

**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

### Licensing Issues – Interim Key Employee Status While Application Pending

The Gambling Control Act<sup>1</sup> provides the California Gambling Control Commission (hereafter, "Commission") the authority to issue licenses concerning gambling operations at gambling establishments.

This jurisdiction includes work permit holders, holders of findings of suitability or approvals, key employee licensees, registrants, licensees, and owner licensees of gambling establishments. The intent of such authority is to make sure that the industry maintains a good reputation, does not cheat or harm the public, and is made up of people of good character. The Commission's mandate is to ensure that the public is protected, and that any criminal or corruptive elements are excluded from the industry. The Commission performs that mandate by working in concert with the Department of Justice, Division of Gambling Control (hereafter, "Division").

The Gambling Control Act is "an exercise in the police power of the state for the protection of the health, safety, and welfare of the people of the State of California, and shall be liberally construed to effectuate those purposes."<sup>2</sup> The Legislative Findings and Declarations of the Gambling Control Act, Business and Professions Code, section 19801, subdivision (f), states:

Public trust that permissible gambling will not endanger public health, safety, or welfare requires that comprehensive measures be enacted to ensure that gambling is free from criminal and corruptive elements, that it is conducted honestly and competitively, and that it is conducted in suitable locations.

<sup>1</sup> Business and Professions Code, section 19800 et seq.

<sup>2</sup> Business and Professions Code, section 19971.

The Commission is tasked with carrying out this legislative intent and

- Assuring that licenses, approvals, and permits are not issued to, or held by, unqualified or disqualified persons, or by persons whose operations are conducted in a manner that is inimical to the public health, safety, or welfare.<sup>3</sup>
- Assuring that there is no material involvement, directly or indirectly, with a licensed gambling operation, or the ownership or management thereof, by unqualified or disqualified persons, or by persons whose operations are conducted in a manner that is inimical to the public health, safety, or welfare.<sup>4</sup>

An applicant for a work permit will have been subject to a background investigation that includes a fingerprint check for criminal history. Currently, the Commission has regulations (12120-12128) to provide for a temporary work permit within 15 days of the request while the regular application is being processed. This allows a person to commence working in a relatively short time after being offered the position. There is not a similar general provision for key employees, which hampers cardroom owners who want to either promote a current employee (who already holds a work permit) or hire a new key employee. New applications for key employees can take almost a year from submission to a Commission vote, and may in some instances take over a year if the Division must seek supplemental information during its investigation (such as criminal or civil court information from another state)<sup>5</sup>.

Business and Professions Code Section 19883<sup>6</sup> allows a corporate owner licensee to hire a key employee and have that person commence the duties of the position

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<sup>3</sup> Business and Professions Code, section 19823, subdivision (a)(1).

<sup>4</sup> Business and Professions Code, section 19823, subdivision (a)(2).

<sup>5</sup> See Commission Regulation 12343.

<sup>6</sup> Business and Professions Code, section 19883:

- (a) To the extent required by this chapter, officers and directors, shareholders, lenders, holders of evidence of indebtedness, underwriters, agents, or employees of a corporate owner licensee shall be licensed individually. The corporation shall require these persons to apply for a gambling license, and shall notify the division of every change of corporate officers, directors, or key employees within 10 business days after the change. An officer, director, or key employee who is required to apply for a license shall apply for the license within 30 calendar days after he or she becomes an officer, director, or key employee.
- (b) The corporation shall immediately remove any officer or director required to apply for a license from any office or directorship if any of the following apply to that officer or director:
  - (1) He or she fails to apply for the license within 30 calendar days after becoming an officer or director.
  - (2) He or she is denied a license.
  - (3) His or her license is revoked.
- (c) If the license of any officer or director is suspended, the corporation, immediately and for the duration of the suspension, shall suspend that officer or director.
- (d) If any shareholder who is required to apply for a gambling license fails to apply for the license within the time required, the shareholder shall be deemed to have been denied a license for purposes of subdivision (b) of Section 19882.
- (e) If any person, other than an officer, director, or shareholder, who is required to apply for a gambling license fails to do so, the failure may be deemed to be a failure of the corporate owner licensee to require the application.

immediately, submitting the application form during the following thirty days. This creates an imbalance between corporate owner licensees and non-corporate owner licensees (including sole proprietorships, partnerships, and limited liability companies). Many non-corporate cardroom owner licensees have requested that the Commission review this issue and provide them with a similar way to promote or hire without the lengthy process. Especially for smaller cardrooms who lose an employee and do not have a sufficient pool of key employees to cover shifts, being able to promote a current (work permitted) employee to a key employee position or hire a new key employee in a short time-frame would be beneficial to their businesses.

This regulation seeks to temper the statutory disparity between corporate and non-corporate cardrooms and allow for employees to be hired or promoted while providing the public with a basic level of protection.

**Section 12347. Interim Key Employee Status While Application Pending.**

Subsection (a) requires that a non-corporate cardroom may allow a person to commence work as an interim key employee after giving notice to the Commission and Division. This person must possess a current work permit (issued either by the Commission or by the local jurisdiction) or have a state license as a key employee at another cardroom. This means that the person will have already had (and passed) a criminal background check.

Subsection (b) requires that the completed application be submitted within thirty days, similar to the requirements on corporate cardrooms.

Subsection (c) provides for a cancellation of interim status. This is important in the event that the underlying work permit or licensure elsewhere is denied, because it shows that the applicant is unsuitable and should not be working as a key employee. As the Commission's duty is to protect the public from unqualified or unsuitable elements, the Commission needs to be able to end an interim status and have the cardroom respond quickly (reply notification in subsection (e)).

Subsection (d) provides reasons for cancellation of interim status. Because the burden of obtaining a license is on the applicant, if there are doubts regarding licensure, the applicant should not be granted the license until the doubts are removed. Therefore, if granting an application seems to be against the public interest, the applicant should not continue working in the position until the applicant demonstrates suitability for licensure, either by submitting required documents or completing the administrative hearing process. Further, if a non-corporate cardroom is abusing the privilege of using this interim key employee procedure – for instance, acting in bad faith or not notifying the Commission and Division in timely manner – the cardroom should not be able to use this procedure because the public protection element is not satisfied.

Subsection (e) provides a follow-up from the cardroom to a cancellation, which is important because the Commission needs to be assured that the employee will not be working in a key position.

Subsection (f) provides judicial review in case an employee wants to challenge a cancellation of interim key status. Thus, due process is afforded through the Writ procedure.

### 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 under the Gambling Control Act.

#### 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.