

CALIFORNIA GAMBLING CONTROL COMMISSION

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Initial Statement of Reasons

California Code of Regulations, Title 4. Business Regulations
Division 18. California Gambling Control Commission
Chapter 6. State Gambling Licenses and Approvals for Gambling
Establishments, Owners, and Key Employees

Gaming Activity Authorization / Additional Tables

The Gambling Control Act¹ provides the California Gambling Control Commission (hereafter, "Commission") the authority and jurisdiction over gambling establishments in the state of California:

...including jurisdiction over operation and concentration, and supervision over gambling establishments in this state and over all persons or things having to do with the operations of gambling establishments.²

Business and Professions Code, section 19841, subdivisions (o) and (p) mandate the Commission to adopt regulations which do as follows:

(o) Restrict, limit, or otherwise regulate any activity that is related to the conduct of controlled gambling, consistent with the purposes of this chapter.

(p) Define and limit the area, games, hours of operation, number of tables, wagering limits, and equipment permitted, or the method of operation of games and equipment, if the commission, upon the recommendation of, or in consultation with, the division, determines that local regulation of these subjects is insufficient to protect the health, safety, or welfare of residents in geographical areas proximate to a gambling establishment.

The Commission therefore proposes to adopt regulations regarding gaming activity, additional temporary tables, and additional permanent tables.

The title of Chapter 6 is being amended to reflect that this chapter includes not just gambling establishment licenses but also key employee licenses (in future regulation packages) and approvals for gambling establishments, such as approvals for gaming activity and additional tables.

¹ Business and Professions Code, section 19800 et seq.

² Business and Professions Code, section 19811, subdivision (b).

Request for Gaming Activity Authorization

The Gambling Control Act provides the Commission the authority to adopt regulations to “provide for the approval of game rules and equipment by the division to ensure fairness to the public and compliance with state laws.”³ Thus, the Commission is to specify the means by which the Division of Gaming Control (“Division”) approves gaming activity.

Proposed regulation 12356 codifies current practice (based on an older Division regulation) and adds judicial remedies, which were requested by the regulated industry. Based upon requests by industry, the proposed regulation includes a provision wherein games or gaming activities used in tournaments, if previously approved by the Division, do not have to be re-approved. The form on which approval is requested remains the same, and has previously been incorporated by reference in the Division’s regulations.

A local jurisdiction may have ordinances which are more strict than the state’s requirements.⁴ Certain provisions of the Penal Code or published case law may prevent a game from being lawful in California. Therefore, if a local ordinance, statute, regulation, or court decision prohibits a certain type of game or gaming activity, the proposed regulation would require the Division to refrain from approving the game or gaming activity for that particular cardroom. This is to ensure consistency regarding whether or not a cardroom may employ particular games or gaming activities.

In the event that a gambling establishment disagrees with a Division response in disapproving or withdrawing authorization for a game, the proposed regulation provides for an appeal of the decision. Industry comments on drafts circulated in August 2004 and May 2005 have resulted in changes to the proposed draft regulation, including clarifying judicial remedies regarding a Division order, pursuant to Business and Professions Code, section 19804.⁵

³ Business and Professions Code, section 19841, subdivision (b).

⁴ Business and Professions Code, section 19960.

⁵ Business and Professions Code, section 19804. Action for Declaratory or Injunctive Relief or Relief by Extraordinary Writ; Required Evidence; Administrative Remedies; Copy of Pleading

(a) In any action for declaratory or injunctive relief, or for relief by way of any extraordinary writ, other than an action initiated pursuant to Section 19932, wherein the construction, application, or enforcement of this chapter, or any regulation adopted pursuant thereto, or any order of the division or the commission issued pursuant thereto, is called into question, a court shall not grant any preliminary or permanent injunction, or any peremptory writ of mandate, certiorari, or prohibition, in connection therewith, except as follows:

- (1) Upon proof by clear and convincing evidence that the division or the commission is abusing or threatens to abuse its discretion.
- (2) Upon proof by clear and convincing evidence that the division or the commission is exceeding or threatens to exceed its jurisdiction.

(b) No temporary injunction or other provisional order shall issue to restrain, stay, or otherwise interfere with any action by the division or the commission, except upon a finding by the court, based on clear and convincing evidence, that the public interest will not be prejudiced thereby, and no order may be effective for more than 15 calendar days.

(c) This section does not relieve a petitioner's obligation to exhaust administrative remedies.

(d) In an action for relief of any nature wherein the construction, application, or enforcement of this chapter, or any regulation adopted pursuant thereto, or any order of the division or commission issued pursuant thereto, is called into question, the party filing the pleading shall furnish a copy thereof to the division and to the commission. The copy shall be furnished by the party filing the pleading within 10 business days after filing.

Request for Additional Temporary Tables for Tournaments or Special Events

Business and Professions Code, section 19952 reads as follows:

The commission, by regulation, shall establish fees for special licenses authorizing irregular operation of tables in excess of the total number of tables otherwise authorized to a licensed gambling establishment, for tournaments and other special events.

Due to the increase in poker tournaments on television, many cardrooms want to host their own tournaments in their establishments. Proposed regulation 12358 thus provides a mechanism for requesting additional temporary tables for tournaments or special events and establishes fees for those tables. The application fee of \$500 is set by Business and Professions Code, section 19951, subdivision (a): "Every application for a license or approval shall be accompanied by a nonrefundable fee of five hundred dollars (\$500)."

The fees for temporary tables are set pursuant to the authority of Business and Professions Code 19952. A draft of this regulation was distributed to industry in August 2004, which included limits on the number of tournaments allowed per year and limits on the number of days each tournament could last. A multiplier of seven was used in the calculation of fees for tables. This multiplier was to cover costs of enforcement and to deter misuse of tournaments. At a large public workshop held in September 2004, industry pointed out that if they were to pay additional fees for the temporary tables, there should be no limits on the number or length of tournaments. Industry also indicated that the multiplier of seven was too high. A new draft was circulated in the spring of 2005, which deleted the limits on tournaments and lowered the multiplier to three. Golden State Gaming Association indicated that the multiplier was still too high for cardrooms. This draft lowers the multiplier again, to two. While additional enforcement time is required to ensure that temporary tables are being used appropriately for tournaments or special events, the main concern is that some cardrooms use the tournament or special event umbrella to obtain a "weekend table" at a lower rate when they should be applying for a permanent additional table. Setting the fee at twice that of regular tables will help ensure that temporary tables are only requested for actual tournaments or special events, and not as an end-run around having more tables on weekends or holidays. Because of the additional workload to Commission and Division staff in processing the requests as well as overseeing compliance with the number of authorized tables and preventing misuse of temporary tables, setting the fees for temporary tables at twice that of regular tables will lessen the processing and compliance burden on state (as well as local) authorities.

In furtherance of the Gambling Control Act, the Commission's mandate to insure that gambling is conducted in suitable locations⁶, and local jurisdiction's authority to regulate gambling to a stricter degree than state standards⁷, approval for additional temporary tables will not be given if the additional tables would violate the number of tables authorized by local ordinance for that particular cardroom, or for the jurisdiction as a whole, or if such a request has already been denied by the local jurisdiction.

⁶ Business and Professions Code, section 19801, subdivision (f); section 19824, subdivision (e); section 19862.

⁷ Business and Professions Code, section 19960.

In furtherance of the Gambling Control Act, the Commission's mandate to insure that gambling is free from criminal and corruptive elements⁸ and to protect the public health, safety, and general welfare of the residents of the state⁹, approval for additional temporary tables will not be given if the gambling establishment's license is currently suspended or has restrictions on the license preventing additional temporary tables or if the gambling establishment is not current on the monies owed to the Commission or Division, including any license fees, fines, or penalties.

This proposed regulation provides for processing times of the application. It also provides that Commission staff will notify the applicant regarding the denial of the request or the approval and subsequent issuance of a license certificate for the additional temporary tables. This section thus provides notice to the public of the Commission procedures.

Request for Additional Permanent Tables

The Texas Hold 'Em poker craze has swept the state, bringing many new patrons to California cardrooms. Many establishments are seeking to increase the number of permanent tables in the cardroom within their local and statutory limits. Currently, there is no procedure for requesting additional tables and both industry and staffs of the Commission and Division have requested a form and procedures by which such a request may be made.

Proposed regulation 12359 provides a mechanism by which a gambling establishment may request authorization for additional permanent tables.

The application fee of \$500 is set by Business and Professions Code, section 19952, subdivision (a): "Every application for a license or approval shall be accompanied by a nonrefundable fee of five hundred dollars (\$500)."

In furtherance of the Gambling Control Act, the Commission's mandate to insure that gambling is conducted in suitable locations¹⁰, and local jurisdiction's authority to regulate gambling to a stricter degree than state standards¹¹, approval for additional temporary tables will not be given if the additional tables would violate the number of tables authorized by local ordinance for that particular cardroom, or for the jurisdiction as a whole, or if such a request has already been denied by the local jurisdiction.

In furtherance of the Gambling Control Act, the Commission's mandate to insure that gambling is free from criminal and corruptive elements¹² and to protect the public health, safety, and general welfare of the residents of the state¹³, approval for additional temporary tables will not be given if the gambling establishment's license is currently suspended or has restrictions on the license preventing additional temporary tables or if

⁸ Business and Professions Code, section 19801, subdivisions (b) and (i); section 19862.

⁹ Business and Professions Code, section 19920.

¹⁰ Business and Professions Code, section 19801, subdivision (f); section 19824, subdivision (e); section 19862.

¹¹ Business and Professions Code, section 19960.

¹² Business and Professions Code, section 19801, subdivisions (b) and (i); section 19862.

¹³ Business and Professions Code, section 19920.

the gambling establishment is not current on the monies owed to the Commission or Division, including any license fees, fines, or penalties.

This proposed regulation provides for processing times of the application. It also provides that Commission staff will notify the applicant of the Commission agenda date for the item to be approved or disapproved in the event that the applicant desires to attend and be heard regarding the application. Finally, Commission staff will calculate the prorated amount of the table fees in the event the application is approved and notify the applicant. This section thus provides notice to the public of the Commission procedures. Because a failure to pay licensee fees is a violation of Business and Professions Code section 19942, all required table fees would have to be paid before a licensee could place the tables in operation.