

**California Gambling Control Commission**

**DESCRIPTION OF PROPOSED REGULATORY ACTION**

**ADVERTISING**

**INTRODUCTION:**

The California Gambling Control Commission (Commission) is proposing regulations that would implement the Commission’s mandate under the Gambling Control Act (Act) to ensure the integrity of gambling in California with respect to advertising activity and to provide for the disapproval of deceptive advertising. Specifically, these regulations would implement Business and Professions Code section 19841, subdivision (f) of the Act, which requires the Commission to provide for the disapproval of deceptive advertising by licensed gambling establishments, as determined by the Bureau of Gambling Control (Bureau)<sup>1</sup>. The statute further specifies that an advertisement is presumptively deceptive if it appeals to children or adolescents or offers gambling as a means of becoming wealthy.

The proposed regulations would establish new definitions as well as general and specific requirements pertaining to the various types of gambling-related advertisements (e.g. audio, video, print, electronic media, etc.) produced by or for a gambling enterprise or third-party provider of proposition player services (TPPPS). The new requirements would provide a regulatory framework for the Bureau to utilize in determining its disapproval of any noncompliant advertisement that solicits participation in gambling at a licensed gambling establishment (cardroom). Further, the proposed regulations contain enforcement mechanisms, which provide that violations of the requirements may be considered in determining the license suitability of a gambling enterprise or TPPPS at any time.

**EXISTING LAW:**

Business and Professions Code – General Provisions

Business and Professions Code section 17508 makes it “unlawful for any person doing business in California and advertising to consumers in California to make any false or misleading advertising claim, including claims that: (1) purport to be based on factual, objective, or clinical evidence, (2) compare the product’s effectiveness or safety to that of other brands or products, or (3) purport to be based on any fact.”

---

<sup>1</sup> 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.

# ***DRAFT***

## DESCRIPTION OF PROPOSED REGULATORY ACTION ADVERTISING

### Gambling Control Act

Business and Professions Code section 19801, subdivision (c) states that gambling can become addictive and is not an activity to be promoted or legitimized as entertainment for children and families.

Business and Professions Code section 19801, subdivision (d) states that unregulated gambling enterprises are inimical to the public health, safety, welfare, and good order. Accordingly, no person in this state has a right to operate a gambling enterprise except as may be expressly permitted by the laws of this state and by the ordinances of local governmental bodies.

Business and Professions Code section 19841, subdivision (f) requires the Commission adopt regulations to provide for the disapproval of advertising by licensed gambling establishments that is determined by the Bureau to be deceptive to the public. Advertisements that appeal to children or adolescents or that offer gambling as a means of becoming wealthy are presumptively deceptive. This statute also requires that cardroom advertising regulations adopted by the Commission be consistent with advertising regulations adopted by the California Horse Racing Board (CHRB) and the California State Lottery Commission (Lottery).

Business and Professions Code section 19841, subdivision (o) allows the Commission to adopt regulations that restrict, limit, or otherwise regulate any activity that is related to the conduct of controlled gambling.

Business and Professions Code section 19920 states that it is the policy of the State of California to require that all establishments wherein controlled gambling is conducted in this state be operated in a manner suitable to protect the public health, safety, and general welfare of the residents of the state. Responsibility for the employment and maintenance of suitable methods of operation rests with the owner licensee, and willful or persistent use or toleration of methods of operation deemed unsuitable by the Commission or by local government shall constitute grounds for license revocation or other disciplinary action.

### **EXISTING REGULATIONS:**

#### Title 4, California Code of Regulations

Section 12461, subsection (b) requires that any website operated by or on behalf of any gambling enterprise, TPPPS, or gambling business shall contain a responsible gambling message and a link to the Office of Problem Gambling (or its successors) that provides information and referral services for problem gamblers.

Section 12461, subsection (c) requires that advertising material produced by or on behalf of any gambling enterprise, TPPPS, or gambling business shall contain a responsible gambling message. This provision also requires that the advertisement shall refer to the toll-free telephone number and/or link approved by the Office of Problem Gambling (or its successors) that provides information and referral services for problem gamblers. It provides an exception for any digital material with limited characters or space to alternatively provide a link to a website that contains

***DRAFT***

# ***DRAFT***

## DESCRIPTION OF PROPOSED REGULATORY ACTION ADVERTISING

the information required by subsection (b). It also exempts any small tangible items in which the size or space limitations do not allow for the responsible gambling message to be legibly displayed.

### **PROBLEMS ADDRESSED:**

Within the Act, Business and Professions Code section 19841, subdivision (f) directs the Commission to adopt regulations providing for the disapproval of advertising by licensed gambling establishments that is determined by the Bureau to be deceptive to the public. To date, there have been no regulations adopted in response to this statutory mandate. Without having a regulatory framework established to provide for the disapproval of advertising, the Bureau has no clear standard or criteria to measure against for making consistent determinations. Furthermore, gambling enterprises and TPPPSs have little guidance or requirements to utilize in the creation of an advertisement other than industry best practices and general state and federal laws.

### **ANTICIPATED BENEFITS OF THE PROPOSED REGULATIONS:**

The proposed actions will establish a regulatory framework for the Bureau to use in determining if an advertisement created, purchased, placed, or distributed by of for a gambling enterprise or TPPPS is deceptive to the public. The proposed regulations will enhance transparency in the regulation of gambling entities and protect the health, safety, and general welfare of the public by aiding and preserving the integrity of controlled gambling and the cardroom industry.

The proposed regulations provide specific guidance and requirements for the creators, producers, and responsible parties of cardroom advertising content. This is anticipated to dissuade and reduce dissemination of gambling advertisements that are deceptive or that inappropriately target children or adolescents. The proposed regulations allow the Bureau to provide a notice of disapproval if they determine an advertisement is out of compliance with these provisions and specifies the potential enforcement actions that may be exercised by the Commission as a result of any violation.

### **CONSISTENCY WITH EXTERNAL GAMBLING REGULATIONS**

As required by statute, the proposed advertising regulations are consistent with the regulations adopted by CHRB and the Lottery. However, the advertising regulations contained in this proposal are more detailed and specific. This is out of necessity to provide the regulated community with the proper guidance in producing an advertisement and to establish a measurable set of criteria for the Bureau to reference. It is important to note that Business and Professions Code section 19841, subdivision (f) only requires that the advertising regulations be “consistent,” not identical.

***DRAFT***

# **DRAFT**

## DESCRIPTION OF PROPOSED REGULATORY ACTION ADVERTISING

### California Horse Racing Board

The proposed regulations are consistent with those adopted by CHRB in the following areas:

- *Underage gambling.* Both CHRB and the Commission prohibit and discourage gambling by persons under 21. For example, CHRB regulations in Title 4, CCR, Section 2066(d) require that all advertisements “contain a statement that persons under 21 are not allowed access to the minisatellite wagering site.” Similarly, the proposed language in Section 12082(b)(2)(A) provides that advertisements must include a “statement that participants must be 21 or older to gamble.” CHRB’s provision is more restrictive, which prohibits access to persons under the age of 21 to minisatellite wagering facilities, whereas under current and proposed regulations, persons under 21 are allowed to enter a cardroom but are prohibited from gambling. This slight regulatory discrepancy is appropriate because it reflects the differences in requirements provided in the correlating reference statutes.

Additionally, the Commission’s proposed regulations are similar to the regulations CHRB has adopted in Title 4, CCR, Sections 2071(h) and 2072(h), which require that “[a]ll advertisements shall contain a statement that persons under 18 are not allowed to open or have access to [Advance Deposit Wagering] Accounts.” While these requirements are consistent with the aforementioned regulations proposed for adoption by the Commission, CHRB regulations are specific to pari-mutuel wagering.

- *Problem Gambling.* Both CHRB and Commission regulations require that advertisements contain information on problem gambling support. CHRB regulations in Title 4, CCR, Sections 2066(d), 2071(h), and 2072(h) require that all advertisements shall “contain contact information for a recognized problem-gambling support organization.” Similarly, the proposed language in Section 12082(b)(2)(B) states that all advertisements must include the information required by Section 12461(c) - which requires advertising material contain a responsible gambling message and list at least one of the information and referral services approved by the Office of Problem Gambling. Additional consistency with CHRB regulations is proposed in Section 12461(c), which requires that advertising material produced by or on behalf of any gambling enterprise, TPPPS, or gambling business must contain a responsible gambling message and must refer to at least one of the information and referral services approved by the Office of Problem Gambling.

### California State Lottery Commission

A majority of the Lottery’s requirements pertaining to advertising are located within statute (not regulation), such as Government Code section 8880.24, which requires the Lottery to comply with both the letter and spirit of the laws governing false and misleading advertising, including Business and Professions Code section 17500 et seq. To that effect, the Lottery regulations do not contain advertising requirements that are directly related to the Commission’s proposed regulations, which are intended to provide for the disapproval of advertisements that are deceptive to the public.

**DRAFT**

# **DRAFT**

## DESCRIPTION OF PROPOSED REGULATORY ACTION ADVERTISING

However, it is worth noting that California Lottery Regulations, Section 7.5.7 requires retailers to post “Play Responsibly” signage and other related point-of-sale materials at play centers, including maintaining and making available to players responsible gaming awareness brochures and related publications supplied by the Lottery. This required information, while not specifically correlated to Lottery advertisements, is similar in nature to the Commission’s existing and proposed regulations in Section 12461, as previously discussed.

### **PROPOSED ACTION:**

A general change has been made in the proposal to remove the word “shall.” Shall is a potentially ambiguous word. In most connotations it is used to convey an obligation. However, the word has been used in a variety of contexts to convey a range of ideas including “may,” defining a term, meaning “should,” etc. In an effort to foreclose any such ambiguity, shall is replaced throughout the text with other words subject to less interpretation. These are non-substantive, clarifying changes.

Additionally, while Business and Professions Code section 19841, subdivision (f) applies to “licensed gambling establishments,” the terms “gambling enterprise” and “gambling establishment” are inconsistently used throughout the Act. For consistency in the regulations, gambling enterprise has been used in other regulatory packages adopted by the Commission to refer to the person or entity that conducts a gambling operation; whereas a gambling establishment has been used to refer to one or more of the physical rooms where the controlled gambling or activity occurs. As such, this practice has been carried forward throughout these proposed regulations, where appropriate.

### **CHAPTER 1. GENERAL PROVISIONS.**

#### **ARTICLE 1. DEFINITIONS AND GENERAL PROVISIONS.**

##### *Amend Section 12002. General Definitions*

This section provides general definitions for this division. Two new definitions are proposed to be added. Non-substantive changes have been applied throughout to renumber the existing definitions accordingly.

**Subsection (b)** is amended to add the definition of “advertisement” or “advertising material,” with the following components:

- The definition encompasses “any statement, illustration, or depiction concerning controlled gambling activity, or any display of the logo or trademark of a gambling establishment.” This language targets a broad range of instances in which gambling activity is portrayed through words, images or graphics, including the display of a cardroom’s logo or trademark. As methods of advertising are broad, varied, and complex, this breadth is necessary to capture all potential forms of advertising.
- The language “in a publication, outdoor or indoor display, broadcast announcement, or electronic media” is added to capture the various mediums by which an advertisement may be distributed or displayed. The provision ensures clarity regarding the various

**DRAFT**

forms of media covered by the regulation. Again, as the various mediums for advertising are wide-ranging, varied, and complex, this breadth is necessary to capture any means by which advertising content reaches the public.

- The definition specifies that it only applies to advertisements “over which a gambling enterprise or third-party provider of proposition player services has a reasonable degree of control.” This language protects these entities from being held responsible for noncompliant advertisements placed without their consent or knowledge (e.g. the listing of general information on a gambling establishment within a travel directory or brochure). Additionally, including TPPPSs within the language helps to prevent a potential loophole, which could be used to side-step the requirements herein. For example, a TPPPS that has an agreement in its contract to provide advertising services for a gambling enterprise (in accordance with existing TPPPS contract requirements), could, outside of the control of a gambling enterprise, disseminate a non-compliant advertisement of a cardroom in which it operates to increase business (either known or unbeknownst to the gambling enterprise). Without TPPPSs being included in the definition, the requirements of this Division may be more difficult to enforce. Conversely, a “gambling business” has been intentionally excluded from the definition because a gambling business is not expressly authorized to have a third-party relationship or contract with a cardroom.
- The proposed language “for the purpose of soliciting participation in controlled gambling” ensures that the regulations appropriately target only advertising materials intended to encourage participation in controlled gambling. This language is necessary because many cardrooms offer much more than just gambling and want to drive business to other attractions within the establishment. The exception also ensures that the regulations remain within the scope of enabling legislation.
- **Paragraph (b)(1)** provides that an “advertisement” or “advertising material” does not include the following:
  - *The solicitation of activities, events, or services, which do not promote participation in controlled gambling and that may otherwise be provided on the premises of a gambling establishment including, but not limited to: restaurant dining, concerts, trade shows, business conferences, and non-gambling related promotions and contests.* This express language clarifies that other advertisements used to solicit non-gambling related activities at a gambling establishment (e.g. restaurant dining, concerts, trade shows, etc.) are not subject to the same regulatory restrictions and requirements.
  - *Any identifying business signage located in or on the premises of a gambling establishment.* This prevents any business signage on the property of a gambling establishment from being subject to the same disclosure requirements applicable to advertisements.
  - *Any notices or postings otherwise required by the Act, this Division, or Title 11, Division 3 of the California Code of Regulations, such as posted game rules.* This exclusion is necessary because content requirements for notices and postings are contained in other regulatory sections. Further, the Bureau’s regulations in Title

# **DRAFT**

## DESCRIPTION OF PROPOSED REGULATORY ACTION ADVERTISING

11 require the posting of game play rules. It is not intended that these notices and postings be subject to the content requirements for advertisements.

**Subsection (m)** defines the advertising category of “direct advertisement” or “direct advertising” as advertisements that are distributed directly to a specific individual or household in person or through the mail, Internet, messaging service, or any telephonic communication system for the purpose of soliciting participation in controlled gambling. It identifies some examples of the various ways an advertisement could be directly distributed using a list of specific recipients, demographic data, or Internet trackers. This more specific category of advertising is necessary to define because it entails additional requirements than other forms of advertising due to its potential to intrude on privacy by targeting specific individuals at their household or place of business.

### **CHAPTER 1. GENERAL PROVISIONS. ARTICLE 3: ADVERTISING**

#### *Add Section 12080. General Requirements*

Section 12080 provides general requirements for a gambling enterprise and TPPPS pertaining to gambling advertisements.

**Subsection (a)** sets forth the following general responsibilities of a gambling enterprise and TPPPS with respect to all advertisements and direct advertisements. Specifically:

- **Paragraph (a)(1)** requires that a gambling enterprise or TPPPS comply with all the requirements of this article, as applicable. This provision is necessary to ensure that a gambling enterprise or TPPPS is held accountable for complying with the requirements of this article.
- **Paragraph (a)(2)** requires that a gambling enterprise or TPPPS comply with Title 11, CCR, Section 2072(e). This reference to the Bureau’s regulations provides clarity by ensuring the reporting requirements pertaining to cardroom advertisements are included and referenced in the same article.
- **Paragraph (a)(3)** specifies that a gambling enterprise or TPPPS is responsible for any advertisement that is created, purchased, placed, or distributed by or for it (regardless of whether the enterprise or TPPPS directly participated). This provision is necessary to clarify that a gambling enterprise or TPPPS may be subject to disciplinary consequences in the event that an advertisement, over which it has a reasonable degree of control (as noted in the definition of an “advertisement”), fails to meet the standards required by the Commission. The provision holds accountable the appropriate party (either the gambling enterprise or TPPPS) responsible for the advertisement.

**Subsection (b)** prohibits a TPPPS from creating, purchasing, placing, or distributing any advertisement for a gambling enterprise with which it has a proposition player contract (as defined in Section 12200), *unless* the advertising costs are identified in the Bureau-approved proposition player contract. This proposed provision is consistent with the existing regulations in Chapter 2.1 including, Section 12200.7, subsections (c)(1) and (c)(2). The provision prohibits

**DRAFT**

# ***DRAFT***

## DESCRIPTION OF PROPOSED REGULATORY ACTION ADVERTISING

a registrant or licensee of a TPPPS from independently funding a cardroom advertisement for a gambling enterprise with which it has a proposition player contract unless compensation is included in the Bureau-approved proposition player contract.

### Add Section 12082. Advertising Content.

**Subsection (a)** provides general criteria applicable to all information that is required to be presented by this section.

**Subsection (b)** sets forth the following content requirements for all advertisements. Specifically:

- **Paragraph (b)(1)** requires that all advertisements state the name, nickname, alias, or any other name by which the gambling establishment is commonly known. Providing this information is necessary to be able to identify the licensee responsible for the advertisement (gambling enterprise or TPPPS) so that, in the event that an advertisement is determined by the Bureau to be deceptive to the public, the Bureau may contact the gambling enterprise or TPPPS and/or issue a notice of disapproval. The requirements of this paragraph have been separated from the requirements under subparagraphs (b)(2)(A) through (D) to provide the licensee more flexibility and prevent the regulations from being unnecessarily onerous. However, it is important to note that while the name of the establishment presented in the advertisement is not subject to the more stringent standards provided by subsections (d) through (f), the name must meet the general “clear and conspicuous” criteria specified by subsection (a).
- **Paragraph (b)(2)** was broken out separately from paragraph (b)(1) because the information required by this paragraph contains language that is subject to an exception for small tangible items and additional requirements specified under subsections (c) through (f).
  - **Subparagraph (b)(2)(A)** requires that advertisements include a statement that participants must be 21 or older to gamble. This statement is necessary to align with the existing statutory requirements in Business and Professions Code section 19921.
  - **Subparagraph (b)(2)(B)** requires that advertisements contain the referral information for the Program for Responsible Gambling specified in Section 12461(c). This reference provides clarity by ensuring all requirements related to cardroom advertising are included or referenced within the same section.
  - **Subparagraph (b)(2)(C)** contains requirements for referencing Bureau-approved games within advertisements. The provision requires that when an advertisement references a game, the Bureau-approved game name or Bureau-approved alternative game name must be included. The Penal Code provides limitations on the types of games that can be played. Requiring an advertisement to include a Bureau-approved game name ensures that only legal games are being advertised, prevents advertisements from including misleading game names, and provides the ability for the public to accurately identify the advertised game and contact the Bureau or gambling enterprise to review the game rules. This provision also provides additional flexibility by allowing for the potential use of alternative

***DRAFT***

game names in the future; however, a policy and process for approval would first need to be established by the Bureau before alternative game names could be allowed. The Bureau would likely need to establish limits on the number of alternative game names that would be allowed. The idea of being able to use Bureau-approved alternative game names is based on concerns raised at past stakeholder meetings by industry representatives. Stakeholders have consistently commented that restricting advertisements to the Bureau-approved game name, which is the name the game was patented under, is often inconvenient, lengthy, and less effective for identification purposes than using a name that the game is more commonly known by. Allowing the use of alternative game names that are more commonly known by the public may yield advertisements that are more effective, less lengthy, and easier to understand.

- **Subparagraph (b)(2)(D)** allows an advertisement to use any gaming activity name in reference to a Bureau-approved gaming activity as long as the Bureau-assigned gaming activity identification number is presented. This provides licensees flexibility in their advertising without compromising an individual's ability to contact the Bureau or gambling enterprise using the identification number and review the associated rules for the gaming activity. It's important to note, in a letter dated August 25, 2008, the Bureau announced a new option to allow the use of alternative gaming activity names (*not game names*) if the corresponding identification number is included in the advertisement. As such, this provision is consistent with the Bureau's current policies on referencing game names and gaming activity names.

**Subsection (c)** contains express language that provides the requirements of paragraph (b)(2) do not apply to any small tangible items upon which the information required to be printed or displayed would be impracticable, such as: apparel, hats, pens, key chains, dishware, drinking glasses, coffee mugs, etc. This exception is necessary due to the size limitations of small items when printing the information would be infeasible and/or the information would take up an unreasonable or impractical amount of space. However, this provision does not allow small tangible items to omit the name of the gambling establishment, as required by paragraph (b)(1), and presented in accordance with the general "clear and conspicuous" criteria established by subsection (a). Maintaining this requirement for advertisements in the form of a small tangible item ensures that the gambling establishment is properly identified and can be contacted if the Bureau disapproves of the item.

**Subsection (d)** provides specific standards for how the information required by paragraph (b)(2), that appears in writing or connected to via hyperlinked text (as applicable), is to be presented within an advertisement (e.g. font style, contrast, orientation, placement, etc.). This prevents unnecessary duplication of the same standards throughout subsection (f) and provides uniform criteria for all written information including the hyperlinks.

**Subsection (e)** provides that the required information concerning a participant's minimum age and a problem gambling statement must be displayed on a separate line above the required game

# **DRAFT**

## DESCRIPTION OF PROPOSED REGULATORY ACTION ADVERTISING

and/or gaming activity information, when presented in writing. This requirement is necessary to ensure the required information is separated by relevance appropriately. Further, the requirement ensures the written information is organized and presented in a clear and conspicuous manner that is easy for the viewer to read and understand.

- **Subsection (f)** specifies that the information required in paragraph (b)(2) must be presented in accordance with the requirements specified in paragraphs (f)(1) through (7), as applicable. Again, while the regulations require the name of a gambling establishment be provided in a “clear and conspicuous” manner [see subsection (a)], this information should not be subject to the more stringent standards that are required for statements concerning problem gambling, age restriction, and game or gaming activity identification – information necessary to protect the health and welfare of the public. Further, it is not necessary for the additional criteria to apply to presenting the name of the gambling establishment in an advertisement because it would only benefit a gambling enterprise or TPPPS to make the name clearly known to the recipient. These less restrictive standards for providing the name of the establishment will allow for greater creative freedom. This will also ensure that the problem gambling and age restrictive messages are emphasized by not having too much information condensed into the timeframes and size requirements specified in the paragraphs that follow.
  - **Paragraphs (f)(1) through (7)**, in addition to the requirements of subsection (d) through (e), provides clear and specific guidance to a gambling enterprise or TPPPS regarding how the required information specified in paragraph (b)(2) is to be presented in an advertisement communicated via video, audio, print, over-size print, over-size electronic display, email, or other form of electronic media not otherwise specified. Furthermore, the requirements expressly provide a framework of measurable criteria for the Bureau to be able to determine what constitutes a deceptive advertisement and the disapproval thereof. The proposed regulations ensure information will be unobscured, legibly displayed, and otherwise allow the average observer to view/hear and understand the information communicated. When appropriate, certain categories contain clarifying and descriptive language to assist the reader in determining the specific category that an advertisement falls under. The requirements in each category address various aspects of communication, such as the length of time the information must be presented and/or the size of the text. Some of these requirements were developed based on the review of various existing federal and state laws and regulations related to political advertising disclosures implemented by the Fair Political Practices Commission and the Federal Election Commission. Further, advertising laws and regulations specifically related to gambling implemented by the New Jersey Casino Control Commission, New York State Gaming Commission, and Louisiana Gaming Control Board were also reviewed to develop these requirements. However, due to technological advancements in new ways to advertise using electronic media, we found it necessary to provide more specific requirements for modern advertisements sent via social media, text message, or advertisements displayed on a website or electronic billboard, etc. The amount of information required for disclosure within the proposed provisions was also taken

**DRAFT**

into consideration in the development of these standards. The proposed requirements in paragraphs (f)(1) through (7) are necessary to provide both cardrooms and the Bureau specific points of measurement for each type of advertisement to confirm whether compliance has or has not been met. It ensures the required information is clearly communicated to the recipient and reduces the chances of a licensee from having to remove or modify a noncompliant advertisement upon the Bureau's disapproval.

**Subsection (g)** provides the following factors, which specify what constitutes a deceptive advertisement:

- **Paragraph (g)(1)** clarifies that any advertisement is deceptive if it fails to comply with any of the requirements of this section. This provision is necessary to effect uniform disciplinary actions concerning deceptive advertisements in response to violations of the proposed regulations.
- **Paragraph (g)(2)** provides that any advertisement is deceptive if it promotes gambling as a promise or guarantee to become wealthy. This provision is necessary to address the addictive potential of gambling and to comply with and make specific Business and Professions Code section 19841, subdivision (f), which states that an advertisement that offers gambling as a means to become wealthy is presumptively deceptive.
- **Paragraph (g)(3)** provides that any advertisement is deceptive if it promotes irresponsible or illegal gambling. This provision is necessary to address advertisements that are deceptive because they encourage problem gambling behavior or unauthorized gambling.
- **Paragraph (g)(4)** provides that any advertisement is deceptive if it specifically targets or appeals to children or adolescents and provides some examples in the subparagraphs that follow. This provision is necessary to comply with and make specific Business and Professions Code section 19841, subdivision (f), which states an advertisement that appeals to children or adolescents is presumably deceptive.
  - **Subparagraph (g)(4)(A)** specifies that models and actors appearing in or providing voice-over services for any advertisement must be at least 21 years old<sup>2</sup>. It is a generally accepted view that youth are particularly susceptible to the influence of peers, thus advertisements depicting persons with the appearance of being underage carry a special risk of appealing to youth.
  - **Subparagraph (g)(4)(B)** specifies that any advertisement must not be disseminated on the grounds of any Kindergarten through 12<sup>th</sup> grade school. This provision is adapted from advertising restrictions in other industries to which youth exposure is limited, such as alcohol, cannabis, and tobacco. Such restrictions are beneficial in protecting children and adolescents from age restricted activities by limiting their exposure.
  - **Subparagraph (g)(4)(C)** specifies that a licensee must not intentionally target children or adolescent users of the Internet who are registered or known to be under the age of 21 with gambling advertisements online. Many Internet

---

<sup>2</sup> Note: This provision was adapted from alcohol industry guidelines.

# **DRAFT**

## DESCRIPTION OF PROPOSED REGULATORY ACTION ADVERTISING

advertising services provide age gating technology that can help prevent specific advertisements from being disseminated to underage users.

- **Paragraph (g)(5)** provides that any advertisement is deceptive if it constitutes a false advertisement pursuant to Business and Professions Code section 17508 and 15 U.S.C. 55<sup>3</sup>. This provision is necessary to capture any other form of false advertising not specified by the above criteria in accordance with existing state and federal laws.

**Subsection (h)** provides specific criteria for a licensee that distributes or causes the distribution of any direct advertisement in addition to the other content requirements within this section. If the licensee uses the services of a third-party company to solicit direct advertisements, the licensee must maintain control so that it can pullback or discontinue the advertisement at the Bureau's discretion. Further, at least one reasonable method for a person to opt-out from receiving future direct advertisements is required due to the intrusive nature of the advertisement. The subsection also requires the licensee, at any time prior to the distribution of a direct advertisement, to have used a method of age affirmation or verification to validate the intended recipient is at least 21 years of age or older. The licensee must maintain a record of such intended recipients and the specific method of age affirmation or verification used. Further, it provides that the method of age affirmation or verification may be completed by the intended recipient (self-certified). The requirements for direct advertising have been developed based on incorporating a combination of similar requirements related to regulations governing direct advertising for recreational marijuana/cannabis adopted by the California Bureau of Cannabis Control (CCR, Title 16, Div. 42, Ch. 1, Art. 4, § 5041) and national age restriction standards for direct advertising in the tobacco industry. While the proposed criteria may seem onerous to some, the requirements for direct advertising are appropriate and necessary for soliciting age restricted activities.

### Add Section 12084. Disapproval of Advertising.

Due to previous comments requesting the regulations contain an appeal process for disputing the Bureau's disapproval, it is important to note that there is nothing in the Act that expressly provides the Commission with the ability to conduct appellate hearings on Bureau-issued warning notices. This section does not expand nor diminish the existing authority of the Commission or the Bureau that has already been granted by enabling statute. Staff notes that the Commission may wish to provide some guidance on how a notice of disapproval is to be treated differently (if at all) than a letter of warning.

**Subsection (a)** allows the Bureau to issue a notice of disapproval to a gambling enterprise or TPPPS to correct a deficiency of an advertisement if the Bureau determines it does not conform to the requirements of Article 3 herein. The notice must describe each deficiency and specify a reasonable time in which the deficiency is to be corrected. This provision is necessary to specify

---

<sup>3</sup> **15 U.S.C. 45** defines "false advertisement" to mean advertising which is materially misleading, taking into account not only representations made or suggested by statement, word, design, device, sound, or any combination thereof, but also the extent to which the advertisement fails to reveal material facts relating to consequences from using the item featured in the advertisement.

**DRAFT**

# **DRAFT**

## DESCRIPTION OF PROPOSED REGULATORY ACTION ADVERTISING

a mechanism whereby the Bureau may document and notify a gambling enterprise or TPPPS of its disapproval of an advertisement. Further, it allows the licensee to be notified of exactly what deficiency or deficiencies it must correct within a specified timeframe. Due to the wide variation in types of gambling advertisements, more specific disapproval procedures were left out of the requirements. For example, a deficient website operated by the gambling enterprise or TPPPS may be easily and quickly corrected, while a printed billboard would likely take more time to correct, and a mailer may be impossible to correct. This provision provides the Bureau flexibility in requiring reasonable deadlines for a licensee to correct each deficiency, which is necessary due to the wide range of different types of media and how quickly some may be corrected versus others.

**Subsection (b)** provides that violations of Article 3 may be considered a factor in determining the license suitability of a gambling enterprise or TPPPS at any time, including during the consideration of an approval for an initial or renewal license application, or during a disciplinary action under Chapter 10 of this Division. This provision provides clarity to the reader as it is consistent with and provides reference to the Commission's existing authority.

**Subsection (c)** contains clarifying references, which recognize the Bureau's existing authority to take disciplinary actions against a licensee, including an emergency order.

## **CHAPTER 7. CONDITIONS OF OPERATION FOR GAMBLING ESTABLISHMENTS. ARTICLE 6. PROGRAM FOR RESPONSIBLE GAMBLING.**

### *Amend Section 12461. Posting Referral Information.*

**Subsection (b)** is proposed to be amended to add additional standards for displaying the required written information on websites operated by or for any gambling enterprise, TPPPS, or gambling business, as specified. The language aligns with the standards proposed for written information required in Section 12082. Further, the subsection requires additional information be displayed on each page of a website by adding a third set of posting requirements. For better readability, the requirements have been broken down into a more organized format. The amendments also include other changes that are non-substantive and editorial in nature.

Specifically, the changes are proposed as follows:

- Replace "on behalf of" with "for." The change is necessary because the term "for" may be subject to broader interpretation than "on behalf of." The change ensures all intended websites are subject to the requirements.
- Add more specific requirements, consistent with those provided in Section 12082, for how a website that is operated by or for a gambling enterprise, TPPPS, or gambling business is to display the required information as specified.
- Replace the phrase "and a link" with the phrase "an underlined hyperlink." Hyperlink is the proper term to use and requiring an underline ensures the hyperlink stands out and is formatted appropriately.

**DRAFT**

# ***DRAFT***

## DESCRIPTION OF PROPOSED REGULATORY ACTION ADVERTISING

- Add an additional posting requirement for websites that are operated by or for any gambling enterprise, TPPPS, or gambling business, to require at least one of the following information and referral services for problem gamblers (approved by the Office of Problem Gambling): (1) 1-800-GAMBLER; (2) 800gambler.chat; or (3) Text “SUPPORT” to 53342. The additional requirement was added based on feedback received from the Office of Problem Gambling. The addition is necessary due to the proliferation of mobile smart phones and tablets, which are commonly used to browse webpages on the Internet and communicate with others. Further, the additional requirement provides the public a readily accessible and direct means to get help with a gambling problem via telephone, chat, or text communications, which often times would be more convenient than having to navigate to the Office of Problem Gambling website to obtain the same information.

**Subsection (c)** contains the following proposed changes:

- Add “as defined in Section 12002.” This reference provides clarity to the reader and ensures that all intended types of advertisements and direct advertisements, as defined, are captured.
- Replace “on behalf of” with “for” [similar to subsection (b) above]. The change is necessary because the term “for” may be subject to broader interpretation than “on behalf of.” The change ensures all advertising material related to cardroom gambling is reached by the proposed regulations, regardless of the relationship of an advertising entity with the cardroom.
- Delete “or gambling business.” This change is necessary because, consistent with existing regulation and other proposed changes, a gambling business is prohibited from having a third-party relationship or contract with a cardroom and thus, should not be allowed to create advertising material for any gambling establishment. Referencing the definitions of “advertising and direct advertising” material produced by or for a gambling enterprise or TPPPS clarifies and safeguards that only the intended advertisements and direct advertisements soliciting participation in gambling at a cardroom are subject to the requirements.
- Replace the requirement that advertising and direct advertising material must refer to the telephone and/or website information in subsections (a) and (b) with a requirement that the advertisement or direct advertisement must list at least one of the methods for reaching the problem gambler helpline listed in paragraph (b)(3). The change is necessary because it is more appropriate and effective to require non-web based advertisements (e.g. print, billboard, video, audio, etc.) to contain a method for connecting to the helpline rather than a hyperlink to the Office of Problem Gambling website. Providing a hyperlink to the Office of Problem Gambling in a non-web based advertisement or direct advertisement is not appropriate because website access may not be feasible for the reader at the time of viewing. This proposed change was suggested on behalf of the Office of Problem Gambling.
- Replace language that specifies the types of advertisements the section applies to with “in accordance with Section 12082.” This reference provides clarity and notice to the reader that there are additional requirements within a different section of the regulations.

***DRAFT***

- **Paragraphs (c)(1) and (c)(2)** have been repealed. The requirements have been relocated and expanded upon in Section 12082, which contains specific advertising content standards. As such, any changes to these requirements are discussed within the description text of Section 12082. The changes are necessary to remove redundancy in the regulatory text and to minimize potential confusion for the reader. Placing advertising content requirements and exceptions in one place within the regulations provides clarity and avoids duplication and potential conflicts.

Amend Section 12463. Self-Restriction Program.

- **Paragraph (a)(6)** provides that one of the minimum policies and procedures that a gambling enterprise is required to develop to implement the Self-Restriction Program, must include procedures for an individual to restrict his or her inclusion on customer lists maintained by the licensee. This list is for direct mail marketing, telephone marketing, or other direct marketing. The existing language proposed for amendment pre-dates the proposed definition of “direct advertising.” The proposed change is necessary to make the provision clear and consistent with the proposed definition of “direct advertising” and other requirements.

Amend Section 12464. Self-Exclusion Program.

- **Paragraph (a)(6)** provides that one of the minimum policies and procedures a gambling enterprise must develop to implement the Self-Exclusion Program, must include procedures for excluding an individual from receiving direct mail marketing, telephone marketing, or other direct marketing. The language proposed for amendment pre-dates the proposed definition of “direct advertising.” The proposed change is necessary to make the provision clear and consistent with the proposed definition of “direct advertising” and other requirements.