

CALIFORNIA GAMBLING CONTROL COMMISSION
INITIAL STATEMENT OF REASONS
CGCC-GCA-2021-04-R

HEARING DATE: None Scheduled

SUBJECT MATTER OF PROPOSED REGULATIONS: Southern California Gambling Control Act Hearings

SECTIONS AFFECTED: California Code of Regulations, Title 4, Division 18: Sections 12006, 12052, 12057, 12060, and 12118.

SPECIFIC PURPOSE OF REGULATORY PROPOSAL:

INTRODUCTION:

The California Gambling Control Commission (Commission) is the state agency charged with the administration and implementation of the Gambling Control Act (Act).¹ The Commission is authorized to adopt regulations governing applications for licenses, permits, registrations, findings of suitability, or other approvals,² including the consideration of an application at an evidentiary hearing.³

The Commission's regulations provide comprehensive procedures for evidentiary and non-evidentiary hearings and related topics. At a non-evidentiary hearing meeting the Commission may, among other actions, issue a license, temporary license, interim license, registration, permit, finding of suitability, renewal or other approval; or it may elect to hold an evidentiary hearing if issues are identified that require additional information or consideration related to an applicant's suitability for licensure. For evidentiary hearings on applications, the regulations require the hearing be conducted as a Gambling Control Act hearing (GCA hearing), which is most common, unless the Commission determines the hearing should be conducted as an Administrative Procedure Act hearing (APA hearing).

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

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

² Business and Professions Code section 19824, subdivision (a)

³ Business and Professions Code section 19870

PROBLEM ADDRESSED:

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

In 2018, the Commission conducted a total of 36 GCA hearings. Of the 36 GCA hearings, roughly half (19) were conducted on applicants who resided in any of the following Southern California counties at the time of their hearing: Imperial, Kern, Los Angeles, Orange, Riverside, San Diego, San Luis Obispo, San Bernardino, Santa Barbara, and Ventura. There were nine instances out of the 36 scheduled hearings where the applicant failed to appear (no-shows). Five of the nine no-shows were Southern California residents. There were 20 default decisions considered at regular Commission meetings in 2018. In these cases, a GCA hearing was not held because the applicant either did not request a hearing on the Notice of Defense form or they withdrew their request for a hearing. Of the 20 default decisions, four involved Southern California residents. In reviewing updated figures for subsequent years up to March of 2021, this same trend continues.

Furthermore, the majority of GCA hearings conducted in 2018 through March of 2021 involved applications for a Third-Party Provider of Proposition Player Services (TPPPS) player license. The hourly pay for many employee category positions held by TPPPS licensees start at or near minimum wage. Some TPPPS license applicants that reside in Southern California may choose not to request or show up for a GCA hearing either because they cannot afford travel to Sacramento or they decide to seek a comparable paying job with fewer barriers to entry.

PURPOSE:

The purpose of this proposed action is to reduce travel costs and other disproportionate burdens for applicants residing in Southern California that have been scheduled for a GCA hearing. While existing law provides the Commission discretion to hold hearings in other locations within the State when the interests of the public may be better served,⁴ regulations need to be implemented for determining when this would be appropriate. The proposed regulations establish a process with specific criteria for applicants residing in a Southern California county to request that their GCA hearing be held at a location in Southern California determined by the Commission.

⁴ Business and Professions Code section 19819, subdivision (a)

ANTICIPATED BENEFITS OF PROPOSED REGULATION:

The proposed regulations are anticipated to improve GCA hearing attendance of applicants that reside in the Southern California area by providing them the opportunity to be heard closer to their home. Improving access to an applicant's right to due process and thorough evidentiary hearing by reducing travel burdens for these applicants should result in a decrease in the amount of withdrawn hearing requests and failures to appear, both of which result in default denial decisions.

PROPOSED ACTION:

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

General Notes

A general change throughout has been made in all references to the current version of the Notice of Defense form, CGCC-CH1-03 (~~New 05/20~~Rev. 08/21), as amendments to the form are being proposed as part of this regulatory package. This is a non-substantive change.

CHAPTER 1. GENERAL PROVISIONS.

ARTICLE 1. DEFINITIONS AND GENERAL PROCEDURES.

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

Subsection (b) is amended to reference the new version of the Notice of Defense form, CGCC-CH1-03 (Rev. 08/21). See General Notes above.

ARTICLE 2. PROCEDURES FOR HEARINGS AND MEETINGS ON APPLICATIONS.

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

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

1. **Subparagraphs (c)(2)(B) and (C)** contain nonsubstantive amendments to align with the re-numbering of the subsections in Section 12060.
2. **Subparagraph (c)(2)(E)** is amended to include a new version of the Notice of Defense form, CGCC-CH1-03 (Rev. 08/21). This form is provided to the applicant to complete, and once returned to the Bureau and Commission, provides important information to the Commission concerning the evidentiary hearing process. Section 1 of the form is being amended to provide an applicant the ability to request a GCA hearing be held at a Southern California location. The applicant is required to acknowledge that there may be a significant delay in concluding a Southern California hearing and confirms that their primary residence is in one of the following California counties: Imperial, Kern, Los Angeles, Orange, Riverside, San Diego, San Luis Obispo, San Bernardino, Santa Barbara, or Ventura. Providing the applicant a means of making the request using the Notice of Defense form is necessary to inform the applicant of this option, provides for the timely submittal of the request, and provides the Commission enough time to make appropriate schedule and travel arrangements.

Amend Section 12057. Default Decisions and Uncontested Applications.

Subsection (a) is amended to reference the new version of the Notice of Defense form, CGCC-CH1-03 (Rev. 08/21). See General Notes above.

Amend Section 12060. GCA Hearings.

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

1. **New subsection (c)** provides that an applicant may request his, her, or its GCA hearing be held at a Southern California location on the Notice of Defense form under specified conditions (see below). Currently, the Commission only holds GCA hearings at its principal office in Sacramento. Failure to appear at a scheduled meeting without requesting a continuance may result in a default decision. This can be overly onerous for individuals that reside in Southern California and in some circumstances, financially impossible. These circumstances may include travel expenses (e.g., airfare, car rental, hotel accommodation, dining), child or elderly care, missed wages, etc. Business and Professions Code section 19819 authorizes the Commission to hold meetings at any place within the state when the interests of the public may be better served. Providing Southern California applicants the opportunity to have their hearing held in Southern California is in the better interest of the public.
2. **New paragraph (c)(1)** provides that the Executive Director (or designee), as defined in Section 12002(w), will approve an applicant's request to have a Southern California GCA hearing if specified criteria are met (identified below). Providing this approval authority to the Executive Director is consistent with existing subsections (a) and (b), which grant the Executive Director the authority to set and give notice of a GCA hearing to an applicant.
 - a. **New subparagraph (c)(1)(A)** specifies that the hearing must not be estimated by Commission staff to exceed four hours in length. The intent behind these regulations is for the Commission to conduct multiple Southern California hearings within a single visit to maximize time and efficiency. Further, this criterion is necessary so that the Commissioners and supporting staff are not inappropriately obligated to stay in Southern California for extended periods of time—leading to delay and neglect of other vital day-to-day operations that take place at the Commission's principal office. This provision will ensure that state travel and hotel expenses associated with offsite GCA hearings are kept within a reasonable minimum. It's important to note that the average hearing length in 2018 was two hours and all but seven of the 36 hearings were conducted in less than two hours. As such, establishing a four-hour time limit is reasonable and necessary to ensure judicial economy.

- b. **New subparagraph (c)(1)(B)** specifies that the applicant’s primary residence must be located in one of the following counties: Imperial, Kern, Los Angeles, Orange, Riverside, San Diego, San Luis Obispo, San Bernardino, Santa Barbara, or Ventura. These counties have been chosen due to their distance from the Commission’s principal office in Sacramento. Because the cities of or near Los Angeles and San Diego are the most likely and practical locations to hold GCA hearings, choosing all of the counties south of Monterey, Kings, Tulare, and Inyo county make the most sense based on distance of travel. Anyone with a primary residence north of San Luis Obispo, Kern, and San Bernardino County is within a reasonable driving distance from Sacramento.
 - c. **New subparagraph (c)(1)(C)** specifies that a GCA hearing will be noticed for a Southern California location only when doing so is in the best public interest, promotes judicial economy, and comports with the Commission’s availability. This provision ensures that a request for a Southern California hearing would not be approved if doing so would be judicially inefficient, cost prohibitive, or conflict with the Commission’s availability—all of which would not be in the better interest of the public.
 3. **New paragraph (c)(2)** authorizes Commission staff to cancel a Southern California GCA hearing and issue a new notice of hearing for the Commission’s Sacramento office if at any time before the hearing the Executive Director determines that the criteria in subparagraphs (c)(1)(A) through (C) are no longer met. Sometimes new information becomes available after a hearing has been noticed and before a hearing takes place. This may happen after the statement of reasons is filed or during the prehearing conference. When new information is made known, the parties may state the need for more time to prepare for the hearing or it may become evident to the presiding officer that the hearing would likely exceed four hours in length. Further, staffing limitations, venue availability, budget issues, or unforeseen events could arise or the Commission could unexpectedly go through a period of being unable to reach quorum after a Southern California hearing has already been noticed. As such, under any circumstances where the criteria in subparagraphs (c)(1)(A) through (C) are no longer met, Commission staff must have the ability to reschedule and/or relocate the hearing. The requirement is necessary to ensure that holding GCA hearings in Southern California does not create unnecessary judicial inefficiencies, state costs, or conflict with the Commission’s availability
 4. **Subsection (e)** [formerly (d)] specifies that if a request for a continuance of a Southern California hearing is granted, the hearing may be relocated to the Commission’s office in Sacramento if the criteria specified in subparagraphs (A) through (C) of paragraph (1) of subsection (c) are no longer met. The Commission does not have an established hearing location in Southern California and location choices will be limited due to availability. Arrangements for Southern California hearings must be made well in advance and will consist of multiple hearings scheduled over the course of one or more consecutive days. Due to limitations on staffing, Commission and venue availability, travel arrangements, and funding, Southern California hearing opportunities will be limited to maintain judicial economy and avoid unnecessary delay in adjudicating an application.

5. **Subsections (f), (g), (h), (i), (j), (k), (l), (m), and (n)** [formerly (e), (f), (g), (h), (i), (j), (k), (l), and (m) respectively] contain non-substantive amendments to align with the re-lettering of the subsections in Section 12060.

CHAPTER 2. LICENSES AND WORK PERMITS.

ARTICLE 2. INITIAL AND RENEWAL LICENSES AND WORK PERMITS.

Amend Section 12118. Objection to Local Work Permits.

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

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: None.

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 no mandatory requirement on businesses. The proposed regulations only provide a process for individual applicants to request their GCA hearing be held in Southern California if specified conditions are met.

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 consolidated small business definition provided in Government Code section 11346.3, subdivision (b), paragraph (4) was utilized.

The basis for this determination is that this proposed action imposes no mandatory requirement on businesses or individuals and does not significantly change the Commission's current practices and procedures. Licenses and Commission work permits are portable and the proposed action only increases access to an applicant's right to due process and thorough evidentiary hearing by providing a different means of hearing attendance for qualifying Southern California applicants. The proposed action may cause a minor and insignificant increase in business for the following types of businesses as a result of holding GCA hearings in Southern California over a

four day period, three times per year: Airlines, hotels, restaurants, and ground transportation businesses.

The Commission does not have an established hearing location in Southern California and location choices will be limited due to space requirements and availability. However, the Commission has been in contact with the Department of General Services' Building Management Division, which has provided information on several state owned facilities located in Southern California that are available to reserve and rent at no additional cost to any state agency.

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 aiding and preserving the integrity of controlled gambling and providing increased access to an applicant's right to due process and a thorough evidentiary hearing, which will better serve the public.

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: Commission staff researched the possibility of state reimbursement for travel expenses that would be incurred by applicants residing in Southern California to attend their GCA hearing at the Commission's hearing room located in Sacramento, California. However, this alternative is not possible because non-state employees that are not representing or acting on behalf of the state (the applicants) are not eligible for travel reimbursement pursuant to the California Department of Human Resources Manual section 2201 - Travel and Relocation Policy. As such, there are no alternatives to the regulation.