

CALIFORNIA GAMBLING CONTROL COMMISSION

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**UPDATED INFORMATIVE DIGEST**

No changes to be made. The Informative Digest in the Notice of Proposed Rulemaking is incorporated as if fully set forth in this section.

FINAL STATEMENT OF REASONS**A. SUMMARY OF COMMENTS RECEIVED AND RESPONSES THERETO**

There were no requests for a public hearing and no public hearing was held.

Two comment letters were received during the 45-day comment period. The Division of Gambling Control sent in a letter of general support and indicated that they were prepared to implement the self-exclusion database. The Department of Alcohol and Drug Programs, Office of Problem Gambling, indicated that they were in favor of the regulations but lacked the fiscal mechanism to receive forfeited funds.

AB 1973, Chapter 854, Statutes of 2006, was signed by the Governor on September 30, 2006. A copy is attached to this Final Statement of Reasons (Attachment A). This legislation (among other things) creates the fiscal mechanism for the Office of Problem Gambling to receive forfeited funds. Based upon the naming of the fund, a 15-day comment period was initiated for modifications to the forms and to the text of sections 12463(a)(4)(C) and 12464(a)(4). This 15-day comment period (the First) occurred from October 17, 2006 through November 1, 2006.

The Office of Problem Gambling also recommended that the Commission explore the possible need to add language regarding ATMs in cardrooms. Such language was originally vetted in the informal stages, along with language regarding check cashing and extension of credit, but was tabled for this particular rulemaking package. The Commission is planning on addressing the ATM issue in 2007, in a separate rulemaking.

During the First 15-day comment period, the Office of Problem Gambling sent in a letter supporting the modifications to the draft regulations and to the draft regulations as a whole.

Attorney David Fried (**DF**) wrote on behalf of the Golden State Gaming Association. They endorse the overall aim of the regulations but requested clarification on certain areas (see below).

Attorney Alan Titus (**AJ-1**) of Robb & Ross wrote on behalf of Artichoke Joe's, a cardroom in Northern California. Artichoke Joe's appreciates the Commission's efforts but had some concerns (see below).

Although comments from DF and AJ did not relate to the First 15-day comment period, the Commission reviewed them and made changes in response to certain suggestions. A Second 15-day comment period was then held from November 20, 2006 through December 5, 2006.

During the Second 15-day comment period, the Commission received a letter of support from the California Council on Problem Gambling.

Attorney Alan Titus (**AJ-2**) of Robb & Ross wrote on behalf of Artichoke Joe's, a cardroom in Northern California. Artichoke Joe's appreciates some of the changes made in the First 15-day comment period in response to their concerns, but wanted to re-raise other concerns (see below).

Specific comments on specific sections by DF and AJ during the first and second comment periods are as follows:

12460

AJ-1 and AJ-2: Exclusion should not be irrevocable. Is it legal?

RESPONSE: (Note: Not part of 15-day change.) The Commission declines to make this change. Please see Initial Statement of Reasons, pages 3-4. The Commission is not in a position to determine someone's mental health or "recovery" to determine whether removal from the exclusion list is in the person's best interest. Instead, the Commission provided two terms of exclusion that are not lifetime. The entire program is a voluntary effort to help problem gamblers.

12460(a), 12463

AJ-1: Should not be confidential. Suggest adding that prohibition against sharing list with third party.

RESPONSE: (Note: Not part of 15-day change.) Many people would not sign up for an exclusion unless it is confidential. Even in Gambler's Anonymous, confidentiality is key. Those signing up for the list are made aware that a certain number of individuals will know of their participation and that they will be in a database. A release of liability is included in the participation forms. In addition, the Commission has added language as suggested to section 12466 to assist cardrooms in maintaining confidentiality.

12461 (a)

DF: Rather than signs at every entrance (such as delivery entrances), just have at gaming areas.

RESPONSE: (Note: Not part of 15-day change.) We have modified the regulation to refer to patron gambling entrances.

12461 (b) and (c)

DF: How long does a club have to change its website and advertising:

RESPONSE: (Note: Not part of 15-day change.) We have clarified that July 1, 2007 will be the deadline.

12462(b)

AJ-1: What does "as part of licensee's application for renewal" mean?

RESPONSE: (Note: Not part of 15-day change.) As with other current regulatory provisions, a cardroom would indicate by letter how they had complied with this section.

12464(a)(3)

AJ-1: Suggest adding “if and when identity becomes known...”

DF: Suggest “designed to thwart self-excluded patrons from entering the gaming area...”

RESPONSE: (Note: Not part of 15-day change.) We have added DF’s suggestion and believe that covers the goal of cardrooms developing procedures to not allow excluded patrons to gamble.

12463 (a)(3) / 12464(a)(3)

DF: Clarify that removal involves police and/or security.

RESPONSE: (Note: Not part of 15-day change.) We have modified the regulation to refer to police and/or security.

12364(a)(4) / 12464(a)(4)

AJ-1 and AJ-2: Delete forfeiture provisions.

RESPONSE: (Note: Not part of 15-day change.) The Commission declines to adopt this suggestion. Please see Part B, section 12463 and 12464.

12464

DF: Clarify that clubs will not use force; that cardrooms can declare restricted or excluded persons ineligible for jackpots; specify who can execute the forms; allow cardrooms to restrict a patron entirely from all games, rather than specific games.

RESPONSE: (Note: Not part of 15-day change.) Please see Part B, section 12463 and 12464. No change to regulatory text deemed necessary.

12466

AJ-1: Change “a gambling establishment” to “any...”

RESPONSE: (Note: Not part of First 15-day change.) The Commission had made this change.

AJ-1 and AJ-2: Suggest greater exculpatory language.

RESPONSE: (Note: Not part of 15-day change.) The Commission believes that the release language in the forms and the current language in 12466(e) is sufficient. Please see Initial Statement of Reasons, pages 4-5.

B. UPDATE OF INITIAL STATEMENT OF REASONS

The Initial Statement of Reasons is incorporated as if fully set forth in this section. In addition, the Commission is adding the following information.

Section 12462 – Training Requirements.

Food and beverage servers were excluded from the requirements on cardrooms for employee training regarding problem gambling based on a specific request from industry during the informal discussion process. This is in part due to the turnover of wait staff, and the Commission agreed that food and beverage servers need not be trained, but appreciates the efforts of those cardrooms who go above and beyond the regulation requirements to train all employees, including wait staff.

The Commission is requiring that employees be trained as part of their initial orientation to make sure that employees know from the beginning information regarding problem gambling. The Commission is further requiring annual training as a refresher, and to take into account any new information (such as a changed phone number, perhaps). Records of such training are required to be kept for five years. While accounting records for cardrooms are required to be kept for seven years, the Commission did not determine that this type of personnel information needed to be kept for as long as financial data. However, cardrooms need to keep the information for a long enough time to establish a record and need to have a point of contact so that new employees are not inadvertently missed or so that new information regarding problem gambling is properly routed to the correct source. In the future, after more experience is gained regarding the type and amount of training necessary for employees to adequately understand the nature and symptoms of problem gambling and the resources available, the Commission may revisit the area of recordkeeping if keeping such documentation becomes a burden on licensees.

Section 12463 – Self-Restriction and Section 12464 – Self-Exclusion.

These sections provide a way for people who feel that they need assistance in stopping gambling or in limiting their type of play (harm reduction strategies), be it through types of games, or only being able to use predetermined “ready money” (cash) and not access their checking account or gamble on credit.

Historically, gambling on credit has been seen as having the potential to cause problems, as some people don't stop with the money they bring to the table but seek to leverage assets or borrow from others. The precedent in law

... against legalized gambling on credit goes all the way back to 1710 in the Statute of Anne, which permitted gambling "at the palaces of St. James, or Whitehall when the sovereign is in residence" but limited such gambling to "ready money only." (9 Anne, ch. 14, § 9.)¹

Thus, the self-restriction model allows people to limit their gambling in a cardroom, ban themselves from a particular cardroom, or ban themselves from all cardrooms in California.

¹ *Metropolitan Creditors Service v. Sadri*, (1993) 15 Cal. App. 4th 1821, 1829.

While the Commission understands that some people who exclude or restrict themselves may, in weaker moments, try to enter and gamble – perhaps even in disguise, the regulations require that a cardroom use its best efforts to thwart gambling by restricted or excluded persons. The Commission realizes that different cardrooms have different sizes and layouts and thus leaves it to the cardrooms to develop policies and procedures to best effectuate the goals of keeping problem gamblers from gambling. Cardroom procedures do not have to require any restraint or physical confrontation when asking a restricted or excluded patron to return winnings. It has never been the Commission’s intent to require any physical confrontation by cardroom employees to literally “kick someone out” or take away winnings. A cardroom may develop procedures that include calling security or the local police department, should the need arise. Cardrooms shall notify the Division if security is called to remove someone, but stopping an excluded patron at the door does not require notification to the Division. The Division must be notified so that they can determine if a pattern is emerging regarding certain excluded persons in order to better put other cardrooms on notice and therefore help cardrooms deter excluded patrons from entering the premises. Notification may also help the Commission adjust the program in the future, as experience is gained in the area of problem gambling, to better serve the citizens of California.

In creating the policies and procedures, a cardroom may choose to revisit jackpot rules and include that excluded patrons are not eligible for a jackpot, thus removing the possibility of an excluded player sneaking in and trying to win the jackpot, to the other patron’s dismay. The jackpot would never be paid to the excluded patron, so forfeiture would be unnecessary in that instance. In instances where excluded patrons are discovered after winning money, the cardroom shall address in policies and procedures any mechanism they wish to employ to determine what the excluded patron’s winnings or losses recovered actually are for purposes of forfeiture. The principle of forfeiture is an important deterrent to a patron in exclusion, because it provides a consequence. “Why play if you can’t keep your winnings?”

The form for Self-Restriction is a model for those cardrooms who do not want to develop a separate plan. Cardrooms may choose their own form, with their own periods of exclusion (perhaps a two-year ban) or not having the options of restricting from only certain games but only from all games, if segregation of games is seen as not feasible. Some smaller cardrooms suggested the addition of games to the restriction form, but that distinction may not be reasonable for larger cardrooms. Also suggested as an addition to the form in the informal discussion period before formal APA comment was the inclusion of having a key employee witness the form, since requiring a notary might deter a person from signing up. It was determined that a key employee, who is backgrounded for licensure, would possess the trustworthiness to ensure that the person signing the form was the person to be excluded. A cardroom may choose, in its policies and procedures, to designate only certain key employees to handle this function. In the industry, there is a title of “Ambassador” that is used to describe staff that interacts with problem gamblers and their families who come to a gaming facility. If a cardroom wanted to specifically train certain staff on the best ways to interact with those having questions about self-restriction or self-exclusion, or provide further information, the Commission appreciates those extra efforts. The regulations merely require that one of the cardroom key employees already required to be available during cardroom hours be able to witness the signatures, and if a cardroom chooses to use Ambassadors, at least one Ambassador would need to be available when the cardroom is open.

REQUIRED DETERMINATIONS

LOCAL MANDATE

These regulations do not impose a mandate on local agencies or school districts.

REASONABLE ALTERNATIVES TO THE PROPOSED REGULATIONS AND REASONS FOR REJECTING THOSE ALTERNATIVES.

The Commission is not aware of any reasonable alternatives that would as effectively achieve the regulatory purpose of assisting with problem gambling.

REASONABLE ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESSES

The Commission is not aware of any reasonable alternatives that would lessen any adverse impact on small businesses.

IMPACT ON PRIVATE PERSONS

The Commission is not aware of any reasonable alternatives that would be more effective or as effective and less burdensome to private persons.

IMPACT ON BUSINESS

The Commission has made a determination that the proposed regulatory changes will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.