

DRAFT

1 **California Gambling Control Commission**
2 **SPECIFIC LANGUAGE OF PROPOSED REGULATIONS**
3 **Advertising**
4 **CGCC-GCA-2019-0#-R**

5
6 **CALIFORNIA CODE OF REGULATIONS**

7 **TITLE 4. BUSINESS REGULATIONS.**

8 **DIVISION 18. CALIFORNIA GAMBLING CONTROL COMMISSION.**

9
10 **CHAPTER 1. GENERAL PROVISIONS.**

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

12
13 **§ 12002. General Definitions.**

14 Unless otherwise specified, the definitions in Business and Professions Code
15 section 19805, supplemented by the definitions found in Chapter 10 of Title 9 of
16 Part 1 of the Penal Code (commencing with section 330), ~~shall~~ govern the
17 construction of this division. As used in this division:

18 ...

19 (b) “Advertisement” or “advertising” means any statement, illustration, or
20 depiction concerning the conducting of or participation in a controlled game or
21 gaming activity, or any display of the logo or trademark of a gambling
22 establishment, in a publication, outdoor or indoor display, broadcast
23 announcement, or electronic media, over which a gambling enterprise or primary
24 owner, as defined in Section 12200, has or reasonably should have control, for the
25 purpose of soliciting participation in a controlled game or gaming activity.

26 (1) “Advertisement” or “advertising” does not include:

27 (A) The solicitation of activities, events, or services that do not relate to
28 participation in a controlled game or gaming activity and may otherwise be
29 provided on the licensed premises including, but not limited to: restaurant dining,
30 concerts, trade shows, business conferences, and non-gambling related
31 promotions and contests.

32 (B) Business signage located in, on the exterior of, or adjacent to the licensed
33 premises, or that is displayed or presented to represent a corporate sponsorship,
34 which solely identifies the name, nickname, alias, or any other name by which the
35 gambling establishment is commonly known, including its logo or trademark.

36 (C) A business listing that is published for informational or contact purposes
37 only. A business listing may include the name and contact information of a
38 gambling establishment that is listed in an informational publication including,

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1 but not limited to, a hotel directory, phone book directory, chamber of commerce
2 directory, business directory, etc.

3 (D) Any job postings for employment opportunities.

4 (E) Any notices or postings otherwise required by the Act, this Division, or
5 Title 11, Division 3 of the California Code of Regulations, such as posted game
6 rules.

7 (2) Any advertising material included with or attached to those items which do
8 not constitute an advertisement pursuant to paragraph (1), must comply with
9 Article 3.

10 (c)~~(b)~~...

11 (d)~~(c)~~...

12 (e)~~(d)~~...

13 (f)~~(e)~~...

14 (g)~~(f)~~...

15 (h)~~(g)~~...

16 (i)~~(h)~~...

17 (j)~~(i)~~...

18 (k)~~(j)~~...

19 (l)~~(k)~~...

20 (m) “Direct advertisement” or “direct advertising,” means any advertisement
21 or advertising material that is disseminated directly to a specific individual or
22 household in-person, by physical mail, telephone, messaging service, social
23 media, the Internet, or electronic means, for the purpose of soliciting participation
24 in a controlled game or gaming activity. A direct advertisement may be in the
25 form of, but is not limited to, a brochure, letter, flyer, email, text message,
26 multimedia message, direct message, social media post, audio and/or video.

27 (n)~~(l)~~...

28 (o)~~(m)~~...

29 (p)~~(n)~~...

30 (q)~~(o)~~...

31 (r)~~(p)~~...

32 (s)~~(q)~~...

33 (t) “Gaming activity” has the same meaning as defined in Title 11, CCR,
34 Section 2010, subsection (f).

35 (u)~~(r)~~...

36 (v)~~(s)~~...

37 (w)~~(t)~~...

38 (x)~~(u)~~...

39 (y)~~(v)~~...

40 (z)~~(w)~~...

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1 ~~(aa)(x)~~...

2 ~~(ab)(y)~~...

3 ~~(ac)(z)~~...

4 ~~(ad)(aa)~~

5 Note: Authority cited: Sections 19811, 19823, 19824, 19840, 19841, 19853(a)(3) and 19854,
6 Business and Professions Code. Reference: Sections 19800, 19805, 19811, 19816, 19841, 19853,
7 19951 and 19984, Business and Professions Code.

8 ARTICLE 3: ADVERTISING

9 § 12080. General Requirements.

10 (a) A gambling enterprise or primary owner, as defined in Section 12200:

11 (1) Must comply with all the requirements of this article, as applicable.

12 (2) Must comply with Title 11, CCR, Section 2072, subsection (e).

13 (3) May be held responsible for any advertisement that is created, purchased,
14 placed, or disseminated by or for it, over which it has or reasonably should have
15 control, whether contractual or otherwise.

16 (b) A primary owner, as defined in Section 12200, will not create, purchase,
17 place, or disseminate any advertisement for a gambling enterprise unless it has a
18 proposition player contract with that gambling enterprise, as defined in Section
19 12200, and the advertisement costs are included in the proposition player contract.

20 Note: Authority cited: Sections 19824, 19826, 19840, 19841 and 19984, Business and Professions
21 Code. Reference: Section 19984, Business and Professions Code.

22 § 12082. Advertising Content and Dissemination.

23 (a) Advertisements must present all of the required information pursuant to
24 this section in a clear and conspicuous manner to give the viewer or listener
25 adequate notice of the information. As used in this section, clear and conspicuous
26 means the required information is readable to the average viewer and audible and
27 intelligible to the average listener, as applicable.

28 (b) Advertisements must present all of the required information in the same
29 language and format as the primary language and format of the advertisement. For
30 example, advertisements in both audio and video format must present the required
31 information in both audio and video format and in the primary language of the
32 advertisement. If the advertisement is not presented using a primary language or
33 any language, the required information must be presented using the English
34 language.

35 (c) All advertisements must include:

36 (1) The name, nickname, alias, or any other name by which the gambling
37 establishment is commonly known; and,

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1 (2) All of the following:

2 (A) A statement that participants must be 21 or older to gamble;

3 (B) Information required by paragraphs (1) and (3) of subsection (b) of
4 Section 12461;

5 -----
6 **Option 1:** When an advertisement references a game, it must include the
7 approved game name or approved alternative game name. Additionally, when an
8 advertisement references a gaming activity, it must include any gaming activity
9 name with the identification number. This option, while reorganized for clarity,
10 has the same effect as the language provided in the draft text presented at the
11 December 4, 2018 Workshop. As such, in the summaries of additional options
12 below, this option is used as a comparison.

13 (C) In any reference to a game, either:

14 (i) The Bureau-approved game name; or,

15 (ii) The Bureau-approved alternative game name; and,

16 (D) In any reference to a gaming activity, any gaming activity name with the
17 Bureau-approved identification number.

18 -----
19 **Option 2:** This option differs from Option 1 in that it requires only the Bureau-
20 approved gaming activity name be used when an advertisement references a
21 gaming activity. *(The use of any other gaming activity name is not allowed and no*
22 *identification number is required.)*

23 (C) In any reference to a game, the Bureau-approved game name;
24 and,

25 (D) In any reference to a gaming activity, the Bureau-approved gaming
26 activity name.

27 -----
28 **Option 3:** This option differs from Option 1 by specifying that any game name
29 referenced in an advertisement must be in accordance with existing sections of
30 law, as specified. Additionally, a game may be identified by a name other than an
31 approved game name if its identification number is included; and, any referenced
32 gaming activity must be identified by the Bureau-approved gaming activity name
33 and identification number.

34 (C) In any reference to a game, any game name in accordance with the
35 following:

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1 (i) The game advertised must be a controlled game, as defined in Business and
2 Professions Code section 19805; and,

3 (ii) The name of the game advertised must not refer to a game prohibited by
4 Penal Code section 330; and,

5 (iii) If the game advertised is identified by a name other than the Bureau-
6 approved game name, its Bureau-approved identification number must be
7 included.

8 (D) In any reference to a gaming activity, the Bureau-approved gaming
9 activity name and the Bureau-approved identification number.

10 -----
11 **Option 4:** This option differs from Option 1 by specifying that any game name
12 that is not deceptive may be used to reference a game but it must be in accordance
13 with existing sections of law, as specified. Further, this option allows the use of
14 any gaming activity name that is not deceptive. Unlike Option 1, this option does
15 not require the inclusion of Bureau-approved game names or any identification
16 numbers under any circumstances.

17 (C) In any reference to a game, any game name that is not deceptive and is in
18 accordance with the following:

19 (i) The game advertised must be a controlled game, as defined in Business and
20 Professions Code section 19805; and,

21 (ii) The name of the game advertised must not refer to a game prohibited by
22 Penal Code section 330.

23 (D) In any reference to a gaming activity, any gaming activity name that is not
24 deceptive.

25 -----
26 (d) The requirements of paragraph (2) of subsection (c), do not apply to any
27 small tangible items upon which the information required would be impracticable
28 to print, display, or present, including, but not limited to: apparel, hats, pens, key
29 chains, dishware, drinking glasses, coffee mugs, etc.

30 (e) An advertisement must not be deceptive to the public. An advertisement is
31 considered deceptive if it:

32 (1) Depicts gambling as a means to become wealthy or resolve a financial
33 burden.

34 (2) Specifically targets or appeals to children or adolescents. Examples of this
35 include, but are not limited to:

36 (A) Using models or actors who are less than 21 years of age to appear in or
37 provide voice-over services for any advertisement.

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1 (B) Advertisements that depict a child or portray any objects, images, cartoon
2 figures, or movie or television characters that primarily appeal to persons less
3 than 21 years of age. Advertising material is considered to primarily appeal to
4 persons less than 21 years of age if it has special attractiveness to such persons
5 beyond the general attractiveness it has for persons 21 years of age or older.

6 (C) Displaying, broadcasting, or disseminating advertising material on the
7 premises of any Kindergarten through 12th Grade school.

8 (3) Constitutes a false or misleading claim pursuant to Business and
9 Professions Code section 17508 and/or a false advertisement pursuant to 15
10 U.S.C. 55.

11 (f) In addition to the other requirements of this section, a direct advertisement
12 must meet the following criteria, as applicable:

13 (1) The gambling enterprise or primary owner, as defined in Section 12200,
14 must have a reasonable degree of control over the content of any direct
15 advertisement.

16 (2) All direct advertisements must, in accordance with subsection (a) and (b),
17 provide at least one reasonable method, including instructions, by which
18 recipients can unsubscribe, opt-out, or exclude themselves from receiving all
19 future direct advertisements.

20 (3) For a direct advertisement that is directly disseminated by a gambling
21 enterprise or primary owner, as defined in Section 12200:

22 (A) The recipient must not be known to the gambling enterprise or primary
23 owner to be less than 21 years of age; and,

24 (B) The gambling enterprise or primary owner must have the ability to cease
25 and desist further dissemination of the direct advertisement.

26 (4) For a direct advertisement that a gambling enterprise or primary owner, as
27 defined in Section 12200, causes to be disseminated using the services of a third-
28 party direct advertisement distributor, prior to dissemination, a gambling
29 enterprise or primary owner must provide instruction to the advertisement
30 distributor and retain a record thereof, to not disseminate the advertisement to
31 individuals known to the advertisement distributor to be less than 21 years of age.
32 A third-party direct advertisement distributor may consist of, but is not limited to,
33 any third-party social media advertisement distribution company, social media
34 platform, direct email distributor, or direct physical mail distributor, that uses the
35 personal contact information of specific individuals or households to distribute an
36 advertisement.

37 Note: Authority cited: Sections 19811, 19824, 19841 and 19920, Business and Professions Code.
38 Reference: Sections 19801, 19841 and 19920, Business and Professions Code; and Sections
39 4369.2 and 4369.4, Welfare and Institutions Code.

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§ 12084. Disapproval of Deceptive Advertising.

(a) If the Bureau determines that an advertisement is deceptive pursuant to this article or any other applicable state or federal laws, the Bureau may issue a notice of disapproval to the gambling enterprise or primary owner, as defined in Section 12200. The notice must include the following:

(1) A description of each part of the advertisement that is deceptive; and,

(2) A specified time frame or deadline to correct the deceptive advertisement and/or cease and desist further dissemination of the deceptive advertisement.

(b) Violations of this article may be considered a factor in determining the suitability for licensure of a gambling enterprise or primary owner, as defined in Section 12200, at any time, including:

(1) The consideration of the licensee’s initial or renewal license application; and,

(2) A disciplinary action under Chapter 10 of this division.

(c) This provision does not limit the Bureau’s authority under Business and Professions Code sections 19930 and 19931.

Note: Authority cited: Sections 19811, 19824, 19841(f), 19841(o), 19856, 19857, 19859 and 19920, Business and Professions Code. Reference: Sections 19801(c) and 19920, Business and Professions Code; and Sections 4369.2 and 4369.4, Welfare and Institutions Code.

CHAPTER 7. CONDITIONS OF OPERATION FOR GAMBLING ESTABLISHMENTS.

ARTICLE 1. GENERAL PROVISIONS.

§ 12360. Chapter Definitions.

Except as otherwise provided in Section 12002 of these regulations, the definitions in Business and Professions Code section 19805 govern the construction of this chapter. As used in this chapter:

...

~~(f) “Gaming activity” has the same meaning as defined in Title 11, CCR, Section 2010, subsection (f).~~

~~(f)(g)...~~

~~(g)(h)...~~

~~(h)(i)...~~

~~(i)(j)...~~

Note: Authority cited: Sections 19811, 19824, 19840, 19841 and 19924, Business and Professions Code. Reference: Sections 19805, 19841, 19860 and 19924, Business and Professions Code.

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ARTICLE 6. PROGRAM FOR RESPONSIBLE GAMBLING.

§ 12461. Posting Referral Information.

(a) Each licensee ~~shall~~must post or provide, at patron gambling entrances or exits, and in conspicuous places in or near gambling areas and any areas where cash or credit are available to patrons, accessible written materials concerning the nature and symptoms of problem gambling and the toll-free telephone number approved by the Office of Problem Gambling (or its successors) that provides information and referral services for problem gamblers, currently “1-800-GAMBLER.”

(b) Any website operated by or ~~on behalf of~~for any gambling enterprise, TPPPS, or gambling business ~~shall~~must, in accordance with subsection (a) and (b) of Section 12082, contain the following information in writing:

(1) ~~a~~-A responsible gambling message;

(2) ~~and a link~~-A hyperlink to the Office of Problem Gambling (or its successors) at <http://www.problemgambling.ca.gov> that provides information and referral services for problem gamblers,currently

~~“<http://www.problemgambling.ca.gov>”; and,~~

(3) At least one of the following information and referral services for problem gamblers approved by the Office of Problem Gambling (or its successors):

(A) 1-800-GAMBLER;

(B) 800gambler.chat; or,

(C) Text “SUPPORT” to 53342.

(c) ~~Advertising material~~An advertisement or direct advertisement, as defined in Section 12002, produced by or ~~on behalf of~~for any gambling enterprise, ~~or TPPPS or gambling business shall~~must be in accordance with Article 3 of Chapter 1, ~~contain a responsible gambling message and shall refer to the telephone number listed in subsection (a) above or the website listed in subsection (b) above, or both. This provision applies to any advertisement that will be distributed by television, radio, outdoor display, flyer, mail or digitally. This provision does not apply to:~~

~~(1) Any digital material with limited characters or space that provides a link to a website that complies with subsection (b).~~

~~(2) Any promotional item in which size or space limitations do not allow the responsible gambling message to be legibly displayed, such as: pens, key chains, hats, drinking glasses, coffee mugs, etc.~~

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1 Note: Authority cited: Sections 19811, 19840, 19841~~(e)~~ and 19920, Business and Professions
2 Code. Reference: Sections 19801 and 19920, Business and Professions Code; and Sections 4369.2
3 and 4369.4, Welfare and Institutions Code.

§ 12463. Self-Restriction Program.

5 (a) Licensees ~~shall~~must implement a program that allows patrons to self-limit
6 their access to the gambling establishment entirely, or to the issuance of credit,
7 check cashing, or marketing by that licensee. That program ~~shall~~must contain, at
8 a minimum, the following:

9 ...

10 (6) Policies and procedures that allow a patron to restrict his or her inclusion
11 on customer lists maintained by the licensee for direct advertising ~~mail marketing,~~
12 ~~telephone marketing, and other direct marketing~~ regarding gaming opportunities
13 or promotions at the gambling establishment during the term of restriction.

14 ...

15 Note: Authority cited: Sections 19811, 19840, 19841~~(e)~~ and 19920, Business and Professions
16 Code. Reference: Sections 19801, 19920 and 19954, Business and Professions Code; and Section
17 4369.4, Welfare and Institutions Code.

§ 12464. Self-Exclusion Program.

19 (a) Licensees ~~shall~~must implement a program that allows patrons to exclude
20 themselves from gambling establishments using a form entitled Self-Exclusion
21 Request, form CGCC-037 (Rev. 02/15), attached in Appendix A to this chapter.
22 That program ~~shall~~must contain, at a minimum, the following:

23 ...

24 (6) Policies and procedures for removal of a patron from customer lists
25 maintained by the licensee for direct advertising ~~mail marketing, telephone~~
26 ~~marketing, and other direct marketing or marketing opportunities~~ regarding
27 gaming opportunities or promotions at the gambling establishment;

28 ...

29 Note: Authority cited: Sections 19811, 19840, 19841~~(e)~~ and 19920, Business and Professions
30 Code. Reference: Sections 19801, 19920 and 19954, Business and Professions Code; and Section
31 4369.4, Welfare and Institutions Code.

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