

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**SUMMARY OF COMMENTS AND RESPONSES THERETO**

The original 45-Day comment period was from March 3 to April 20, 2006, the date of the scheduled public hearing. Written comments were received before the hearing, oral comments were made at the hearing, and further written comments were received after the hearing but before the end of the day on April 20, 2006. A 15-day comment period was held on modified text from May 23 through June 7, 2006. A second 15-day comment period was held on modified text from November 6 through 21, 2006. The comments, oral and written, are summarized below in section order with Commission responses. Where applicable, numbers correspond to issues and therefore not all comments begin with the number one.

SECOND 15-DAY COMMENT, Section 12550(a)

Written Second 15-Day Comment from Alan Titus, on behalf of Artichoke Joe's
"Denial proceedings" unclear.

RESPONSE TO SECOND 15-DAY COMMENT, Section 12550(a)

The Commission disagrees that "denials" is a term that needs definition. Denials are different than disciplinary hearings and are being addressed in a separate rulemaking. No change necessary.

SECOND 15-DAY COMMENT, 12550(b)

Written Second 15-Day Comment from Alan Titus, on behalf of Artichoke Joe's
Flexibility destroys fairness.

RESPONSE, 12550(b)

This section has not been changed from the originally noticed draft.

SECOND 15-DAY COMMENT, 12550(d)(2)

Written Second 15-Day Comment from David Fried, on behalf of Golden State Gaming Association
Fines should be specified within disciplinary regs, not outside them. Revise 12566(a) to include the fine schedule.

Written Second 15-Day Comment from Alan Titus, on behalf of Artichoke Joe's
Provision is confusing and possibly duplicative. Please clarify or delete.

RESPONSE, 12550(d)(2)

The Commission has deleted the provision regarding fines.

SECOND 15-DAY COMMENT, 12550(e)

Written Second 15-Day Comment from Alan Titus, on behalf of Artichoke Joe's
Unnecessary.

RESPONSE, 12550(e)

This section has not been changed from the originally noticed draft. Questions had emerged during workshops which suggested that this section is indeed necessary.

SECOND 15-DAY COMMENT, 12550(f)

Written Second 15-Day Comment from Alan Titus, on behalf of Artichoke Joe's
Clarify the context of the Division and Commission's authority.

RESPONSE, 12550(f)

This section has not been changed from the originally noticed draft. Authority is in the statute and has not been questioned in workshops or previous drafts.

SECOND 15-DAY COMMENT, 12552

Written Second 15-Day Comment from Alan Titus, on behalf of Artichoke Joe's
Inconsistent. Add that accusation will not be considered in any future actions.

RESPONSE, 12552

This section has not been changed from the originally noticed draft. Whether or not the settlement of a matter could be used in the future may be a point of negotiation in the settlement itself.

SECOND 15-DAY COMMENT, 12552(c)

Written Second 15-Day Comment from David Fried, on behalf of Golden State Gaming Association
Add that settlement may be considered by Commission on its own initiative.

RESPONSE, 12552(c)

Section 12552 was not modified in the Second 15-Day Comment period. The comment does raise a good suggestion, however, which the Commission will revisit in 2007.

COMMENT, Section 12554

Oral & Written 45-day Comment from David Fried, on behalf of the Golden State Gaming Association.

1. Subsection (c) should have a clear and convincing standard of proof for owners .
2. Subsection (d) should delete "or gambling establishments" since the Commission should only be considering laws related to gambling. Local jurisdictions should be left to interpret and apply their own ordinances.
3. Subsection (d)(7) -- Instead of fifty percent for all violations, the fine should be twenty-five percent for the first suspension within the prior 36 months, and fifty percent if the license has been previously suspended within the prior 36 months. *{transcript, pp 18-23}*
4. Subsection (d)(7) -- The minimum penalty should be reduced from \$500 to \$250. *{transcript, p 23}*

Oral Comment from Steve Simas joining the written comment from David Fried, on behalf of the Golden State Gaming Association.

1. *{transcript pp 24—29}*, Subsection (c) should have a clear and convincing standard of proof for owners. Under 19930(d), the Commission could choose to have "suitable proof" be a higher standard (clear and convincing instead of preponderance) and the Golden State Gaming Association requests

that the Commission choose the higher clear and convincing standard when an owner is charged with an offense that could be a felony in criminal court.

2. *{transcript pp 29-33}*, Subsection (d) should delete “or gambling establishments”

Oral Comment from Rod Blonien, joining David Fried and Steve Simas, and on behalf of Commerce Club, Hollywood Park, Lucky Derby, Phoenix, Capitol Club, and other small cardrooms {transcript pp 40-41}

2. Clubs should not be suspended for technical violations of FPPC laws.

Written First 15-day Comment from David Fried, on behalf of the Golden State Gaming Association.

1. [Note: Not part of 15-day change.] 12554(c) should have an exception to the preponderance of evidence standard because of the vested interest an owner has in a gambling establishment.
3. 12554(D)(7)(A) should have a 25% fine for first suspensions.

Written Second 15-Day Comment from Alan Titus, on behalf of Artichoke Joe’s

1. [Note: Not part of 15-day change.] Need a higher standard of proof.

Written Second 15-Day Comment from Alan Titus, on behalf of Artichoke Joe’s

5. Should use “limits” rather than “guidelines.”

Written Second 15-Day Comment from Alan Titus, on behalf of Artichoke Joe’s

6. 12554(d)(7)(A) not consistent with 12466(a) and (b).

Written Second 15-Day Comment from David Fried, on behalf of Golden State Gaming Association

7. 12554(d)(7)(B) Should use the word “multiplying” the fine by owner’s percentage interest.

Written Second 15-Day Comment from Division of Gambling Control, Department of Justice

7. Disagrees with section 12554(d)(7)(B) entirely. But if adopting, should use the word “multiplying” the fine by owner’s percentage interest and should use “gambling enterprise” to more accurately define the actors.

Written Second 15-Day Comment from Alan Titus, on behalf of Artichoke Joe’s

7. Tables should be defined to exclude restaurant tables or use gross revenue. Amount seems excessive.

Written Second 15-Day Comment from Alan Titus, on behalf of Artichoke Joe’s

8. 12554(d)(7)(C), (D), (E) -- Discrepancy in fines paid between third party providers and gambling businesses.

Written Second 15-Day Comment from Division of Gambling Control, Department of Justice

9. 12554(e) and (f) - “Receiver” is undefined and does not indicate conditions.

Written Second 15-Day Comment from Alan Titus, on behalf of Artichoke Joe’s

9. 12554(e) and (f) - Question the Commission’s authority to appoint.

Written Second 15-Day Comment from Alan Titus, on behalf of Artichoke Joe’s

10. 12554(k) is inconsistent with 12556.

RESPONSE, Section 12554

1. The Commission, for reasons detailed in the initial statement of reasons, believes that the standard of proof should remain “preponderance of the evidence.” An auto smog technician or a cosmetologist, as referenced in the comment, must take specialized training courses and pass an exam in order to apply for a license. There are no such formal training requirements in the Gambling Control Act. The options in the Gambling Control Act for imprisonment would be pursued by local law enforcement, not the Commission, and therefore no physical liberty is at risk requiring proof beyond a reasonable doubt.
2. The Commission does not agree that its purview must be narrowly limited to laws directly governing the operations within a gambling establishment. Gambling is a highly regulated industry and the Commission's mandate encompasses jurisdiction over all persons or things having to do with the operations of gambling establishments. This includes the duty to ensure that the conduct of permissible gambling will not endanger the health, safety or welfare of the public. While the Commission is not a general law enforcement agency, failure of an establishment or licensee to adhere to local ordinances or state laws which relate to the health and safety and welfare of employees, patrons or the surrounding community may be legitimate grounds for discipline. (See Business and Professions Code sections 19801, 19811, 19857.) See also our response to section 12566 [item number 3].
3. The Commission agreed with the Division at the February noticed meeting that the amount of money to “buy out” a suspension should be 50%. This amount was a compromise with industry from a higher percentage used in earlier pre-APA comment drafts. However, an additional 25% amount has been set for lesser/first time violations in Section 12566.
4. The Commission has reviewed the revenues of small clubs, and has lowered the minimum penalty amount to \$300 to be more commensurate in size and scope.
5. This language has not been changed from the originally noticed draft. The Commission does not see a need to change the language at this time.
6. Section 12566(a) provides an additional specific option, and is not exclusive of or inconsistent with this section. The Commission does not see a need to change the regulation.
7. The Commission is deleting this language, but may revisit the concept in a 2007 rulemaking.
8. This language has not been changed from the originally noticed draft. While in some instances gambling businesses may pay more for certain violations, in many instances third party providers of proposition player services would pay more.
9. The Commission will remove this subsection and re-visit the concept at a later time.
10. The Commission does not see an inconsistency. In 12554(k), a frequency and duration of a practice shall be treated as aggravating or mitigating factors. In 12556(l), the Commission shall consider (if presented) the frequency or duration of any pattern or practice... In both cases, the frequency and duration of a practice shall be treated as aggravating or mitigating factors if that is an issue in the accusation.

SECOND 15-DAY COMMENT, Section 12554(a) – Chart

Written Second 15-Day Comment from Division of Gambling Control, Department of Justice

Suggest language from “fuller” to “complete” and “will prevail” to “prevails.” Suggestions to chart.

RESPONSE, Section 12554(a) – Chart

Inasmuch as nonsubstantive changes to correct spellings or typos can be made, staff has made those changes.

SECOND 15-DAY COMMENT, Section **12556**

Written Second 15-Day Comment from Division of Gambling Control, Department of Justice
Ability to reduce minimum undermines regulation. Suggest removing.

RESPONSE, Section **12556**

The ability to reduce a proposed penalty is in the Administrative Procedure Act, Government Code 11517. No change necessary.

SECOND 15-DAY COMMENT, Section **12556 (a)**

Written Second 15-Day Comment from Alan Titus, on behalf of Artichoke Joe's
Should only apply to uncontested situations.

RESPONSE, Section **12556 (a)**

This language has not been changed from the originally noticed draft. Someone presenting evidence that a condition was violated would have to show that the condition existed.

SECOND 15-DAY COMMENT, Section **12556 (b)**

Written Second 15-Day Comment from Alan Titus, on behalf of Artichoke Joe's
Unclear.

RESPONSE, Section **12556 (b)**

This language has not been changed from the originally noticed draft. The facts of each individual case will establish what is relevant to that case.

SECOND 15-DAY COMMENT, Section **12556 (h)**

Written Second 15-Day Comment from Alan Titus, on behalf of Artichoke Joe's
Clarify what constitutes disciplinary history.

RESPONSE, Section **12556 (h)**

This language has not been changed from the originally noticed draft. Again, the presenter of such evidence would need to show existence and relevance of facts.

SECOND 15-DAY COMMENT, Section **12556 (i)**

Written Second 15-Day Comment from Alan Titus, on behalf of Artichoke Joe's
Too vague.

RESPONSE, Section **12556 (i)**

This language has not been changed from the originally noticed draft. Again, these would depend on the facts of a particular case.

SECOND 15-DAY COMMENT, Section **12556 (j)**

Written Second 15-Day Comment from Alan Titus, on behalf of Artichoke Joe's
"Potential harm" is too vague.

RESPONSE, Section **12556 (j)**

This language has not been changed from the originally noticed draft. Again, these would depend on the facts of a particular case.

SECOND 15-DAY COMMENT, Section **12556 (l)**

Written Second 15-Day Comment from Alan Titus, on behalf of Artichoke Joe's
Clarify owner licensee.

RESPONSE, Section **12556 (l)**

This language has not been changed from the originally noticed draft. The Commission will review for future amendments.

SECOND 15-DAY COMMENT, Section **12556 (m)**

Written Second 15-Day Comment from Division of Gambling Control, Department of Justice
Add licensee or registrant and delete gambling establishment for consistency.

Written Second 15-Day Comment from Alan Titus, on behalf of Artichoke Joe's
Clarify if this applies to an accusation against a gambling establishment.

RESPONSE, Section **12556 (m)**

This language has not been changed from the originally noticed draft.

SECOND 15-DAY COMMENT, Section **12556 (n)**

Written Second 15-Day Comment from Division of Gambling Control, Department of Justice
Delete gambling business.

RESPONSE, Section **12556 (n)** This section was written specifically for gambling businesses and the fact that they often have independent contractors instead of employees. If discipline is being taken against a gambling business owner/employee (be that an owner licensee, licensee as in supervisory type person, or owner registrant) because of actions by someone paid by the owner, then the mitigating factor is directly tied the gambling business owner/employee. No change necessary.

SECOND 15-DAY COMMENT, Section **12556 (o)**

Written Second 15-Day Comment from Alan Titus, on behalf of Artichoke Joe's
Unclear or nonsensical.

RESPONSE, Section **12556 (o)**

This language has not been changed from the originally noticed draft. A third party may be involved in collusion or be committing a crime on the premises (such as prostitution or loan-sharking) which the owner or an employee should have known about, or perhaps would have had no way of knowing about, and therefore would be an aggravating or mitigating factor in an accusation against the owner or employee.

SECOND 15-DAY COMMENT, Section **12558**

Written Second 15-Day Comment from Division of Gambling Control, Department of Justice
Add monetary penalty of \$100 to work permit, for consistency with other license types.

RESPONSE, Section **12558**

This language has not been changed from the originally noticed draft. Monetary penalty is already referred to in Section 12554(d)(7)(G). Will consider revising this regulation when some experience with work permit discipline is achieved.

COMMENT, Section **12560**

Oral and Written 45-day Comment from Michael Franchetti, on behalf of Game Souce LLC.

1. {transcript pp 45-46} - Investors in third party providers of proposition player services are passive owners, and should be treated differently than primary owners in terms of discipline. Discipline should be more in lines with that of a supervisor.
2. {transcript pp 46-47} - Section 12560(b)(10) involves a violation regarding control of dice, etc. Some better definition may be in order regarding the issue of control. Some providers would like joint control over cards, to make sure no cheating is going on.

45-day Written Comment from Department of Justice, Division of Gambling Control

1. In response to the written and oral comments of Michael Franchetti [above], the Division has concerns with the suggestions put forward. It would be difficult to prove whether an investor has the “ability to significantly influence the operation” and an exemption for a passive owner in this context would result in further exemption requests – from gambling businesses and the cardrooms. Every investor has the ability to influence, and that term would have to be defined in order to apply it. Holding passive owners less accountable would impede the Division’s efforts in identifying passive owners who have not yet registered.

Written First 15-day Comment from Michael Franchetti, on behalf of Game Souce LLC.

1. [Note: Not part of 15-day change.] Passive investors should be treated separately.

REPOSNE, Section **12560**

1. The Commission did discuss the possibility of having a separate standard or level of discipline for passive owners, but rejected that separation during the informal comment process. Given the comments on both sides of this issue, the Commission will refrain from changing the current language. If, after the disciplinary regulations have been in effect for some time and issues emerge regarding passive owners, the Commission may re-evaluate the regulations then and consider amendments.
2. The Commission does not, at this time, believe that anyone other than the gambling establishment should have control over gaming equipment such as cards and dice cups.

COMMENT, Sections **12560, 12562, and 12554(d)(7)(B)**

Oral comment from Tracey Buck-Walsh, on behalf of Network Management {transcript pp 28-39}

The penalty structure for third party providers of proposition player services and gambling businesses should reflect whether or not the registrant had properly registered.

RESPONSE, Section s **12560, 12562, and 12554(d)(7)(B)**

The Commission has worked with Ms. Buck-Walsh and the Division to make changes based upon the comments. We have added a subsection (C) to follow section 12554(d)(7)(B) which distinguishes between those who have properly registered and those who have not.

SECOND 15-DAY COMMENT, Section **12562(b)**

Written Second 15-Day Comment from Division of Gambling Control, Department of Justice
Recommend referring to 12554(d)(7).

RESPONSE, Section **12562(b)**

A specific minimum monetary penalty was added in this section already. No change necessary.

COMMENT, Section **12566**

Oral & Written 45-day Comment from David Fried, on behalf of the Golden State Gaming Association.

1. Subsection (a) of 12566 should refer only to a local “gaming” ordinance. See comment regarding Section 12554. [item number 2]
2. Subsection (a) should involve only fines and penalties, not a suspension.
3. Subsection (b) should be used only for willful or persistent violations affecting public safety or welfare.
4. Even minimum penalties should be subject to aggravating and mitigating factors, and that language should be expressly stated.
5. Subsection (b) should include willfully or persistently and (b)(1) should include “materially.”
6. Subsection (b)(2) should include “in a separate proceeding.”
7. Subsection (b)(7) should include “where the licensee has actual notice of the person(s) status or failed to take reasonable steps to determine the person(s) status.” {*transcript, pp 12-13*}
8. Subsection (b)(9) should be deleted and (11) should include language of reasonable reliance. {see transcript, pp 13-17}
9. Subsection (b)(14) should have an additional “intentionally” added.
10. Subsection (b)(17) should have “regarding employees” deleted.

Written First 15-day Comment from David Fried, on behalf of the Golden State Gaming Association.

3. 12566(b) penalties should be willful and persistent use or toleration of unsuitable methods of operation.
4. Section 12566(b) - Clarify that even minimum suspensions are subject to aggravating and mitigating factors.
5. 12566(b)(1) add “materially”
8. 12566(b)(9) add reasonable reliance, delete mention of 19921. Reflect ABC case.
9. [Note: Not part of First 15-day change.] 12566(b)(13) add “intentionally”

REPOSNE, Section **12566**

1. See response regarding Section 12554 [item number 2].
2. The Commission retains the authority to suspend based upon violations, but anticipates using the fine structure which is provided in subsection (a).
3. Subsection (b) may be used either for willful violations or law, or for persistent violations which may be willful, reckless, or negligent. The aggravating/mitigating factors listed in Section 12556, subsection (b), speak to this. While the Commission and Division do not anticipate pursuing a disciplinary action for a single inadvertent act that does not harm the public, repeated technical or inadvertent regulations may indicate a disregard for the law, either callous or negligent, which could result in harm to the public. Therefore, the Commission retains the authority to discipline, subject to the aggravating and mitigating factors and the facts and circumstances of the violation. Additional language was added to 12556 to address the request for clarification.
4. Additional language was added to 12556 to address the request for clarification.
5. The Commission declines to adopt this suggestion. The Commission believes the current language is clear and appropriate.
6. The Commission believes the current language is clear and appropriate.
7. The Commission has made this change in subsection (b)(2).
8. The Commission refers back to the initial statement of reasons and continues to emphasize the importance of excluding those under the age of 21 from gambling areas. The Commission has added language in 12566(c)(9) to reflect reasonable reliance and has added the case citation to the reference section for the regulation. The Commission declines to repeat the statutory language because a regulation may not unnecessarily duplicate a statute. The Commission will consider

- splitting the violation of Business and Professions Code section 19921 into two parts and has therefore deleted the language in current 12566(b)(7) and left it “reserved” for rulemaking in 2007.
9. The Commission believes the current language is clear and appropriate.
 10. The Commission has made this change in (originally) subsection (b)(17) [now (b)(13) and (c)(16)].

Written 45-day Comment from Lake Bowl Card Room

Concerns with suspension and fines and subsection (b)(9) and (11); would like a fair and reasonable alternative to fix any problems or miscommunications. Supports the letter written by David Fried.

RESPONSE, Section 12566

Thank you for your concerns. Please see the responses above. In addition, we have included in Section 12550 that the Division may issue warning notices, notices to cure, or advisory letters, so that many problems or miscommunications may never reach the level of initiating a disciplinary action.

SECOND 15-DAY COMMENT, SECTION 12566(a)

Written Second 15-Day Comment from Alan Titus, on behalf of Artichoke Joe’s

Too vague as to what violations are covered. “Public health, safety, and welfare” so vague as to be meaningless. Why have different formula for penalties here?

RESPONSE TO SECOND 15-DAY COMMENT, SECTION 12566(a)

In original workshops, the Commission spelled out a number of administrative or ministerial violations (such as a sign not being posted). Industry members objected and suggested that a general “catch-all” section cover the more minor violations. Further, comments submitted during the applicable comment periods suggested that local ordinances should be specified to reflect those wherein the public might actually be harmed by the violation. The Commission thus modified 12566(a) to include local ordinances more narrowly. The Commission is mandated to protect the public and the phrase “public health, safety, or welfare” is a standard term of art that is not considered vague at all. Also, in the workshops conducted, industry members suggested that a citation system be set up, and that it should be based on tables and gross revenue, in keeping with the Legislature’s mandate to keep size and scope of a cardroom in mind. This tiered system was based upon the Legislative tiers set up for licensing fees and was created in the originally-noticed draft.

SECOND 15-DAY COMMENT, SECTION 12566(a)(1) and (2)

Written Second 15-Day Comment from Division of Gambling Control, Department of Justice

Delete table reference and go with annual gross revenue only.

RESPONSE TO SECOND 15-DAY COMMENT, SECTION 12566(a)(1) and (2)

Note: Not part of 15-day change. The table language was originally included due to suggestions from the Division and industry. Will consider revising in future amendment.

SECOND 15-DAY COMMENT, SECTION 12566(a)

Written Second 15-Day Comment from David Fried, on behalf of Golden State Gaming Association

Commission shouldn’t impose discipline for violations of local ordinances other than gaming ordinances.

RESPONSE TO SECOND 15-DAY COMMENT, SECTION 12566(a)

The Commission is tasked with protecting the public, and has narrowed the scope of the language to reflect that the ordinances would be directly related to the public health, safety, or welfare. No further change.

SECOND 15-DAY COMMENT, SECTION 12566(a), (b), (c)

Written Second 15-Day Comment from David Fried, on behalf of Golden State Gaming Association
Suspension should not be a starting point. Suspensions for first time offenses violate 19920 (willful/persistent).

RESPONSE TO SECOND 15-DAY COMMENT, SECTION 12566(a),(b),(c)

Actually, the Division has the option of issuing notices to cure, etc., so that this level will not be a mere inadvertence. And the section is written so that monetary penalties may be imposed in lieu of suspensions. The Commission retains the right to suspend, in the event that monetary penalties do not deter the offender's actions.

SECOND 15-DAY COMMENT, SECTIONS 12566(a)(3) and (4)

Written Second 15-Day Comment from Alan Titus, on behalf of Artichoke Joe's
Need upper limits.

RESPONSE TO SECOND 15-DAY COMMENT, SECTIONS 12566(a)(3) and (4)

The Commission will not adopt subsections (4) and (5), so the upper limit of "over \$200,000" remains.

SECOND 15-DAY COMMENT, SECTION 12566(b)

Written Second 15-Day Comment from Division of Gambling Control, Department of Justice
Does this apply to businesses or individuals? Recommend adding additional violations 12200.7 (Contract Criteria) and 12200.16 (Inspections).

RESPONSE TO SECOND 15-DAY COMMENT, SECTION 12566(b)

Section 12566 was designed to address the business of a cardroom. The violations listed here are cardroom business violations, such as failure to maintain adequate financing for the cardroom. Yes, the intent is that individual owners and particular business entities would be covered by Section 12568. Will consider adding additional violation in a future rulemaking.

SECOND 15-DAY COMMENT, SECTION 12566(b)

Written Second 15-Day Comment from Alan Titus, on behalf of Artichoke Joe's
Amount too harsh; penalties have too wide of parameters.

RESPONSE TO SECOND 15-DAY COMMENT, SECTION 12566(b)

In workshops conducted with the industry before these regulations were noticed, industry members expressed a preference for wider parameters so that the factors in aggravation and mitigation would be used. The 25% option was added in the Second 15-day period on suggestion by industry at a noticed Commission hearing.

SECOND 15-DAY COMMENT, SECTION 12566(b)(1)

Written Second 15-Day Comment from Alan Titus, on behalf of Artichoke Joe's
Exceeds authority.

RESPONSE TO SECOND 15-DAY COMMENT, SECTION 12566(b)(1)

The Commission is mandated to protect the public from persons who might create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in the conduct of controlled gambling or in the carrying on of the business and financial arrangements incidental thereto. (Business & Professions Code, section 19857) The Commission must maintain the public trust that permissible

gambling will not endanger public health, safety, or welfare, which 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. (Business & Professions Code, section 19801)

SECOND 15-DAY COMMENT, SECTION 12566(b)(2)

Written Second 15-Day Comment from Alan Titus, on behalf of Artichoke Joe's
Reference Division Regulation 2053.

RESPONSE TO SECOND 15-DAY COMMENT, SECTION 12566(b)(2)

Not referencing Division Regulation in this instance is not required as it is clear what the violation is. Nevertheless, the Commission will consider adding the section number in a future rulemaking.

SECOND 15-DAY COMMENT, SECTION 12566(b)(3)

Written Second 15-Day Comment from Alan Titus, on behalf of Artichoke Joe's
Should mirror Regulation 12220.23 language.

RESPONSE TO SECOND 15-DAY COMMENT, SECTION 12566(b)(3)

Based upon this suggestion, the Commission is not adopting this modified section, and will reserve the space for a 2007 rulemaking.

SECOND 15-DAY COMMENT, SECTION 12566(b)(4)

Written Second 15-Day Comment from David Fried, on behalf of Golden State Gaming Association
Disclosing key employee status hard to determine. Suggest alternate language.

Written Second 15-Day Comment from Alan Titus, on behalf of Artichoke Joe's
Section numbers refer to different items – references not clear.

RESPONSE TO SECOND 15-DAY COMMENT, SECTION 12566(b)(4)

Based upon comment by David Fried, the Commission is not adopting this modified section, and will reserve the space for a 2007 rulemaking.

SECOND 15-DAY COMMENT, SECTION 12566(b)(7)

Written Second 15-Day Comment from David Fried, on behalf of Golden State Gaming Association
Need to add loitering to this portion instead of 12566(c); need to include reasonable reliance.

Written Second 15-Day Comment from Alan Titus, on behalf of Artichoke Joe's
Add reasonable reliance language.

RESPONSE TO SECOND 15-DAY COMMENT, SECTION 12566(b)(7)

Based upon these two comments, the Commission is not adopting this modified section, and will reserve the space for a 2007 rulemaking.

SECOND 15-DAY COMMENT, SECTION 12566(b)(8)

Written Second 15-Day Comment from Alan Titus, on behalf of Artichoke Joe's
Not clear.

RESPONSE TO SECOND 15-DAY COMMENT, SECTION 12566(b)(8)

This language has been in the draft regulations since before the public workshops. The penalty is for “Violation of Business and Professions Code, section 19924.” That statute reads in its entirety: “Each owner shall maintain security controls over the gambling premises and all operations therein related to gambling, and those security controls are subject to the approval of the Commission.”

SECOND 15-DAY COMMENT, SECTION 12566(b)(9)

Written Second 15-Day Comment from Alan Titus, on behalf of Artichoke Joe’s
Campaign finance guidelines not necessary until 2015.

RESPONSE TO SECOND 15-DAY COMMENT, SECTION 12566(b)(9)

This language has been in the draft regulations since before the public workshops. While recent legislation has moved the general moratorium on cardrooms to 2015, city or county or city and county ordinances could be amended by vote with regard to games played or hours of operation under Business and Professions Code 19960, and therefore the campaign finance requirements are in existence.

SECOND 15-DAY COMMENT, SECTION 12566(b)(10)

Written Second 15-Day Comment from Alan Titus, on behalf of Artichoke Joe’s
Should specify 12403(b) only. Privacy rights of cardrooms cancel authority for regulation. Should exonerate club if CPA prepared records.

RESPONSE TO SECOND 15-DAY COMMENT, SECTION 12566(b)(10)

This language has been in the draft regulations since before the public workshops. The Commission respectfully disagrees with the assertion that only under 12403(b) is there any duties to the Commission with respect to providing data. The accounting regulations require a chart of accounts to be submitted (12402), and require that financial records listed in the article be maintained and available for inspection. If a cardroom misreports revenue, for example, Division auditors would not be barred by any “privacy rights” to ascertain the appropriate revenue for determination of licensing fees.

The issue of responsibility came up during the public workshops and reliance on a CPA could be a factor in mitigation but cannot be used as an absolute shield.

SECOND 15-DAY COMMENT, SECTION 12566(b)(13)

Written Second 15-Day Comment from Alan Titus, on behalf of Artichoke Joe’s
Discipline for late filing fee should be modest.

RESPONSE TO SECOND 15-DAY COMMENT, SECTION 12566(b)(13)

The 25% option was added in this 15-day period on suggestion by industry at a noticed Commission hearing.

SECOND 15-DAY COMMENT, SECTION 12566(b)(14)

Written Second 15-Day Comment from Alan Titus, on behalf of Artichoke Joe’s
Should have more levels.

RESPONSE TO SECOND 15-DAY COMMENT, SECTION 12566(b)(14)

As experiences with these regulations are gained, the Commission will determine if certain items need to be separated and distinguished. The language of this section has not changed since the public workshops, however, only the allowance for a lesser penalty.

SECOND 15-DAY COMMENT, SECTION 12566(c)

Written Second 15-Day Comment from David Fried, on behalf of Golden State Gaming Association
Add length of time.

Written Second 15-Day Comment from Alan Titus, on behalf of Artichoke Joe's

Shouldn't structure the regulations this way. Consider adding time frames. Add basis for character revocation with respect to gambling establishments. Repeat lack of authority arguments from (b).

RESPONSE TO SECOND 15-DAY COMMENT, SECTION 12566(c)

At this point, there have been almost no disciplinary actions taken by the Commission (three settlements this summer), so there isn't a need for a baseline yet. The Commission will review and consider revising the regulation in 2007. For comments repeating arguments of (b), see responses to (b).

COMMENT, Section 12568

Oral & Written 45-day Comment from David Fried, on behalf of the Golden State Gaming Association.
Subsection (a) should include the word "materially."

Oral Comment from Rod Blonien, joining David Fried and Steve Simas, and on behalf of Commerce Club, Hollywood Park, Lucky Derby, Phoenix, Capitol Club, and other small cardrooms {transcript pp 41-45}

Subsection (a)(3) and (4) may be overbroad. Associated adjacent property may have nothing to do with the primary focus of gambling. Parking lots with abandoned buildings or kitchen areas are not in the purview of the Commission. Some definition or narrowing may be needed.

REPOSE, Section 12568

The Commission believes the current language is clear and appropriate. See also the response to section 12554(d)(7).

SECOND 15-DAY COMMENT, SECTION 12568

Written Second 15-Day Comment from Division of Gambling Control, Department of Justice
Clarify if this covers businesses. Typo of "owner license."

Written Second 15-Day Comment from Alan Titus, on behalf of Artichoke Joe's

Beyond authority.

RESPONSE TO SECOND 15-DAY COMMENT, SECTION 12568

Inasmuch as a business holds an owner license, it is covered under this regulation. Thus, it is not a typo, but reflects that, for instance, a general partnership or corporation could be licensed to own a cardroom.

The Commission is mandated to protect the public from persons who might create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in the conduct of controlled gambling or in the carrying on of the business and financial arrangements incidental thereto. (Business & Professions Code, section 19857) The Commission must maintain the public trust that permissible gambling will not endanger public health, safety, or welfare, which 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. (Business & Professions Code, section 19801)

SECOND 15-DAY COMMENT, SECTION 12568(b)(3)

Written Second 15-Day Comment from Alan Titus, on behalf of Artichoke Joe's
19944 has criminal fines/imprisonment, therefore requires higher burden of proof.

RESPONSE TO SECOND 15-DAY COMMENT, SECTION 12568(b)(3)

This language has not changed from the originally noticed draft. See also response to 12554(c).

SECOND 15-DAY COMMENT, SECTION 12568(b)(4)

Written Second 15-Day Comment from Alan Titus, on behalf of Artichoke Joe's
Inconsistent.

RESPONSE TO SECOND 15-DAY COMMENT, SECTION 12568(b)(4)

This language has not changed from the originally noticed draft.

SECOND 15-DAY COMMENT, SECTION 12568(b)(5)

Written Second 15-Day Comment from Alan Titus, on behalf of Artichoke Joe's
Exceeds authority – the Commission does not have the authority to discipline a licensee for a felony.

RESPONSE TO SECOND 15-DAY COMMENT, SECTION 12568(b)(5)

This language has not changed from the originally noticed draft. See response to 12568 in general.

SECOND 15-DAY COMMENT, SECTION 12568(b)(6)

Written Second 15-Day Comment from Alan Titus, on behalf of Artichoke Joe's
Exceeds authority – the Commission does not have the authority to discipline a licensee for a felony.

RESPONSE TO SECOND 15-DAY COMMENT, SECTION 12568(b)(6)

This language has not changed from the originally noticed draft. See response to 12568 in general.

SECOND 15-DAY COMMENT, SECTION 12568(b)(7)

Written Second 15-Day Comment from Alan Titus, on behalf of Artichoke Joe's
Exceeds authority – the Commission does not have the authority to discipline a licensee for a felony.

RESPONSE TO SECOND 15-DAY COMMENT, SECTION 12568(b)(7)

This language has not changed from the originally noticed draft. See response to 12568 in general.

SECOND 15-DAY COMMENT, SECTION 12568(b)(8)

Written Second 15-Day Comment from Alan Titus, on behalf of Artichoke Joe's
Exceeds authority – the Commission does not have the authority to discipline a licensee for a felony.

RESPONSE TO SECOND 15-DAY COMMENT, SECTION 12568(b)(8)

This language has not changed from the originally noticed draft. See response to 12568 in general.

SECOND 15-DAY COMMENT, SECTION 12568(b)(9)

Written Second 15-Day Comment from Alan Titus, on behalf of Artichoke Joe's
Exceeds authority – the Commission does not have the authority to discipline a licensee for a felony.

RESPONSE TO SECOND 15-DAY COMMENT, SECTION 12568(b)(9)

This language has not changed from the originally noticed draft. See response to 12568 in general.

SECOND 15-DAY COMMENT, SECTION 12568(b)(10)

Written Second 15-Day Comment from Alan Titus, on behalf of Artichoke Joe's

Exceeds authority – the Commission does not have the authority to discipline a licensee for a felony.

RESPONSE TO SECOND 15-DAY COMMENT, SECTION 12568(b)(10)

This language has not changed from the originally noticed draft. See response to 12568 in general.

SECOND 15-DAY COMMENT, SECTION 12568(b)(11)

Written Second 15-Day Comment from Alan Titus, on behalf of Artichoke Joe's

Exceeds authority – the Commission does not have the authority to discipline a licensee for a felony.

RESPONSE TO SECOND 15-DAY COMMENT, SECTION 12568(b)(11)

This language has not changed from the originally noticed draft. See response to 12568 in general.

SECOND 15-DAY COMMENT, SECTION 12568(b)(12)

Written Second 15-Day Comment from Alan Titus, on behalf of Artichoke Joe's

Exceeds authority – the Commission does not have the authority to discipline a licensee for being convicted of offenses related to gambling.

RESPONSE TO SECOND 15-DAY COMMENT, SECTION 12568(b)(12)

With regard to the argument of no authority for the action, this language has not changed from the originally noticed draft. See response to 12568 in general.

SECOND 15-DAY COMMENT, SECTION 12568(b)(13)

Written Second 15-Day Comment from Alan Titus, on behalf of Artichoke Joe's

Exceeds authority – the Commission does not have the authority to discipline a licensee for a felony. “Related to gambling” lacks clarity.

RESPONSE TO SECOND 15-DAY COMMENT, SECTION 12568(b)(13)

With regard to the argument of no authority for the action, this language has not changed from the originally noticed draft. See response to 12568 in general. Whether or not something is related would be determined on a factual case-by-case basis.

SECOND 15-DAY COMMENT, SECTION 12568(c)

Written Second 15-Day Comment from Alan Titus, on behalf of Artichoke Joe's

Commission should consider the public trust, pursuant to 19856.

RESPONSE TO SECOND 15-DAY COMMENT, SECTION 12568(c)

This language has not changed from the originally noticed draft. The statutory references given in the draft originally noticed are deemed sufficient.

COMMENT, General

45-day Comment from Gaming Fund Group, letter dated April 20, 2006

Gaming Fund Group concurs with all of the suggestions offered in the public hearing by David Fried, Tracey Buck-Walsh, and Michael Franchetti.

Oral & Written 45-day Comment from David Fried, on behalf of the Golden State Gaming Association.

Penalties should be commensurate with the severity of the violation, and discipline should be progressive.

Written First 15-day Comment from David Fried, on behalf of the Golden State Gaming Association.
Violations must be related to gambling laws. Lack of authority, necessity. Duplicative.

Oral comment from Kermit Shayltz, President of the Golden State Gaming Association, and speaking on behalf of small clubs, and especially as the owner of the Lucky Derby Cardroom {transcript pp 33—38}
Penalties should not be draconian.

Written 45-day comment from California Cities for Self-Reliance Joint Powers Authority
Disciplinary regulations should impose penalties that are commensurate with the severity of the violation, be remedial as opposed to punitive, and not involve closure of a card club.

Written First 15-Day Comment from Department of Justice, Division of Gambling Control
The Division fully supports the current proposed text.

Written First 15-day Comment from Andrew Schneiderman, Commerce Casino, dated June 1, 2006
The Commission should not have a casual attitude toward suspending a state gambling license. Mitigating factors should be considered.

NOTE: As this Comment letter was also sent directly to the Commissioners, the Commission Chair responded directly. This response is included in the rulemaking file. Summarily, the Commission does not take a casual attitude toward suspension. In regulating the industry it is inevitable that the Commission will take some positions with which industry will disagree.

Written First 15-day Comment from Andrew Schneiderman, Commerce Casino, dated June 13, 2006
Each licensee shares the Commission's responsibility to protect the public and to create public trust in the industry.

RESPONSE, General

The Commission appreciates your time in making these comments. The Commission believes that the discipline levels put forth in the regulations are commensurate with the severity of the violation, and has looked at other jurisdictions and agencies in determining the levels. The Commission will, where appropriate, allow a cardroom or holder of a gambling license to pay a penalty in lieu of suspension, but retains the authority to close a cardroom in order to protect the health and safety of the citizens of the state of California. See Initial Statement of Reasons, Final Statement of Reasons, and responses to previous comment letters. Please see the appropriate sections above for more specific responses.

Many general comments made during the first and second 15-day comment periods revisit areas of the regulations not covered by the modifications to the proposed regulations in the modified text 15-day comment periods.

COMMENT, Structure

Written Second 15-Day Comment from Alan Titus, on behalf of Artichoke Joe's

Consider structuring regulations by violation or by nature of duties, or between violations involving the public and not involving the public.

RESPONSE, Structure

In order to make the regulations more accessible, we added a summary chart in the Second 15-day comment period, which acts as an index by violation instead of by license type or severity. As the comment letter shows, the regulations could have been structured a number of ways; the Commission's

original approach has been augmented to help the public and the Commission does not see a need for further structural changes at this time. Note: the structural change of the regulatory text was not altered during the first or second 15-day comment period.

UPDATE OF INITIAL STATEMENT OF REASONS

The Initial Statement of Reasons is incorporated as if fully set forth in this section.

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 Commission's regulatory purpose.

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.