

TITLE 4.
CALIFORNIA GAMBLING CONTROL COMMISSION
NOTICE OF PROPOSED REGULATORY ACTION
Advertising
CGCC-GCA-2022-05-R

NOTICE IS HEREBY GIVEN that the California Gambling Control Commission (Commission) is proposing to take the action described in the Informative Digest after consideration of all relevant public comments, objections, and recommendations received concerning the proposed action. Comments, objections, and recommendations may be submitted as follows:

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Commission at any time during the 45-day public comment period, which closes on **February 13, 2023**. Written comments relevant to the proposed regulatory action may be sent by mail, facsimile, or e-mail, directed to one of the individuals designated in this notice as a contact person. To be eligible for the Commission's consideration, all written comments must be **received at its office no later than midnight on February 14, 2023. Comments sent to persons and/or addresses other than those specified under Contact Persons, or received after the date and time specified above, will be included in the record of this proposed regulatory action, but will not be summarized or responded to regardless of the manner of transmission.**

PUBLIC HEARING

The Commission has not scheduled a public hearing on this matter. Any interested person, or his or her authorized representative, may request a hearing pursuant to Government Code section 11346.8. A request for a hearing should be directed to the person(s) listed under Contact Persons no later than 15 days prior to the close of the written comment period.

ADOPTION OF PROPOSED ACTION

After the close of the public comment period, the Commission, upon its own motion or at the instance of any interested party, may thereafter formally adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit oral or written testimony related to this proposal or who have requested notification of any changes to the proposal.

AUTHORITY AND REFERENCE

Pursuant to the authority vested by sections 19811, 19824, 19826, 19840, 19841, 19856, 19857, 19859, 19920 and 19984 of the Business and Professions Code; and to implement, interpret or

make specific sections 19801, 19841, 19920 and 19984 of the Business and Professions Code, and sections 4369.2 and 4369.4 of the Welfare and Institutions Code; the Commission is proposing to adopt the following changes to Chapters 1 and 7 of Division 18 of Title 4 of the California Code of Regulations:

INFORMATIVE DIGEST AND POLICY STATEMENT

Introduction:

The Commission is proposing regulations that would implement the Commission's mandate under the Gambling Control Act (Act)¹ 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). 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.

To date, the Commission has found numerous examples of existing and prior advertisements that do not contain a 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.

Additionally, the Commission is aware that, as a current industry practice, many gambling establishments 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 pursuant to the California Constitution, Article IV, Section 19 and Penal Code Section 330.

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

¹ Business and Professions Code, Division 8, Chapter 4, section 19800 et seq.

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.

EXISTING LAW AND REGULATION:

Title 15, United States Code, Section 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.

California Constitution, Article IV, Section 19, subdivision (e), prohibits the operation of casinos of the type (offering banking or percentage games) currently operating in Nevada and New Jersey.

B&P 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.”

B&P 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.

B&P 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.

B&P 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. Additionally, this statute 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 that are also relevant to advertising a controlled game or gaming activity, 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 CCR, Title 4, Division 4, 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 CCR, Title 4, Division 4, 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 referral 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.

B&P 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.

B&P 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.

Penal Code section 330 prohibits gambling establishments from offering certain types of games including any banking or percentage games. Specifically, this provision provides that every person who deals, plays, or carries on, opens, or causes to be opened, or who conducts, either as owner or employee, whether for hire or not, any game of faro, monte, roulette, lansquenet, rouge

et noire, rondo, tan, fan-tan, seven-and-a-half, twenty-one, hokey-pokey, or any banking or percentage game played with cards, dice, or any device, for money, checks, credit, or other representative of value, and every person who plays or bets at or against any of those prohibited games, is guilty of a misdemeanor, and shall be punishable by a fine not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000), or by imprisonment in the county jail not exceeding six months, or by both the fine and imprisonment

Title 4, CCR, Division 18, Section 12461, requires the 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.

Title 11, CCR, Division 18, Section 2072, subsection (e), requires that each licensed gambling establishment submit a biannual report to the Bureau which includes, among other things, copies or transcripts of all advertisements within the prior six months used to promote a gaming activity offered at a gambling establishment.

EFFECT OF REGULATORY ACTION:

The proposed regulations would implement the Commission's mandate in B&P Code section 19841, subdivision (f), by establishing 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 party(ies). Further, the proposed regulations contain mechanisms for enforcement and include the potential disciplinary actions that may be exercised as a result of a failure to correct a deceptive advertisement.

ANTICIPATED BENEFITS OF PROPOSED REGULATION:

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. The proposed requirements will establish criteria necessary for the Bureau to use in determining if an advertisement is deceptive and will provide the cardroom industry guidance with 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. These 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.

SPECIFIC PROPOSAL:

This proposed action will make changes within the 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 for purposes of applicability in 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.

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.
- “*...that is disseminated to the public...*” This language provides that the requirements do not apply to advertisements under development or in draft form, which have not yet been released to the public.
- “*...which is calculated to induce participation in a controlled game or gaming activity at one or more gambling establishment...*” This language adds further specificity to the definition to target only advertising intended to solicit, encourage, or promote participation in gambling.
- “*...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 captures the various media by which an advertisement may be disseminated to 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. The 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 provides that 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 as those that fall under the definition of an advertisement.

- **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 provides that the sole display or use of a gambling establishment’s name(s), logo, or trademark is not considered an advertisement, as defined for the purposes of the regulations.
- **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 (e.g., news articles, business listings, information identifying charitable contributions, etc.). The language was adapted from the definition of an advertisement in Cannabis Law (B&P Code section 26150(b)(2)).
- **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 exempts materials that may recognize a gambling establishment for its donation, gift, or charitable contribution so long as the material does not target persons under 21 years of age.
- **Subparagraph (E):** *“Any job postings for employment opportunities.”* This provision clarifies 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 provision exempts content requirements for notices and postings that are contained in other regulatory sections from falling under the

definition of an advertisement, such as the Bureau’s regulations in Title 11 that require the posting of game play rules.

- **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 the requirements for advertisements in Article 5.

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.

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. This provision holds owner category licensees responsible for advertising done through a contracted third-party providing advertising and marketing services.

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. This requirement is consistent with current regulations, which require that all financial arrangements between the cardroom business licensee and TPPPS business licensee, including advertising, must be disclosed 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” makes the requirement applicable to advertising done through the services of a third-party advertising company. This provision is 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.

Adopt Section 12097. Advertising Content and Dissemination.

This section establishes content and dissemination requirements for gambling advertisements. This section also provides criteria for the Bureau to justify its determination to disapprove an advertisement that is deceptive to the public.

Subsection (a) provides general criteria applicable to presenting the required information in a clear and conspicuous manner in all advertisements and specifies that the required information must legible and readable or audible and intelligible.

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.

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.
- **Paragraph (c)(2)** requires that advertisements include a statement that participants must be 21 or older to gamble, which aligns with the existing requirements in B&P Code section 19921.
- **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).
- **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.
 - **Subparagraphs (A) and (B)** contain requirements for referencing Bureau-approved games within advertisements. Subparagraph (A) requires that when an advertisement references a game, the name of the Bureau-approved game or Bureau-approved alternative game name must be included. Subparagraph (B) allows for the potential use of alternative game names in the future, pending a policy and approval process that 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.

- **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.
 - **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. 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.
- **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).

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 for 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.
- **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. The provisions in this paragraph specify 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 old².

² 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->

- **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 to appeal to minors or anyone under 21 years of age³.
- **Subparagraph (e)(2)(C)** prohibits advertising, as defined in Chapter 1, on the premises of any day care center, youth center, preschool, or kindergarten through 12th grade school or related function thereto, or at any function that is being primarily held for persons under 21 years old.
- **Paragraph (e)(3)** specifies what terms are prohibited from being used to describe any games or gaming activities. This provision provides the owner type licensee specific guidance in the development of an advertisement and gives the Bureau specific criteria to cite if it disapproves of an advertisement.
- **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. This provision maintains the Bureau's discretion concerning its disapproval and avoids creating any implication of civil liabilities resulting from a violation of the statute.

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 provides 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 a prohibited 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 the owner category licensee to 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, this provision specifies what forms of communication must utilize age verification methods (communication through in-person, telephone, physical mail, or electronic).

Subsection (b) provides an exemption to age verification requirements 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.

<content/uploads/2021/03/2021-DISCUS-Code-of-Responsible-Practices-for-Beverage-Alcohol-Advertising-and-Marketing.pdf>

³ 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>

Subsection (c) provides that age verification or self-attestation is required prior to adding a potential customer to a mailing list or subscription to receive direct communications (targeted marketing) controlled by the owner category licensee.

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, which is consistent with the requirements for other age-restricted industries.

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 specifies 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 requires the Bureau to provide the owner category licensee information to identify what it must correct in the advertisement and when it must be corrected before disciplinary action is taken.

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. This provision provides the Bureau with enforcement options if the licensee fails to take corrective action pursuant to the issuance of a notice of disapproval.

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.

Subsection (d) provides references to the Bureau's existing authority for filing a disciplinary action under Chapter 10 of this division and/or under B&P Code sections 19930 and 19931.

Subsection (e) clarifies 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 to 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.” Further, this section is being amended to add social media landing pages to the types of advertising media required to contain problem gambling information. Additional amendments are proposed 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.

Further, the subsection is being updated and expanded upon in paragraphs (1) through (3) to include additional information and referral services that are currently available for problem gamblers and to 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.

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.

CONSISTENCY OR COMPATIBILITY WITH EXISTING STATE REGULATIONS:

The Commission has evaluated this regulatory action and determined that the proposed regulations are neither inconsistent nor incompatible with any other existing state regulations.

COMPARABLE FEDERAL LAW:

There are no existing federal regulations or statutes comparable to the proposed regulations.

FISCAL IMPACT ESTIMATES

FISCAL IMPACT ON PUBLIC AGENCIES INCLUDING COSTS OR SAVINGS TO STATE AGENCIES OR COSTS/SAVINGS IN FEDERAL FUNDING TO THE STATE:

The proposed action is estimated to have no fiscal impact to the Commission.

Additionally, the proposed action would only adjust the current enforcement practices of the Bureau and result in an absorbable increase in compliance and enforcement staff workload. Specifically, the Bureau indicated an absorbable annual increase in workload of 1,456 hours for compliance staff and 1,144 hours for enforcement staff. The Bureau has determined that the regulations will not require additional positions and has identified a fiscal impact of \$0.

There are no costs or savings in Federal funding to the State.

NON-DISCRETIONARY COST OR SAVINGS IMPOSED UPON LOCAL AGENCIES:

None.

MANDATE IMPOSED ON ANY LOCAL AGENCY OR SCHOOL DISTRICT FOR WHICH PART 7 (COMMENCING WITH SECTION 17500) OF DIVISION 4 OF THE GOVERNMENT CODE REQUIRES REIMBURSEMENT:

None.

COST TO ANY LOCAL AGENCY OR SCHOOL DISTRICT FOR WHICH PART 7 (COMMENCING WITH SECTION 17500) OF DIVISION 4 OF THE GOVERNMENT CODE REQUIRES REIMBURSEMENT:

None.

EFFECT ON HOUSING COSTS:

None.

IMPACT ON BUSINESS:

The Commission has made a determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, 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 implements requirements for gambling establishment advertisements 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, and 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.

Cost Impact on Representative Private Person or Business:

The proposed action will amend existing content and dissemination requirements for gambling advertisements, provide age confirmation requirements for advertisements involving direct communication or dialogue (direct marketing), and establish age gating requirements for accessing websites and social media landing pages operated by or for an owner category licensee. The proposed action also amends existing requirements for posting problem gambling information and referral services on websites operated by or for an owner category licensee, by adding social media landing pages to this requirement. The average initial cost in the first year is estimated to be higher than in subsequent years because businesses will need to revise and/or replace any current gambling advertisements that do not comply with the new requirements.

The Commission estimates that the proposed action will have an average initial cost of \$62,488 per typical business in the first year and an average ongoing cost of \$16,500 per typical business in each subsequent year.

Effect on Small Business:

The Commission has made a determination that the proposed regulatory action would have a similar impact on small businesses to comply with the proposed regulations, as noted above. The Commission estimates that the proposed action will have an average initial cost of \$42,085 per small business in the first year and an average ongoing cost of \$8,997 per small business in each subsequent year.

RESULTS of 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 federal Small Business Administration (SBA) definition of a small business 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. Due to mandatory closures resulting from the COVID-19 pandemic, 2019 was the last full year of operation; information from 2020 and 2021 was not used.

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.

Benefits of Proposed Regulation:

The proposed regulation will benefit the health, safety, and welfare of the public by ensuring that only responsible gambling advertisements are disseminated to the public and problem gambling

information and resources are posted on all gambling related advertisements, websites, and social media landing pages. Implementing the proposed regulations will fulfill the Commission's statutory mandate and maintain integrity within the controlled gambling industry.

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 does not pertain to environmental issues.

CONSIDERATION OF ALTERNATIVES

The Commission must determine that no reasonable alternative considered by the Commission or that has otherwise been identified and brought to the attention of the Commission would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

INITIAL STATEMENT OF REASONS, INFORMATION AND TEXT OF PROPOSAL

The Commission has prepared an Initial Statement of Reasons and the exact language for the proposed action and has available all the information upon which the proposal is based. Copies of the language and of the Initial Statement of Reasons, and all of the information upon which the proposal is based, may be obtained upon request from the Commission at 2399 Gateway Oaks Drive, Suite 220, Sacramento, CA 95833-4231.

AVAILABILITY AND LOCATION OF THE RULEMAKING FILE AND THE FINAL STATEMENT OF REASONS

All the information upon which the proposed action is based is contained in the Rulemaking File that will be available for public inspection and copying at the Commission's office throughout the rulemaking process. Arrangements for inspection and/or copying may be made by contacting the primary contact person named below.

You may obtain a copy of the Final Statement of Reasons, once it has been prepared, by making a written request to one of the contact persons named below or by accessing the Commission's Website listed below.

CONTACT PERSONS

All comments and inquiries concerning the substance of the proposed action should be directed to the following **primary** contact person:

Alex Hunter, Legislative and Regulatory Specialist
Legislative and Regulatory Affairs Division
California Gambling Control Commission
2399 Gateway Oaks Drive, Suite 220, Sacramento, CA 95833-4231
Telephone: (916) 263-1301
Fax: (916) 263-0499
E-mail: ahunter@cgcc.ca.gov

Requests for a copy of the Initial Statement of Reasons, proposed text of the regulation, modified text of the regulation, if any, or other technical information upon which the proposed action is based should be directed to the following **backup** contact person:

Joshua Rosenstein, Legislative and Regulatory Specialist
Legislative and Regulatory Affairs Division
California Gambling Control Commission
2399 Gateway Oaks Drive, Suite 220, Sacramento, CA 95833-4231
Telephone: (916) 274-5823
Fax: (916) 263-0499
Email: jrosenstein@cgcc.ca.gov

WEBSITE ACCESS

Materials regarding this proposed action are also available on the Commission's Website at www.cgcc.ca.gov.