

TITLE 4.
CALIFORNIA GAMBLING CONTROL COMMISSION
NOTICE OF PROPOSED REGULATORY ACTION
THIRD-PARTY PROVIDERS of PROPOSITION
PLAYER SERVICES; CONTRACTS
CGCC-GCA-2014-05-R

NOTICE IS HEREBY GIVEN that the California Gambling Control Commission (Commission) is proposing to take the action described in the Informative Digest after consideration of all relevant public comments, objections and recommendations received concerning the proposed action. Comments, objections and recommendations may be submitted as follows:

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 September 22, 2014. Written comments relevant to the proposed regulatory action may be sent by mail, facsimile, or e-mail, directed to one of the individuals designated in this notice as a contact person. 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 September 22, 2014. 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.** Written comments will also be accepted at the public hearing described below.

PUBLIC HEARING

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 November 5, 2014**, in the Commission's Hearing Room located at 2399 Gateway Oaks Drive, Suite 100, Sacramento, CA 95833.

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 19840, 19841, and 19984, of the Business and Professions Code; and to implement, interpret or make specific sections 19805 and 19984 of the Business and Professions Code, the Commission is proposing to adopt the following changes to Chapter 2.1 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 the state agency charged with the administration and implementation of the California Gambling Control Act (Act).¹ Under the Act, the Commission is required to establish regulations under which the Bureau of Gambling Control (Bureau) may invalidate or prohibit an agreement or contract between a gambling enterprise and a third-party provider of proposition player services (TPPPS). Regulations concerning the procedures for the consideration and approval of contracts have been prepared to implement and make specific section 19984 of the Business and Professions Code.²

EFFECT OF REGULATORY ACTION:

This proposed action has been prepared to implement sections 19805 and 19984 by providing a clear structure for the approval of contracts for providing proposition player services. This regulation establishes guidelines for what must be included in the contract and what information is required to be submitted alongside the contract. The proposed provisions provide flexibility to the parties while ensuring that the gambling enterprise is correctly segregated from the funds wagered, lost, or won as part of the game.

ANTICIPATED BENEFITS OF PROPOSED REGULATION:

This proposed action will have the benefit of clarifying the TPPPS contract approval process by identifying how any payment by the TPPPS to the gambling enterprise shall be determined. Additionally, the proposed action will provide the Bureau with clearer criteria to use in reviewing and approving contracts, and ensures that the information required for review is clear and available. The gambling enterprise and TPPPS will benefit by having a clear understanding of what payments are allowed to ensure that their businesses are properly segregated and to help prevent illegal banking situations from occurring.

¹ Business and Professions Code, Division 8, Chapter 4, section 19800 et seq.

² All statutory references hereinafter are to the Business and Professions Code, unless otherwise specified.

EXISTING LAW:

Section 19841, subdivision (o) provides authority for the Commission to restrict, limit, or otherwise regulate any activity that is related to the conduct of controlled gambling.

Section 19984, subdivision (a) requires that any agreement between a gambling enterprise and a TPPPS shall be approved in advance and the agreement shall not provide the house with any direct or indirect interest in funds wagered, lost, or won.

Section 19984, subdivision (b) provides authority for the Commission to impose licensing requirements, disclosures, approvals, conditions, or limitations as it deems necessary to protect the integrity of controlled gambling.

SPECIFIC PROPOSAL:

This proposed action would make the following specific changes in Chapters 2.1 and 10 of Division 18 of Title 4 of the California Code of Regulations:

The proposed changes in Chapter 2.1 are as follows:

ARTICLE 1. DEFINITIONS AND GENERAL PROCEDURES.

Amend Section 12200. Definitions.

This proposed action would add three new terms to Section 12200, consolidate or delete several existing definitions and renumber various paragraphs accordingly. In addition, numerous grammatical, editorial and clarifying changes are made through the section.

- Subsection (a) is modified to change the term “regulation” to “section.”
- Paragraph (1) of subsection (b) is revised to clarify to whom the additional badge is provided instead of just making a general reference to another section.
- Paragraph (2) of subsection (b) is added to clarify the definition of “Affiliate.”
 - ◆ Subparagraph (A) provides that individuals are considered to control the specified person if they are the spouse or registered domestic partner of the specified person.
 - ◆ Subparagraph (B) provides that individuals are considered to control the specified person if they are another close family member of either the specified person or the spouse or registered domestic partner of the specified person and either live in the same home as the specified person or participate in the management of any business in which the specified person has an ownership interest.
 - ◆ Subparagraph (C) provides that trusts or other estates are considered under the control of the specified person or their spouse or registered domestic partner if either has a substantial beneficial interest or serves in a fiduciary capacity similar to that of trustee.

- ◆ Subparagraph (D) provides that businesses in which the specified person and their spouse or registered domestic partner own a combined interest of at least 10 percent are under the control of the specified person.
- Paragraph (3) of subsection (b) is revised to clarify that an applicant is a person applying for a registration or license.
- Paragraph (4) of subsection (b) is changed to provide that it is the registration or license that authorizes play in a controlled game and not the badge. The final sentence, which is a control provision and not part of a definition, has been moved and incorporated into subsection (b) of Section 12200.21.
- Paragraph (6) of subsection (b) is added to provide a definition for the term “derivative party.” This definition establishes a general term that may be used when referring collectively to the various owners of either a TPPPS or gambling enterprise.
- Paragraph (7) of subsection (b) includes a non-substantive grammatical, editorial change that reorganizes an existing provision and that has no regulatory effect.
- Subparagraphs (C) and (D) of paragraph (8) of subsection (b) are removed from the definition of “license.” Subparagraph (C) has been moved to paragraph (2) of subsection (b) of Section 12200.21 while subparagraph (D) is repealed as its provision is duplicative of paragraph (1) of subsection (b) of Section 12200.21.
- Paragraph (10) of subsection (b) includes a non-substantive grammatical, editorial change that repeals an unnecessary internal reference and has no regulatory effect.
- Paragraph (12) of subsection (b) is revised both to correct for a change in law and to move a definition to another location without change. The change to subparagraph (A) moves the definition of primary owner to paragraph (14), which is the actual definition of primary owner. Prior to this change, the definition of primary owner was only a reference back to subparagraph (A) of paragraph (12). Subparagraph (A) now uses the term primary owner for simplicity and clarity. The change to paragraph (B) is likewise non-substantive and simply conforms to the statutory change made in 2009.
- Paragraph (13) of subsection (b) includes a non-substantive grammatical, editorial change that clarifies and conforms to the definition of “proposition player” in paragraph (15), and has no regulatory effect.
- Paragraph (14) of subsection (b) includes a non-substantive grammatical, editorial change that provides clarity to the definition of primary owner. Currently, the definition of primary owner is not actually provided under primary owner but instead as part of the definition of

owner. This change directly links primary owner with its definition and has no regulatory effect.

- Paragraph (16) of subsection (b) is amended to clarify that the proposition player contract is between the gambling enterprise and the primary owner of the TPPPS.
- Paragraph (17) of subsection (b) is amended to clarify that a rebate may include a complete return of chips or money and is not limited to only a partial return.
- Paragraph (19) of subsection (b) contains non-substantive grammatical, editorial changes that bring the wording and formatting into conformance with the similar definition in paragraph (8). Additionally, subparagraph (C) of paragraph (19) is removed from the definition of “registration” as its provisions are not part of a definition. The first sentence of this subparagraph is now addressed in paragraph (2) of subsection (b) of Section 12200.21, while the second sentence is duplicative of paragraph (1) of subsection (b) of Section 12200.21.
- Paragraph (20) of subsection (b) includes a non-substantive grammatical, editorial change that deletes an unnecessary internal cross reference. Additionally, the definition is revised to refer to a *proposition* player instead of player for clarity.
- Paragraph (21) of subsection (b) includes a non-substantive grammatical, editorial change that deletes an unnecessary internal cross reference and has no regulatory effect.
- Paragraph (22) of subsection (b) is added to include a definition for “specified person.”
- Paragraph (23) of subsection (b) is revised to refer to *proposition* player instead of player for clarity.
- Paragraph (24) of subsection (b) includes non-substantive grammatical, editorial changes that delete unnecessary internal cross references. Additionally, the definition is revised to refer to *proposition* player instead of player for clarity.
- Paragraph (25) of subsection (b) is modified for consistency. The party to the contract is the gambling enterprise, specifically, and not the *house*, as defined in section 19805.
- Paragraph (26) of subsection (b) is changed from the definition “TPP” or “third party proposition” to “TPPPS” or “third-party provider of proposition player services.”
- Paragraph (27) of subsection (b) is revised to provide clarity as to whom the transfer badge is provided instead of just a general cross reference to another section.

Amend Section 12200.7. Proposition Player Contract Criteria.

This proposed action describes the minimum requirements of any contract between a TPPPS and a gambling enterprise, including provisions that must be included in the contract, and how any payment under the contract can be determined.

- Subsection (a) provides that even during the effective term of a contract, should the contract have any provisions that come into conflict with any changes in the Act; the contract is superseded by the statutory changes. The language is revised to expand the Act's application from just section 19984 to the entire Act. Additionally, the requirement that the contract be superseded by changes in the regulations is deleted and replaced with a provision in Section 12200.10 which would prevent an expedited review in the event that regulations have been revised.
- Subsection (b) specifies the provisions that must be included in every contract.
- Paragraph (1) of subsection (b) provides that the parties to the contract must be specified in the contract. Additionally, the requirement to provide both derivative parties and affiliates of the specified persons has been included.
- Paragraph (3) of subsection (b) provides that the specific name of any games that the TPPPS is providing services for must be included in the contract. This paragraph has been revised to require the game number assigned by the Bureau in addition to the game name. Additionally, the reference to gaming activities is changed to controlled game(s).
- Paragraph (4) of subsection (b) specifies that the minimum and maximum number of tables available for service by the TPPPS must be provided.
- Paragraph (5) of subsection (b) specifies that no more than one of any license type may simultaneously play at one table. This provision is moved to paragraph (4) of subsection (b) of Section 12200.21.
- A new paragraph (6) of subsection (b) is added and the current paragraph (6) is renumbered as paragraph (7) accordingly. The new paragraph (6) requires that if the TPPPS is to be assigned a dedicated seat at a table it must be specified in the contract.
- The current paragraph (7) of subsection (b), renumbered as paragraph (8), requires that if specific items are being stored by the TPPPS at the gambling establishment, the purpose of those items must be included in the contract. Additionally, the location and security measures for the space must be included. A requirement to also include the location of the storage facilities utilized by the TPPPS within the gambling establishment is added to this paragraph.

- Paragraph (8) of subsection (b) in the current regulation is repealed. This provision requires that the contract include a provision requiring compliance with laws and regulations pertaining to controlled gambling.
- Paragraph (9) of subsection (b) in the current regulation is repealed. This paragraph requires that the contract contain a provision that services may only be provided by authorized players who are licensed or registered.
- Paragraph (10) of subsection (b) in the current regulation is repealed. This provision requires that the TPPPS must provide a copy of its registration or license to the gambling enterprise who shall maintain it on file along with a copy of the approved contract.
- Paragraph (11) of subsection (b) in the current regulation is repealed and moved to paragraph (3) of subsection (b) of Section 12200.21. This provision prohibits an individual who has dual licenses (TPPPS and gambling establishment) from performing any TPPPS functions within their associated gambling establishment.
- Paragraph (12) of subsection (b) in the current regulation is repealed and moved to subsection (c) of Section 12200.21. This provision clarifies that the TPPPS is required to pay the collection fees related to their level of participation at any stage of play.
- Paragraph (13) of subsection (b) in the current regulation is repealed. This provision requires that a copy of the playing book form be included as part of the contract.
- Paragraph (14), renumbered as paragraph (9), of subsection (b) requires that any agreement related to the TPPPS inspecting or receiving copies of surveillance recordings be included in the contract. This provision is amended to change the term house to gambling enterprise.
- Paragraph (15) of subsection (b) in the current regulation requires disclosure of any financial arrangements between the parties to the contract that may exist in addition to the specific provisions of the contract. This provision requires that any other arrangements be considered as part of the contract. This contract requirement is duplicative of other similar provisions and is therefore repealed.
- Paragraph (16) of subsection (b) in the current regulation requires that any legal dispute between the parties to the contract be reported to the Bureau and Commission. This provision is moved to subsection (d) of Section 12200.21 with only minor grammatical, editorial changes that have no regulatory effect.
- Paragraph (17) of subsection (b) in the current regulation requires that any occurrence of a registrant being arrested or removed from the gambling establishment must be reported to the Bureau and the Commission. The provision is moved to subsection (e) of Section 12200.21 with only minor grammatical, editorial changes that have no regulatory effect.

- Paragraph (18) of subsection (b) in the current regulation requires that any occurrence of cheating reported to the gambling enterprise by the TPPPS must be reported to the Bureau and the Commission, in writing, within 5 days. This provision is moved to subsection (f) of Section 12200.21 with only minor grammatical, editorial changes that have no regulatory effect.
- Paragraph (19) of subsection (b) in the current regulation requires that if the TPPPS is allowed to provide rebates, any criteria must be provided for in the contract or, if rebates are not allowed, a statement to that effect must be included. This provision is deleted. Consistent with the proposed addition of subsection (k) of Section 12200.21, which would bar the TPPPS from issuing rebates, this provision is no longer appropriate or necessary.
- Paragraph (20) of subsection (b), renumbered as paragraph (10), requires that if the TPPPS and gambling enterprise have a pre-arranged tipping agreement through which the TPPPS tips the gambling enterprise employees, it must be included in the contract. Additionally, if there is no agreement, a statement to that effect must be included in the contract. This provision is revised to limit the requirement to a yes/no response. The current provision requires that the specifics of the tipping arrangement be included in the contract and while the change to this provision removes that requirement, the addition of subsection (g) to Section 12200.21 addresses tipping and tipping arrangements.
- Paragraph (21) of subsection (b) in the current regulation specifies that any reimbursement by the TPPPS to the gambling enterprise for equipment must be included in the contract. Paragraph (21) is repealed and the requirement incorporated into the changes to subsection (c).
- Paragraph (22) of subsection (b) in the current regulation requires that the contract include a provision that states the contract is a complete expression of all agreements and financial arrangements between the TPPPS and gambling enterprise and that any revisions must be approved by the Bureau in accordance with Commission regulations. This contract requirement is duplicative of other similar provisions and is therefore repealed.
- Subsection (c) in the current regulation provides the structure within which any payment to the gambling enterprise is determined. This includes limiting reimbursement to just services, facilities and advertising, and prohibiting the amounts from being based upon a percentage of the TPPPS's profits, wagers, or number of players and from being substantially disproportionate to the value of the services or facilities provided. Current subsection (c) contains only associated paragraphs and no direct provisions. The second and third sentences of paragraph (1) are changed to become subsection (c) and the remaining paragraphs are reorganized and renumbered.
 - ◆ The first sentence of paragraph (1) of subsection (c) in the current regulation provides that payments may not be based on the profits or revenues of the TPPPS, unless expressly authorized. This restriction is maintained as paragraph (1) but modified to more closely

meet the restriction provided for in section 19984 restricting interest in the funds wagered, lost or won. The first half of paragraph (2) is then incorporated with the clarification that the gambling enterprise cannot receive money based upon a percentage of the TPPPS's profits and wagers.

- ◆ The last sentence of the current paragraph (1) requires that a detailed list, excluding specific costs, be included in the contract. This provision is modified and renumbered as paragraph (2) of subsection (c) to require a detailed list of all items provided for in the contract. The limitation of excluding specific costs is removed.
- ◆ The current paragraph (1) also includes a restriction of payments to three categories: services, facilities and advertising. Additionally, the last sentence of the current paragraph (2) limits the payment to a fixed amount for the services and facilities and to a reasonable share of advertising. Finally, the first sentence of the current paragraph (3) disallows payments for services and facilities that are substantially disproportionate to their value. These three provisions provide an unclear limitation of the payment amount, using undefined concepts of value, substantially disproportionate and reasonable and are deleted. The new paragraphs (3) and (4) clarify the restrictions.
- A new paragraph (3) limits payments for services and facilities to their established value. Services and facilities are items with a more abstract expense associated with them. Services and facilities provided to the public for free are not allowed as their value has been set at zero cost.
- A new paragraph (4) relocates the provisions moved from paragraph (21) of subsection (b) of the current regulation and limits payments for advertising and equipment, to a proportionate share of the actual costs of each item that is directly related to the benefit to the TPPPS.
- Subsection (d) of the current regulation imposes a restriction preventing the parties from agreeing to any limitation on communications with the Bureau and the Commission, or taking any retaliatory action should those communications occur. This is changed to expand the agencies that are covered by this restriction beyond just the Bureau and Commission to include other licensing and law enforcement agencies.
- Subsections (e) and (g) are amended to clarify that a gambling *enterprise*, not a gambling *establishment*, is a party to the contract.

Amend Section 12200.9. Review and Approval of Initial and Renewal Proposition Player Contracts.

This proposed action modifies and clarifies those processes and procedures the Bureau must follow when reviewing and approving a contract. Additionally, this section is expanded to include the requirements for the renewal of a contract which limits duplicative language in the chapter.

- Paragraph (1) of subsection (a) in the current regulation provides that the TPPPS may not perform services for a gambling enterprise until after a contract has been approved by the Bureau, and that to perform services without approval is a violation. Additionally, this subsection provides a list of conditions that must be met. The last sentence is amended to clarify that the conditions listed must all be met before a contract can be approved or renewed.
 - ◆ Subparagraphs (B), (C) and (D) of the current paragraph (1) are moved to a new paragraph (2).
 - ◆ New subparagraph (B) clarifies that the TPPPS must have a valid license or registration before a contract can be approved.
 - ◆ A new subparagraph (C) is added which works in conjunction with the new paragraph (3) of subsection (c) of Section 12200.7, by requiring that the values for services and facilities determined and provided for in the contract are not higher than their justified value. Additionally, the incorporated form, BGC-APP-030, is modified to reflect the changes to the regulations and to incorporate the non-duplicative information of form BGC-APP-031, with that form being repealed.
 - ◆ A new subparagraph (D) is added which works in conjunction with paragraph (4) of subsection (c) of Section 12200.7, by requiring that documentation be provided to substantiate that payments or reimbursements for advertising or equipment do not exceed a proportionate share of the actual costs related to the benefit received by the TPPPS.
 - ◆ A new proposed subparagraph (E) is added to move the provision from subsection (c) that limits the term of a contract to a two-year period.
- Paragraph (2) of subsection (a) in the current regulation is repealed as it is redundant. A new paragraph (2) would provide a list of items that a contract cannot include. Additionally, two options are included:
 - ◆ Option 1 would provide two restrictions that would instruct the Bureau to not approve a contract if approving that contract would allow specific situations to exist.
 - The first situation [new subparagraph (D)] is where an owner of a TPPPS contracts for third-party services with an owner of a cardroom and each owner already has an approved contract. In this contract the owner of the TPPPS represents the cardroom in the other contract and the owner of the cardroom represents the TPPPS in the other contract.
 - The second situation [new subparagraph (E)] is where an owner of a TPPPS contracts for third-party services with an owner of a cardroom, and the two owners are also both owners in common of another TPPPS company, gambling business or gambling enterprise. The regulations, current and proposed, attempt to create a structure consistent with section 19984, which requires separation of the interests of a gambling enterprise from the play of a controlled game. The existence of a direct

- financial or controlling interest in a licensed business does not create an environment where the two parties can independently determine the value of a third-party contract.
- ◆ Option 2 would only provide for the prohibition of the second situation [new subparagraph (D)].
 - Paragraph (3) of subsection (a) in the current regulation is renumbered as subsection (b) and provides a list of the items that must be provided to the Bureau, along with the contract, in applying for initial approval. In addition, the incorporation of the contract approval application form (BGC-APP-030) is moved to this paragraph, as a result of repeal of paragraph (2) of subsection (a) in the current regulation.
 - ◆ Subparagraph (B) of paragraph (3) in the current regulation requires the submittal of an Appointment of Designated Agent form (BGC-APP-031). This provision is repealed, as that form is being merged with the contract approval application form (BGC-APP-030) and will no longer exist.
 - ◆ A new paragraph (6) is added which will work in conjunction with the new paragraph (3) of subsection (c) of Section 12200.7 by requiring that a methodology be submitted that shows how the value of any services and facilities being provided in the contract were determined.
 - ◆ A new paragraph (7) is added which will work in conjunction with the new paragraph (4) of subsection (c) of Section 12200.7 by requiring that documentation be provided that establishes the actual costs of advertising and equipment.
 - ◆ A new paragraph (8) is added to expand upon a new subsection (j) of Section 12200.21. This provision requires that a full disclosure of any financial arrangements entered into within three years prior to the contract must be provided to the Bureau.
 - ◆ A new paragraph (9) provides clarity that the Bureau is able to request additional information, as needed, so that the Bureau can be confident that the contract is not in violation of the provisions of regulation or law.
 - A new subsection (c) is added to provide that a complete application for approval of the renewal of a contract would follow the same requirements as an initial application with the exception of a requirement to provide copies of three completed playing book forms.
 - Paragraph (4) of subsection (a) in the current regulation is renumbered as subsection (d), and details the method the Bureau must follow when either approving or disapproving the contract.
 - Current subsection (b) requires that an executed copy of the contract and any amendments along with any Bureau notices be maintained at the gambling establishment for review or copying by the Commission or Bureau. This provision is repealed.

- Current subsection (c) requires that the contract term not exceed two years and that specific amendments may not be made without prior written approval of the Bureau. The portion of this subsection dealing within amendments is repealed. The part of this subsection limiting a contract to no more than a two-year term is retained and relocated to subsection (a) as subparagraph (E) of paragraph (1).
- A new subsection (e) requires that a copy of the Bureau's notice of approval or disapproval be provided to the Commission. This moves the current requirement from subsection (b) of Section 12200.10C.

Amend Section 12200.10A. Expedited Review and Approval of Proposition Player Contracts.

This proposed action would renumber Section 12200.10A as Section 12200.10. This renumbered section continues the current expedited contract approval procedures and expands upon them.

- Paragraph (2) of subsection (a) is revised to change the term "house" to "gambling enterprise."
- A new paragraph (4) is added to subsection (a). The expedited review process requires that the new contract be substantially similar to the existing contract except that the TPPPS is different.
- A new paragraph (5) is added to subsection (a). This paragraph provides that the provisions of Paragraph (1) of subsection (a) of Section 12200.9 apply to the expedited review and approval process.
- Subsection (b) is revised to change the term "house" to "gambling enterprise."
- Subsection (c) is revised to provide a non-substantive formatting correction. Additionally, paragraphs (1) through (5) of subsection (c) are deleted and replaced with a reference to the requirements of a complete application pursuant to paragraph (2) of subsection (a) of Section 12200.9. Paragraph (6) of subsection (c) is retained and renumbered accordingly.
- A new subsection (d) added. This provision is consistent with the new subsection (c) of Section 12200.9.

Amend Section 12200.10B. Review and Approval of Amendments to Proposition Player Contracts.

This proposed action would renumber Section 12200.10B as Section 12200.11. This renumbered section continues the current amendment approval procedures and expands upon them.

- Subsection (a) establishes the approval process for standard contract amendments. This provision is amended to clarify that any amendments, except for those provided for in

subsection (b), must be approved by the Bureau before becoming effective. Additionally, non-substantive grammatical, editorial changes in reference to the required form are made. Language is added to provide clarity that the amendment process cannot be utilized to circumvent the minimum standards provided for in paragraph (1) of subsection (a) of Section 12200.9. Finally, in conjunction with the repeal of Section 12200.10C, and with the changes in Sections 12200.9 and 12200.10, a requirement for Commission notification is added.

- Subsection (b) provides an alternative process for a select list of contract terms. This process allows for the specified terms to be modified without Bureau approval and instead only requires notification within 10 days of the execution of the revised contract.
- Current subsection (b) provides that paragraphs (3), (4) and (6) [renumbered as (3), (4) and (7)] of subsection (b) of Section 12200.7 are subject to this process. The adoption of a new paragraph (1) of subsection (b) of this section adds new paragraphs (5) and (6) and current paragraph (8) of subsection (b) of Section 12200.7 to this exception.
- A new paragraph (2) is added to provide that payments made by the TPPPS to the gambling enterprise for advertising and equipment may be amended with only notification to the Bureau. These payments are restricted to no more than a proportionate share of the actual cost of the advertising or equipment, and the parties must provide documentation to show the actual cost.

Repeal Section 12200.10C. Submission of Contracts or Amendment to Commission.

This section provides guidance to the Bureau on how it must communicate with the Commission during the contract approval process. The proposed action repeals this section.

- Subsection (a) requires that the Bureau provide copies of contracts and amendments to the Commission for review and comment. This provision is repealed.
- Subsection (b) is deleted and its provisions are incorporated into Sections 12200.9, 12200.10 and 12200.11. This provision requires that the Bureau provide copies of its notices of approval and disapproval to the Commission.

Repeal Section 12200.11. Extension of Proposition Player Contracts.

The proposed action repeals this section. As part of the changes in Section 12200.9, the non-duplicative provisions of this section are incorporated into the standard application approval process.

Amend Section 12200.21. Compliance.

This section provides general guidelines and restrictions for the TPPPS contract process, including those provisions previously in the contract that are not contractual terms between the parties but regulatory restrictions placed on the parties. The proposed action also provides additional requirements or clarifications, many of which have been removed from other sections and amended into this section.

- Subsection (a) provides a general requirement that TPPPS employees follow the game rules approved by the Bureau. Additionally, it allows a contract to contain provisions regarding the assignment of a permanent seat to the TPPPS, and exclusion of other TPPPS and gambling businesses. These last two provisions are deleted and moved to subsection (b) of Section 12200.7 as new paragraphs (5) and (6).
- The current text of subsection (b) becomes paragraph (1) of subsection (a), without change, and new paragraphs (2), (3) and (4) are added.
- The new paragraph (2) of subsection (b) provides that individuals with a “higher” level of licensure can also serve the functions of “lower” level licenses.
- The new paragraph (3) of subsection (b) provides a restriction to individuals who hold approvals to function both as a TPPPS employee and a gambling enterprise employee. This restriction prevents an individual from utilizing their third-party proposition player status within any gambling enterprise where they are employed.
- The new paragraph (4) of subsection (b) limits the presence of the TPPPS at any specific table to no more than one owner, supervisor or proposition player. This restriction currently exists as paragraph (5) of subsection (b) of Section 12200.7.
- The new subsection (c) provides clarification that the TPPPS shall pay the same collection rate as any other participant in a controlled game. This restriction currently exists as paragraph (12) of subsection (b) of Section 12200.7; however, the language has been modified.
- The new subsection (d) requires that any legal dispute between the parties needs to be reported to the Bureau. This provision currently exists as paragraph (16) of subsection (b) of Section 12200.7; however, the language has been modified.
- The new subsection (e) provides that if any employee of the TPPPS is arrested in or removed from the gambling establishment or is involved in a dispute with a patron that results in the removal of one or more individuals, the parties must provide a report to the Bureau. This provision currently exists as paragraph (17) of subsection (b) of Section 12200.7; however, the language has been modified.
- The new Subsection (f) provides that any incident of cheating reported by the TPPPS to the gambling enterprise must be reported to the Bureau within five days. This provision currently exists as paragraph (18) of subsection (b) of Section 12200.7; however, the language has been modified. The requirement to report to the Commission has been eliminated in the revised language.

- The new Subsection (g) provides guidelines for any tipping arrangement put in place as part of, or in addition to, the contracting process.
- Paragraph (1) of the new subsection (g) requires the TPPPS to provide its tipping policy as an addendum to the contract. The revisions to paragraph (20) of subsection (b) of Section 12200.7 remove the requirement that the tipping policy be included as part of the contract. Paragraph (1) of subsection (g) replaces that old requirement with a new one that allows for a tipping arrangement to be included in the contract, as is currently required, but also provides an additional requirement to cover situations where the parties have agreed to allow tipping but not to have a pre-arranged system.
- Paragraph (2) of the new subsection (g) continues the restriction already present in paragraph (20) of subsection (b) of Section 12200.7, restricting any tipping arrangement or policy from including any percentage calculation.
- Paragraph (3) of the new subsection (g) requires that the employee classifications of the gambling enterprise that are included in the tipping policy be provided.
- Paragraph (4) of the new subsection (g) prohibits any tipping arrangement or policy from providing tips to any employee of the gambling enterprise that is exercising any supervisory responsibility or any authority to make discretionary decisions that affect the result of the game during that particular shift.
- Paragraph (5) of the new subsection (g) provides clarity that a tip can be considered any monetary asset and not just a gambling chip or currency.
- The new subsection (h) provides that a TPPPS may not purchase, lease or control any gambling equipment related to a controlled game at a gambling establishment. This restriction currently exists as the second sentence of paragraph (21) of subsection (b) of Section 12200.7.
- The new subsection (i) provides that it is the responsibility of the gambling enterprise to ensure that the TPPPS follows all laws and regulations pertaining to controlled gambling. The addition of this provision is in conjunction with the repeal of paragraph (8) of subsection (b) of Section 12200.7.
- The new subsection (j) provides that financial arrangements, relationship or transactions entered into during the contract period and between the TPPPS and gambling enterprise or any of their designated derivative parties or persons affiliated with them, must be disclosed to the Bureau with 10 days of their execution.
- The new subsection (k) provides that neither the TPPPS nor the gambling enterprise may provide rebates.

The proposed changes in Chapter 10 are as follows:

Amend Section 12560. Disciplinary Guidelines for Third-Party Providers of Proposition Player Services Licensees or Registrants.

This section contains non-substantive revisions to correct and conform the references in paragraphs (7), (8), (9), (10), (11), and (19) of subsection (b) and paragraph (8) of subsection (d) to numerous changes made to the specified sections in Chapter 2.1. Additionally, to be consistent with subsection (k) of Section 12200.21, paragraph (19) of subsection (b) and paragraph (8) of subsection (d) of this section are revised to conform to the prohibition of rebates in all cases.

DOCUMENTS INCORPORATED BY REFERENCE

Application for Contract/Amendment Approval, BGC-APP-030 (Rev. 06/14)

CONSISTENCY OR COMPATIBILITY WITH EXISTING STATE REGULATIONS

The Commission has evaluated this regulatory action and determined that the proposed regulations are neither inconsistent nor incompatible with any other existing state regulations.

The Commission is vested with jurisdiction and supervision over gambling establishments and over all persons or things having to do with the operations of gambling establishments in California. The scope and content of the Commission's regulations is generally set forth in section 19841. As provided in subdivision (o) of section 19841, the Commission may "restrict, limit, or otherwise regulate any activity that is related to the conduct of controlled gambling..." As provided in subdivision (a) of section 19984, "Any agreement, contract, or arrangement between a gambling enterprise and a third-party provider of proposition player services shall be approved in advance..." Those regulations that currently implement the Commission's authority to regulate the review and approval by the Bureau of Gambling Control (Bureau) of contracts to provide proposition player services are being amended in this proposal.

The Bureau [Department of Justice]³ has also been granted some authority to adopt regulations (section 19826), but that authority is limited to the adoption of regulations reasonably related to its specified duties and responsibilities. While the Bureau has been given the responsibility for the actual approval of contracts, the Commission has been given the statutory direction and authority to adopt all necessary regulations to implement section 19984. These proposed regulations are not inconsistent or incompatible with any Bureau regulation (Title 11, CCR, Division 3), nor do they fall within the Bureau's authority to adopt regulations. The Bureau does not currently have any regulations in effect that relate to the content or approval of contracts for third-party proposition player services.

³ In the Act, "Department" refers to the Department of Justice. While the Act assigns certain powers and authority to the Department, in actual practice the responsibility for fulfilling the obligations imposed upon the Department is delegated to the Bureau of Gambling Control, pursuant to Business and Professions Code section 19810.

COMPARABLE FEDERAL LAW

There are no existing federal regulations or statutes comparable to the proposed regulations.

FISCAL IMPACT ESTIMATES

FISCAL IMPACT ON PUBLIC AGENCIES INCLUDING COSTS OR SAVINGS TO STATE AGENCIES OR COSTS/SAVINGS IN FEDERAL FUNDING TO THE STATE: None.

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.

EFFECT ON HOUSING COSTS: 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.

This proposed action imposes some mandatory requirements on businesses. The regulation provides a clear process for determining the payment for services in a contract for proposition player services and sets a clear process for receiving approval from the Bureau. Costs associated with pursuing a contract would be voluntarily assumed by the gambling enterprise as a contract with a TPPPS is only required if the gambling enterprise desires such services. The TPPPS, however, is required to have a TPPPS contract in order to operate, so any additional costs are not voluntarily assumed. Parties currently engaged in a contract will find an increase in the documentation and justification required under this revised process, though the specifics will depend on the complexity of their contract.

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 SMALL BUSINESS:

The Commission has determined that the proposed regulatory action may affect small businesses if any affected gambling enterprise or TPPPS would qualify as a small business.

RESULTS OF ECONOMIC IMPACT ASSESSMENT/ANALYSIS

IMPACT ON JOBS/NEW BUSINESSES:

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

This proposal is only intended to clarify the contract amounts currently being determined and should not cause a significant impact on the contract prices. Additional parts of the proposal include clarification of current contract approval processes and the shift of operative or compliance provisions to other regulation sections for enforcement by the Bureau. No significant additional burden has been placed upon either the gambling enterprise or the TPPPS, or either entity's employees.

BENEFITS OF PROPOSED REGULATION:

This proposed action will have the benefit of clarifying the manner in which the consideration provided for in the contracts for proposition player services is determined, providing stronger assurances that any consideration provided to the gambling enterprise is not disproportionate to the services being provided and in no way provides the house with any interest, whether direct or indirect, in the funds wagered, lost or won. The revised approval process will provide the Bureau a higher level of detail of the services, facilities, etc. that are provided for in the contract, as well as the justification that the payment for those services or facilities follows the requirements of the regulations. The Bureau is also provided with additional information to ensure that the relationship between the two parties is fully disclosed in the contract, and that there are no attempts to circumvent statutory and regulatory limitations.

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

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 be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

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, Manager
Regulatory Actions Unit
California Gambling Control Commission
2399 Gateway Oaks Drive, Suite 220, Sacramento, CA 95833-4231
Telephone: (916) 263-4024
Fax: (916) 263-0499
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:

Joshua Rosenstein, Regulatory Actions Analyst
Regulatory Actions Unit
California Gambling Control Commission
2399 Gateway Oaks Drive, Suite 220, Sacramento, CA 95833-4231
Telephone: (916) 274-5823
Fax: (916) 263-0499
E-mail: jrosenstein@cgcc.ca.gov

THIRD-PARTY PROVIDERS
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WEB SITE ACCESS

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