

TITLE 4.
CALIFORNIA GAMBLING CONTROL COMMISSION
CGCC-GCA-2008-04-E

**STATEMENT CONCERNING READOPTION OF EMERGENCY REGULATIONS FOR
THE IMPLEMENTATION OF THE CALIFORNIA REMOTE CALLER BINGO ACT**
CHAPTER 748, STATUTES OF 2008 (SB 1369, Cedillo and Battin et al.)

INTERIM APPROVAL OF BINGO CARD-MINDING DEVICES

The California Gambling Control Commission (Commission) is proposing to readopt an emergency regulation that establishes a process for granting interim approval of card-minding devices used in the play of bingo games. Section 12486 (formerly Section 12482), Title 4, Division 18, Chapter 8, California Code of Regulations, was initially adopted as an emergency regulation effective January 1, 2009,¹ was amended once in a subsequent emergency adoption effective April 24, 2009,² and was amended a second time in another emergency adoption effective May 18, 2009.³ Both OAL File No. 2008-1218-06 E and OAL File No. 2009-0414-01 E, as well as that portion of OAL File No. 2009-0508-02 E relating to the amendment of Section 12486, are hereby incorporated by reference as if fully set forth herein. The emergency adoption of the proposed regulation implements one element of the California Remote Caller Bingo Act (CRCBA),⁴ as mandated by Business and Professions Code section 19850.6 and Penal Code section 326.5.

DEEMED EMERGENCY

The Commission has been specifically directed, pursuant to Business and Professions Code section 19850.6, subdivision (a), to adopt emergency regulations to implement the California Remote Caller Bingo Act (CRCBA) as soon as possible. Subdivision (a) also expresses the intent of the Legislature to "provide the Commission with full authority and sufficient flexibility to adopt all needed regulations," and finds and declares that it is necessary to provide the Commission with limited exemption from normal rulemaking procedural requirements for reasons specified. Pursuant to subdivision (b) of section 19850.6, the amendment, adoption or repeal of a regulation implementing the CRCBA is deemed to address an emergency for the purposes of sections 11346.1 and 11349.6 of the Government Code. Further, subdivision (b) of section 19850.6 provides the Commission an express exemption from the requirements of subdivision (b) of section 11346.1.

¹ See OAL File No. 2008-1218-06 E

² See OAL File No. 2009-0414-01 E

³ See OAL File No. 2009-0508-02 E

⁴ Chapter 748, Statutes of 2008 (SB 1369, Cedillio and Battin, et al.)

AUTHORITY AND REFERENCE

Pursuant to the authority vested by sections 19840, 19850.5, and 19850.6 of the Business and Professions Code, and section 326.5 of the Penal Code; and to implement, interpret or make specific Sections 19850.5 and 19850.6 of the Business and Professions Code, and section 326.5 of the Penal Code; the Commission is proposing to add Chapter 8 to Division 18 of Title 4 of the California Code of Regulations:

INFORMATIVE DIGEST AND POLICY STATEMENT OVERVIEW

INTRODUCTION:

SB 1369 authorizes “remote caller bingo” as a game that would allow specific nonprofit organizations to use audio or video technology to remotely link designated in-state facilities to cosponsor live bingo games, if authorized pursuant to a local ordinance and approved by the Commission. The Commission is required to regulate remote caller bingo, including but not limited to, the development of regulations for approval of card-minding devices. This bill created several entirely new regulatory programs with major elements to be developed by the Commission in the rulemaking process.

The bill directs the Commission to adopt appropriate emergency regulations as soon as possible, with the initial regulatory action to be filed with the Office of Administrative Law by May 1, 2009. SB 1369 provides a partial exemption from the Administrative Procedure Act through December 31, 2009 and authorizes the Commission to adopt regulations in a series of subsequent regulatory actions. The authority to adopt emergency regulations is necessary to implement the program in a timely manner.

According to the author, SB 1369 is intended to provide nonprofit organizations an opportunity to increase their fundraising ability by authorizing remote caller bingo, which will allow charities across the State to combine their games and offer larger prizes than allowed under current law. The author states, “The demand for services from California charities is increasing due to the economy, unemployment and our state budget cuts. At the same time, charitable donations are down and charities are faced with turning away people for whom it is their mission to serve. Charities desperately need new tools to increase their ability to raise funds to keep up with the demand for their services.”

EXISTING LAW:

Effective January 1, 2009, Penal Code section 326.5, subdivision (o), provides that electronic or video displays shall not be used in connection with the game of bingo, except in connection with the caller’s drawing of the numbers or symbols, public display of that drawing, and except in connection with the use of hand-held, portable card-minding devices used by players who are physically present at a bingo game. Subdivision (p) provides that players who are physically present at a bingo game may use hand-held, portable card-minding devices that meet specified requirements to assist in monitoring the numbers or symbols announced in a live game. This subdivision also requires that the Commission approve any card-minding device in advance of its use.

Section 12486, Title 4, Division 18, Chapter 8, California Code of Regulations, currently establishes requirements for the interim approval of card-minding devices, and any modifications to approved devices, as well as the use of those devices in the play of bingo.

EFFECT OF REGULATORY ACTION:

This proposed action will readopt Section 12486 in Chapter 8 of Division 18 of Title 4 of the California Code of Regulations which specifies the process and requirements for interim approval of card-minding devices and any modifications to approved devices, as follows:

- a. Subsection (a) of Section 12486 establishes a card-minding device interim approval based on the applicant's/manufacture's certification of compliance with the applicable provisions of section 326.5 of the Penal Code. Provisions are included to clearly establish the conditions under which interim approval may be granted. This subsection establishes an approval cancellation process and includes provisions that afford manufacturers due process and an opportunity to be heard before cancellation of an interim approval. More specifically, subsection (a) provides as follows:
 - (1) Paragraph (1) sets the interim approval term at one year from the date granted or until regulations specifying additional criteria for approval become effective, whichever is later. The Commission is in the process of determining appropriate approval criteria, but as this is a new responsibility, we are unsure of the expected timeline. Setting the term of the approval at the latter of one year or the effective date of additional regulations is intended to minimize the burden on both the Commission and the device manufacturer. The manufacturer will not be required to reapply for an interim approval if the regulations are not yet established at the one-year expiration of the approval, saving time and money for the manufacturer and decreasing the workload on the Commission.
 - (2) Paragraph (2) states that an interim approval does not obligate the Commission to grant a regular approval and does not create a vested right in the holder to either an extension of an interim approval or the granting of a subsequent regular approval. This provision is intended to clarify that a card-minding device that receives an interim approval will not be guaranteed to receive a regular approval. All conditions established by the Commission in future regulations applicable to card-minding devices will need to be met, regardless of whether or not the device has received an interim approval.
 - (3) Paragraph (3) states that an interim approval does not change the legal requirement that the applicant bears the burden of establishing device compliance. This requirement is consistent with the provision in Business and Professions Code section 19856 stating that the burden of proof regarding qualifications for a license rests on the applicant.
 - (4) Paragraph (4) clarifies that interim approval of a specific card-minding device has no bearing on whether the manufacturer of the device will qualify for a Commission license, and states that an interim approval for a device will be cancelled if the

manufacturer is ineligible for licensure. Pursuant to Penal Code section 326.5(p)(3)(B), any person that manufactures card-minding devices must be licensed by the Commission. Manufacturers are licensed through a separate licensing process established in Section 12492. The qualifications to receive a license to manufacture a card-minding device are unrelated to the criteria required for the device itself to be approved.

- (5) Paragraph (5) establishes a procedure for the cancellation of an interim approval for a card-minding device that is found, during the interim approval period, to be non-compliant. A notice will be given to the manufacturer, by the Executive Director of the Commission, in the form of an order to show cause as to why the device's approval should not be cancelled. The manufacturer will have at least 30 days, but not more than 90 days, to respond to the order in writing. The matter will then be set for consideration at a Commission hearing, which will be conducted in accordance with applicable provisions of Section 12050(b). The process established in paragraph (5) affords due process and an opportunity to be heard before cancellation of an interim approval.
- b. Subsection (b) establishes the process for requesting interim approval of a card-minding device by a manufacturer and provides that a specific model of card-minding device and its designated software version shall be deemed approved on an interim basis if specified conditions are met. More specifically, subsection (b) provides as follows:

- (1) Paragraph (1) requires the chief executive officer or other authorized representative of the entity that manufactures the card-minding device to self-certify, under penalty of perjury, that the specific card-minding device meets requirements established in statute. The approval of card-minding devices is a new program for the Commission, and it will take time for the appropriate approval criteria to be determined. Furthermore, the Commission does not have the resources at this time to preemptively examine every make and model of card-minding device used in California without serious disruption to charities' fundraising efforts. Until appropriate approval criteria are established and sufficient resources are available, the Commission must rely on a self-certification process. If a device is later found to be non-compliant, the interim approval can be revoked.

Paragraph (1) also provides for the use of Form CGCC-615, "Application for Interim Approval of Bingo Card-Minding Devices" (Rev. 05/09). The application form is needed in order to collect necessary information regarding the business and the types of devices manufactured, and to obtain the manufacturer's self-certification that the device complies with all statutory requirements.

An application fee is established at \$50 for each device model and its designated software version for which interim approval is requested. It is intended that different versions of the same model shall be listed individually on the form and a separate fee paid for each. For example:

Model A with software version 1	\$ 50.00
Model A with software version 2	50.00
Model A with software version 3	<u>50.00</u>
TOTAL	\$ 150.00

The manufacturer that developed and built the card-minding device, and maintains and modifies the software is required to certify the device's compliance with section 326.5 of the Penal Code rather than a distributor or supplier that only makes the device available for use. The manufacturers of these devices are the most knowledgeable and authoritative source to certify their compliance as they have direct knowledge as to how the devices were designed and constructed, and what the devices' capabilities do or do not include.

(2) Paragraph (2) establishes the second criterion under which a card-minding device may be deemed approved as issuance of an interim approval by the Commission.

- c. Subsection (c) requires a new approval of any device that has undergone a material software upgrade, as required pursuant to Penal Code section 326.5(p)(3)(A). Because the software is crucial to the operation of the card-minding device, a material software upgrade could significantly change the performance of the device.
- d. Subsection (d) requires that players, when using a card-minding device, manually input the numbers or symbols announced in the game into the device, and specifically prohibits automatic daubing, as defined.⁵ This subsection also requires that any card-minding device possessing automatic daubing capability have that capability disabled as a condition of approval. Penal Code section 326.5(p)(1)(B) requires that card-minding devices provide a means for bingo players to manually input each individual number or symbol, and section 326.5(p)(2) limits the functions performed by the card-minding device to those specified in statute. The Commission has interpreted these two provisions to prohibit the use of an automatic daubing feature in card-minding devices.
- e. Subsection (e) establishes the process for review and consideration of applications for approval by the Commission. The Commission will consider each application at a noticed meeting in order to provide transparency to the public and the manufacturer of the device. This subsection also provides that, if the application does not meet the requirements of this section, the manufacturer shall be notified of the deficiencies. A notification of deficiencies will allow the manufacturer to correct any shortfalls in the application, rather than have the application disapproved.

Effective January 1, 2009, Penal Code section 326.5(p)(3)(A) requires that any card-minding device used pursuant to the CRCBA be approved in advance by the Commission. The interim approval process was established to further the legislative intent of avoiding disruption of fundraising efforts by nonprofit organizations. The interim approval is not intended to and does not confer any vested rights. As authorized by the CRCBA, the

⁵ See Section 12480(b)(2), effective May 18, 2009

Commission expects to adopt additional requirements in regulation; any card-minding device used in California after the effective date of any forthcoming regulation will be required to conform to any requirement specified in that regulation.

FISCAL IMPACT ESTIMATES

MANDATE IMPOSED ON 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 STATE OR LOCAL AGENCY OR SCHOOL DISTRICT FOR WHICH PART 7 (COMMENCING WITH SECTION 17500) OF DIVISION 4 OF THE GOVERNMENT CODE REQUIRES REIMBURSEMENT: None.

NONDISCRETIONARY COST OR SAVINGS IMPOSED ON ANY LOCAL AGENCY: None.

FISCAL IMPACT ON PUBLIC AGENCIES INCLUDING COSTS OR SAVINGS TO STATE AGENCIES OR COSTS/SAVINGS IN FEDERAL FUNDING TO THE STATE: None.