

CALIFORNIA GAMBLING CONTROL COMMISSION

**DESCRIPTION OF PROPOSED REGULATORY ACTION**

**TRANSACTIONS**

**INTRODUCTION:**

The California Gambling Control Commission (Commission) is proposing regulations that would establish the Commission's requirements for reporting and approving transactions. These regulations would implement various aspects of the Gambling Control Act (Act)<sup>1</sup> and provide guidance to the procedures required to maintain and submit transactions and transaction reports. The proposed regulations would apply the transaction requirements, as appropriate, to gambling enterprises, Third-Party Providers of Proposition Player Services (TPPPS), and gambling businesses.

**BACKGROUND:**

Current regulations require Commission approval for the sale, in whole or in part, of any ownership interest in a TPPPS or gambling business; however, the regulations do not include provisions for the sale, in whole or in part, of a gambling enterprise. Current regulations also do not include security interest enforcement provisions or transaction reporting requirements. Without regulations, monitoring of the transactional activities for these entities is limited to specific requests for documentation, the sale of a TPPPS or gambling business, and the information obtained through an on-site audit by the Bureau of Gambling Control (Bureau). Without regulations, the approval of the sale of a gambling enterprise, TPPPS, or gambling business would be done without regulatory guidance.

Business and Professions Code sections 19900 through 19906<sup>2</sup> authorize the Commission to adopt regulations regarding the approval of transactions and the enforcement of security interests for those who hold a California gambling license. Sections 19878 and 19892 also require prior Commission approval for certain transactions; and, section 19841 authorizes the Commission to adopt regulations for the monitoring and reporting of transactions.

Multiple sections in the Act include terms defined in section 19805 that refer specifically to gambling enterprises. This is because the Act originally addressed only gambling enterprises and not TPPPS until the adoption of section 19984. Nevertheless, the Commission has the implied authority to apply the same transaction requirements for gambling enterprises to TPPPS and gambling businesses. TPPPS and gambling businesses are entities licensed to conduct gambling activities on the premises of a gambling establishment. Section 19984 provides the Commission with the authority necessary to impose disclosure and approval requirements upon TPPPS. Section 19857 provides that no license shall be granted unless the Commission is satisfied with the business and financial arrangements of the applicant; and, section 19870 provides that the Commission shall only grant an application to an applicant qualified to hold a

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<sup>1</sup> Business and Professions Code, Division 8, Chapter 5, Section 19800, *et seq.*

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

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license. Moreover, the Commission also has broad authority over all persons or things having to do with the operations of gambling establishments under section 19811, as well as the ability to regulate any activity related to the conduct of controlled gambling under section 19841. Finally, in section 19801, the Legislature found that public trust and confidence can only be maintained by strict and comprehensive regulation of all persons, practices, associations, and activities related to the operation of gambling establishments.

Therefore, while the requirements of certain provisions of the Act do not specifically mention TPPPS or gambling businesses, the requirement that the business activities of gambling enterprises be regulated, coupled with the statutory authority and legislative intent to regulate the financial activities of all entities involved in gambling activities, provides an authority and necessity to establish transactional requirements for TPPPS and gambling businesses, as well as gambling enterprises.

## **PROBLEM ADDRESSED:**

Section 19878 and sections 19900 through 19906 authorize the Commission to approve transactions and the enforcement of security interests, but provide no formal processes for doing so. Instead, these statutes require that the formal process be established by regulation. There are currently no regulations that provide procedures or guidance for licensees to obtain approval for transactions or for the enforcement of a security interest involving a licensee. Also, section 19841 authorizes the Commission to regulate transaction reporting and maintenance, but there are currently no regulations establishing transaction reporting or maintenance requirements.

## **EXISTING LAW:**

Section 19823, subdivision (a), paragraph (2) provides that the responsibilities of the Commission include, without limitation, assuring that there is no material involvement, directly or indirectly, with a gambling operation by persons whose operations are conducted in a manner inimical to the public health, safety, or welfare.

Section 19824, subdivision (c) provides that the Commission shall have all powers necessary and proper to approve or disapprove transactions, events, and processes as provided in the Act.

Section 19824, subdivision (d) provides that the Commission shall have all powers necessary and proper to take actions deemed to be reasonable to ensure that no ineligible, unqualified, disqualified, or unsuitable persons are associated with controlled gambling activities.

Section 19841, subdivision (d) provides the Commission the authority to adopt regulations that require owner licensees to report and keep records of transactions involving cash or credit.

Section 19841, subdivision (h) provides the Commission the authority to adopt regulations that prescribe minimum procedures for licensees to exercise effective control over their internal fiscal and gambling affairs. This shall include, but not be limited to, the safeguarding of assets and revenues; prescribing the manner in which compensation from games and gross revenues shall

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be computed and reported; and providing reliable records, accounts, and reports to be submitted to the Department.<sup>3</sup>

Section 19841, subdivision (k) provides the Commission the authority to adopt regulations that specify standard forms for reporting financial conditions, results of operations, and other relevant financial information.

Section 19841, subdivision (m) provides the Commission the authority to adopt regulations that prescribe the intervals at which information in subdivision (k) shall be furnished to the Department.

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

Section 19855 provides that every person who is required to hold a state license shall obtain the license prior to engaging in the activity or occupying the position with respect to which the license is required.

Section 19878 provides that an owner licensee must obtain Commission approval prior to entering into any contract or agreement with any person, or any person under the control of another, who has been denied a license, has had a license suspended or revoked by the Commission, or has had an application withdrawn with prejudice. This section also requires Commission approval prior to employing any person in any capacity for which he or she is required to be licensed if the person has been denied a license, or if his or her license has been suspended or revoked.

Section 19892 requires prior Commission approval for the sale, assignment, transfer, pledge, or other disposition of any interest, or the grant of an option to purchase an interest, in a partnership or Limited Liability Company (LLC) that holds a gambling license.

Section 19900 provides the Commission the authority to adopt regulations to establish the procedure for the enforcement of security interests that involve the securities issued by a licensee.

Section 19901 declares unlawful any sale, purchase, lease, hypothecation, borrowing or lending of money, creation of a voting trust agreement, or any other agreement of any sort to, or with, any licensee in connection with a controlled gambling operation, unless performed in accordance with the Commission's regulations.

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<sup>3</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 of fulfilling the obligations imposed upon the department is delegated to the Bureau of Gambling Control, pursuant to Business and Professions Code section 19810.

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Section 19902 provides that a contract to sell or lease any property or interest in property that requires approval or licensing by the Commission shall not specify a closing date that is prior to the Commission granting of approval.

Section 19903 requires a contract for the sale or lease of any property or interest in property which requires approval or licensing of the purchaser or lessee by the Commission to include a provision, acceptable to the Commission, regarding the responsibility for payment, prior to the closing date of the transaction, of any fees due for any deficiency determination.

Section 19904 provides that the Commission must approve, in advance, the disposition of or the granting of an option to purchase a security issued by a corporation that holds a gambling license. Without prior approval by the Commission, the disposition or granting of an option is void.

Section 19905 provides the Commission the authority to regulate the extension or redemption of credit and the documentation to be maintained and submitted as evidence of compliance.

Section 19906 provides that any contract for the sale of a gambling enterprise shall state whether any outstanding gaming chips of the seller will be honored by the purchaser. If the contract does not require the purchaser to honor outstanding chips, this section requires that the contract state what provisions will be made for redemption by patrons of any outstanding chips. This section also requires the Department to determine the amount of the outstanding chip liability, and the seller to satisfy the Commission that the amount of the liability is safeguarded. This section also requires that the seller provide notice to its patrons in order to provide an adequate opportunity for the redemption of any outstanding gaming chips.

Section 19984, subdivision (b) provides the Commission the authority to establish criteria for, and require the licensure or registration of, any person or entity that provides proposition player services at gambling establishments. This subdivision also provided the Commission the authority to impose requirements for disclosures, approvals, conditions, or limitations as it deems necessary to protect the integrity of controlled gambling.

Section 19984, subdivision (c), provides the Department the authority, pursuant to Commission regulations, to perform background checks, financial audits, and other investigatory services as needed to assist the Commission in regulating TPPPS.

## **PURPOSE OF THE PROPOSED REGULATIONS:**

This proposed action has been drafted to establish transaction reporting, review, and approval procedures, as well as procedures for the enforcement of security interests. These regulations provide clear direction by adopting currently established practices and procedures for the review of documentation, and ensure clarity and uniformity.

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

These proposed regulations would have the benefit of providing specific procedures that must be followed when approving transactions and the enforcement of security interests. The proposed regulations would have the benefit of establishing transaction reporting procedures to monitor a licensee's compliance with the Act. These specified procedures would assure the public that only those who have Commission approval would be permitted to conduct business within the gambling industry through consistent review and approval processes, and would provide transparency, clarity, and uniformity in business and government.

## **PROPOSED ACTION:**

This proposed action would make changes within Division 18 of Title 4 of the California Code of Regulations. The proposed changes are as follows:

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.

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

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

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

- Subsection (d) – would add clarity and specificity to the definition of the term "affiliate" found in Business and Professions Code section 19805, subdivision (a). While section 19805 provides a definition for "affiliate," it does not provide sufficient clarity concerning which individuals or entities fall under this definition. The proposed action clarifies the individuals and entities that are required to be identified and reported to the Bureau under various provisions throughout Division 18 relating to contracts and transactions by breaking down the different categories of relationship or control. The amended subsection (d) specifies that "affiliate" includes, but is not limited to, the following:
  - (1) Any person, business, trust, or estate in which the specified person has control or is controlled by, a specified person.
  - (2) A director, officer, general partner, managing member or person in control of any business where the specified person has an ownership interest.
  - (3) A spouse or registered domestic partner of the specified person.
  - (4) A father, mother, or sibling of either a specified person or a specified person's spouse or registered domestic partner, or a child or grandchild of a specified person or the spouse or

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registered domestic partner of a child or sibling of a specified person who resides in the same home as the specified person.

- (5) Any trust or other estate in which a specified person or a specified person's spouse or registered domestic partner is a beneficiary, or serves as a trustee or in a similar fiduciary capacity.
- (6) Any business in which the specified person and that specified person's spouse or registered domestic partner, have a combined ownership interest of 10 percent or more.

It is necessary to identify individuals and entities that are financially closest to parties involved in the contracts, transactions, and other financial dealings of gambling enterprises, TPPPS, and gambling businesses in order to comply with applicable provisions of the Act. For example, the Commission is charged with the responsibility of assuring that there is no material involvement, directly or indirectly, with a gambling operation of persons whose activities are conducted in a manner inimical to the public health, safety, or welfare. To achieve this, the Commission is granted all powers necessary and proper to approve or disapprove transactions, events, and processes as provided in the Act.

Furthermore, section 19984 specifies that a gambling enterprise shall not have any interest in the funds wagered, lost, or won by a TPPPS. While regulations have been adopted to ensure that inappropriate payments are not made, the identification of other affiliated persons is necessary to ensure that inappropriate payments are not being provided through a secondary avenue. In order to establish these secondary relationships, identification of the possible inappropriate recipients of funds is necessary and the section 19805 definition does not provide the specificity necessary.

- The current subsections (d) through and including (x) will be renumbered as (e) through and including (y), accordingly.
- Subsection (z) – The term “specified person” is added. This definition is necessary because while the Act provides a definition of affiliate in subdivision (a) of section 19805, that definition uses the term “specified person.” The definition does not, however, provide any clarification of who a specified person may be. Therefore, this regulation provides the required clarity to the term so that affiliates can be accurately and consistently determined.

A specified person would be identified in relationship to a gambling enterprise, TPPPS, or gambling business based on an ownership interest of at least 10 percent. The definition of specified person is first limited to a consideration of owners of a business based upon the context of the Act. The purpose of the Act is to provide assurance to the public that gambling is safe and free from criminal influence. To accomplish this, individuals apply for and receive licenses, registrations, or some other form of approval. To receive this approval, applicants must undergo background checks. At the highest level are those applicants with direct control over the workings and assets of the business. These individuals can exert

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significant influence over the gambling enterprise; therefore, the State has the highest level of interest in these people and in those who can influence them.

Many business structures do not include a single primary owner, but can include a multitude of individuals and entities, some with very small ownership percentages. Individuals with small ownership interests, even if influenced by others, may not be in a position to actually effectuate any action within the business. Therefore, an exception to ownership is provided to remove individuals without this control, defined as someone with less than 10 percent ownership interest and no other reason for licensure (such as working in the facility). The value of 10 percent interest is consistent with the U.S. Securities and Exchange Commission's idea of beneficial ownership [United States Code, Title 15, Chapter 2B, 78p(a)].

- The current subsections (y) through and including (aa) will be renumbered as (aa) through and including (ac), accordingly.

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

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

#### *Repeal Section 12200.15. Transfers and Sales.*

Section 12200.15 regulates the transfers and sales of an ownership interest, in whole or in part, of a TPPPS. This section would be replaced with similar provisions in Article 3 of Chapter 5, and would therefore be repealed as unnecessarily duplicative.

## **CHAPTER 2.2. GAMBLING BUSINESSES: REGISTRATION; LICENSING.**

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

#### *Repeal Section 12220.15. Transfers and Sales.*

Section 12220.15 regulates the transfers and sales of an ownership interest, in whole or in part, of a Gambling Business. This section would be replaced with similar provisions in Article 3 of Chapter 5, and would therefore be repealed as unnecessarily duplicative.

## **CHAPTER 5. ACCOUNTING AND TRANSACTIONS.**

Chapter 5, Accounting and Transactions organizes and consolidates accounting and transaction provisions for gambling enterprises, TPPPS, and gambling businesses.

### **ARTICLE 1. ACCOUNTING AND FINANCIAL REPORTING.**

This article is renamed to Definitions and General Provisions

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## Amend Section 12311. Definitions.

Section 12311 is amended to include two additional terms used throughout Chapter 5. These definitions are necessary to ensure that the proposed regulations are clear, concise, and easy to understand, and that the meanings of these terms are specific. The following definitions are proposed:

- Amend Paragraph (6) to define licensee as all owner licensees, owners of third-party providers, and owners of gambling businesses. This is a non-substantive change as the intent of Chapter 5 was not to apply to employees of a third-party provider or gambling business. The existing provision could be interpreted to apply to employees and so it is modified to provide clarity.
- Adopt paragraph (7) which would define “security interest” to mean an interest in property that secures the payment or performance of an obligation or a judgment. This term is necessary to provide a clear, consistent reference to this action.
- Adopt paragraph (8) which would define “transaction” to mean any contract, agreement, or other business activity in which goods, services, or monies are exchanged. The use of this term is consistent with the Act, specifically sections 19801, 19805, 19824, 19841, and 19931, to apply even when individual sections of the Act may refer to a contract, agreement, etc. Using one term throughout the regulations is necessary to provide simplicity, clarity, and consistency.

## Amend Section 12312. Record Retention and Maintenance; General Provisions.

This section is renamed Record Retention and Maintenance. This section provides requirements for what records need to be maintained.

- Subsection (a) would require that the records in this section must be maintained for a minimum of seven years. Section 12003 provides general requirements for how records must be maintained, but only requires a minimum of five years. This provision is modified to provide clarification that even though this provision requires seven years, the rest of Section 12003 still applies. As Section 12003 already applies, this change only provides clarity that the difference in time frames does not separate the other requirements. This is a non-substantive, clarifying change.

## **ARTICLE 2. ACCOUNTING AND FINANCIAL REPORTING.**

This new article is created and will include existing Sections 12313, 12315, and 12316. Previously, this chapter only contained provisions related to accounting and financial reporting. With the addition of transaction provisions, this separation provides clarity and allows for more specific referencing. These sections are also amended to be consistent with the general replacement of “shall.”



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## Amend Section 12313. Financial Statements and Reporting Requirements.

This section provides accounting requirements specific to the size of the gambling enterprise, TPPPS company, or gambling business.

- Subsection (a) provides that financial statements covering all financial activities must be prepared for each fiscal year. This provision covers TPPPS companies, gambling businesses, and gambling enterprises. The order these business types are provided is changed to place gambling enterprises first. This change makes the reference to these businesses consistent with other similar references. This is a non-substantive change, without regulatory effect.

## Amend Section 12316. Unclaimed or Abandoned Property.

This section provides that a gambling enterprise must establish policies and procedures regarding unclaimed chips, cash, and cash equivalents. This requirement makes reference to California's Unclaimed Property Law and in doing so uses an abbreviation to reference the Code of Civil Procedure. This shorthand is expanded to include the full name of the code. This is a non-substantive change that provides clarity to the referenced statutes.

## **ARTICLE 3. TRANSACTION REQUIREMENTS.**

### Adopt Section 12320. General Provisions.

This section provides a series of conditions and requirements that apply to a transaction or to the parties of a transaction.

- Subsection (a) would require that any transaction must be evidenced by documentation. This provision is necessary to create a paper trail of business activities for audit purposes and would create a minimum procedure for licensees to exercise effective control over their internal fiscal and gambling affairs in accordance with Business and Professions Code section 19841.
- Subsection (b) would require that gambling enterprises, TPPPS companies, and gambling businesses provide writings and supporting documents to the Bureau, as required by subsection (c) of Section 12003, but additionally to any appropriate law enforcement agencies or federal, state, or local regulators. The gambling industry is a highly regulated industry and it is not the intent of the Commission to hinder any other agency with purview over gambling. Many of the records required to be maintained by the Commission are unique to the specific requirements of the Commission. Transactions and transactional documents are of a more general interest. This requirement is necessary to ensure that Commission regulations support and not hinder those other agencies.

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- Subsection (c) would provide that a transaction is considered consummated the earlier of the contract date, or later specified date, or the date the cash, property, credit, guaranty, benefit, or security is received. This threshold would provide a means to review a licensee's business transactions at a level deemed to be appropriate to balance both the need to regulate transactions for inappropriate activity and minimize the burden upon the licensee.
- Subsection (d) would exempt a written contract between a gambling enterprise and a primary owner of a TPPPS for the purpose of providing proposition player services at a gambling establishment. The process for review and approval of a written contract with a TPPPS can be found in Chapter 2.1, Article 1, Sections 12200.7 through 12200.11.
- Subsection (e) would exempt institutional investors from licensure when they are parties to a transaction requiring approval. Institutional investors are defined in Business and Professions Code section 19805(w), and consist of lending and investment persons otherwise regulated by law. Requiring that these persons obtain another license in order to transact with an individual would be unnecessary and burdensome; and, therefore would unnecessarily limit the licensees' ability to transact with otherwise-regulated persons. Minimizing unnecessary obstructions for a licensee to transact with institutional investors would aid the public health, safety, and welfare by encouraging the licensee to transact with persons licensed and regulated by agencies with the appropriate specialty.
- Subsection (f) would provide that individual patron chip transactions, credit to patrons or patron check cashing are exempt from this article. Covering these transaction types is unnecessary because there are other regulations that require the documentation of chip balances.
- Subsection (g) would provide that no licensee, or any of their affiliates, may enter into, or cause any other person to enter into a contract that would limit providing information to the Bureau, Commission, or any federal, state, or local law enforcement agency. The Commission is required to ensure that the gambling industry is conducted in a manner that does not endanger public health, safety, or welfare. Part of this task is to ensure that only individuals of suitable moral character are involved in the conduct of controlled gambling. In order to make these determinations and when investigating violations, the Commission, along with the Bureau and federal, state, and local law enforcement agencies require information from individuals. Allowing these individuals to engage in transactions that prevent the acquisition of needed information directly undercuts the role of the Commission and endangers the public trust that the gambling industry is conducted in a manner that does not endanger public health, safety, or welfare.
- Subsection (h) would provide that licensees may not structure, or conduct, any transaction in a way that attempts to hide anything or avoid any requirements of any local ordinance or regulation, or any state or federal statute or regulation. The Commission is required to ensure that the gambling industry is conducted in a manner that does not

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endanger public health, safety, or welfare. Part of this task is to ensure that only individuals of suitable moral character are involved in the conduct of controlled gambling. This provision is necessary to ensure that individuals maintain their transactions in a manner intended to be consistent with all legal requirements.

## *Adopt Section 12322. Required Contract Terms or Conditions.*

Section 12322 would set forth specific terms or conditions required to be included, as applicable, in transactions requiring Commission approval. It is necessary to consolidate multiple provisions of the Act and current practice into this section in order to provide clear and simple compliance requirements and to apply the requirements, when appropriate, to TPPPS companies and gambling businesses. These terms are also necessary to not only comply with the Act, but also to ensure that all parties to a transaction connected with controlled gambling are appropriately informed of the responsibilities and regulating authorities for controlled gambling.

- Subsection (a) would require all parties to a transaction to be advised of the Act, the Commission, and the Bureau. This is necessary to inform parties not already involved in controlled gambling of the laws and regulating authorities that control a transaction with a person holding a gambling registration or license.
- Subsection (b) would require that when the Commission has previously required the licensure of a purchaser or lessee of any real property to be approved or licensed, that any transaction to sell or lease the property would have two conditions applied to it.
  - (1) The transaction cannot specify a closing date that is prior to the approval of the transaction. This provision is necessary to ensure that the Commission has the time to review the transaction. As the Commission had previously determined that the owner required a license, the Commission must be provided the time necessary to determine if any new owner requires a license. If the Commission does determine that any new owner requires a license, the transaction's timeline must provide time for the application to be submitted and considered.
  - (2) Any documentation must include a provision, satisfactory to the Commission, that details the payment of any fees that may be due pursuant to any subsequent deficient determination may under the Act. This provision consolidates the requirements of Business and Profession Code section 19903 with the other transaction requirements in order to provide consistency.
- Subsection (c) requires a transaction for the sale of a gambling enterprise to comply with Business and Professions Code section 19906, which will set forth outstanding chip liability. This is necessary to ensure that the transaction contains all requirements of statute by clearly including all requirements in one location.

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- Subsection (d) requires that any proceeds derived from continuing operations during a sale of a gambling enterprise, TPPPS, or gambling business that would be payable to the new owner that is unlicensed must be placed in an escrow account. Business and Professions Code section 19855 provides that a license is required prior to engaging in controlled gambling activity. However, if responsibilities must transfer to the new owner while licensing is still in progress, placing the proceeds in escrow is necessary to allow new owners to eventually receive the income that they are entitled to without violating section 19855.
- Subsection (e) requires that any lease between a gambling entity and the landlord must contain a statement where the landlord acknowledges that he, she, or it is familiar with the requirements of Section 12326(a)(4) and that he, she, or it, will comply with the Act, Commission regulation, and Bureau regulation to the extent the lease may trigger any requirements. This provision is necessary to ensure that any prospective landlord understands that a license may be required and that there may be other additional requirements that need to be met. This avoids a situation where a gambling entity could find itself in a location where it cannot meet the requirements of the Act or regulation.
- Subsection (f) requires that a legend must be included on any document evidencing an ownership interest in a gambling enterprise, TPPPS, or gambling business. Further, it will allow for the legend to be included in the body or attached to the document evidencing the ownership interest. This is necessary to conform to current practice, and this legend summarizes for all parties the need for Commission approval before the certificate changes possession.

## **Option 2A- Broader Approval List with Allowances.**

The specific necessity of options 2 and 2A are discussed in Section 12326.

- Subsection (g) requires that any agreement with a gambling enterprise, TPPPS, or gambling business will be considered to include a provision for its termination by the Commission. The parties agree that should the Commission terminate a contract, no further liability may be incurred, except for outstanding sums owed, either payment or services, from prior to the date of termination. Additionally, the parties agree to indemnify the State of California, the Commission, and the Bureau from any liability relating to the agreement's termination. Finally, any termination is not subject to appeal or evidentiary hearing. This provision is necessary to explain what happens when the Commission terminates a transaction. Without this provision, a party could be left with services rendered (or paid for) but unable to receive their equivalent payment (or service). This would force, in almost every case, the parties to seek judicial remedy to conclude the transaction. Additionally, such a situation could place the Commission in legal jeopardy. By providing these necessary details, the Commission provides a clear path for the conclusion of a terminated contract without any party unfulfilled and with all proper protections.

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## *Adopt Section 12324. Reporting Requirements.*

Section 12324 would establish reporting requirements of licensee transactions to be submitted to the Bureau. This report would be a tool to determine whether each licensee is conducting business in compliance with the regulations, and would aid in audit and enforcement procedures.

- Subsection (a) would require all transactions to be reported annually to the Bureau. Transactions would be reported to the Bureau with their renewal application, or in years where no renewal application would be submitted, 12 months after the last report was submitted. This timeframe most effectively matches the needs of the Bureau and licensee. Currently, the licensee is required to submit fiscal information to the Bureau as part of their renewal application. By expanding that current requirement to include this requirement, the licensee is being required to submit less documentation. If a separate timeframe were created, the licensee would be required to submit a report with the renewal applicant and at some other time. An annual report is necessary so that the Bureau has up to date information when conducting compliance checks during periods not connected to the renewal of an application.
- Subsection (b) would require the report to include a summary of each transaction that is either (1) still in effect at the time of the report, or (2) has an effective date after the date of the last submitted report. Additionally, should there be no applicable transactions a statement to that effect would be provided. This information provides the Bureau with an update from the last report and allows the Bureau to maintain a current picture of the gambling enterprise, TPPPS, or gambling businesses' transactional history.
- Subsection (c) would list the information to be provided in the report for each transaction. These disclosures are necessary to provide basic information to allow the Bureau to monitor activities connected with controlled gambling. Should the Bureau wish to further investigate any of the transactions it already has the authority to request additional information. The requirements of this report are meant to only notice the Bureau of existing transactions and to provide basic information from which they can investigate. The requirements of the report include:
  1. The earliest date any party performed any duties or obligations, or received any compensation.
  2. The names of the parties.
  3. The purpose of the transaction.
  4. A description of any goods or services, rights, powers, privileges, obligations, duties or liabilities that are exchanged or modified as part of the contract.
  5. The total aggregate value associated with the transaction.

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6. Any affiliates other than those who are solely affiliates of the reporting licensee.
  7. The name of any employee of a licensee who is performing services beyond those reasonably related to their position or classification, what services were performed, and any additional earnings from these services.
  8. Any Bureau identification number that may have been previously issued.
  9. This provision provides that if a transaction has already been reported, this new report only needs to include items 2 and 4, above, plus the license number that the transaction was previously reported with and a description of where, in that other report, the transaction can be found. This eliminates the requirement for the licensee to continually report the same information, if, for example, a person owns two businesses or has already submitted the transaction in a previous licensing cycle.
- Subsection (d) would require the Bureau to review the documents submitted under this section for compliance with the Act and any conditions applicable to the licensee. This provision is necessary to provide guidance to the Bureau and licensee on how the documents will be used.
  - Subsection (e) specifies that a bankruptcy filing by a licensee does not relieve that licensee of the reporting requirements in this chapter. This is necessary to provide clarification to the licensee that transaction reporting requirements are still in effect during bankruptcy proceedings and that the Bureau and Commission must be kept informed of any developments.

### Adopt Section 12326. Commission Approval of Transactions.

Section 12326 would establish submittal requirements for transactions requiring Commission approval.

- Subsection (a) would list the transactions that require prior approval by the Commission in accordance with the Act and current practice. Consolidating multiple provisions of the Act and current practice into the paragraphs of this subsection would provide clear and simple compliance requirements and apply the requirements, when appropriate, to TPPPS and gambling businesses. The prior approval of these transactions is necessary to comply with the Act, and to allow the Commission and the Bureau to be aware of and monitor transactions creating obligations with others directly connected with gambling activities. Under this provision the Commission would pre-approve the following:

#### **Option 1 – Limited Approval List Focused on Statutory Requirements**

1. The sale, assignment, transfer, pledge, or other disposition, in whole or in part, of any ownership interest in a gambling enterprise, TPPPS, or gambling business. Business and Professions Code section 19892 requires prior approval for the sale

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of a gambling enterprise that is either an LLC or a partnership, and section 19904 requires prior approval for the sale of a gambling enterprise corporation. These sections currently do not include the sale of sole proprietorships for gambling enterprises, TPPPS or gambling businesses. This provision is necessary to encompass sole proprietorships, TPPPS, and gambling businesses.

2. The sale, assignment, transfer, pledge, or other disposition of an option to purchase any ownership interest in a gambling enterprise, TPPPS companies or gambling business. Business and Professions Code section 19892 provides that the grant of an option to purchase the interest in a partnership or LLC is void unless approved in advance by the Commission. This provision is necessary to encompass gambling enterprise corporations, TPPPS companies and gambling businesses.
3. The transfer of possession, ownership, or title of a security interest. Business and Profession Code section 19900, subdivision (a), provides that three types of security interests cannot be enforced until approved by the Commission. These types of interests are those issued by (1) a corporation, (2) a holding company, or (3) a partnership, limited partnership, or limited liability company, if that company is licensed by the state. This provision is necessary to encompass TPPPS and gambling businesses.
4. The sale or lease of any real property associated with a gambling enterprise, TPPPS company, or gambling business, when the Commission had previously required the owner of the real property to be licensed in accordance with section 19853. This provision is in accordance with Business and Professions Code section 19902 and allows the Commission the opportunity to ensure that any new owner receives licensure prior to the sale of the property, if still appropriate.
5. Any secured or unsecured loan agreement with an individual(s) that includes a right to purchase interest in a new entity to be formed to own a gambling enterprise, TPPPS or gambling business. This is in accordance with Business and Professions Code section 19901 and allows the Commission to ensure that any prospective owners receive any necessary licensure.
6. Any transaction with a person who has been denied a Commission license, had a Commission license suspended or revoked, or has had an application for Commission approval withdrawn with prejudice, in accordance with Business and Professions Code section 19878. This would allow the Commission to monitor transactions with those persons deemed by the Act to be inappropriate to participate directly in gambling activities.
7. For the employment of a person who has been denied a Commission license, has had a Commission license suspended or revoked, or who has had an application

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for Commission approval withdrawn with prejudice, in accordance with subsection (b) of Business and Professions Code section 19878. An exception is allowed if the Commission has previously permitted employment under a work permit issued by a local jurisdiction. This would allow the Commission to monitor the employment of those persons deemed by the Act to be inappropriate to participate directly in gambling activities.

8. When a trust or other estate is created that permits a person to take part in the operation of a gambling enterprise, TPPPS company, or gambling business, or that provides payment to a person from the profits of a gambling enterprise, TPPPS company, or gambling business. This would allow the Commission to ensure that all persons involved or potentially involved in the operation of, or receiving profits from, a gambling enterprise, TPPPS company, or gambling business is properly licensed in accordance with Business and Profession Code section 19850.
9. Any transaction that materially amends or modifies any transaction previously approved by the Commission. This is necessary to ensure that later amendments do no alter or circumvent the Commission’s approval, conditions, or limitations.

## **Option 2 – Broader Approval List**

10. Any transaction between a gambling enterprise, including an owner or affiliate of the gambling enterprise, and a TPPPS company, including an owner or affiliate of a TPPPS company. TPPPS contracts would be exempted from this provision, as the Commission already has regulations pertaining to TPPPS contracts. This provision is necessary to monitor the financial relationships between gambling enterprises and TPPPS companies who do not have a TPPPS contract to ensure that any relationship is unrelated to the providing of proposition player services, as that would necessitate a TPPPS contract.
11. Any transaction that would result in an individual who is not an employee of a gambling enterprise, TPPPS, or gambling business operating in a position that would otherwise require licensure. The Act has established that a gambling enterprise employee is a person “employed in the operation of a gambling enterprise...”<sup>4</sup> This language neither requires the person be employed by the gambling enterprise nor in a gambling establishment. Instead the definition includes specific categories such as “...dealers, floor personnel, surveillance personnel, data-processing personnel, appropriate maintenance personnel, waiters and waitresses, and secretaries...” and then goes on to provide a general category of any “...person whose employment duties require or authorize access to restricted gambling establishment areas.” This allows for a gambling enterprise to contract with other companies for specific services. However, these persons,

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<sup>4</sup> Business and Professions Code section 19805, subdivision (n).



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while not employed directly by the gambling enterprise, are still gambling enterprise employees and require licensure. In order to ensure that the Commission has properly licensed all individuals, transactions of this nature must be approved in advance, otherwise the result could be unlicensed and unsuitable individuals acting in these roles.

12. Any transaction that would restrict or require the sale or purchase of, or create a right of first refusal, of any ownership interest. The Act provides that the Commission is the ultimate decider of who can and cannot conduct controlled gambling in California and therefore need to provide approval on any transactional provision that would alter, limit, or control that authority. Additionally, any persons who could become owners or exert a level of control over the ownership may themselves be required to be licensed and therefore any agreement providing such authority would need to be considered to ensure that if licensure is required, it has been provided prior to the transaction becoming effective.
13. This provision provides an additional list of items based upon their topic. These topics are as follows:
  - (A) Any transaction involving a licensing agreement. In the gambling industry context, a licensing agreement most commonly deals with a specific game being offered. As these types of issues revolve around the operation or conduct of controlled gambling, the Commission has an interest in making sure these agreements are consistent with the requirements of the Act. Additionally, as individuals who own the licensed material may have influence or control over the operations of the gambling entity, the transaction needs to be reviewed to determine if any licensure is necessary.
  - (B) Any transaction involving an intellectual property agreement. In the gambling industry context, an intellectual property agreement most commonly deals with a specific game strategy. As these types of issues revolve around the operation or conduct of controlled gambling, the Commission has an interest in making sure these agreements are consistent with the requirements of the Act. Additionally, as individuals who own the licensed material may have influence or control over the operations of the gambling entity, the transaction needs to be reviewed to determine if any licensure is necessary.
  - (C) Any transaction involving a customer procurement agreement. These agreements involve individuals who are not employees working on the behalf of the gambling entity to find and bring customers to the gambling establishment. These individuals are able to exercise control over some of

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the customers of the gambling entities, including potentially increasing, decreasing, or ending their participation in a specific cardroom (such as encouraging their customers to attend a competitor's business). Due to this potential control, the Commission is responsible to ensure that any individual providing such a service receives a finding of suitability, if warranted, in order to ensure that only suitable people participate in the operation of a controlled game.

- (D) Any transaction involving an operator of a tour, bus, or travel program. These agreements involve individual who are not employees working on the behalf of a gambling entity to find and bring customers to the gambling establishment. These individuals are able to exercise control over some of the customers of the gambling entities, including potentially increasing, decreasing, or ending their participation in a specific cardroom (such as encouraging their customers to attend a competitor's business). Due to this potential control, the Commission is responsible to ensure that any individual providing such a service receives a finding of suitability, if warranted, in order to ensure that only suitable people participate in the operation of a controlled game.
- (E) Any transaction involving a management services agreement. While it is possible that employees contracted through a management services agreement may be placed in positions that would otherwise require licensure [and therefore be subject to paragraph (11) where the necessity of such is discussed] it is possible that management services could be utilized for positions that do not require licensure. In those cases, this provision would independently apply. It is necessary that these additional transactions be reviewed by the Commission to ensure that, even though the positions may not be directly related to the provision of controlled gambling, that the Commission is comfortable with an unlicensed outside entity exercising control. Licensure of the individuals or the business providing services would ensure that no unlicensed and unsuitable individuals are acting in these roles. By requiring the transaction to be approved, it provides the Commission with the opportunity to make this determination before the contract goes into effect.
- (F) Any agreement that allows a person to conduct business on the premises of a gambling enterprise, TPPPS, or gambling business. It is necessary for the Commission to approve these transactions in order to determine the level of access to secure areas or gambling equipment that may be possible, and if sufficient access is granted to warrant licensure to maintain the security of any controlled gambling or other activities. By requiring the transaction to be approved, it provides the Commission with

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the opportunity to make this determination before the contract goes into effect.

(G) Any agreement that contains a confidentiality clause. Similar to the requirements for TPPPS contracts, provided in Section 12200.7(d), this provision would all the Commission to review any confidentiality clause to ensure that no individual is prevented from communicating with or assisting any agency, whether State, Federal, or Local, in any investigation or communication.

(H) Any agreement with a gambling equipment distributor, manufacturer, servicer, or repairer. Individuals in the position to control or alter a gambling device are also in a position to negatively alter the device potentially to jeopardize the security and honesty of the game. By providing for the review of these contracts, the Commission will be able to ensure that only credible businesses and people have access to this critical equipment.

(I) Any transaction involving a non-governmental security business or security provider. While it is possible that an employees contracted through a security services agreement may be placed in positions that would otherwise require licensure [and therefore be subject to paragraph (11) where the necessity of such is discussed] it is possible that security services could be utilized for positions that do not require licensure, such as in a hotel or other real property occupied by the gambling enterprise, TPPPS, or gambling business. In those cases, this provision would independently apply. It is necessary that these additional transactions be reviewed by the Commission to ensure that, even though the positions may not be directly related to the provision of controlled gambling, that the Commission is comfortable with an unlicensed outside entity exercising control. Licensure of the individuals or the business providing services would ensure that no unlicensed and unsuitable individuals are acting in these roles. By requiring the transaction to be approved, it provides the Commission with the opportunity to make this determination before the contract goes into effect.

- Subsection (b) would establish a tier structure for reporting specific transactions to the Bureau. The tiers would be the same for any gambling enterprise, TPPPS, or gambling business. This allows for the Commission to target its reviews to the larger transactions in a transactional category. By separating the category by financial amount by group, the Commission is able to review those transactions that bear a specific weight based upon a licensee's size.

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1. Paragraph (1) provides the transaction thresholds for each tier. The purpose of the thresholds is to review transactions that bear a specific weight based upon a licensee's size. For example a \$50,000 contract is more significant to a \$500,000 business than a \$20 million business. To determine the threshold amounts the concept of beneficial ownership, as discussed in the definition of affiliates, was applied to the existing group categories in Section 12312(b), paragraphs (I) through (IV), inclusive.

Group	Minimum Gross Revenue	Maximum Gross Revenue
Group I	\$ 10,000,000	
Group II	\$ 2,000,000	\$ 9,999,999.99
Group III	\$ 500,000	\$ 1,999,999.99
Group IV		\$ 499,999.99

Applying the 10% threshold to the bottom of the group range produces the values for groups (I) through (III), inclusive, as provided below.

Group	Minimum Gross Revenue	Maximum Gross Revenue	10% Transaction Amount
Group I	\$ 10,000,000		\$ 1,000,000
Group II	\$ 2,000,000	\$ 9,999,999.99	\$ 200,000
Group III	\$ 500,000	\$ 1,999,999.99	\$ 50,000
Group IV		\$ 499,999.99	

As Group IV does not have a minimum value, and includes all gambling enterprises, TPPPS, and gambling businesses that reported gross revenues of less than \$500,000, an appropriate percentage value needed to be separately determined. Comparing the resulting transaction thresholds to the maximum gross revenues of the category provided two different percentages, as shown:

Group	Maximum Gross Revenue	10% Transaction Amount	Transaction Amount Compared to Maximum Gross Revenue
Group II	\$ 9,999,999.99	\$ 200,000	2%
Group III	\$ 1,999,999.99	\$ 50,000	2.5%

As the two groups are not equally distributed, their maximum gross revenue compared to their threshold does not provide equal values. The more conservative of the two values (2%) was selected in order to be inclusive.

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Applying the more conservative of the two values to the maximum threshold of Group IV provides the following final transaction amounts:

Group	Minimum Gross Revenue	Maximum Gross Revenue	10% Transaction Amount
Group I	\$ 10,000,000		\$ 1,000,000
Group II	\$ 2,000,000	\$ 9,999,999.99	\$ 200,000
Group III	\$ 500,000	\$ 1,999,999.99	\$ 50,000
Group IV		\$ 499,999.99	\$ 10,000

2. Paragraph (2) provides the transaction categories to which the transaction threshold would be applied.
  - (A) Any transaction with, or involving, another licensee. This is necessary to ensure relationships between different licensees are not structured in a manner that may put a limitation of a regulation in jeopardy. For example, a gambling business cannot have a contract to provide proposition player services with a gambling enterprise. If a gambling business were to have a transaction with a gambling enterprise or even a TPPPS, it should be reviewed to ensure that this transaction does not attempt to circumvent the existing limitation. Likewise, a TPPPS who has a contract with a gambling enterprise to provide proposition player services is required to submit that contract for approval following the requirements of Article 1 of Chapter 2.1 and is limited to only that contract. However, if a TPPPS doesn't have a TPPPS contract with a gambling enterprise and seeks to have a relationship with a gambling enterprise for some other service, it should have that transaction reviewed to ensure that it does not conflict with TPPPS contract requirements.
  - (B) Any transaction with, or involving, an affiliate of another licensee. This is necessary to ensure relationships between different licensees are not structured in a manner that may put a limitation of a regulation in jeopardy. For example, a gambling business cannot have a contract to provide proposition player services with a gambling enterprise. If there was a relationship between a gambling business and the affiliate of a licensee of a gambling enterprise the transaction should be reviewed to ensure that there is not a circumvention of gambling business restrictions. Likewise, a TPPPS who has a contract with a gambling enterprise to provide proposition player services is required to submit that contract for approval following the requirements of Article 1 of Chapter 2.1 and is limited to only that contract. If there was a relationship between a TPPPS and the affiliate of a licensee of a gambling enterprise the transaction should be reviewed to ensure that there is not a circumvention of TPPPS restrictions.

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- (C) Any transaction involving the forgiveness of a debt or other obligation either owed by, or to, a licensee or the affiliate of a licensee. It is necessary for the forgiveness of a debt or other obligation to be reviewed by the Commission to ensure that nothing is being provided in lieu of existing debt or obligation that could result in a compromise to the offering of controlled gambling.
- (D) Any consulting agreement. It is necessary for these types of contracts to be reviewed to ensure that the costs of services being provided are not disproportionate to the value of services being provided. Additionally, in larger contracts individuals are potentially provided with more access and/or control over the activities of the businesses. For transactions providing a consultant group with enhanced control, the Commission may want to consider any licensure requirements it may wish to require.
- (E) Any agreement with an independent agent or contractor. If a contracted employee is providing services that would otherwise require licensure the transaction would require submittal pursuant to paragraph (11) where the necessity of such is discussed. It is necessary for these types of contracts to be reviewed to ensure that the costs of services being provided are not disproportionate to the value of services being provided. Additionally, in larger contracts individuals are potentially provided with more access and/or control over the activities of the businesses. For transactions providing a contractor with enhanced control, the Commission may want to consider any licensure requirements it may wish to require.
- (F) Any agreement to provide food or beverage services. While food and beverage is a common expense to a gambling enterprise an extreme amount could be disproportionate to the value of the services provided to the business and would necessitate further investigation before going into effect to ensure that nothing inappropriate has been included as part of the agreement.
- (G) Any personal property leasing agreement. Personal property is anything that is not land, which is covered under paragraph (4) of subsection (a). The review of large leasing agreements is necessary to ensure that the amount of the lease is not disproportionate to the value of property being leased at that the transaction is not being used as way to shift money in a manner that is attempting to circumvent some other requirement in regulation, such as a TPPPS contract or to an individual who has been found to be inimical to the public health, welfare, and safety and is therefore prohibited from participating in the offering of controlled gambling.

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- (H) Any transaction involving real property improvements. This would include any type of remodel, improvement or other type to the physical locations used by the gambling enterprise, TPPPS, or gambling business. The review of real property improvements is necessary to ensure that the costs are not disproportionate to the work being done in the transaction in an attempt to circumvent some other requirement in regulation, such as providing money to individuals whose conduct is inimical to the public health, welfare, and safety and is therefore prohibited from participating in the offering of controlled gambling.
- (I) Any transaction with a vendor that is related to the operation of a gambling enterprise, TPPPS, or gambling business and is not otherwise specified in this section. This provides a catch-all to any vendors not already provided for in regulation. This allows the Commission to ensure that costs are not disproportionate to the work being done in the transaction in an attempt to circumvent some other requirement in regulation, such as providing money to individuals whose conduct is inimical to the public health, welfare, and safety and is therefore prohibited from participating in the offering of controlled gambling.

## **Option 2A – Broader Approval List with Allowances**

- Subsection (c) would list the transactions that may become effective prior to review by the Commission, but still require Bureau and Commission review. The approval of these transactions is necessary to allow the Commission and the Bureau to be aware of and monitor transactions creating obligations with others directly connected with gambling activities. This process would work by allowing a transaction to become effective once it has been submitted to the Commission. This review process would work in conjunction with 12322(g), allowing the Commission to terminate a transaction at the conclusion of its review. The transactions that would be allowed to become effective prior to Commission review are:
  - 1. [NOTE: (a)(14)(C)]
  - 2. [NOTE: (a)(14)(D)]
  - 3. [NOTE: (a)(14)(H)]
- Subsection (d) would establish a tier structure for reporting specific transactions to the Bureau. The tier reporting structure is the same as provided in subsection (b). The approval of these transactions is necessary to allow the Commission and the Bureau to be aware of and monitor transactions creating obligations with others directly connected with gambling activities. This process would work by allowing a transaction to become effective once it has been submitted to the Commission. This review process would work

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in conjunction with 12322(g), allowing the Commission to terminate a transaction at the conclusion of its review.

1. Paragraph (1) provides the transaction thresholds for each tier. The purpose of the thresholds is to review transactions that bear a specific weight based upon a licensee's size. The specifics of each group's thresholds are discussed in subsection (b).
3. Paragraph (2) provides the transaction categories to which the transaction threshold would be applied.

(A) [NOTE: (b)(2)(A)]

(B) [NOTE: (b)(2)(F)]

(C) [NOTE: (b)(2)(G)]

(D) [NOTE: (b)(2)(H)]

### Adopt Section 12328. Transactions and License Requirements.

Section 12328 provides the timelines for when a transaction must be submitted and the documentation that is included in a complete application.

- Subsection (a) provides that a transaction must be submitted to the Bureau under the timeline(s) as provided.

#### **Option 1 – Limited Approval List Focused on Statutory Requirements**

1. Paragraph (1) provides that if one or more persons involved in the transaction is not licensed or registered, but will be required to be, the transaction must be submitted in conjunction with any required license application. This provision is necessary to ensure that the Bureau and Commission have everything required to practically act on the transaction. For situations when a license is required, the Commission will be unable to act on a transaction without the license application, so requiring the license application be submitted at the same time provides the most efficient administrative process.

#### **Option 2 – Broader Approval List**

2. Paragraph (2) provides that if all persons involved in the transaction are licensed, or will not require a license, that the transaction request must be submitted at least 150 days prior to the proposed closing date of the transaction. This provision is necessary to provide the Bureau and Commission sufficient time to review the transaction. In situations where licensure is not required a transaction is not



linked to a lengthier licensure application process and so a more streamlined process can be utilized.

**Option 2A – Broader Approval List with Allowances**

3. Paragraph (2) provides the timelines that can be utilized, depending on the type of transaction, when all persons involved in the transaction are licensed or will not require licensure.

(A) [NOTE: see item 2 above]

(B) In situations where the transaction is submitted pursuant to Section 12326, paragraphs (c) or (d), the transaction must be submitted at least concurrently with the proposed closing date of the transaction. This is necessary in order to be consistent with the allowances of these subsections which allow the transactions to be submitted “before any party to the transaction performs his, her, or its duties, obligations...”

- Subsection (b) provides the contents of a complete application.

1. Paragraph (1) incorporates the Transaction Review Request Form, CGCC-0XX. This form provides the basic information that will be needed by the Bureau to review a transaction.

Section 1 of the Transaction Review Request Form requires basic information about the requestor; including, the type of business and all necessary contact and identification information. This information is necessary so that the Commission and Bureau understand who is making the request and how to contact them.

Section 2 of the Transaction Review Request Form requires a brief description of the purpose of the transaction. This information is necessary to assist the Bureau in processing the transaction and provides information that can help with determining any additional information that might be required or if a license could be required by the Commission.

Section 3 of the Transaction Review Request Form provides a space for additional items required as part of a complete application.

- A non-refundable fee of \$1,000, payable to the Bureau. This is necessary to cover the costs of processing and reviewing the transaction approval request.
- An attachment that identifies the names, addresses, and contact numbers of all parties to the transaction. This information is necessary so that the Bureau is able to conduct its review to ensure that no individuals who are

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inimical to the public health, welfare, and safety and whose conduct is therefore prohibited from participating in the offering of controlled gambling do so. Additionally, the Bureau may need to contact specific parties to request additional information as part of its review of the transaction.

- An attachment that identifies if any of the parties are affiliates to any gambling enterprise, TPPPS company, or gambling business. This is necessary so that the Commission and Bureau can properly consider the transaction and its requirements and limitations to other provisions of the Act and regulation.
- If the transaction involves a lender who is not an institutional investor, documents sufficient to show the sources of all money used to fund the loan. This information is necessary to provide the Commission and Bureau information related to anyone involved in providing loans to licensees to ensure unsuitable individuals whose conduct is inimical to the public health, welfare, and safety and is prohibited from participating in the offering of controlled gambling.
- If the transaction includes a party who has been denied a license, or who has had their license suspended or revoked, or who has had an application denied with prejudice, information must be provided related to the party's employment and an explanation of the person's duties and why someone else cannot provide these services. This provision is necessary for the Commission to properly consider whether to allow a party who has previously been denied a license, or who has had their license suspended or revoked, or who has had an application denied with prejudice, to work in controlled gambling.

Section 4 of the Transaction Review Request Form provides a space for the application to be signed. This is necessary as it allows the Bureau to know that the application was submitted by someone who was authorized to do so.

### Adopt Section 12330. Required License or Registration Maintenance.

Section 12330 would require all licenses and registrations to remain current during a sale or ownership transfer, and would allow a former owner to be endorsed on the purchaser's or transferee's license.

- Subsection (a) would require all licenses and registrations to continue to be renewed during the approval period of a transaction. This provision is necessary to ensure that at all times the entity remains licensed or registered, and that a responsible person is licensed or registered during the approval process.

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- Subsection (b) would allow a seller or transferor that maintains a security interest during the sale or transfer to be endorsed on the purchaser's or transferee's license as a security interest holder. This provision is necessary to allow for a smoother transfer of ownership if the security interest must be enforced and the security interest holder is reestablished as an owner.

## Adopt Section 12332. Processing Timeliness for Transaction Requests.

Section 12332 would establish the submission and processing times for a request for formal approval of a transaction.

- Subsection (a) would set forth the processing timelines for a transaction formal approval request.
  - Paragraph (1) would provide that the Bureau must notify the licensee in writing within ten days after the receipt of the request of any deficiencies in the request and what is needed to correct them. This process is consistent with other approval processes, and is necessary to allow the licensee an opportunity to correct any deficiencies in order to maintain an efficient and timely process for both the licensee and the Bureau.
  - (A) Paragraph (2) would provide that if the licensee does not respond to any request by the Bureau to cure deficiencies within 30 days, the Bureau may deem the request abandoned. This process is consistent with other approval processes, and is necessary to allow the Bureau to manage its workload by being able to abandon a request if the licensee is unresponsive. The provision also provides the necessary guidance that allows the licensee to resubmit the transaction as a new request.
  - (B) Paragraph (3) would provide that within 45 days of receiving a complete request, the Bureau must provide the transaction to the Commission for consideration. Additionally, the Bureau may provide a recommendation on the transaction and report whether any licensure, registration, or finding of suitability may be necessary. Upon the submission of its report to the Commission, the Bureau must notify the licensee of any recommendations to the Commission. This provision is necessary to provide a concrete review timeline to the process. Additionally, as the review of a transaction is a request for approval, notification by the Bureau to the licensee of any recommendation is required in order to ensure there are no *ex parte* communications.
  - Paragraph (4) would allow the Bureau to request further information. Additionally, any time taken on the part of the applicant in submitting the requested information does not count towards the 45-day timeline of the Bureau. This is necessary to provide the ability to gather whatever information they may require to complete their review of the transaction request. Additionally, the pause in the Bureau's review period provides a fixed time period that is known and understood by both the

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applicant and Bureau. Finally, should the applicant fail to promptly reply to the Bureau's request, the request can be abandoned pursuant to paragraph (2).

- Subsection (b) provides the Commission's review timeline.
  - Paragraph (1) provides that once the Commission has received the Bureau's transaction review, the Commission will have 60 days to schedule the transaction for review at a non-evidentiary hearing meeting. Additionally, the Commission may notify the applicant, in writing, that additional time is needed. This is necessary to keep the timeline within the 150 days provided for in Section 12328(a)(2).
  - Paragraph (2) provides some of the possible results of the Commission's consideration of the transaction request. Some of the possible options include:
    - (A) Approval of the transaction. This is provided in the regulation to include one of the more common and beneficial outcomes.
    - (B) Disapproval of the transaction. This is provided in the regulation to include one of the more common and least beneficial outcomes.
    - (C) Requesting additional information from either the Bureau or applicant. While the Bureau conducts the review of the transaction, it is the Commission's responsibility to ultimately approve or disapprove a transaction. If the Bureau's review does not include specific information that the Commission may feel is necessary to make a decision, it must be able to request that information.
    - (D) Determining that an unlicensed party to the transaction requires licensure, or a currently licensed party requires an additional licensure. In these cases, the Commission may set aside making a final decision on a transaction until such time as the required license application has been acted upon. This provision is necessary to make clear that the Commission need not approve a transaction that will require licensure prior to the licensure being considered. It is the Commission's responsibility to preserve the public health, safety, and welfare and to ensure that no unsuitable individuals participate in the offering of controlled gambling. Therefore, should the Commission determine that a transactional relationship requires licensure of a party, the party's suitability must be fully resolved prior to the party being placed into the position that requires licensure.

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## **CHAPTER 10. DISCIPLINE, HEARINGS, AND DECISIONS.**

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

Subsection (b) provides a discipline structure for TPPPS owners. The minimum discipline of this subsection is a suspension of five days, with a maximum punishment of revocation. The requirement is modified to replace the word “must” with “will.” This is a non-substantive change without regulatory effect. Additionally, this provision is amended to include the requirements of Chapter 5 as new paragraph (23). This provision is necessary to detail the possible disciplinary action for violation of the transaction provisions.

### *Amend Section 12562. Disciplinary Guidelines for Gambling Business Licensees or Registrants.*

Subsection (b) provides a discipline structure for gambling business owners. The minimum discipline of this subsection is a monetary penalty of \$2,500 and/or suspension of five days, with a maximum punishment of revocation. This provision is amended to include the requirements of Chapter 5 as new paragraph (15). This provision is necessary to detail the possible disciplinary action for violation of the transaction provisions.

### *Amend Section 12566. Disciplinary Guidelines for Gambling Establishments.*

Subsection (c) provides a discipline structure for gambling enterprise owners. The minimum discipline of this subsection is a suspension of five days, with a maximum punishment of revocation. This provision is amended to include the requirements of Chapter 5 as new paragraph (18). This provision is necessary to detail the possible disciplinary action for violation of the transaction provisions.