

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 activities. 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 (cardrooms), as determined by the Bureau of Gambling Control (Bureau)¹. 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 gambling-related advertisements and direct advertisements produced by or for any owner of 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 a deceptive advertisement that solicits participation in controlled gambling at a cardroom and procedures for notifying the responsible parties. Further, the proposed regulations contain mechanisms for enforcement concerning a failure to correct a deceptive advertisement.

EXISTING LAW:

Title 15, United States Code, Section 55 – Definition of “False Advertisement”

15 U.S.C. 55 defines “false advertisement” to mean advertising which is materially misleading, taking into account not only representations made or suggested by a 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.

Business and Professions Code section 17500 – Untrue or Misleading Advertising Statements

Business and Professions Code section 17500 provides that it is unlawful to make any statement (for advertising purposes) which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading.

Business and Professions Code section 17508 – False or Misleading Advertising Claims

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

¹ 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.

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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.”

Gambling Control Act

The Commission has broad authority under the Act to adopt regulations for the administration and enforcement of the 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

Title 4, CCR, 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.

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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 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.

Title 11, California Code of Regulations

Title 11, CCR, Section 2072, subsection (e), requires that each licensed gambling establishment submit a biannual report to the Bureau which includes, among other things, copies or transcripts of all advertisements within the prior six months used to promote a gaming activity offered at a gambling establishment.

PROBLEMS ADDRESSED:

As previously stated, Business and Professions Code section 19841, subdivision (f), requires the Commission to adopt regulations that provide for the disapproval of advertising by licensed gambling establishments that is determined by the Bureau to be deceptive to the public. To date, the Commission has found numerous examples of current advertisements that do not contain a responsible gambling message or information and referral services for problem gamblers—which violates existing regulations. Further, the existing regulations do not specify how the information must be presented. As a result, some advertisements deliver the information in an unclear and inconspicuous manner, which makes it difficult if not impossible for the public to understand and comprehend.

Section 19841, subdivision (f), also states that advertisements that appeal to children or adolescents are presumptively deceptive. The Commission is aware of current industry practices for many cardrooms to sponsor youth functions, such as Little League sports teams. This includes placing the cardroom's name and/or logo on the children's uniforms. While these sponsorships may be well-intended to show support of the local community, they inappropriately sanction advertising to minors, which the statute clearly seeks to prevent.

Some advertisements reviewed by the Commission contain untrue or misleading statements such as "Nevada style" or "Vegas style" in reference to the games offered at a cardroom. Others have been found to advertise games by using a different name other than the name that a game has been approved under. These types of statements can mislead the public into thinking that a cardroom offers house banked games which are prohibited from being offered at a gambling establishment.

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Currently, there is no regulatory framework established to provide for the Bureau's disapproval of an advertisement that it determines is deceptive to the public. The Bureau has no basis or procedures to utilize in making consistent determinations for purposes of enforcement, which this regulatory proposal seeks to establish. Furthermore, owners of a gambling enterprise or TPPPS have little guidance and requirements to refer to in the creation and dissemination of an advertisement other than industry best practices and general state and federal laws.

ANTICIPATED BENEFITS OF THE PROPOSED REGULATIONS:

The proposed regulations will establish necessary criteria for the Bureau to use in determining if an advertisement is deceptive and provide the cardroom industry guidance via requirements and standards (including specific safe harbors and prohibited statements) concerning the content, dissemination, and control of an advertisement. Further, this proposal provides additional protection to the more impressionable youth by explicitly prohibiting advertisements from being displayed, broadcasted, or disseminated on the premises of any K-12 school or at any function primarily held for youth participation. The requirements are intended to dissuade and reduce dissemination of gambling advertisements that are determined to be deceptive to the public, including those that inappropriately appeal to children or adolescents, offer gambling as a means of becoming wealthy, or contain false or misleading claims, or untrue or misleading statements. The proposal provides the Bureau procedures for notifying gambling enterprise and TPPPS owners if it determines that an advertisement is deceptive and specifies the potential disciplinary actions that may be exercised as a result of a failure to correct a deceptive advertisement. Implementing these proposed regulations will fulfill the Commission's statutory mandate, help better protect the health, safety, and general welfare of the public, and ensure integrity is maintained with regard to cardroom advertising.

CONSISTENCY WITH EXTERNAL GAMBLING REGULATIONS:

Business and Professions Code section 19841, subdivision (f), requires that the proposed advertising regulations be "consistent with" (not identical to) the advertising regulations adopted by CHRB and the Lottery. While the Lottery has not adopted any advertising regulations, CHRB has several regulations related to advertising. However, many of CHRB's advertising regulations are inapplicable to advertising a controlled game or gaming activity, such as the requirements prohibiting the use of symbols or markings on uniforms and prohibiting the use of a stable name registration for advertising purposes (Title 4, CCR, Div, 4, Art. 12).

California Horse Racing Board

The proposed regulations are consistent with those regulations adopted by CHRB, and specifically 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

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12082(c)(2)(A) provides that advertisements must include a “statement that participants must be 21 or older to gamble.”

- *Problem Gambling.* The Commission’s proposed regulations are consistent with the regulations adopted by the CHRB in that they both require advertisements to contain contact information for problem gambling support. CHRB regulations in Title 4, CCR, Sections 2066(d), 2071(h), and 2072(h), require that all advertisements must “contain contact information for a recognized problem-gambling support organization.” Similarly, the proposed language in Section 12082(c)(2)(B) requires that all advertisements include a responsible gambling message and a reference to one of the help services for problem gamblers approved by the Office of Problem Gambling.

California State Lottery Commission

The Lottery has not adopted any regulations which would relate to the Commission’s proposed regulations that provide for the disapproval of advertising. A majority of the Lottery’s requirements pertaining to advertising are located within statute and not regulation. For example, Government Code section 8880.24, 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.

Notably, 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 requirement is similar in nature to the Commission’s existing and proposed regulations in Sections 12082 and 12461.

PROPOSED ACTION:

General Notes

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 changes are non-substantive and clarifying in nature.

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.

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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. These terms are necessary to define for purposes of applicability of the proposed regulations. Additionally, one existing definition currently located in Chapter 7 is proposed to be relocated to this section. 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” with the following components:

- The definition encompasses “any statement, illustration, or depiction concerning the conduct of or participation in a controlled game or gaming 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 regulatory clarity regarding the various mediums over which an advertisement may be disseminated. Again, as the various mediums for advertising are broad, 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 an advertisement “that is disseminated to the public.” This language is added so that the requirements do not apply to advertisements under development or in draft form which have not yet been released to the public, such as instances where draft advertisements may be displayed in the back office of a gambling establishment for review by employees.
- The definition specifies that it only applies to an advertisement “over which a licensee, as specified in Business and Professions Code section 19851, or an owner, as defined in Section 12200 (Title 4, CCR), has or reasonably should have control.” The language protects gambling enterprise and TPPPS owners from being held responsible for a deceptive advertisement placed without their consent or knowledge. It also addresses situations where a cardroom may intentionally avoid having control over an advertisement to bypass the regulations.

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Further, including an owner of a TPPPS within the language is necessary to prevent the advertising requirements from being side-stepped via a potential loophole if a TPPPS were to provide advertising services for a cardroom. 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 regulations in Chapter 2.1), could, outside of the control of a gambling enterprise, disseminate a deceptive advertisement for a cardroom in which it operates to increase business (either known or unbeknownst to the gambling enterprise). Including the reference to an owner of a TPPPS within the definition will assist in the compliance and enforcement of the proposed regulations.

It is important to note, the language “licensee, as specified in Business and Professions Code section 19851” is used throughout the regulations to include any owner of a gambling enterprise, including endorsed owners. Likewise, the language “owner, as defined in Section 12200” is used to include any owner of a TPPPS, including any funding source or individual specified in Business and Professions Code section 19852, subdivisions (a) through (i).

- The proposed language “for the purpose of soliciting participation in a controlled game or gaming activity” ensures that the regulations are specific enough to target only advertising materials intended to encourage or promote participation in 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 additional clarity and specificity to the definition of an advertisement by expressly providing what does not constitute an advertisement and ensures the regulations do not exceed the authority provided by enabling legislation. The proposed advertising requirements are not to apply to the following:
 - **Subparagraph (b)(1)(A).** *The solicitation of activities, events, or services that are not related to the conduct of or participation in a controlled game or gaming activity and may otherwise be provided on the licensed premises including, but not limited to: restaurant dining, concerts, trade shows, business conferences, and non-gambling related promotions and contests.* The term “licensed premises” has the same meaning as “gambling establishment” pursuant to the definition provided in Business and Professions Code section 19805, subdivision (o). These terms are used to describe one or more rooms where any controlled gambling or activity directly related thereto occurs (as specified). The 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.
 - **Subparagraph (b)(1)(B).** *Business signage located in, on the exterior of, or adjacent to the licensed premises, which solely identifies the name, nickname,*

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alias, or any other name by which the gambling establishment is commonly known, including its logo or trademark. This provision provides that business signage used to identify a cardroom's place of business that is located in specified areas is not subject to the requirements applicable to advertisements. The language allows for the unrestricted use of signage space at a local strip mall or shopping center in which the cardroom is located and allows business signage to be displayed on the interior/exterior of the cardroom and prevents the regulations from being overly restrictive.

- **Subparagraph (b)(1)(C).** *A business listing that is published for informational or contact purposes only.* This provision exempts from the requirements for advertisements, business listings that include the name, logo, trademark, and contact information of a cardroom that may be provided in an informational publication. This information is often published in hotel directories, phone book directories, chamber of commerce directories, business directories, etc., without the knowledge or control of the business. Holding a licensee or owner (as specified) responsible for these types of listings would be inappropriate and beyond the scope of enabling legislation.
- **Subparagraph (b)(1)(D).** *The distribution of informational material that is not targeted at persons under 21 years of age for purposes of recognizing a donation, gift, or charitable contribution. The information provided may include the name, logo, and trademark of a gambling establishment and may be provided in informational material including, but not limited to, a program pamphlet or informational handout for an event, a posting on a charitable organization's website, etc.* This provision exempts materials that may recognize a gambling establishment for its donation, gift, or charitable contribution so long as the material does not target persons under 21 years of age. It would be inappropriate to apply the advertising requirements to materials such as a non-gaming related event handout or program pamphlet.
- **Subparagraph (b)(1)(E).** *Any job postings for employment opportunities.* This provision provides a commonsense clarification that job postings for employment would not be subject to the requirements for advertisements.
- **Subparagraph (b)(1)(F).** *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 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.

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- **Paragraph (b)(2)** clarifies that anything meeting the definition of an advertisement that is included with or attached to the items exempted in paragraph (b)(1) above, must comply with Article 3. The Commission has found several examples of business signage located on the exterior of a cardroom that also contains advertisements for games and gaming activities offered at the cardroom. The format of these advertisements are typically appended to the business signage and have been found in the form of static signs, digital billboards, and scrolling marquees that advertise various games and gaming activities. Many of these advertisements use misleading names of the games that a cardroom is allowed to offer (Bureau-approved games) or advertise phrases such as “Vegas style” or Nevada style.” The proposed provision ensures that an advertisement is not able to side-step the requirements when appended to items such as business signage, business listings, job postings, etc.

Subsection (m) defines the advertising category of “direct advertisement” or “direct advertising” as advertisements that are disseminated directly to a specific individual or household in person, via physical mail, or electronic means, for the purpose of soliciting participation in a controlled game or gaming activity. It identifies some examples of the various ways an advertisement could be directly disseminated including social media posts. 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 and target specific individuals under the age of 21.

Subsection (t) is added to include the definition for “gaming activity.” This definition is currently located in subsection 12360(f), applying only to Chapter 7 where the term is primarily used. However, the term is also referenced in subparagraph 12312(c)(4) of Chapter 5. As part of the proposed regulations, the term is being moved to Chapter 1 to apply to all chapters so that all uses of the term utilize the same definition.

CHAPTER 1. GENERAL PROVISIONS.

ARTICLE 3: ADVERTISING

Add Section 12080. General Requirements

Section 12080 specifies general requirements and responsibilities pertaining to the creation, purchase, placement, or dissemination of gambling advertisements.

Subsection (a) sets forth general obligations and responsibilities of a licensee, as specified in Business and Professions Code section 19851, and an owner, as defined in Section 12200 with respect to all advertisements and direct advertisements.

Specifically:

- **Paragraph (a)(1)** clarifies that all requirements within this article are mandatory, not optional.

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- **Paragraph (a)(2)** specifies that a licensee, as specified in Business and Professions Code section 19851, and an owner, as defined in Section 12200, is responsible for any advertisement, over which it has or reasonably should have control (whether contractual or otherwise), that is created, purchased, placed, or disseminated by or for it. This provision is necessary to clarify that the licensee or owner (as specified) may be subject to disciplinary consequences in the event that an advertisement fails to meet the requirements. The provision holds the appropriate licensed party responsible for the advertisement, even if they utilize the services of a third-party advertising entity or distribution service to create and/or disseminate the advertisement. The language “or reasonably should have control” addresses situations where a cardroom may intentionally avoid having control over an advertisement to bypass the regulations.

Subsection (b) contains specific requirements exclusive to a primary owner of a TPPPS.

Specifically:

- **Paragraph (b)(1).** Business and Professions Code section 19984 provides that a licensed gambling enterprise may contract with a TPPPS. Current regulations require that all financial arrangements between a gambling enterprise and a primary owner of a TPPPS, including advertising, must be disclosed in a Bureau-approved proposition player contract. This paragraph clarifies that in order for the gambling enterprise and primary owner of a TPPPS to comply with existing Commission regulations, a primary owner of a TPPPS is barred from advertising for a gambling enterprise unless the advertisement costs are included in the proposition player contract.
- **Paragraph (b)(2)** requires the primary owner of a TPPPS to provide copies to the gambling enterprise of all advertisements used to promote a gaming activity that the TPPPS has, or has caused to be, created, purchased, placed, or disseminated for the gambling enterprise. The phrase “or has caused to be” ensures that advertisements the TPPPS has caused to be created, purchased, placed, or disseminated through the services of a third-party advertising company are also subject to the requirements. This provision is necessary to remain consistent with an existing Bureau regulation in Title 11, CCR, Section 2072(e), which requires each licensed gambling establishment to submit a biannual report to the Bureau that includes copies or transcripts of all advertisements used to promote a gaming activity in the prior six months. Without this requirement, a gambling enterprise may unknowingly omit a gaming activity advertisement, which was under the control of a TPPPS, from its biannual report.

Add Section 12082. Advertising Content and Dissemination.

This section establishes content and dissemination requirements for gambling advertisements. The section is also necessary to provide the Bureau with criteria to reference in justifying its determination to disapprove an advertisement that is deceptive to the public. While the First Amendment provides protection for commercial speech, it does not protect the expression of deceptive speech.

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Subsection (a) provides general criteria applicable to presenting the required information in all advertisements and ensures that the required information is legible and readable or audible and intelligible, as determined by the Bureau. Specifying the required information must be presented in a clear and conspicuous manner is necessary to provide guidance to the regulated community as well as protect the health, safety, and welfare of the public from deceptive advertisements so that the public has adequate notice. This requirement is intentionally broad and references the Bureau's discretion to stay within the parameters of enabling legislation and avoid infringing on commercial speech rights.

Subsection (b) specifies that certain portions of the information required to be presented in an advertisement are in the same language as all of the languages used in the advertisement. Specifically, only the statement that participants must be 21 or older to gamble and the problem gambling statement are required to be presented in all used languages. Conversely, requiring the contact information for problem gambler referral services in a language other than English is unnecessary and would likely lead to confusion when trying to navigate to those provided services. This provision is necessary because many gambling advertisements use languages other than or in addition to English, with the purpose of targeting groups of people who know or speak in languages other than English. For their own health, welfare, and protection, these individuals should be presented with the required information in a language they fully understand.

Subsection (c) sets forth the following specific content requirements for all advertisements:

- **Paragraph (c)(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 party responsible for the advertisement 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 owner(s) and/or issue a letter of warning.
- **Paragraph (c)(2)** was broken out separately from paragraph (c)(1) because the information required by this paragraph contains language that is subject to an exception for small tangible items.
 - **Subparagraph (c)(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 requirements in Business and Professions Code section 19921. Further, the provision is necessary to reduce the likelihood of an individual under 21 from being deceived into thinking they may legally participate in a controlled game or gaming activity at a cardroom.
 - **Subparagraph (c)(2)(B)** references the requirements of paragraphs 12461(b)(1) and (3) that provides advertisements must contain a responsible gambling message and reference one of the information and referral services approved by

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the Office of Problem Gambling (or its successor). This existing advertising requirement was previously located in 12461(c). The provision provides clarity by ensuring all requirements related to cardroom advertising are included or referenced within the same section.

- **Subparagraph (c)(2)(C)** provides three approved ways to reference games within an advertisement. The game advertised must be referred to in accordance with one of the three clauses discussed below. These clauses have been written to provide flexibility in the language used to advertise a game while preventing the use of untrue or misleading statements and false or misleading claims.
 - **Clauses (i) and (ii)** contain requirements for referencing Bureau-approved games within advertisements. The provision requires that when an advertisement references a game, the name of the Bureau-approved game or Bureau-approved alternative game name must be included. The Penal Code provides limitations on the types of games that can be played and the Bureau must approve any game before it can be offered for play in a cardroom. While this provision also provides additional flexibility by allowing for the potential use of alternative game names in the future, a policy and process for approval would first need to be established by the Bureau before alternative game names could be allowed. If this were implemented, the Bureau would likely need to establish limits on the number of alternative game names that would be allowed.
 - **Clause (iii)** contains requirements that allow an advertisement to refer to a game or group of games using any name if certain safe harbor statements are included. This section also allows for the Bureau to publish additional safe harbor statements at its discretion. These safe harbor statements make it clear to the public that the types of games advertised and offered are distinguished from games that may not lawfully be offered at California cardrooms.
- **Subparagraph (c)(2)(D)** provides two options for referencing gaming activities within an advertisement. The gaming activity advertised must be referred to in accordance with one of the two clauses discussed below. These clauses have been written to afford flexibility in the requirements, while providing the public a way to identify the gaming activity and contact the cardroom or the Bureau to obtain the approved rules.
 - **Clause (i)** requires the use of the Bureau-approved gaming activity name. The approved gaming activity name can be used to obtain the approved gaming activity rules from the Bureau or the cardroom.

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- **Clause (ii)** provides that any gaming activity name may be used if the Bureau-approved identification number is provided with it. This clause is consistent with the Bureau’s current policy for advertising gaming activities. The identification number can be used to obtain the approved gaming activity rules from the Bureau or the cardroom.

Subsection (d) contains express language that provides the requirements of paragraph (c)(2) do not apply to any small tangible items upon which the information would be impracticable to print, display, or present, including, but not limited to: 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 (c)(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 (e) states that an advertisement must not be deceptive to the public and specifies what constitutes a deceptive advertisement subject to the Bureau’s determination. This subsection provides gambling enterprise and TPPPS owners a set of guidelines of what to avoid in the creation of an advertisement.

- **Paragraph (e)(1)** provides that any advertisement is deceptive if it depicts gambling as a means to become wealthy or resolve a financial burden. This provision addresses the language in 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 (e)(2)** 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 specify Business and Professions Code section 19841, subdivision (f), which states an advertisement that appeals to children or adolescents is presumably deceptive.
 - **Subparagraph (e)(2)(A)** specifies that an advertisement is deceptive if the model(s) or actor(s) appearing in or providing voice-over services for any advertisement are less than 21 years old ². It is a generally accepted view that youth are particularly susceptible to the influence of peers. Advertisements that use models or actors under 21 carry a special risk of appealing to youth.

² Note: This provision was adapted from alcohol industry guidelines.

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- **Subparagraph (e)(2)(B)** specifies that an advertisement is deceptive if it depicts a child or portrays specified items that appeal to persons less than 21. The language “appeal to persons less than 21” is further clarified to mean that which has special attractiveness to persons less than 21 beyond the general attractiveness it has for persons 21 years of age or older.
- **Subparagraph (e)(2)(C)** specifies that any advertisement must not be disseminated on the premises of any day care center, youth center, preschool, or kindergarten through 12th grade school or related function thereto, or at any function that is being primarily held for persons under 21 years old. This regulation is necessary because advertisements disseminated at youth functions must be prohibited due to the vulnerability of the impressionable youth and to meet the legislative intent to protect children and adolescents. The provision also highlights the exception in Section 12002(b)(1)(D) to clarify that the inclusion of certain information to indicate a donation, gift, or charitable contribution is allowed (as specified).
- **Paragraph (e)(3)**, consistent with Business and Professions Code section 17500, provides that any advertisement is deceptive if it makes any untrue or misleading statement as determined by the Bureau. The provision also provides specific examples of common statements that have been used in cardroom advertisements, which are misleading. Untrue or misleading statements are not constitutionally protected speech. If a statement is untrue or misleading it does not receive any first amendment commercial speech protections. The terms “Casino style,” “Nevada Style,” and “Vegas style” are misleading because, pursuant to the California Constitution and the Penal Code, cardrooms are prohibited from offering banking or percentage games like casinos of the type currently operating in Nevada and New Jersey. By utilizing some of the pertinent language used in Section 17500 and providing specific examples, this provision provides the licensee additional guidance in the development of an advertisement and gives the Bureau specific criteria to cite if it disapproves of an advertisement. The language intentionally avoids referencing Section 17500 because our regulations are only intended to allow the Bureau to disapprove of deceptive advertising upon its determination, and by extension, allow the Commission to consider the use of deceptive advertising in its suitability determinations or in a disciplinary action against a licensee. Directly referencing Section 17500 in the regulations would inappropriately take away the Bureau’s discretion and require a misdemeanor conviction of any party found in violation of the statute.
- **Paragraph (e)(4)**, in alignment with Business and Professions Code section 17508, provides that an advertisement is deceptive if it makes any false or misleading claim as determined by the Bureau. False or misleading claims are not constitutionally protected speech. If a claim is false or misleading it does not receive any first amendment commercial speech protections. By utilizing some of the pertinent language found in Section 17508, rather than directly referencing the section, the provision maintains the

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Bureau's discretion concerning its disapproval and avoids creating any implication of civil liabilities resulting from a violation of the statute. Avoiding the statutory reference keeps the regulations specific to the administrative and licensing process and prevents unintentionally supporting potential civil lawsuits.

- **Paragraph (e)(5)** provides that an advertisement is deceptive if the Bureau determines that the advertisement depicts, illustrates, portrays, or references an illegal game as specified in existing law. The provision provides the Bureau necessary discretion and flexibility to make such a determination, especially for advertisements that may not explicitly advertise the name of an illegal game but may imply such a game is offered at a cardroom through the use of illustrations or pictures.

Subsection (f) provides specific criteria for a licensee, as specified in Business and Professions Code section 19851, or owner, as defined in Section 12200, concerning the dissemination of a direct advertisement in addition to the other advertising requirements within this section.

- **Paragraph (f)(1)** requires that the licensee or owner (as specified) has a reasonable degree of control over the content of any direct advertisement. This is necessary to hold the responsible parties accountable for the content of the advertisement under all circumstances, including the use of services that may be provided by a third-party advertisement distributor.
- **Paragraph (f)(2)** requires that the direct advertisement must provide at least one reasonable method for a person to opt-out from receiving future direct advertisements in a clear and conspicuous manner and in all of the languages used in the advertisement. This provision is consistent with the language requirements proposed in subsection (b). The requirement is necessary to ensure that all groups of individuals an advertisement is directed at or designed to appeal to understand how they may opt-out of receiving future unwanted gambling advertisements and is consistent with the existing Self-Restriction and Self-Exclusion requirements. The requirement is also necessary to protect the health, safety, and welfare of individuals with problem gambling disorders who are at risk.
- **Paragraph (f)(3)** provides the following requirements applicable to direct advertisements that are directly disseminated by a licensee or owner: (1) prohibits those entities from deliberately sending a direct advertisement to a person whom they know is under the age of 21, and (2) requires those entities to have the ability to discontinue further dissemination of the direct advertisement. Again, this requirement is necessary to protect the health, safety, and welfare of individuals under the age of 21 and those with problem gambling disorders who are at risk.
- **Paragraph (f)(4)** requires that if the licensee or owner uses a third-party direct advertisement distributor to disseminate an advertisement, it must instruct the distributor to not disseminate the advertisement to individuals known by the distributor to be less

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than 21. A record of the instruction is required to be retained to show proof that the instruction was provided in the event that the Bureau requests it. The provision further provides examples of what could be considered a third-party direct advertisement distributor. This section is necessary to regulate the dissemination of direct advertisements that are distributed by utilizing the services of a third-party distributor via social media, email, physical mail, etc., for a gambling enterprise or TPPPS owner. The requirement is consistent with the mandate in Business and Professions Code section 19841, subdivision (f), and related legislative findings and declarations in Section 19801. The provision reduces the likelihood of an advertisement being deceptive by targeting and appealing to individuals known to be under the legal age allowed to participate in gambling and reduces the chances of early exposure.

Add Section 12084. Disapproval of Deceptive Advertising.

This section explains the procedure for the Bureau to notify a licensee if the Bureau determines an advertisement is deceptive and provides potential disciplinary and enforcement actions that a licensee may be subject to for failing to correct an advertisement. This section does not expand nor diminish the Commission or Bureau's existing authority and is consistent with current processes for dealing with other violations.

Subsection (a) provides the Bureau may issue a letter of warning to the licensee, as specified in Business and Professions Code section 19851, or owner, as defined in Section 12200, for an advertisement that is determined by the Bureau to be deceptive pursuant to the regulations or any other state or federal laws. If the Bureau decides to issue a letter of warning, at a minimum, the letter must provide: (1) A legal citation of the violation, (2) A description of each part of the advertisement that is deceptive, and (3) A specific time frame or deadline for correcting the deceptive advertisement. This provision is necessary to specify a mechanism whereby the Bureau may document and notify the licensee or owner of an advertisement that has been determined to be deceptive. Further, it provides the licensee or owner important guidance and information on exactly what it must correct within a specified timeframe before disciplinary action is taken. Due to the wide variation in types of gambling advertisements, more specific requirements and correction deadlines for the letter of warning have been left out. Flexibility in the requirements is necessary considering Bureau discretion and how quickly some deceptive advertisements may be corrected versus others. For example, a deceptive online advertisement 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 the responsible party. Further, it allows the Bureau to require other actions of the licensee or owner in its letter of warning, such as the submission of a corrective action plan.

Subsection (b) requires the Bureau to issue a notice of disapproval and failure to correct to the gambling enterprise or TPPPS owner if the advertisement was not corrected in accordance with the letter of warning. The provision also specifies that the Bureau has the discretion to take any action, including existing disciplinary actions, if an advertisement is not corrected in accordance with the letter of warning. The requirements of this provision are necessary to provide the

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Bureau with enforcement options if a licensee fails to take corrective action pursuant to the issuance of a letter of warning. The provision is also necessary so that the licensee understands the potential disciplinary actions that may be utilized if it fails to correct a deceptive advertisement.

Subsection (c) requires that the following be included in the Bureau's report to the Commission for consideration during a licensee or owner's initial or renewal license application:

- Any notice of disapproval and failure to correct;
- Any instances of repeated advertising violations pursuant to the regulations; and,
- Any subsequent actions by the licensee, owner, and or Bureau.

The provision further specifies that the above items may be considered a factor in determining the suitability for licensure of an applicant. This regulation is necessary so that the Bureau knows specifically what information is pertinent and required to be reported to the Commission for considering an applicant's suitability for licensure. This subsection also informs the licensee that if advertisements are not corrected or if repeated violations are made, it may be considered a factor in determining their suitability.

CHAPTER 7. CONDITIONS OF OPERATION FOR GAMBLING ESTABLISHMENTS. ARTICLE 1. GENERAL PROVISIONS.

Amend Section 12360. Chapter Definitions.

Subsection (f) currently contains the definition of "gaming activity" which is proposed to be relocated to Chapter 1 so that it applies to all Commission regulations. While under existing regulations the term is primarily used in Chapter 7, the term also appears in subparagraph 12312(c)(4) of Chapter 5 and is being utilized in the proposed regulatory text concerning Advertising. The relocation of the term ensures all uses of the term utilize the same definition.

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

Amend Section 12461. Posting Referral Information.

Throughout this section "on behalf of" is replaced with "for" because the term "for" may be subject to broader interpretation than "on behalf of."

Subsection (b) requires specific information to be displayed on websites operated by or for any gambling enterprise, TPPPS, or gambling business. In accordance with subsections 12082 (a) and (b), the information required must be displayed in a clear and conspicuous manner and in the same language and format as the primary language and format of the advertisement. Further, the subsection is being updated and expanded upon to include additional information and referral services that are currently available for problem gamblers. Due to the proliferation of mobile smart phones and tablets, which are commonly used to browse webpages on the Internet and have become a medium for disseminating advertisements, the updated information and referral services being added in subparagraph (3) provide the public more direct and readily accessible

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ways to get immediate help with a gambling addiction problem (rather than having to navigate to the Office of Problem Gambling website to search for the same information).

In the Act, the Legislature expressed concerns regarding the relationship between advertising and problem gambling. Specifically, in Business and Professions Code section 19801(c), the Legislature found and declared that “gambling can become addictive and is not an activity to be promoted or legitimized as entertainment for children or families.” The Legislature’s mandate that the Commission adopt regulations for the disapproval of deceptive advertising by the Bureau addresses the promotion of controlled gambling, which may lead to addictive and underage gambling. Notably, the Legislature also expressed concerns with problem gambling in Section 19954, which requires that gambling enterprises pay an additional \$100 per table to the State Department of Public Health for deposit in the Gambling Addiction Program Fund, to benefit those who have a gambling addiction problem. The additional information and referral services are necessary to maintain and update existing requirements and carry out the Commission’s duty to protect the health, safety, and welfare of the public from problem gambling.

Subsection (c) has been repealed due to the more specific and extensive advertisement content requirements being proposed in Article 3. The requirements that were previously in this section have been modified, clarified, and expanded upon. The repeal of this section avoids redundancy in the regulations. 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.

Subsection (a).

- **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.

Subsection (a).

- **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.

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