

CALIFORNIA GAMBLING CONTROL COMMISSION
DESCRIPTION OF PROPOSED REGULATORY ACTION
THIRD PARTY PROVIDERS OF PROPOSITION PLAYER
SERVICES: CONTRACTS

INTRODUCTION:

The California Gambling Control Commission (Commission) is proposing to amend previously adopted regulations for the content of contracts related to providing third-party proposition player services along with the review and approval processes for these contracts. These proposed amendments to the regulations better implement various aspects of the Gambling Control Act (Act)¹ and provide further protection to the public.

A majority of the proposed changes consist of a general reorganization of the regulations. The trend is a simplification of the contract content requirements, with operative provisions being moved into the compliance section. There are several items with proposed options open for discussion; including, how consideration between the Third-Party Provider of Proposition Player Services (TPPPS) and the gambling enterprise is determined, how contracts could be limited due to collusion concerns, and if Commission review should continue to be part of the contract approval process.

EXISTING LAW:

Business and Professions Code section 19984 provides that a gambling enterprise may contract with a third party for the purpose of providing proposition player services at the gambling establishment and provides authorization for any contract to be approved by the Bureau under criteria established by the Commission through regulation.

California Code of Regulations (CCR) Section 12200 provides definitions for this chapter, including; rebate and third party proposition or TPP.

CCR Section 12200.7 provides a number of criteria that must be included in the proposition player contract. This section also provides limitations on what a contract can include.

CCR Section 12200.9 provides the review and approval processes and requirements for a proposition player contract.

CCR Section 12200.10A provides the review and approval process for an expedited review and approval process for a proposition player contract.

CCR Section 12200.10B provides the review and approval process for amendments to an existing proposition player contract.

¹ Business and Professions Code section 19800, et seq.

CCR Section 12200.10C provides the process by which the Bureau submits contracts to the Executive Director prior to approval so that Commission staff can provide comments on any contract or amendment.

CCR Section 12200.11 provides the review and approval process for extensions to existing proposition player contracts.

CCR Section 12200.21 provides minimum standards to which registrants and licensees shall comply, including, the game rules as approved by the Bureau, and that only authorized individuals may control currency or chips that are used in the performance of the contract.

PROPOSED ACTION:

This proposed action will make changes within Division 18 of Title 4 of the California Code of Regulations, as follows:

CHAPTER 1. GENERAL PROVISIONS.

Section 12002 – General Definitions

[Page 1²]

- Definitions for the terms “affiliate,” “affiliate of”, and “person affiliated with,” are added to the general definitions applicable to Division 18. These terms will be used in reference to the parties to the contracts between gambling enterprises and TPPPS companies addressed in Chapter 2.1. These terms may also be used in other chapters in reference to approval of transactions and enforcement of security interests, as well as accounting and financial reporting requirements.

CHAPTER 2.1. THIRD-PARTY PROVIDERS OF PROPOSITION PLAYER SERVICES:
REGISTRATION; LICENSING.

ARTICLE 1. DEFINITIONS AND GENERAL PROVISIONS.

Section 12200 – Definitions

[Page 4]

- The proposed change to the definition “applicant” is non-substantive and clarifies that it is a person applying for specified registration or licensing.
- The proposed change to the definition “authorized player” deletes the last sentence as that provision is redundant to the provisions of subsection (c) of Section 12200.21 (page 23). In addition, there is a change that clarifies that an authorized player must be a natural person.
- The proposed changes to repeal paragraphs (5) through (9) and (11) are non-substantive editorial changes as these paragraphs were previously “reserved.”

² All page numbers refer to the Draft Regulation Text dated March 25, 2014.

- The proposed changes to the definition of “funding source” are non-substantive, and include clarifying grammatical changes.

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- The proposed changes to the definition of “license” are non-substantive. Subparagraph (C) is moved and incorporated into subsection (b) of Section 12200.21 as paragraph (2) while subparagraph (D) is repealed as duplicative of paragraph (1) of subsection (b) of Section 12200.21 (page 23). In addition, the list is amended to include “other employee” as a license type.

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- The proposed change to the definition of “organization chart” is a non-substantive repeal of extraneous language.
- The proposed changes to the definition of “owner” are non-substantive. The change to subparagraph (A) of paragraph (10) moves the definition of primary owner to paragraph (12) (page 7) which is the definition for primary owner. Prior to this change, the definition of primary owner was only a reference back to subparagraph (A). Subparagraph (A) now makes reference to the definition of primary owner. The change to paragraph (B) is likewise non-substantive. When originally approved, this definition included subdivisions (a) through (h) of Business and Professions Code section 19852, as it currently does. In 2009, AB 293 (Mendoza, Chapter 233, Statutes of 2009) added subdivision (f) which shifted the former subdivision (h) to subdivision (i). This proposed change simply conforms to the statutory change made by AB 293.

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- The proposed change to the definition of “playing book” clarifies that the TPPPS company is responsible for the completion of the playing book and not the third-party player, though the TPPPS company may delegate the task.
- “Primary owner” is defined and moves the definition from subparagraph (A) of paragraph (10), the definition of owner. This revision provides clarity as formerly there was just a reference to owner as the definition.
- The proposed change to the definition of “proposition player contract” clarifies that the contract is between the gambling enterprise and the TPPPS company. The removal of independent contractor repeals an inaccurate description of the two-party relationship.
- The proposed change to the definition of “rebate” shifts the authorization for rebates being provided by a proposition player to a patron through the contract, to being provided by a player-dealer to another participant through the game rules as approved by the Bureau. This change would allow the rules for rebates to cover any individual participating in the player-dealer position instead of just the third-party player. The status of rebates remains mostly unchanged as review and approval by the Bureau is still required, just through the game rules approval process instead of the contract review and approval process.
- The proposed changes to the definition of “registration” are non-substantive. The first part of subparagraph (C) is moved and incorporated into subsection (b) of Section 12200.21 as paragraph (2) while the second part of subparagraph (D) is repealed as

duplicative of subsection (b) of Section 12200.21 (page 23). In addition, the list is amended to include “other employee” as a registration type.

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- The proposed changes to the definitions “reinstatement badge,” “session of play,” and “supplemental information package” are non-substantive repeals of extraneous language.

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- The proposed change to the definition “TPP” or “third party proposition” to “TPPPS” or “third-party provider of proposition player services” is non-substantive and brings the terms used in the regulations closer to the actual terminology used. In addition there is the non-substantive repeal of extraneous language.

Section 12200.7 – Proposition Player Contract Criteria

[Page 9]

- The proposed change to subsection (a) expands the provision that a contract shall be subject to, and superseded by, any change in the law from just those contained within Business and Profession Code section 19984 to any relevant amendment to the Act.
- The proposed change to subsection (b) provides a non-substantive change to the provision.

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- The proposed change to paragraph (1) of subsection (b) requires the additional delineation of the parties to the contract to include derivative and affiliate parties. Derivative parties include the primary owner and owners of a TPPPS company and the owner-licensee and all endorsed owners of the gambling enterprise, while affiliate parties include other persons as defined in Section 12002 (page 1). This delineation is utilized in other proposed changes.
- The proposed change to paragraph (3) of subsection (b) would change the requirements of the contract to include controlled games in place of gaming activities. Gaming activities is a defined term in Title 11, CCR, Section 2010, subsection (f); however, that is not the way this term is being utilized in this paragraph. The purpose of this paragraph is to identify the services being provided, not just jackpots and promotions as provided in the definition of “gaming activity.” Therefore, for the purposes of clarity, the use of controlled games as defined in Business and Professions Code section 19805, subdivision (g) is proposed to be utilized as it provides the definition pursuant to Penal Code section 337j, subdivision (e) of “...any poker or Pai Gow game, and any other game played with cards or tiles, or both, and approved by the Department of Justice...” In addition, the Bureau-approved game number must be provided as this will provide clarity for situations where the Bureau has approved more than one game with the same basic name or different versions of the same game.
- The proposed change to paragraph (4) of subsection (b) will require an additional table count to be provided as part of the contract; that of the average number of tables estimated to be served by the contract on any given day. The number will provide

Bureau representatives foresight as to what they should expect upon entry in the gambling establishment.

- The requirement of paragraph (5) of subsection (b) is an operative regulation and does not need to be included in a contract. Due to this, the paragraph is proposed to be repealed and a comparable requirement added to Section 12200.21(c)(2) (page 23).
- The requirement of paragraph (7) of subsection (b) is revised from requiring a detailed description of any location of specific items to only requiring the specific location. In addition, the added requirement of identifying the location of any storage facilities, offices, cabinets or other such spaces that will be used by the TPPPS company. This revision will further provide the Bureau with the information and specificity it requires.
- The requirement of paragraph (8) of subsection (b) is not a requirement that should be included in a contract. Any possible violations should be reported for investigation by the Bureau. While proposed to be repealed, this change would in no way remove the requirement that a TPPPS company operate in compliance with the laws and regulations pertaining to controlled gambling. In this regard, a similar provision will be added to Section 12200.21, as subsection (j) (page 24), making it clear that the gambling enterprise is responsible for ensuring that proposition player services are conducted lawfully.
- The requirement of paragraph (9) of subsection (b) is an operative regulation and does not need to be included in a contract. Due to this, the paragraph is proposed to be repealed and a comparable requirement added to Section 12200.21(c) (page 23).
- The requirement of paragraph (10) of subsection (b) is not a requirement that should be included in a contract. The Bureau already has both the responsibility to ensure proper licensure or registration of any TPPPS company and for the review and approval of every contract and therefore it should not be the burden of the gambling enterprise to maintain a copy of the license or registration of their provider. In addition, this paragraph is an operative requirement and should not be included in a contract.

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- The requirement of paragraph (11) of subsection (b) is an operative regulation and does not need to be included in a contract. Due to this, the paragraph is proposed to be repealed and a comparable requirement added to Section 12200.21(c)(1) (page 23).
- The requirement of paragraph (12) of subsection (b) is an operative regulation and does not need to be included in a contract. Due to this, the paragraph is proposed to be repealed and a comparable requirement added to Section 12200.21(d) (page 23).
- The requirement of paragraph (13) of subsection (b) is unnecessary. There is no need for the contract to include a copy of the playing book as the requirements for approval of the contract already include the requirement that the playing book be submitted for approval. Therefore this requirement is redundant to the other, more important, process.
- The proposed change to paragraph (14) of subsection (b) clarifies that it is the gambling enterprise and not the house that participates in the contract with the TPPPS company. Other similar proposed changes are made throughout the regulations.

- The proposed change to paragraph (15) of subsection (b) coincides with the proposed change in paragraph (1). The provision of derivative and affiliate parties allows for a more detailed list of financial arrangements which in turn will provide the Bureau with more information to ensure that proposed contractual arrangements are not collusive and do not jeopardize the public's health, safety, welfare, or the integrity of gambling.
- The requirement of paragraph (16) of subsection (b) is an operative regulation and does not need to be included in a contract. Due to this, the paragraph is proposed to be repealed and a comparable requirement added to Section 12200.21(e) (page 23).
- The requirement of paragraph (17) of subsection (b) is an operative regulation and does not need to be included in a contract. Due to this, the paragraph is proposed to be repealed and a comparable requirement added to Section 12200.21(f) (page 24).

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- The requirement of paragraph (18) of subsection (b) is an operative regulation and does not need to be included in a contract. Due to this, the paragraph is proposed to be repealed and a comparable requirement added to Section 12200.21(g) (page 24).
- The requirement of paragraph (19) of subsection (b) coincides with the proposed change to the definition of "rebate" as proposed in Section 12200. With the shift in focus of rebates from the contract to the game rules as approved by the Bureau, this paragraph is no longer required and is proposed to be deleted.
- The requirement of paragraph (20) of subsection (b) moves a portion that is operative to subsection (h) of Section 12200.21 (page 24). In addition, clarifying language would be added to provide that if there will be no tipping arrangement under any circumstances; the contract shall include a statement to that effect.
- The proposed changes to paragraph (21) of subsection (b) are non-substantive. The second sentence is an operative regulation and does not need to be included in a contract. Due to this, the sentence is proposed to be repealed and a comparable requirement added to Section 12200.21(i) (page 24). In addition, the first sentence is rewritten with no change in the meaning or requirements.
- Paragraph (22) of subsection (b) is proposed to be repealed due to being duplicative of other sections of regulations. Paragraph (15) of subsection (b) provides that a full disclosure of financial arrangements entered into during the term of the contract must be included as part of the contract. Therefore, any additional arrangements entered into after contract approval would require a revision of the contract. Paragraph (2) of subsection (a) of Section 12200.10B (page 20) already provides for the approval of revisions to the contract and therefore the second portion of paragraph (22) of subsection (b) is also duplicative.
- The proposed change to paragraph (1) of subsection (c) revises the requirements of the detailed list of contract reimbursements to allow for the inclusion of specific, separately identified costs. In addition, a specification that the TPPPS company may not provide payment for anything that exceeds its actual value is added. This will better provide the Bureau with the information it may need to ensure that the proposed contractual arrangement is not inappropriately allowing reimbursement to the gambling enterprise in

such a manner as to cause the gambling enterprise to have a direct or indirect interest in the funds wagered, lost or won.

[Page 14]

- The proposed changes to paragraph (3) of subsection (c) include the movement of two provisions from subsection (a) of Section 12200.21 (page 23). These provisions directly relate to the provisions of this paragraph and moving them to the same location will improve the clarity of the regulation. In addition, the first sentence is repealed as the recommendations for the revision of paragraph (2) of this subsection all provide revised guidelines to the value of the services included in the contract and so the “substantially disproportionate” restriction is no longer needed.
- The proposed change to subsection (d) provides clarification that a contract cannot include the restriction of communication with licensing or enforcement agencies for any purpose, including providing information. The revision also expands the agencies that are covered by this exclusion beyond just the Bureau and Commission. It is of paramount importance that any licensed party be able to communicate with any licensing or law enforcement agency without restriction or fear of retaliation.

Note: The previous options 2(a)(1), 2(a)(2), 2(b)(1), 2(b)(2) and 2(d) have been removed from the proposed text. Option 2(c) has been renumbered to option 1(b).

OPTION 1(a) – Disallow Payment [page 13]

This option would prohibit the contract from including any payment from the TPPPS company to the gambling enterprise. The contract would still be allowed to contain consideration in the form of the exchange of services, and would not prohibit the gambling enterprise from providing payment to the TPPPS company. Other changes in the regulations would be required alongside this option, such as an additional item in disciplinary actions for violations.

Pro:

- Would provide a clear financial barrier between the gambling enterprise, the TPPPS company and any money wagered, lost, or won during the play of a controlled game.

Con:

- May provide an inconsistent interpretation of the “direct or indirect” language utilized in Business and Professions Code section 19984 from other sections of the Gambling Control Act, such as Business and Professions Code section 19850.

OPTION 1(b) – Fixed Amount Option [paragraph (2) of subsection (c), page 13]

This option continues the current contract value determination method, and provides standards that the payment must be fixed, cannot be linked to the funds wagered, lost or won and cannot be based on the gross profits of the TPPPS company. This option also includes an additional review during the contract amendment review process; the Bureau must re-verify that any modification of the fixed amount is not due to the same prohibited criteria.

Pros:

- Potentially provides protection from “indirect interest” as required in Business and Professions Code section 19984 if the term is defined as funds linked to those wagered, lost or won, either directly or through a percentage or fraction of the TPPPS company’s profits.
- Provides that a fixed payment between the TPPPS company and the gambling enterprise does not constitute an interest in the TPPPS company by the gambling enterprise in the same way that a landlord does not have an interest in a gambling enterprise should any lease payment be a fixed amount.
- Provides a transparent and workable valuation from which the Bureau could operate in evaluating the entities relationship.

Cons:

- May not address some concerns expressed by other interested parties.
- Does not provide a concrete review standard for the Bureau’s approval process.
- Does not limit the flow of money between cardrooms and TPPPS company and any potential appearance of collusion that this may cause.

OPTION 1(c)– Limited Payment [paragraph (2) of subsection (c), page 14]

This option continues a payment method similar to the one already utilized but, depending on the restrictions applied, may provide different limits on which services can be reimbursed by the TPPPS company.

Pros:

- Limits the impact and influence any one TPPPS contract can have on the gambling enterprise.
- Potentially provides protection from “indirect interest” as required in Business and Professions Code section 19984 if that term is defined as a sliding scale with some costs as acceptable and the others not.

Cons:

- Some of the broader limitations may be unclear and subject to interpretation. This lack of clarity could make enforcement difficult.
- Does not provide a concrete review standard for the Bureau’s approval process.

Section 12200.9 – Review and Approval of Proposition Player Contracts

[Page 16]

- The proposed change to paragraph (1) of subsection (a) is non-substantive and shifts the last sentence to a more active instruction to the applicant and Bureau.
- The proposed adoption of subparagraph (E) of paragraph (1) of subsection (a) provides that a TPPPS company must have a current and valid registration or license prior to

contracting to conduct third-party services as a registration or license is required prior to the start of the third-party services.

- The proposed change to paragraph (2) of subsection (a) is a non-substantive removal of expired calendar requirements.
- The proposed change to paragraph (3) of subsection (a) repeals the form BGC-APP-031, and the requirement to submit the form as part of a complete application. In addition, those requirements of form BGC-APP-031 that are not duplicative of the requirements of form BGC-APP-030 are added to form BGC-APP-030. This change consolidates the two forms into one and simplifies the paperwork that is required as part of requesting contract approval without significantly changing the information provided to the Bureau.

[Page 17]

- The proposed repeal of subsection (b) removes the requirement that the gambling enterprise maintain a copy of the contract, any amendments to the contract and a copy of all Bureau notices approving the contract or amendments at the gambling establishment. Representatives of the Commission and Bureau have access to these documents, and therefore the gambling enterprise should not be required to maintain it for the Commission's or Bureau's use.
- The proposed change to subsection (c) is non-substantive as the repealed portions are duplicative of subsection (b) of Section 12200.10B (page 21) [proposed to be changed to paragraph (2) of subsection (a) of Section 12200.11].

OPTION 2(a) – Cross-banking and associated banking are prohibited [subsection (c), page 18]

This option would provide that a contract could not be approved if another contract between these parties already existed and this new contract would create either a cross-banking or associated banking situation.

Pro:

- Strengthens the separation between the contracting TPPPS company and the gambling enterprise by limiting additional contractual relationships.

Cons:

- Inconsistent with past Commission action. The adoption of this proposal would prevent one or more currently approved contracts from being renewed.
- The population of individuals engaged in either the ownership of a gambling enterprise or TPPPS company is limited and the restriction of certain business relationships would further dilute the pool of available vendors.

OPTION 2(b) – Cross-banking is allowed but associated banking is not allowed [subsection (c), page 18]

This option would provide that a contract could not be approved if another contract between these parties already existed and this new contract would create an associated banking situation.

Pro:

- Strengthens the separation between the contracting TPPPS company and the gambling enterprise by limiting additional contractual relationships.

Con:

- The population of individuals engaged in either the ownership of a gambling enterprise or TPPPS company is limited and the restriction of certain business relationships would further dilute the pool of available vendors.

Section 12200.10 – Expedited Review and Approval of Proposition Player Contracts [Former Section 12200.10A]

This section is renumbered from Section 12200.10A to 12200.10.

[Page 19]

- The proposed addition of paragraph (4) of subsection (a) provides that should a revision of the Act or regulations become effective during the term of a contract and those changes effect the provisions under which contracts are approved, a contract may not be eligible for expedited review.
- The proposed addition of paragraph (5) of subsection (a) mirrors the requirement of subparagraph (E) of paragraph (1) of subsection (a) of Section 12200.9 (page 16).
- The proposed changes to paragraphs (1) and (2) of subsection (c) parallel the change to paragraph (3) of subsection (a) of Section 12200.9 (page 16).

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- The proposed addition of subsection (d) is non-substantive and results from subsection (b) of Section 12200.10C (page 21) being moved. In addition, it has been clarified that the Bureau is responsible for providing a copy of their approval or disapproval notice to the Commission.

Section 12200.11 – Review and Approval of Amendments to and Renewal of Proposition Player Contracts. [Former Section 12200.10B and 12200.11]

This section is renumbered and combines Sections 12200.10B and 12200.11

[Page 20]

- The proposed changes to paragraphs (1) and (2) of subsection (a) are non-substantive and include corrections to references and format changes. In addition, a proposed change to paragraph (2) would add the locations of security measures and storage facilities to the list of items that do not require advanced contract review. This would not prevent other operative sections that may or may not require advanced approval, such as for security resources, from being effective. This change would only clarify the process does not include advanced contract approval.

- The proposed changes to subsection (b) are non-substantive changes that include format and grammatical changes. The change to subparagraph (D) of paragraph (1) clarifies that the Bureau only requires three form pages and not three completed playing books.

[Page 22]

- Subsection (c) is proposed to be repealed. Currently, the process includes a requirement for the Bureau to submit the contract or amendment to the Executive Director for review and comment. However, the process requires only Bureau approval and does not require the Bureau to consider or wait for any comments from Commission staff. This section is unnecessary and its removal streamlines and improves the approval process.
- The proposed addition of subsection (c) is non-substantive and results from subsection (b) of Section 12200.10C (page 21) being moved. In addition, it has been clarified that the Bureau is responsible for providing a copy of their approval or disapproval notice to the Commission.

Section 12200.10C – Submission of Contract or Amendment to Commission

[Page 21]

This section is proposed to be repealed. Currently, the process includes a requirement for the Bureau to submit the contract or amendment to the Executive Director for review and comment. However, the process requires only Bureau approval and does not require the Bureau to consider or wait for any comments from Commission staff. This section is unnecessary and its removal streamlines and improves the approval process.

Section 12200.21 – Compliance

[Page 23]

- The proposed changes to subsection (a) include the addition of rebates in parallel to the changes in paragraph (19) of subsection (b) of Section 12200.7 (page 12) and moving the last portion of the subsection to paragraph (3) of subsection (c) of Section 12200.7 (page 14).
- The proposed addition of paragraph (2) of subsection (b) is the non-substantive move from paragraphs (12) and (17) of subsection (b) of Section 12200.7 (page 11).
- The proposed addition of subsection (c) is the non-substantive move of paragraph (9) of subsection (b) of Section 12200.7 (page 10).
- The proposed addition of paragraph (1) of subsection (c) is the non-substantive move of paragraph (11) of subsection (b) of Section 12200.7 (page 11).
- The proposed addition of paragraph (2) of subsection (c) is the non-substantive move of paragraph (5) of subsection (b) of Section 12200.7 (page 10).
- The proposed addition of subsection (d) is the non-substantive move of paragraph (12) of subsection (b) of Section 12200.7 (page 11). In addition the subsection is revised to clarify that the collection fee paid by the third-party player must be the same for the level

of participation as any other participant would pay should they be at the same level as the third-party player.

- The proposed addition of subsection (e) is the non-substantive move of paragraph (16) of subsection (b) of Section 12200.7 (page 11).

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- The proposed addition of subsection (f) is the non-substantive move of paragraph (17) of subsection (b) of Section 12200.7 (page 11).
- The proposed addition of subsection (g) is the non-substantive move of paragraph (18) of subsection (b) of Section 12200.7 (page 12).
- The proposed addition of subsection (h) provides that if a contract allows tipping, and a specific arrangement is not included in the contract, the TPPPS company must provide any related tipping policies with the contract.
- The proposed addition of paragraph (2) of subsection (h) is the non-substantive move of paragraph (20) of subsection (b) of Section 12200.7 (page 12).
- The proposed addition of paragraph (3) of subsection (h) provides that the tipping policy must identify which job classifications are eligible to receive tips. This restriction provides clarity to limit the perception of any possible collusion.
- The proposed addition of paragraph (4) of subsection (h) provides clarification that tips cannot be provided to employees of the gambling enterprise that have any supervisory responsibility or who could make a discretionary decision that could affect the results of any game served by the TPPPS company. This restriction provides clarity to limit the perception of any possible collusion.
- The proposed addition of paragraph (5) of subsection (h) provides clarification that tips include any monetary assets provided by the TPPPS company to an employee of the gambling enterprise. This restriction provides clarity to limit the perception of any possible collusion.
- The proposed addition of subsection (i) is the non-substantive move of paragraph (21) of subsection (b) of Section 12200.7 (page 12).
- The proposed addition of subsection (j) would require the gambling enterprise to be responsible to ensure that the TPPPS company follows all laws and regulations pertaining to controlled gambling.