

# California Gambling Control Commission

## DESCRIPTION OF PROPOSED REGULATORY ACTION

### SOUTHERN CALIFORNIA GAMBLING CONTROL ACT HEARINGS

#### INTRODUCTION:

The California Gambling Control Commission (Commission) is the state agency charged with the administration and implementation of the Gambling Control Act (Act).<sup>1</sup> The Commission is authorized to adopt regulations governing the application for a license, permit, registration or approval,<sup>2</sup> including the consideration of an application at an evidentiary hearing.<sup>3</sup> Alternatively, the Commission may consider an application in accordance with Chapter 5 (commencing with section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.<sup>4</sup>

The Commission's regulations provide comprehensive procedures for evidentiary and non-evidentiary hearings and related topics. At a non-evidentiary hearing meeting the Commission may, among other actions, issue a license, temporary license, interim license, registration, permit, finding of suitability, renewal or other approval; or it may elect to hold an evidentiary hearing if issues are identified that require additional information or consideration related to an applicant's suitability for licensure. For evidentiary hearings, the regulations require that the hearing be conducted as a Gambling Control Act hearing (GCA hearing), which is most common, unless the Executive Director or the Commission determine the hearing should be conducted as an Administrative Procedure Act hearing (APA hearing). Despite there being a significant number of large cardrooms located in Southern California, all GCA hearings are held in Sacramento at the Commission's principal office, causing applicants to incur travel costs when attending their hearing. While existing law provides the Commission discretion to hold a hearing in another location within the state when the interests of the public may be better served,<sup>5</sup> there have been no regulations established for determining when this would be appropriate.

This regulatory proposal modifies existing GCA hearing regulations including the Notice of Defense Form, CGCC-CH1-03 (New 05/20) to establish specific criteria and requirements associated with determining when an applicant is eligible to request their GCA hearing be held at a location in Southern California. The criteria consist of requirements concerning the location of an applicant's primary residence, the estimated length of an applicant's GCA hearing, whether the hearing promotes judicial economy, and other requirements.

At minimum, the following individuals are needed to facilitate a GCA hearing and would thus be required to travel to Southern California to conduct an offsite hearing:

- Three to five Commissioners (three required to meet quorum)
- Two to three attorneys (one acting as the presiding officer)
- One IT staff member (livestream, audio recordings, sound system, etc.)

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<sup>1</sup> Business and Professions Code, Division 8, Chapter 4, section 19800 et seq.

<sup>2</sup> Business and Professions Code section 19824, subdivision (a)

<sup>3</sup> Business and Professions Code section 19870

<sup>4</sup> Business and Professions Code section 19825

<sup>5</sup> Business and Professions Code section 19819, subdivision (a)

**EXISTING LAW:**

Gambling Control Act

Business and Professions Code section 19819, subdivision (a) requires the Commission establish and maintain a general office for the transaction of its business in Sacramento and provides that the Commission may hold meetings at any place within the state when the interests of the public may be better served.

Business and Professions Code section 19819, subdivision (c) specifies that a majority of the membership of the Commission is a quorum and requires a concurring vote of three members for any official action of the Commission.

Business and Professions Code section 19871 provides authority for promulgating regulations pertaining to the evidentiary hearing process, and provides a list of items that must be part of the process.

**EXISTING REGULATIONS:**

Title 4, California Code of Regulations

Section 12002, subdivision (aa) provides the definition of a “GCA hearing” to mean an evidentiary hearing referred to as “the meeting” pursuant to Business and Professions Code section 19870 and 19871.

Section 12052 provides general procedures regarding the hearing process and incorporates by reference the Notice of Defense, CGCC-CH1-03 (New 05/20), which provides important guidance and information to the Commission concerning the evidentiary hearing process for a particular applicant.

Section 12054 provides procedural guidance by laying out some of the various decisions the Commission may make at a regular non-evidentiary meeting regarding an application including, electing to hold an evidentiary hearing in accordance with Section 12056.

Section 12056 defines the manner by which the Commission or Executive Director determines between an APA and GCA hearing format once the Commission has elected to hold an evidentiary hearing. The section also provides additional procedural information.

Section 12057 provides for the Commission to adjudicate an applicant’s application by default when an applicant fails to submit a completed Notice of Defense, CGCC-CH1-03 (New 05/20) in accordance with the timelines provided on the form and specifies the default process.

Section 12060 implements the evidentiary hearing process pursuant to Business and Professions Code sections 19870 and 19871. This process provides a clear method for the applicant to show the Commission that he, she, or it meets the requirements of the Act and is of good character, honesty, and integrity.

**PROBLEMS ADDRESSED:**

Southern California is home to many of the largest cardrooms in the state. Despite having a significant population of licensees that reside in Southern California, all evidentiary hearings that are conducted as GCA hearings are currently held in Sacramento at the Commission's principal office. This requires initial and renewal applicants who have been noticed for a GCA hearing to travel a significant distance to Sacramento to attend their hearing and incur all related expenses, which can include airfares, car rentals, hotel accommodations, dining costs, missed wages, childcare costs, etc. These expenses can be especially burdensome for those living in Southern California with applications for lower paying positions within a cardroom that require a valid license, permit, or registration. In many instances these applicants either do not request a hearing on the Notice of Defense Form, withdraw their request for a hearing, or fail to appear at their scheduled hearing, resulting in a default decision and a denial of the application.

In 2018, the Commission conducted a total of 36 GCA hearings. Of the 36 GCA hearings, roughly half (19) were conducted on applicants who resided in any of the following Southern California counties at the time of their hearing: Imperial, Kern, Los Angeles, Orange, Riverside, San Diego, San Luis Obispo, San Bernardino, Santa Barbara, and Ventura. There were nine instances out of the 36 scheduled hearings where the applicant failed to appear (no-shows). Five of the nine no-shows were Southern California residents. There were 20 default decisions considered at regular Commission meetings in 2018. In these cases, a GCA hearing was not held because the applicant either did not request a hearing on the Notice of Defense form or they withdrew their request for a hearing. Of the 20 defaults decisions, four involved Southern California residents.

Furthermore, the majority of GCA hearings conducted in 2018 involved applications for a Third-party Provider of Proposition Player Services (TPPPS) player license. The pay for jobs associated with these positions can start around as little as \$13 per hour. Some TPPPS licensees that reside in Southern California face challenges in traveling to Sacramento either because they cannot afford transportation or the job is simply not worth the trouble of keeping due to the number of comparable paying jobs available in other industries with fewer barriers to entry.

**ANTICIPATED BENEFITS OF THE PROPOSED REGULATIONS:**

The proposed regulations are anticipated to improve GCA hearing attendance of applicants that reside in the Southern California area by providing them the opportunity to be heard closer to home. Reducing current barriers for Southern California applicants that must travel to Sacramento to attend their hearing should decrease the amount of withdrawn hearing requests and no-shows, both of which result in default denial decisions.

**PROPOSED ACTION:**

General Notes

A general change throughout has been made in all references to the current version of the Notice of Defense, CGCC-CH1-03 (~~New 05/20~~Rev. 04/21) as amendments to the form are being proposed as part of this regulatory package. The references will be updated to the new revision date (forthcoming). This is a non-substantive change.

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

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

#### Amend Section 12006. Service of Notices, Orders and Communications.

**Subsection (b)** is amended to reference the new version of the Notice of Defense, CGCC-CH1-03 (Rev. 04/21). See General Notes above.

### **ARTICLE 2. PROCEDURES FOR HEARINGS AND MEETINGS ON APPLICATIONS.**

#### Amend Section 12052. Commission Meetings; General Procedures; Scope; Notice; Rescheduling of Meeting.

This section provides general procedures regarding the hearing process that is required for the consideration of any license, permit, finding of suitability, renewal, or other Commission approval.

1. **Subparagraphs (c)(2)(B) and (C)** contain nonsubstantive amendments to align with the re-lettering of the subsections in Section 12060.
2. **Subparagraph (c)(2)(E)** is amended to include a new version of the Notice of Defense, CGCC-CH1-03 (Rev. 04/21). This updated form is provided to the applicant to complete, and once returned to the Bureau and Commission, provides important information to the Commission concerning the evidentiary hearing process. Section 1 of the form is being modified to provide an applicant the ability to request a GCA hearing be held at a Southern California location if the applicant accepts that there may be a significant delay in concluding a Southern California hearing and confirms that their primary residence is in one of the following California counties: Imperial, Kern, Los Angeles, Orange, Riverside, San Diego, San Luis Obispo, San Bernardino, Santa Barbara, or Ventura. Providing the applicant a means of making the request using the Notice of Defense is necessary so the applicant is aware of this option, provides for the timely submittal of the request, and provides the Commission enough time to make appropriate schedule and travel arrangements.

#### Amend Section 12057. Default Decisions and Uncontested Applications.

**Subsection (a)** is amended to reference the new version of the Notice of Defense, CGCC-CH1-03 (Rev. 04/21). See General Notes above.

#### Amend Section 12060. GCA Hearings.

This section implements the evidentiary hearing process pursuant to Business and Professions Code sections 19870 and 19871. This process provides a clear method for the applicant to show the Commission that he, she, or it meets the requirements of the Act and is of good character, honesty, and integrity.

1. **New subsection (c)** provides that an applicant may request his, her, or its GCA hearing be held at a Southern California location on the Notice of Defense form under specified conditions (see below). Currently, the Commission only holds GCA hearings at its principal office in Sacramento by which applicants attend in person. Failure to appear to a scheduled meeting without requesting a continuance results in a default decision. This

can be overly onerous for individuals that reside in Southern California and in some circumstances, financially impossible. These circumstances may include travel expenses (e.g., airfare, car rental, hotel accommodation, dining), child or elderly care, missed wages, etc. Business and Professions Code section 19819 authorizes the Commission to hold meetings at any place within the state when the interests of the public may be better served. Providing Southern California applicants the opportunity to have their hearing held in Southern California is in the better interest of the public.

2. **New paragraph (c)(1)** provides that the Executive Director (or designee), as defined in Section 12002(w), will approve an applicant's request to have a GCA hearing held at a location in Southern California upon specified criteria being met (identified below). Providing this approval authority to the Executive Director is consistent with existing subsections (a) and (b) which grant the Executive Director the authority to set and give notice of a GCA hearing to the applicant.
  - a. **New subparagraph (c)(1)(A)** specifies that the hearing must not be estimated by Commission staff to exceed four hours in length. The intent behind these regulations is for the Commission to conduct multiple Southern California hearings within a single visit to maximize time and efficiency. Further, this criterion is necessary so that the Commissioners and supporting staff are not inappropriately obligated to stay in Southern California for extended periods of time—leading to delay and neglect of other vital day-to-day operations that take place at the Commission's principal office. This provision will ensure that state travel and hotel expenses associated with offsite GCA hearings are kept within a reasonable minimum. It's important to note that the average hearing length in 2018 was two hours and all but six of the 36 hearings were conducted in less than two hours. As such, establishing a four hour time limit is reasonable.
  - b. **New subparagraph (c)(1)(B)** specifies that the applicant's primary residence must be located in one of the following counties: Imperial, Kern, Los Angeles, Orange, Riverside, San Diego, San Luis Obispo, San Bernardino, Santa Barbara, or Ventura. These counties have been chosen due to their distance from the Commission's principal office in Sacramento. Because the cities of or near Los Angeles and San Diego are the most likely and practical locations to hold GCA hearings, choosing all of the counties south of Monterey, Kings, Tulare, and Inyo county make the most sense based on distance of travel. Anyone with a primary residence north of San Luis Obispo, Kern, and San Bernardino County is within a reasonable driving distance from Sacramento.
  - c. **New subparagraph (c)(1)(C)** specifies that a GCA hearing will be noticed for a Southern California location only when doing so is in the best public interest, promotes judicial economy, and comports with the Commission's availability. This provision ensures that a request for a Southern California hearing would not be approved if doing so would be judicially inefficient, cost prohibitive, or conflict with the Commission's availability—all of which would not be in the better interest of the public.

3. **New paragraph (c)(2)** authorizes Commission staff to cancel a Southern California GCA hearing and issue a new notice of hearing for the Commission's Sacramento office if at any time before the hearing the Executive Director determines that the criteria in subparagraphs (c)(1)(A) through (C) are no longer met. Sometimes new information becomes available after a hearing has been noticed and before a hearing takes place. This may happen after the statement of reasons is filed or during the prehearing conference. When new information is made known, the parties may state they need more time to prepare for the hearing or it may become evident to the presiding officer that the hearing would likely exceed four hours in length. Further, staffing limitations, venue availability, budget issues, or unforeseen events could arise or the Commission could unexpectedly go through a period of being unable to reach quorum after a Southern California hearing has already been noticed. As such, under any circumstances where the criteria in subparagraphs (c)(1)(A) through (C) are no longer met, Commission staff must have the ability to reschedule and/or relocate the hearing.
4. **Subsection (e)** [formerly (d)] specifies that if a request for a continuance of a Southern California hearing is granted, the hearing may be relocated to the Commission's office in Sacramento if the criteria specified in subparagraphs (A) through (C) of paragraph (1) of subsection (c) are no longer met. The Commission does not have an established hearing location in Southern California and location choices will be limited due to availability. Arrangements for Southern California hearings must be made well in advance and will consist of multiple hearings scheduled over the course of one or more consecutive days. Due to limitations on staffing, Commission and venue availability, travel arrangements, and funding, Southern California hearing opportunities will be limited to maintain judicial economy and avoid unnecessary delay in adjudicating an application.
5. **Subsections (g), (h), and (i)** [formerly (f), (g), and (h) respectively] contain non-substantive amendments to align with the re-lettering of the subsections in Section 12060.

## **CHAPTER 2. LICENSES AND WORK PERMITS.**

### **ARTICLE 2. INITIAL AND RENEWAL LICENSES AND WORK PERMITS.**

#### *Amend Section 12118. Objection to Local Work Permits.*

**Paragraph (c)(3)** contains a non-substantive amendment to align with the re-lettering of the subsections in Section 12060.