Subsection (a) has been rewritten and reorganized to follow a more logical progression. The new subsection (a) states that the application for a renewal of a state gambling license is due 120 days prior to the expiration of the current license, as required by Business and Professions Code section 19876(b), and defines a timely

³ "Schedule of Investigating and Process Costs," OAL File No. 2011-0203-02 S, approved March 16, 2011

application as one received by the Commission by the due date or postmarked as of the due date. This subsection also provides that an application will be “deemed delinquent” if filed or postmarked later than 110 days prior to the expiration date of the current license, providing a 10-day grace period before the delinquency fee is incurred.

This subsection also defines a “complete application” as the fully executed CGCC-030 for the owner-licensee and each endorsed licensee, the \$1,000 application fee for each application, and any required background deposit.

- Current subsections (b) and (c) have been combined into single subsection (b) and contain editorial changes that do not impose any new requirements, and therefore have no regulatory effects.
- Previous subsection (d) has been incorporated into the current paragraph (3) of subsection (a) with no change to the language of the regulation.
- New subsection (c), previously (e), contains only clarifying and conforming changes and does not impose any additional requirements.
 - Previous paragraph (1) has been moved to subsection (a) for the purposes of clarification. Subsection (c) addresses processing times of the state agencies, and is an inappropriate place to include the applicant’s deadline for submittal of an application.
 - Previous paragraph (2) has become paragraph (1). The definition of “application” previously included in this paragraph has been deleted and moved to subsection (a).
 - Previous paragraph (3) has become paragraph (2). The phrase “renewal of” has been added to clarify that renewal applications are required to be forwarded by the Commission to the Bureau within five days. Initial license applications are addressed in a separate section.
 - Previous paragraph (4) has become paragraph (3) and the phrase “unless that application is filed with the Commission less than 120 days prior to the expiration of the current license” has been moved to current paragraph (4) of subsection (d).
- New subsection (d), previously subsection (f), contains conforming changes and does not impose any additional regulatory requirements.
- New subsection (e), previously subsection (g), deletes the requirement that the Commission and Bureau follow the same processing timeframes required in subsection (e), even if the application was not submitted in a timely manner. The language is confusing and contradicts paragraph (4) of subsection (d).
- New subsection (f), previously subsection (g), makes technical, clarifying changes that do not impose any additional regulatory requirements.

Sections 12335, 12357, and 12359 – Annual Fee (Business and Professions Code section 19955)

This proposed action clarifies and implements provisions of section 19955 in Section 12357 and makes other technical changes to existing regulation. Specifically this proposal does the following:

Section 12335

- The term “table fee” is changed to “annual fee” to more accurately describe the nature of the fee and the manner in which it is calculated.

Section 12357

- The term “table fee” is changed to “annual fee.”
- New subsection (a), previously an unnumbered introductory paragraph, defines a timely submittal of the required annual fees as being received by the Commission or postmarked as of the due date. This subsection also includes clarifying grammatical changes that have no regulatory effect.
- New paragraph (1) of subsection (a), previously subsection (a), specifies that the annual fee shall be based upon the number of tables at the close of the gambling enterprise’s fiscal year.
- New paragraph (2) of subsection (a), previously subsection (b), includes technical, clarifying changes that have no regulatory effect.
- New subsection (b), previously subsection (c), includes technical, clarifying changes that have no regulatory effect, including the revision date of form CGCC-028.
 - Form CGCC-028 – changes include:
 - Updating the header to conform to a universal template.
 - Conforming changes reflecting amendments made in this regulatory package.
 - Technical, grammatical changes.
- New subsection (c) is added to clarify that if the full amount of the required annual fees have not been received within 90 days of the due date and the gambling enterprise’s license has been deemed surrendered, as provided in Business and Professions Code section 19955, the surrendered license shall be subject to the conditions in Section 12347 pertaining to abandoned and surrendered licenses.

Section 12359

- Subsection (d) contains conforming editorial and grammatical changes that have no regulatory effect.

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 that this regulation results in any delinquency fees being assessed due to the late filing of license renewal applications, the Gambling Control Fund could realize additional revenue. The amount of that additional revenue is wholly dependent on the extent of compliance by licensees with the requirement to file timely renewal applications and therefore cannot be accurately estimated. However, based on a review of data for late renewals for 2009 and 2010, and the anticipated deterrent effect of the delinquency fee, the average additional revenue that could be realized is estimated not to exceed \$16,000 annually.

There are no costs/savings in federal funding to the state.

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:

This proposed action does not impose any new requirement upon or require any new action by any business. There are no additional reporting or recordkeeping requirements mandated, nor are there any new performance standards imposed, technologies or equipment specified, nor specific actions or procedures prescribed.

Delinquency Fee: For licensees who comply with their statutory responsibilities to submit renewal applications by the deadline, there will be no impact. Licensees who do not submit their renewal application within 10 days of the deadline will realize an additional \$1,000 fee per application required in the application package.

Because each endorsed licensee is required to submit an application, the number of applications received per cardroom can vary. Many small cardrooms have only one associated license; the largest number of applications received in a single package is 75. Of

the 24 application packages not submitted in a timely manner in 2009 and 2010, no package had more than six required applications and the mean number of required applications in each late package was three. Based on this data, the average delinquency fee that may be assessed against an owner-licensee for a late renewal application package would total \$3,000.

Temporary Closure of Gambling Establishment / Surrender of Gambling License: For licensees who comply with their statutory responsibility to submit required annual fees within 90 days of the close of their fiscal year, there will be no impact. For licensees who fail to meet their statutory requirement, this proposed action will not create any impact. The consequence for failing to pay required fees is set in statute,⁴ and as such, the Commission has no discretion over the matter.

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 cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action and that are known to the Commission are:

- Delinquency fees of \$1,000 per application for late submission of a license renewal application package. Based on historical data, the average delinquency fee that may be assessed against an owner-licensee for a late renewal application package would total \$3,000. The delinquency fee may be avoided altogether by simply complying with the requirement to submit a complete renewal application package in a timely manner.

EFFECT ON HOUSING COSTS:

None.

EFFECT ON SMALL BUSINESS:

The Commission has determined that the proposed regulatory action may affect small businesses if any cardroom qualifies as a small business and submits a late renewal application.

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.

⁴ Business and Professions Code section 19955

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, Research Program Specialist
California Gambling Control Commission
2399 Gateway Oaks Drive, Suite 220, Sacramento, CA 95833-4231
Telephone: (916) 263-4904
Fax: (916) 263-0452
E-mail: sgeorge@cgcc.ca.gov

WEB SITE ACCESS

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