

CALIFORNIA GAMBLING CONTROL COMMISSION  
**INITIAL STATEMENT OF REASONS**  
CGCC-GCA-2022-05-R

**HEARING DATE:** None Scheduled

**SUBJECT MATTER OF PROPOSED REGULATIONS:** Advertising

**SECTIONS AFFECTED:** California Code of Regulations, Title 4, Division 18: Sections 12002, 12095, 12096, 12097, 12098, 12099, and 12461.

**SPECIFIC PURPOSE OF REGULATORY PROPOSAL:**

**INTRODUCTION:**

The California Gambling Control Commission (Commission) is proposing regulations that would implement the Commission’s mandate under the Gambling Control Act (Act)<sup>1</sup> to ensure the integrity of gambling in California with respect to advertising activities. Specifically, these regulations would implement Business and Professions (B&P) 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)<sup>2</sup>. Notably, the statute 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 produced by or for any cardroom owner type licensee or third-party provider of proposition player services (TPPPS) owner type licensee (collectively known and hereinafter referred to as owner category licensees). 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 gambling establishment and procedures for notifying the responsible parties. Further, the proposed regulations contain mechanisms for enforcement concerning a failure to correct a deceptive advertisement.

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

<sup>2</sup> In the Act, “department” refers to the Department of Justice. While the Act assigns certain powers and authority to the department, in actual practice the responsibility for fulfilling the obligations imposed upon the department is delegated to the Bureau of Gambling Control, pursuant to B&P Code section 19810.

**PROBLEM ADDRESSED:**

As previously stated, B&P 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 existing and prior advertisements that do not contain the required 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, which has resulted in some advertisements delivering the information in an unclear and inconspicuous manner. This has the result of nullifying the regulatory requirement by making it difficult, if not impossible, for the public to review and understand the required information.

Section 19841, subdivision (f), also provides that advertisements that appeal to children or adolescents are presumptively deceptive. The Commission is aware that a current industry practice is for many gambling establishments to provide charitable support to local youth and community functions, such as Little League sports teams, toy drives, and holiday tree lighting ceremonies. This includes placing a gambling establishment's name and/or logo on the children's uniforms, team banners, event programs and pamphlets, etc. While these sponsorships are well-intended and benefit the local community, regulations are needed to ensure this is done in a manner that does not make gambling appeal to the impressionable youth.

Some advertisements reviewed by the Commission contain untrue or misleading statements such as "Nevada style" or "Vegas style" in reference to games or gaming activities offered at a gambling establishment. Other advertisements include a name different from the actual Bureau-approved game. These types of statements can mislead the public into thinking that a gambling establishment offers house-banked games, which are prohibited from being offered.

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 specific basis or procedures to utilize in making consistent determinations for purposes of enforcement, which this regulatory proposal seeks to establish. Furthermore, owner category licensees 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.

**PURPOSE:**

The purpose of the proposed regulations is to implement the Commission's mandate in B&P Code section 19841, subdivision (f) of the Act, as follows:

§ 19841.

The regulations adopted by the commission shall do all of the following:

...

(f) Provide for the disapproval of advertising by licensed gambling establishments that is determined by the department to be deceptive to the public. Regulations adopted by the commission for advertising by licensed gambling establishments shall be consistent with the advertising regulations adopted by the California Horse Racing Board and the Lottery

Commission. Advertisement that appeals to children or adolescents or that offers gambling as a means of becoming wealthy is presumptively deceptive.

**ANTICIPATED BENEFITS OF PROPOSED REGULATION:**

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 through 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 day care center, youth center, preschool, K-12 school, or at any function primarily held for persons under the age of 21. The regulations are anticipated to dissuade and reduce dissemination of gambling advertisements that are determined by the Bureau to be deceptive to the public. This includes advertisements that inappropriately appeal to persons under the age of 21, entice participation in gambling as a means of becoming wealthy, make false or misleading claims, or refer to a game prohibited by Penal Code section 330. The proposal provides the Bureau procedures for notifying an owner category licensee 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 the proposed regulations will fulfill the Commission’s statutory mandate, better protect the health, safety, and general welfare of the public, and maintain integrity within the cardroom industry.

**CONSISTENCY WITH EXTERNAL GAMBLING REGULATIONS:**

B&P Code section 19841, subdivision (f), requires that the proposed advertising regulations be “consistent with” (not identical to) the advertising regulations adopted by the California Horse Racing Board (CHRB) and the Lottery Commission (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 12097(c)(2) 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 12097(c)(3) 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

Presently, there are no regulations by the Lottery that 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 B&P 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 12097 and 12461.

### **PROPOSED ACTION:**

This proposed action will make changes within California Code of Regulations, Title 4, Division 18 as follows:

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

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

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

This section provides general definitions for this division. New definitions are proposed to be added. These new terms are necessary to define for purposes of applicability of the proposed regulations. Non-substantive changes have been applied throughout to renumber the existing definitions accordingly.

**Subsection (b)** adds the definition of “advertise” or “advertising” to mean the publication, dissemination, or causing the publication or dissemination of an “advertisement.” Adding this definition allows the use of the verb form of advertisement throughout the regulations. Breaking up the term advertisement into its verb and noun forms is common in many regulatory schemes and provides for ease of understanding.

**Subsection (c)** adds the definition of “advertisement.” Providing the definition is necessary to clarify and specify the meaning of the term used throughout the proposed regulations. The definition includes the following components of what constitutes an advertisement:

- *“Any written or verbal statement, illustration, or depiction...”* This language targets a broad range of instances in which a gambling activity is portrayed through written or spoken words, images, or graphics. As methods of advertising are broad, varied, and

complex, this scope is necessary to capture all potential forms of advertising.

- “...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.
- “...which is calculated to induce participation in a controlled game or gaming activity at one or more gambling establishment...” This language ensures that the regulations are specific enough to target only advertising intended to solicit, encourage, or promote participation in gambling and keeps the regulations within the scope of the statutory mandate. This language is necessary because many gambling establishments offer more than just gambling and want to drive business to other commerce within the establishment.
- “...without limitation, any written, printed, graphic, or other material, billboard, sign, or other outdoor display, periodical literature, publication, or in a radio or television broadcast, social media business page, or in any other media.” This language is intended to capture all of 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.
- **Paragraph (c)(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 (A):** “The solicitation of activities, events, or services that do not relate 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 B&P 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 is necessary to clarify 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):** “Use of the name, nickname, alias, or any other name by which the gambling establishment is commonly known, including its logo or trademark, exclusive of any other content.” This language is necessary to ensure the regulations do not encroach on commercial speech rights and overstep the

statutory directives as the mere display or use of a gambling establishment's name(s), logo, or trademark is generally not inherently deceptive.

- **Subparagraph (C):** *“Any editorial or other reading material, such as a news release, in any periodical, publication, or newspaper for the publication of which no money or valuable consideration is paid or promised, directly or indirectly, by any owner category licensee, and which is not written by or at the direction of the owner category licensee.”* This language broadly exempts reading materials about a gambling establishment written independently and without direction or compensation from an owner category licensee. The language was adapted from the definition of an advertisement in Cannabis Law (B&P Code section 26150(b)(2)). There are many types of publications outside of the control of an owner category licensee such as news articles, business listings, information identifying charitable contributions, etc. Because such reading materials may discuss or highlight information, events, or features of a gambling establishment that could be interpreted to fall under the definition of an advertisement, this exemption is necessary to clarify and ensure an owner category licensee is not subject to discipline for published information outside of their control.
- **Subparagraph (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 is necessary to exempt 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 (E):** *“Any job postings for employment opportunities.”* This provision is necessary to provide a commonsense clarification that job postings for employment would not be subject to the requirements for advertisements.
- **Subparagraph (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.
- **Paragraph (c)(2)** clarifies that anything meeting the definition of an advertisement that is included with or attached to the items exempted under paragraph (c)(1) above, must comply with Article 5. The Commission has found several examples of business signage

located on the exterior of a gambling establishment that also contains advertisements for games and gaming activities offered at the gambling establishment. 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 gambling establishment is allowed to offer (Bureau-approved games) or advertise phrases such as “Vegas style” or Nevada style.” The proposed provision is necessary to ensure an owner category licensee is not able to side-step the requirements when appending advertisements to items such as business signage, business listings, job postings, etc.

## **ARTICLE 5: ADVERTISING**

### **Adopt Section 12095. General Requirements.**

Section 12095 provides new general advertising requirements and responsibilities for all owner category licensees.

**Subsection (a)** applies the requirements within this article to all owner category licensees and specifies that the requirements are mandatory. This language is necessary for clarity to whom this section applies and makes clear the compliance requirement.

**Subsection (b)** clarifies that any act, omission, or failure to comply with this article by an advertising agent, representative, contractor, or any other person retained by the owner category licensee, will be deemed an act, omission, or failure of the owner category licensee. It is common for owner category licensees to contract with third-party agents, representatives, or consultants for advertising and marketing services. Accordingly, this section is necessary for the Bureau to assure that all advertising and marketing done on behalf of an owner category licensee satisfies the requirements of the regulations. This will avoid the potential situation where an owner category licensee could attempt to avoid responsibility for violations of the regulations by having another party advertise or market on its behalf.

### **Adopt Section 12096. Specific TPPPS Business Requirements**

Section 12096 provides new specific advertising requirements and responsibilities for all TPPPS business licensees.

**Subsection (a)** contains requirements exclusive to a TPPPS business licensee, as discussed below:

- **Paragraph (a)(1)** specifies a TPPPS business licensee will not create, purchase, place, or disseminate any advertisement for a cardroom business licensee unless it has a TPPPS contract with that cardroom business licensee and the advertisement costs and scope of advertising services to be performed are included in the TPPPS contract. B&P Code section 19984 provides that a licensed gambling enterprise may contract with a TPPPS. Current regulations require that all financial arrangements between the cardroom business licensee and TPPPS business licensee, including advertising, must be disclosed in the TPPPS contract. This paragraph is necessary to clarify that in order for the cardroom

business licensee and TPPPS business licensee to comply with existing Commission regulations, the reasonable share of the advertisement costs with respect to gaming at the gambling establishment in which the TPPPS business licensee participates, if any, must be included in the TPPPS contract.

- **Paragraph (a)(2)** requires the TPPPS business licensee to provide the cardroom business licensee copies of all advertisements used to promote a gaming activity that the TPPPS business licensee has, or has caused to be, created, purchased, placed, or disseminated for the cardroom business licensee. 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 regulations. This provision is necessary to remain consistent with existing Bureau regulations in Title 11, CCR, Section 2072, subdivision (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, the cardroom business licensee may unknowingly omit a gaming activity advertisement that was under the control of a TPPPS from its biannual report.

**Adopt Section 12097. Advertising Content and Dissemination.**

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

**Subsection (a)** provides general criteria applicable to presenting the required information in a clear and conspicuous manner in all advertisements and ensures that the required information is legible and readable or audible and intelligible. This provision is necessary to ensure that the public has adequate notice, as well as provide guidance to the regulated community. This requirement is intentionally broad to stay within the parameters of enabling legislation and avoid infringing on commercial speech rights.

**Subsection (b)** specifies that the required statement that participants must be 21 or older to gamble and the problem gambling statement must be presented in the same language as all of the languages used in the advertisement. This provision is necessary because many gambling advertisements use languages other than or in addition to English for targeting groups of people who may only be fluent 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 include 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 owner category licensee(s) and/or issue a letter of warning.

- **Paragraph (c)(2)** 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 B&P 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 gambling establishment.
- **Paragraph (c)(3)** references the requirements of Section 12461(b)(1) and (3), which provides advertisements must contain a responsible gambling message and reference one of the information and referral services approved by the Office of Problem Gambling (or its successor). The provision is necessary to provide clarity by ensuring all requirements related to gambling establishment advertising are included or referenced within the same section.
- **Paragraph (c)(4)** 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 or references to games prohibited by Penal Code section 330 or the California Constitution. The requirements of this paragraph are necessary to provide clarity and specificity to the regulation.
  - **Subparagraphs (A) and (B)** 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 are permissible and the Bureau must approve any game before it can be offered for play in a licensed gambling establishment. 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.
  - **Subparagraph (C)** contains requirements that allow an advertisement to refer to a game or group of games using any name if certain safe harbor statements identified under clauses (i) through (iv) 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 gambling establishments.
- **Paragraph (c)(5)** 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 gambling establishment or the Bureau to obtain the approved rules. The requirements of this paragraph are necessary to provide clarity and specificity to the regulation.

- **Subparagraph (A)** 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 gambling establishment.
- **Subparagraph (B)** 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 gambling establishment.

**Subsection (d)** provides specific exemptions for certain types of advertisements that are currently located in Section 12461(c)(1) and (2), which are being proposed to be relocated and amended as follows:

- **Paragraph (d)(1)** contains express language that provides the requirements of paragraphs (c)(2) through (5) 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.
- **Paragraph (d)(2)** provides the requirements of paragraphs (2) and (3) of subsection (c) do not apply to any digital material where the inclusion would be impracticable due to limited characters or spaces if the advertisement includes a link to a website that complies with Section 12461(b). This exception is necessary due to the character and space limitations associated with digital advertising materials such as those found on social media platforms like Twitter. This ensures that these advertisements still provide a way for the public to access the information and referral services provided by the Office of Problem Gambling via a compliant website link.

**Subsection (e)** states that an advertisement must not be deceptive to the public and specifies what constitutes a deceptive advertisement. This subsection provides owner category licensees 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 is necessary to align with and provide additional specificity to the language in B&P Code section 19841, subdivision (f), which states that an advertisement that offers gambling as a means to become wealthy is presumptively deceptive. The additional specificity this provision

provides further ensures that advertisements do not depict gambling as a means to make money to pay off existing debts.

- **Paragraph (e)(2)** provides that any advertisement is deceptive if it specifically targets or appeals to children or adolescents or encourages persons under 21 years of age to engage in controlled gambling and provides specific examples in the subparagraphs that follow. This provision is necessary to provide additional specificity to the language of B&P Code section 19841, subdivision (f), which states that an advertisement that appeals to children or adolescents is presumably deceptive. The provisions in this paragraph are necessary to provide additional clarity and specificity on how licensees may ensure their advertising is tailored to appropriate audiences and not minors.
  - **Subparagraph (e)(2)(A)** specifies that an advertisement is deceptive if it uses depictions, images, appearances, or voice-over services of anyone less than 21 years old<sup>3</sup>. It is a generally accepted view that youth are particularly susceptible to the influence of peers. Further, other age restricted industries such as the alcohol beverage industry follow responsible advertising and marketing guidelines. For example, the Code of Responsible Practices for Beverage Alcohol Advertising and Marketing provides that beverage alcohol products should not be advertised or promoted by any person who is below the legal purchase age or who is made to appear to be below the legal purchase age. This regulation is necessary because 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 uses objects such as toys, inflatables, movie characters, cartoon characters, or any other display, depiction, or image designed in a manner likely to be substantially or predominately appealing to minors or anyone under 21 years of age<sup>4</sup>. This language is necessary to prohibit objects from being used in advertisements that have special attractiveness to persons less than 21 beyond the general attractiveness it has for persons 21 years of age or older. The requirement is necessary to ensure protection of the more impressionable youth.
  - **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 12<sup>th</sup> grade school or related function thereto, or at any function that is being primarily held for persons under 21 years old. The Commission is aware that a current industry practice is for many gambling establishments to provide charitable support to local youth and community functions, such as Little League sports teams, toy drives, and holiday tree lighting

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<sup>3</sup> This provision was adapted from the Distilled Spirits Council of the United States – 2021 Code of Responsible Practices for Beverage Alcohol Advertising and Marketing. <https://www.distilledspirits.org/wp-content/uploads/2021/03/2021-DISCUS-Code-of-Responsible-Practices-for-Beverage-Alcohol-Advertising-and-Marketing.pdf>

<sup>4</sup> This provision was adapted from the United States Federal Trade Commission v R.J. Reynolds Tobacco, Docket No. 9285, 1997. <https://www.ftc.gov/sites/default/files/documents/cases/1997/05/d9285cmp.pdf>

ceremonies. This includes placing a gambling establishment's name and/or logo on the children's uniforms, team banners, event programs and pamphlets, etc. While these sponsorships are well-intended and benefit the local community, this provision is necessary to ensure that such sponsorships are limited to identifying the name and/or logo of the sponsoring cardroom and do not overstep into gambling advertisements that appeal to minors participating in these games or events. 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.

- **Paragraph (e)(3)** specifies what terms are prohibited from being used to describe any games or gaming activities. This provision is necessary to provide the owner type licensee specific guidance in the development of an advertisement, to give the Bureau specific criteria to cite if it disapproves of an advertisement, and to protect the public. It provides specific examples of common misleading statements that have been historically. Misleading statements are not constitutionally protected forms of commercial speech and therefore, do not receive any first amendment protections. The terms "Nevada Style" and "Vegas style" are misleading because, pursuant to the California Constitution and the Penal Code, gambling establishments are prohibited from offering banking or percentage games like casinos of the type currently operating in Nevada and New Jersey. These types of statements can mislead the public into thinking that a gambling establishment offers house-banked games and therefore, should be prohibited.
- **Paragraph (e)(4)**, in alignment with B&P Code section 17508, provides that an advertisement is deceptive if it makes any false or misleading claim. False or misleading claims are not constitutionally protected forms of commercial speech and do not receive any first amendment protections. By utilizing some of the pertinent language found in Section 17508, rather than directly referencing the section, the provision maintains the 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 provides a clear requirement consistent with existing law, while keeping the regulations specific to the administrative process without unintentionally supporting potential civil lawsuits.

**Paragraph (e)(5)** provides that an advertisement is deceptive if the advertisement depicts, illustrates, portrays, or references a prohibited game as specified in Penal Code section 330. The provision is necessary to provide the Bureau essential discretion and flexibility to make such a determination, especially for advertisements that may not explicitly advertise the name of a prohibited game, but may imply such a game is offered at a gambling establishment through the use of illustrations or pictures.

**Adopt Section 12098. Age Confirmation in Advertising.**

This section establishes age confirmation requirements for advertising involving direct communication or dialogue and for accessing gambling establishment websites and social media landing pages.

**Subsection (a)** requires that the owner category licensee must use age affirmation to verify that the recipient is 21 years of age or older prior to any advertising involving direct communication or dialogue. Further, the provision specifies what forms of communication must utilize age verification methods (communication through in-person, telephone, physical mail, or electronic). These methods allow for communication to be focused on a particular individual; thus, allow for direct communication. This section is necessary in providing specific requirements to implement B&P Code section 19841(f) and is consistent with related legislative findings and declarations in Section 19801.

**Subsection (b)** is necessary to address situations where a recipient has already gone through age verification. Specifically, subsection (b) does not require age verification if the owner category licensee can verify that the recipient has already undergone a method of age affirmation and has been verified to be 21 or older, and the communication is sent only to the intended recipient.

**Subsection (c)** is necessary to clarify age verification or self-attestation is required prior to adding a potential customer to a mailing list or subscription to receive direct communications controlled by the owner category licensee. The requirement addresses the fact that licensees develop mailing lists for targeted marketing or advertising communications and complements existing Self- Restriction and Exclusion regulations in Article 9 of Chapter 7.

**Subsection (d)** provides age gating requirements, when possible, for visiting gambling websites and social media landing pages operated by or for an owner category licensee. This is consistent with the requirements for other age-restricted industries. This regulation is necessary to protect the more impressionable youth from accessing such websites and social media landing pages where they may be encouraged or influenced to participate in controlled gambling.

**Adopt Section 12099. Disapproval of Advertising.**

This section explains the procedure for the Bureau to notify an owner category 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 notice of disapproval to the owner category licensee for an advertisement that is not compliant with this article. If the Bureau decides to issue a notice of disapproval, at a minimum, the notice must provide: (1) A legal citation of the violation, (2) A description of each part of the advertisement that is not compliant with the regulations, and (3) A specific deadline for correcting the advertisement. This provision is necessary to specify a mechanism whereby the Bureau may document and notify the owner category licensee of an advertisement that has been determined to be in violation of the regulations. Further, it provides the owner category licensee important guidance and information on exactly what it must correct and when it must be corrected before disciplinary action is taken. Flexibility in the requirements is necessary to provide the Bureau discretion in determining 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 on a case-by-case basis. Further, it allows the Bureau to require other actions of the owner category licensee in its notice of disapproval, such as the submission of a corrective action plan.

**Subsection (b)** provides if a notice of disapproval is issued in accordance with subsection (a) and the noncompliant advertisement is not corrected by the deadline specified by the Bureau, the Bureau may take additional disciplinary action it deems appropriate. The requirements of this provision are necessary to provide the Bureau with enforcement options if the licensee fails to take corrective action pursuant to the issuance of a notice of disapproval. The provision is also necessary so that the owner category licensee understands that disciplinary actions that may be utilized if it fails to correct a deceptive advertisement. Notably, the Bureau has existing authority for addressing disciplinary issues in Chapter 10 of the regulations and this provision provides a general reference to disciplinary action without providing an additional, duplicative process.

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

- Any notice of disapproval and failure to correct;
- Any instances of repeated violations pursuant to the requirements of the article; and,
- Any subsequent actions by the owner category licensee 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.

**Subsection (d)** provides that nothing in this article will be construed to limit the Bureau from filing a disciplinary action under Chapter 10 of this division and/or under B&P Code sections 19930 and 19931. This provision is necessary to align with and clarify the Bureau's existing authority for filing disciplinary actions against a licensee.

**Subsection (e)** is added in response to industry comments to make clear that it is not the intention of these regulations to imply or create a private cause of action based on any actions of the Bureau or Commission regarding the creation of, and/or failure to timely correct, an advertisement found to be deceptive by the Bureau.

## **Chapter 7. Conditions of Operation for Gambling Establishments.**

### **Article 9. Program for Responsible Gambling.**

#### **Amend Section 12461. Posting Referral Information.**

This section contains requirements for posting problem gambling information and referral services on websites and advertisements operated by or on behalf of any cardroom business licensee or TPPPS business licensee. Additionally, this section contains exceptions for digital materials and promotional items with size and space limitations.

**Subsection (b)** requires a responsible gambling message and a hyperlink to the Office of Problem Gambling be displayed on websites operated by or on behalf of any owner category licensee.

In this subsection, “on behalf of” is being replaced with “under the control of,” which is necessary to provide additional clarity and specificity to the intent of the requirements as the term “on behalf of” may be subject to broader interpretation. Further, this section is being amended to add social media landing pages to the requirement. Social media accounts for businesses are now commonplace and accessible to anyone with access to the Internet. The addition of social media landing pages to this requirement is necessary to ensure that these types of advertising mediums contain problem gambling information to help protect the public.

This subsection is also being amended to require the information be displayed in a clear and conspicuous manner and presented in all languages used in the advertisement, as specified in subsections (a) and (b) of Section 12097. This provides additional clarity and specificity to the regulation and ensures the required information is presented to the public in a legible and readable or audible and intelligible manner, as applicable.

Further, the subsection is being updated and expanded upon to include additional information and referral services that are currently available for problem gamblers. The updated information and referral services being added in paragraph (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. The additional services are necessary to list due to the proliferation of modern-day smartphones and tablets that are commonly used to access websites and social media, which have become a popular medium for disseminating advertisements.

**Subsection (c)** provides problem gambling information and referral requirements for advertisements distributed by television, radio, outdoor display, flyer, mail or digitally. This section is being repealed due to the amendments proposed to subsection (b) and the more specific and extensive advertising content requirements being added in Article 5. The requirements that were previously in this section have been modified, clarified, and expanded upon to reduce ambiguity. These changes are necessary to place the advertising content requirements and exceptions in one place within the regulations, which provides clarity and applicability while avoiding unnecessary duplication and potential conflicts.

## **REQUIRED DETERMINATIONS**

### **LOCAL MANDATE:**

A mandate is not imposed on local agencies or school districts.

### **UNDERLYING DATA:**

Technical, theoretical, or empirical studies or reports relied upon:

1. Distilled Spirits Council of the United States – 2021 Code of Responsible Practices for Beverage Alcohol Advertising and Marketing. (<https://www.distilledspirits.org/wp-content/uploads/2021/03/2021-DISCUS-Code-of-Responsible-Practices-for-Beverage-Alcohol-Advertising-and-Marketing.pdf>)

2. This provision was adapted from the United States Federal Trade Commission v R.J. Reynolds Tobacco, Docket No. 9285, 1997.  
(<https://www.ftc.gov/sites/default/files/documents/cases/1997/05/d9285cmp.pdf>)

**BUSINESS IMPACT:**

The Commission has made a determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. This determination is based on the following facts or evidence/documents/testimony:

This proposed action imposes mandatory advertising requirements on businesses pursuant to the Commission's statutory mandate in B&P Code section 19841(f). The proposed regulations provide advertising standards to ensure that only responsible gambling advertisements are disseminated to the public and problem gambling information and referral services are posted on all advertisements, websites, and social media landing pages.

The total statewide dollar costs that businesses may incur to comply with this regulation over its lifetime includes an initial one-time cost of \$2,791,593 for cardroom businesses and \$839,135 for TPPPS businesses in the first year; an ongoing cost of \$631,350 for cardroom businesses and \$191,958 for TPPPS businesses annually in each subsequent year. This results in an initial industry-wide cost of \$3,630,728 in the first year and an ongoing cost of \$823,308 per year thereafter. These costs will not inhibit a California business from competing with business in other states as the gambling industry does not cross state lines and the amounts involved are not significant enough to effect industry competitiveness.

**SPECIFIC TECHNOLOGIES OR EQUIPMENT:**

The proposed action does not mandate the use of specific technologies or equipment.

**ECONOMIC IMPACT ASSESSMENT/ANALYSIS**

**IMPACT ON JOBS/NEW BUSINESSES:**

The Commission has determined that this regulatory proposal will not have a significant impact on the creation of new jobs or businesses, the elimination of jobs or existing businesses, or the expansion of businesses in California. For this purpose, the definition of a small business as defined by the federal Small Business Administration (SBA) was utilized. An average annual gross gaming revenue of \$30 million per year was used as the threshold, as specified in the North American Industry Classification System Code section 713210 and referenced by the SBA. Cardroom business licensees and TPPPS business licensees having a three-year average annual gross gaming revenue of no more than \$30 million were identified as small businesses.

The basis for this determination is that this proposed action only establishes requirements for the cardroom industry to follow concerning the content, publication, dissemination, and control of advertisements that are calculated to induce participation in a controlled game or gaming activity and provides the Bureau with criteria and a process to use in determining its disapproval of an advertisement. The proposed action is responsive to the Commission's mandate in B&P Code section 19841, subdivision (f), and does not encroach on the industry's constitutionally protected



forms of commercial speech.

**HEALTH AND WELFARE OF CALIFORNIA RESIDENTS:**

It has been determined that the proposed action will protect the health, safety, and general welfare of California residents by dissuading and reducing the dissemination of gambling advertisements that are determined by the Bureau to be deceptive to the public. This includes advertisements that inappropriately appeal to persons under the age of 21, entice gambling as a means of becoming wealthy, make false or misleading claims, or refer to a game prohibited by Penal Code section 330. Additionally, the proposed action provides updates to existing requirements concerning the posting of information and referral services for problem gamblers, as approved by the Office of Problem Gambling.

**WORKER SAFETY:**

It has been determined that the proposed action will not affect worker safety because it does not pertain to working conditions or worker safety issues.

**STATE'S ENVIRONMENT:**

It has been determined that the proposed action will not affect the State's environment because it has nothing to do with environmental issues.

**CONSIDERATION OF ALTERNATIVES:**

No reasonable alternative to the regulations would be more effective in carrying out the purpose for which the action is proposed. No reasonable alternative would be as effective as and less burdensome to affected private persons than the proposed action, nor would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

Set forth below are the alternatives that were considered and the reasons each alternative was rejected: No reasonable alternative has been developed or otherwise identified and brought to the attention of the Commission. The Commission is required to promulgate these regulations pursuant to its mandate in B&P Code section 19841, subdivision (f).