

California Gambling Control Commission

DESCRIPTION OF PROPOSED REGULATORY ACTION

ADVERTISING

INTRODUCTION:

The California Gambling Control Commission (Commission) is proposing regulations that would implement the Commission’s mandate under the Gambling Control Act (Act) to ensure the integrity of gambling in California with respect to advertising activity and to provide for the disapproval of deceptive advertising. Specifically, these regulations would implement Business and Professions Code section 19841, subdivision (f) of the Act, which requires the Commission to provide for the disapproval of deceptive advertising by licensed gambling establishments, as determined by the Bureau of Gambling Control (Bureau)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 a gambling enterprise or primary owner of a third-party provider of proposition player services (TPPPS). The new requirements would provide a regulatory framework for the Bureau to utilize in determining its disapproval of any deceptive advertisement that solicits participation in controlled gambling at a licensed gambling establishment (cardroom). Further, the proposed regulations contain enforcement mechanisms, which provide that violations of the requirements may be considered in determining the suitability for licensure of a gambling enterprise or primary owner of a TPPPS at any time.

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 17508 – False or Misleading Advertising Claims

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

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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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

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

Section 12461, subsection (c) requires that advertising material produced by or on behalf of any gambling enterprise, TPPPS, or gambling business shall contain a responsible gambling message. This provision also requires that the advertisement shall refer to the toll-free telephone number and/or link approved by the Office of Problem Gambling (or its successors) that provides

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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.

PROBLEMS ADDRESSED:

Business and Professions Code section 19841, subdivision (f) requires the Commission to adopt regulations related to the disapproval of advertising by licensed gambling establishments that is determined by the Bureau to be deceptive to the public. To date, there have been no regulations adopted in response to this statutory mandate. Without having a regulatory framework established to provide for the disapproval of advertising, the Bureau has no criteria to utilize in making consistent determinations. Furthermore, a gambling enterprise and primary owner of TPPPS has little guidance or requirements to refer to and be held accountable for in the creation of an advertisement other than industry best practices and general state and federal laws.

ANTICIPATED BENEFITS OF THE PROPOSED REGULATIONS:

The proposed requirements will establish a regulatory framework for the Bureau to use in determining if an advertisement that was created, purchased, placed, or disseminated by or for a gambling enterprise or primary owner of a TPPPS is deceptive to the public. The proposed regulations will fulfill the Commission's statutory mandate, help protect the health, safety, and general welfare of children, adolescents, and the general public from deceptive advertisements, and preserve the integrity of the cardroom industry.

The proposed regulations provide specific guidance and requirements concerning the creation and dissemination of cardroom advertising content. This is anticipated to dissuade and reduce dissemination of gambling advertisements that are deceptive, which include advertisements that inappropriately appeal to children or adolescents or that offer gambling as a means of becoming wealthy. The proposed regulations allow the Bureau to issue a notice of disapproval to a gambling enterprise or primary owner of a TPPPS if it determines that an advertisement is out of compliance with these provisions and specifies the potential disciplinary actions that may be exercised as a result of any violation.

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 regulations are inapplicable to controlled gambling, such as the requirements for advertising signage on jockey uniforms or the use of a stable name registration for advertising purposes.

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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 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.

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

CHAPTER 1. GENERAL PROVISIONS.

ARTICLE 1. DEFINITIONS AND GENERAL PROVISIONS.

Amend Section 12002. General Definitions

This section provides general definitions for this division. Two new definitions are proposed to be added. These terms are necessary to define for purposes of applicability of the proposed regulations. Further, 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 conducting 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 advertisements “over which a gambling enterprise or primary owner, as defined in Section 12200 has or reasonably should have control.” This language protects a gambling enterprise and primary owner of a TPPPS 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 primary owners 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 third-party 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 a primary owner of a TPPPS within the definition will assist in the compliance and enforcement of the proposed regulations.

Notably, a “gambling business” has been left out of the definition of an “advertisement” because a gambling business is not expressly authorized to have a business relationship or contract with a cardroom.

- 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:
 - *The solicitation of activities, events, or services that are not related to 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” (which has the same definition as a “gambling establishment”) is used because it is a defined term in Chapter 1 that means 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.
 - *Business signage located in, on the exterior of, or adjacent to the licensed premises or that is displayed or presented to represent a corporate sponsorship, which solely identifies the name, nickname, 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

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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. The provision also exempts business signage that is displayed or presented for the purposes of representing a corporate sponsorship. The exemption avoids disrupting current industry practice where cardrooms often sponsor little league team uniforms, charity fundraisers (etc.) and prevents the regulations from being overly restrictive.

- *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 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 the gambling enterprise or primary owner of a TPPPS responsible for these types of listings would be inappropriate and beyond the scope of enabling legislation.
- *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.
- *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.
- **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. This 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.

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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 of a gambling enterprise and primary owner of a TPPPS pertaining to gambling advertisements.

Subsection (a) cites existing requirements in regulation for clarity and sets forth general responsibilities of a gambling enterprise and primary owner of a TPPPS with respect to all advertisements and direct advertisements.

Specifically:

- **Paragraph (a)(1)** requires that a gambling enterprise or primary owner of a TPPPS to comply with all the requirements of this article, as applicable. This provision clarifies that these requirements are mandatory, not optional.
- **Paragraph (a)(2)** requires that a gambling enterprise or owner of a TPPPS comply with Title 11, CCR, Section 2072(e). This reference to the Bureau’s existing regulations provides clarity by ensuring the reporting requirements pertaining to cardroom advertisements are referenced in the same article.
- **Paragraph (a)(3)** specifies that a gambling enterprise or owner of a TPPPS 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 a gambling enterprise or the primary owner of a TPPPS may be subject to disciplinary consequences in the event that an advertisement fails to meet the requirements. The provision holds accountable the appropriate licensed party responsible for the advertisement, even if they utilize the services of a third-party advertiser to create and 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) prohibits a primary owner of a TPPPS from creating, purchasing, placing, or disseminating any advertisement for a gambling enterprise, *unless* it has a proposition player contract, as defined in Section 12200, and the advertising costs are included in the contract. This

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proposed provision provides clarity and consistency by referencing existing requirements for proposition player contracts in Chapter 2.1.

Add Section 12082. Advertising Content and Dissemination.

This section establishes content and dissemination requirements for advertisements produced by or for a gambling enterprise or primary owner of a TPPPS. 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. To the extent that the content and dissemination requirements only address deceptive advertising, these proposed regulations do not violate the First Amendment and the *Central Hudson* test does not apply.

Subsection (a) provides general criteria applicable to presenting the required information in all advertisements and ensures that the required information is readable and intelligible to the average person. Specifying the required information must be presented in a clear and conspicuous manner is necessary to protect the health, safety, and welfare of the public from deceptive advertisements so that the public has adequate notice. This requirement is intentionally broad to stay within the parameters of enabling legislation and avoid infringing on commercial speech rights.

Subsection (b) specifies the information required to be presented in an advertisement is in the same language and format as the primary language and format used in the advertisement. If no language or no specific primary language is used in the advertisement, the English language must be used to convey the required information. In alignment with the requirement proposed in subsection (a) above, this provision ensures that an advertisement presented in a foreign language conveys the required information in the same language so that the intended primary audience is able to comprehend it. The provision also ensures the required information is presented in the same format as the advertisement (e.g. video and/or audio, print, etc.). Without the required information being presented in the appropriate language and format, the primary audience may not know that participation is restricted to individuals who are 21 and older, for example, which could be deceiving. For additional clarity, the provision provides an example of how the required information must be presented in an audio/video advertisement—such as one that would be disseminated via television or online video stream.

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 primary owner of a TPPPS and/or issue a notice of disapproval.

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- **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 statutory 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)** requires that advertisements contain a responsible gambling message and reference one of the information and referral services approved by the Office of Problem Gambling (or its successor) located in paragraphs 12461(b)(1) and (3). This is an existing requirement that 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.

OPTIONS – subparagraphs (c)(2)(C) and (D): The regulatory text contains a total of four options for subparagraphs (c)(2)(C) and (D), which are described as follows:

Option 1: When an advertisement references a game, it must include either the approved game name or approved alternative game name. Additionally, when an advertisement references a gaming activity, it must include any gaming activity name with the Bureau-approved identification number. This option, while slightly reorganized for clarity, has the same effect as the language provided in the draft text presented at the December 4, 2018 Workshop. As such, in the summaries of additional options below, this option is used as a comparison.

- **Subparagraph (c)(2)(C)** contains requirements for referencing Bureau-approved games within advertisements. The provision requires that when an advertisement references a game, the Bureau-approved game name or Bureau-approved alternative game name must be included. The Penal Code provides limitations on the types of games that can be played. 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.
- **Subparagraph (c)(2)(D)** allows an advertisement to use any gaming activity name in reference to a Bureau-approved gaming activity as long as its identification number is presented. It's important to note, in a letter dated August 25, 2008, the Bureau announced

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a new option to allow the use of alternative gaming activity names (*not game names*) if the corresponding identification number is included in the advertisement. As such, this provision is consistent with the Bureau's current policies on referencing game names and gaming activity names.

Option 2: *This option differs from Option 1 in that it requires only the Bureau-approved gaming activity name be used when an advertisement references a gaming activity. (The use of any other gaming activity name is not allowed and no identification number is required.)*

- **Subparagraph (c)(2)(C)**, while worded slightly different than in Option 1, has the same effect in that in any reference to a game, the Bureau-approved game name must be used. If the Bureau chooses to approve alternative game names in the future, this provision still allows for those alternative names to be used upon their approval.
 - **Subparagraph (c)(2)(D)** does not allow for any other gaming activity name to be used except for the Bureau-approved gaming activity name. As such, requiring the associated identification number in this option is not needed for the Bureau or the public to identify the gaming activity being advertised.
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Option 3: *This option differs from Option 1 by specifying that any game name referenced in an advertisement must be in accordance with existing sections of law, as specified. Additionally, a game may be identified by a name other than an approved game name if its identification number is included; and, any referenced gaming activity must be identified by the Bureau-approved gaming activity name and identification number.*

- **Subparagraph (c)(2)(C)** requires that either: (1) the Bureau-approved game name be used, or (2) any game name be used provided that the game advertised is a "controlled game" as defined in Business and Professions Code section 19805 and it is not a game prohibited by Penal Code section 330. The requirement prohibits illegal games from being advertised and ensures the Bureau and the public has the ability to identify the game being advertised (using either the approved name or identification number).
 - **Subparagraph (c)(2)(D)** differs from Option 1 in that it does not allow for any gaming activity name to be used other than the Bureau-approved name. Further, it requires the gaming activity identification number also be referenced. Requiring both the Bureau-approved gaming activity name and identification number is the most restrictive requirement compared to the related provisions in other options.
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Option 4: *This option differs from Option 1 by specifying that any game name that is not deceptive may be used to reference a game but it must be in accordance with existing sections of law, as specified. Further, this option allows the use of any gaming activity name that is not deceptive. Unlike Option 1, this option does not require the inclusion of Bureau-approved game names or any identification numbers under any circumstance.*

- **Subparagraph (c)(2)(C)** allows any game name that is not deceptive to be used provided that the game advertised is a “controlled game” as defined in Business and Professions Code section 19805 and is not a game prohibited by Penal Code section 330. Game identification numbers are not required. This is the least restrictive requirement concerning game names compared to other options.
- **Subparagraph (c)(2)(D)** allows any game name to be used provided that it is not deceptive. Gaming activity identification numbers are not required. This is the least restrictive requirement concerning gaming activity names compared to other options.

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) specifies what constitutes a deceptive advertisement. This subsection provides the gambling enterprise or primary owner of a TPPPS 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

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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 old². 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.
- **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 grounds of any Kindergarten through 12th grade (K-12) school. This provision is adapted from advertising restrictions in other industries to which youth exposure is limited, such as alcohol, cannabis, and tobacco. Such restrictions are beneficial in protecting children and adolescents from age restricted activities by limiting their exposure. Further, disseminating a gambling advertisement on the grounds of a K-12 school is deceptive because the vast majority of the population in those locations is under the legal age to participate in gambling.
- **Paragraph (e)(3)** provides that any advertisement is deceptive if it constitutes a false or misleading claim pursuant to Business and Professions Code section 17508 and/or 15 U.S.C. 55. This provision is necessary to reference other applicable state and federal laws for clarity and consistency.

Subsection (f) provides specific criteria for a gambling enterprise or primary owner of a TPPPS that disseminates or causes the dissemination of any direct advertisement in addition to the other advertising requirements within this section.

- **Paragraph (f)(1)** requires that the gambling enterprise or primary owner of a TPPPS 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 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

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

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a clear and conspicuous manner and in the same language as the primary language of the advertisement. This is necessary to ensure that individuals are not receiving unwanted gambling messages and is consistent with the existing Self-Restriction and Self-Exclusion requirements. The requirement is necessary to protect the health 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 gambling enterprise or primary owner of a TPPPS: (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 stop further dissemination of the direct advertisement. Again, this requirement is necessary to protect the health and welfare of individuals with problem gambling disorders who are at risk.
- **Paragraph (f)(4)** requires that if the gambling enterprise or primary owner of a TPPPS 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 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 via social media, email, physical mail (etc.), for a gambling enterprise or primary owner of a TPPPS. 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 from 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 disapprove of a deceptive advertisement and provides the potential consequences the gambling enterprise and primary owner of a TPPPS may be subject to for related violations. This section does not expand nor diminish the existing authority of the Commission or the Bureau which has already been granted by enabling statute.

Subsection (a) provides the Bureau may issue a notice of disapproval to a gambling enterprise or primary owner of a TPPPS for an advertisement it has determined to be deceptive pursuant to Article 3 or any other state or federal law. If the Bureau decides to issue the notice, it must describe each part of the advertisement that is deceptive and specify a time frame to correct and/or stop further dissemination of the deceptive advertisement. This provision is necessary to specify a mechanism whereby the Bureau may document and notify a gambling enterprise or primary owner of a TPPPS of its disapproval. Further, it allows the licensee to be notified of exactly what it must correct within a specified timeframe. Due to the wide variation in types of gambling advertisements, more specific requirements and correction deadlines for the notice of

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disapproval have been left out. Flexibility in the requirements is necessary considering how quickly some deceptive advertisements may be corrected versus others. For example, a deficient website operated by the gambling enterprise or TPPPS may be easily and quickly corrected, while a printed billboard would likely take more time to correct, and a mailer may be impossible to correct. This provision provides the Bureau flexibility in requiring reasonable deadlines for the responsible party to correct its actions.

Subsection (b) provides that the Commission may consider any deceptive advertising by a gambling enterprise or primary owner of a TPPPS in subsequent suitability for licensure determinations. By virtue of a licensee's deceptive advertising, the Commission may determine that the licensee has not met its burden of demonstrating good character, honesty, and integrity, or that its prior activities related to advertising do not pose a threat to the public interest or to the effective regulation and control of controlled gambling. This provision is consistent with the Commission's existing authority and responsibility to protect the public through the strict and comprehensive regulation of all persons, locations, practices, associations, and activities related to the operation of lawful gambling establishments.

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

CHAPTER 7. CONDITIONS OF OPERATION FOR GAMBLING ESTABLISHMENTS.

ARTICLE 1. GENERAL PROVISIONS.

Amend Section 12360. Chapter Definitions.

Subsection (f) currently contains the definition of "gaming activity" is proposed to be relocated to Chapter 1 so that it applies to all chapters. 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 of 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

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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 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 amended to reference more specific advertisement content requirements for advertisements and direct advertisements that are being proposed in Article 3. The requirements that were previously in this section have been modified, clarified, and expanded upon. Additionally, the reference to a “gambling business” has been removed because, consistent with existing regulation and other proposed changes, a gambling business is prohibited from having a third-party relationship or contract with a cardroom and thus, should not be allowed to create advertising material for any gambling establishment. The change removes redundancy in the regulatory text and minimizes potential confusion for the reader. Placing advertising content requirements and exceptions in one place within the regulations provides clarity and avoids duplication and potential conflicts.

Amend Section 12463. Self-Restriction Program.

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

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Amend Section 12464. Self-Exclusion Program.

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

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