

CALIFORNIA GAMBLING CONTROL COMMISSION

CALIFORNIA CODE OF REGULATIONS

TITLE 4. BUSINESS REGULATIONS

DIVISION 18. CALIFORNIA GAMBLING CONTROL COMMISSION (§ 12002 et seq.)

IMPLEMENTATION OF SB 112

CGCC-GCA-2017-02-N

SECTION 100. CHANGES WITHOUT REGULATORY EFFECT

Pursuant to Title 1, Division 1, Chapter 1, Article 2, section 100(b)(3), of the California Code of Regulations (CCR), the California Gambling Control Commission (Commission) hereby submits this written statement explaining why the proposed changes to CCR Title 4, Division 18, section 12002 *et seq.*,¹ have no regulatory effect.

THE REGULATIONS ARE INCONSISTENT WITH AND SUPERSEDED BY STATUTORY CHANGES

SB 112 (Committee on Budget and Fiscal Review, Chapter 363, Statutes of 2017) became effective on September 28, 2017. This Budget Trailer bill includes an exception to certain license disqualification requirements of the Gambling Control Act (Business and Professions Code §19800 *et seq.*). Prior to the enactment of SB 112, Business and Professions Code section 19859(c) required the Commission to deny a license on the basis of a conviction of any state or federal felony that would constitute a felony if committed in California. SB 112 amends this section, adding an exception from mandatory denial when the felony: (1) was for the possession of cannabis and (2) would not constitute a felony or misdemeanor under California law on the date the application for a license is submitted.

This Section 100 action makes changes necessary to implement this new exception. Two sections contained in Division 18 of Title 4 are inconsistent with the recent statutory change. Currently, provisions related to the licensing of third-party providers of proposition player services (TPPPS), including TPPPS owners, supervisors, and players, as well as gambling business owners, supervisors, and players, reflect the previous statutory requirement. That is, these provisions specify the applicant is ineligible for a license based on the commission of any felony. The denial based on any felony is inconsistent with the fact that the statute now provides an exception from denial for a certain type of felony as specified.

¹ All references to the California Code of Regulations hereinafter refer to Division 18 of Title 4, unless otherwise specified.

THE COMMISSION HAS NO DISCRETION TO ADOPT A CHANGE THAT DIFFERS IN SUBSTANCE

This Section 100 action makes conforming changes throughout Division 18 by changing certain license denial criteria that indicate any felony pursuant to Business and Professions Code section 19859(c) requires the Commission to deny a license. Accordingly, Business and Professions Code section 19859 has been added as a “reference” citation in the Note sections of these regulations as appropriate. These regulatory changes are consistent with and mandated by the recent amendment to the Act resulting from SB 112.

SPECIFIC FINDINGS

With respect to the foregoing, the Commission finds as follows:

Necessity

Leaving the licensing criteria pertaining to felony convictions unchanged would conflict with the current language of the Act as described above. This would result in an inability to apply or enforce portions of these regulatory provisions. The only logical and practical solution available to the Commission is to amend its regulations to conform to the statutory change enacted in SB 112.

Consistency

Regulations pertaining to licensees, specifically those relating to felony convictions, are not in harmony with, and conflict with the provisions of the Act as amended by SB 112. As noted above, these regulations require automatic denial of a license based on any felony conviction, whereas the statute currently in effect provides an exception from this requirement. This inconsistency could lead to an inability to apply and enforce portions of the existing regulatory provisions.

THE PROPOSED ACTION HAS NO REGULATORY EFFECT

The changes in this action will alter any requirement, right, responsibility, condition, prescription, or other regulatory element of any CCR provision only to the extent mandated by the new statute and are thus without regulatory effect. The changes simply conform to the changes made by SB 112 to the Act.

CHANGES TO TEXT

1. In CCR sections 12218.11(b) and 12236(b): (1) add the term “disqualifying” before “felony;” (2) delete “including a conviction in a court of the United States or any other state of an offense that is classified as a felony by the laws of this state;” and (3) add “under Business and Professions Code section 19859, subdivision (c).”

The existing regulatory language is inconsistent with the statute because it disqualifies applicants based on any felony conviction. The changes make the regulations consistent with the statute by disqualifying applicants, not on the basis of any felony, but on the basis of a felony as specified by Business and Professions Code section 19859(c).

The above regulatory sections provide that an applicant for or requester of a specified registration or license shall be ineligible to hold such registration or license if the applicant or requester “has been convicted of any felony, including a conviction in a court of the United States or any other state of an offense that is classified as a felony by the laws of this state.” This language restates the previous statutory requirement that an applicant be disqualified on the basis of a “conviction of a felony, including a conviction by a federal court or a court in another state for a crime that would constitute a felony if committed in California.” While this language is still incorporated in Business and Professions Code section 19859(c)(1), the existing regulatory language is inconsistent with the fact that there is now an exception for a certain type of felony conviction.

The above-described changes are non-substantive, as they simply ensure that the regulatory language accurately reflects the requirements of the current statute. Adding the term “disqualifying” makes the regulation consistent with the language of Business and Professions Code section 19859 generally, which specifies reasons for which an applicant is “disqualified” from licensure. It also makes the regulation consistent with the fact that a felony conviction in itself is no longer automatically disqualifying. The information being deleted, i.e. regarding the jurisdiction of the felony (state or federal), is not necessary given the added reference to the statutory provision detailing the full requirement. These changes do not afford the Commission any discretion to adopt a different standard with respect to felony convictions than the one set forth in statute.

2. Add Business and Professions Code section 19859 under “Reference” in the Note section of §12218.11 and §12236.

This additional “reference” citation is appropriate because the amended regulatory language implements Business and Professions Code section 19859(c). Because these regulations implement other subdivisions of Business and Professions Code section 19859, it is appropriate to reference the statutory section as a whole. This change is non-substantive within the meaning of Title 1, CCR section 100(a)(5).