

## California Gambling Control Commission

### DESCRIPTION OF PROPOSED REGULATORY ACTION

#### ADVERTISING

##### **INTRODUCTION:**

The California Gambling Control Commission (Commission) is proposing regulations that would implement the Commission's mandate under the Gambling Control Act (Act) to ensure the integrity of gambling in California with respect to advertising activities. Specifically, these regulations would implement Business and Professions (B&P) Code section 19841, subdivision (f) of the Act, which requires the Commission to provide for the disapproval of deceptive advertising by licensed gambling establishments, as determined by the Bureau of Gambling Control (Bureau)<sup>1</sup>. Notably, the statute specifies that an advertisement is presumptively deceptive if it appeals to children or adolescents, or offers gambling as a means of becoming wealthy.

The proposed regulations would establish new definitions as well as general and specific requirements pertaining to gambling-related advertisements produced by or for any cardroom owner type licensee or TPPPS owner type licensee (collectively known and hereinafter referred to as owner category licensees). The new requirements would provide a regulatory framework for the Bureau to utilize in determining its disapproval of a deceptive advertisement that solicits participation in controlled gambling at a gambling establishment and procedures for notifying the responsible parties. Further, the proposed regulations contain mechanisms for enforcement concerning a failure to correct a deceptive advertisement.

##### **EXISTING LAW:**

###### Title 15, United States Code, Section 55 – Definition of “False Advertisement”

15 U.S.C. 55 defines “false advertisement” to mean advertising which is materially misleading, taking into account not only representations made or suggested by a statement, word, design, device, sound, or any combination thereof, but also the extent to which the advertisement fails to reveal material facts relating to consequences from using the item featured in the advertisement.

###### B&P Code section 17500 – Untrue or Misleading Advertising Statements

B&P Code section 17500 provides that it is unlawful to make any statement (for advertising purposes) which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading.

###### B&P Code section 17508 – False or Misleading Advertising Claims

B&P Code section 17508 makes it “unlawful for any person doing business in California and advertising to consumers in California to make any false or misleading advertising claim, including claims that: (1) purport to be based on factual, objective, or clinical evidence, (2)

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<sup>1</sup> In the Act, “department” refers to the Department of Justice. While the Act assigns certain powers and authority to the department, in actual practice the responsibility for fulfilling the obligations imposed upon the department is delegated to the Bureau of Gambling Control, pursuant to B&P Code section 19810.

compare the product's effectiveness or safety to that of other brands or products, or (3) purport to be based on any fact.”

### **Gambling Control Act**

The Commission has broad authority under the Act to adopt regulations for the administration and enforcement of the Act.

#### **B&P Code section 19801(c)**

B&P Code section 19801, subdivision (c), states that gambling can become addictive and is not an activity to be promoted or legitimized as entertainment for children and families.

#### **B&P Code section 19801(d)**

B&P Code section 19801, subdivision (d), states that unregulated gambling enterprises are inimical to the public health, safety, welfare, and good order. Accordingly, no person in this state has a right to operate a gambling enterprise except as may be expressly permitted by the laws of this state and by the ordinances of local governmental bodies.

#### **B&P Code section 19841(f)**

B&P Code section 19841, subdivision (f), requires the Commission adopt regulations to provide for the disapproval of advertising by licensed gambling establishments that is determined by the Bureau to be deceptive to the public. Advertisements that appeal to children or adolescents or that offer gambling as a means of becoming wealthy are presumptively deceptive. This statute also requires that the advertising regulations for gambling establishments adopted by the Commission be consistent with advertising regulations adopted by the California Horse Racing Board (CHRB) and the California State Lottery Commission (Lottery).

#### **B&P Code section 19841**

B&P Code section 19841, subdivision (o), allows the Commission to adopt regulations that restrict, limit, or otherwise regulate any activity that is related to the conduct of controlled gambling.

#### **B&P Code section 19920**

B&P Code section 19920 states that it is the policy of the State of California to require that all establishments wherein controlled gambling is conducted in this state be operated in a manner suitable to protect the public health, safety, and general welfare of the residents of the state. Responsibility for the employment and maintenance of suitable methods of operation rests with the owner licensee, and willful or persistent use or toleration of methods of operation deemed unsuitable by the Commission or by local government shall constitute grounds for license revocation or other disciplinary action.

#### **Penal Code section 330 – Illegal Forms of Gambling; Punishment**

Penal Code section 330 provides that every person who deals, plays, or carries on, opens, or causes to be opened, or who conducts, either as owner or employee, whether for hire or not, any game of faro, monte, roulette, lansquenet, rouge et noire, rondo, tan, fan-tan, seven-and-a-half, twenty-one, hokey-pokey, or any banking or percentage game played with cards, dice, or any device, for money, checks, credit, or other representative of value, and every person who plays or

bets at or against any of those prohibited games, is guilty of a misdemeanor, and shall be punishable by a fine not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000), or by imprisonment in the county jail not exceeding six months, or by both the fine and imprisonment

**EXISTING REGULATIONS:**

Title 4, California Code of Regulations

Title 4, CCR, Section 12461, subsection (b), requires that any website operated by or on behalf of any cardroom business licensee and TPPPS business licensee must contain a responsible gambling message and a link to the Office of Problem Gambling (or its successors) that provides information and referral services for problem gamblers.

Section 12461, subsection (c), requires that advertising material produced by or on behalf of any cardroom business licensee or TPPPS business licensee must contain a responsible gambling message. This provision also requires that the advertisement must refer to the toll-free telephone number and/or link approved by the Office of Problem Gambling (or its successors) that provides information and referral services for problem gamblers. It provides an exception for any digital material with limited characters or space to alternatively provide a link to a website that contains the information required by subsection (b). It also exempts any small tangible items in which the size or space limitations do not allow for the responsible gambling message to be legibly displayed.

Title 11, California Code of Regulations

Title 11, CCR, Section 2072, subsection (e), requires that each licensed gambling establishment submit a biannual report to the Bureau which includes, among other things, copies or transcripts of all advertisements within the prior six months used to promote a gaming activity offered at a gambling establishment.

**PROBLEMS ADDRESSED:**

As previously stated, B&P Code section 19841, subdivision (f), requires the Commission to adopt regulations that provide for the disapproval of advertising by licensed gambling establishments that is determined by the Bureau to be deceptive to the public. To date, the Commission has found numerous examples of current advertisements that do not contain a responsible gambling message or information and referral services for problem gamblers, which violates existing regulations. Further, the existing regulations do not specify how the information must be presented. As a result, some advertisements deliver the information in an unclear and inconspicuous manner, which makes it difficult if not impossible for the public to understand and comprehend.

Section 19841, subdivision (f), also states that advertisements that appeal to children or adolescents are presumptively deceptive. The Commission is aware that a current industry practice is for many gambling establishments to provide charitable support to local youth and community functions, such as Little League sports teams, toy drives, and holiday tree lighting ceremonies. This includes placing a gambling establishment's name and/or logo on the children's uniforms, team banners, event programs and pamphlets, etc. While these sponsorships

are well-intended and benefit the local community, regulations are needed to ensure this is done in a manner that does not make gambling appeal to the impressionable youth.

Some advertisements reviewed by the Commission contain untrue or misleading statements such as “Nevada style” or “Vegas style” in reference to the games offered at a gambling establishment. Other advertisements include a name different from the actual Bureau-approved game. These types of statements can mislead the public into thinking that a gambling establishment offers house-banked games, which are prohibited from being offered.

Currently, there is no regulatory framework established to provide for the Bureau’s disapproval of an advertisement that it determines is deceptive to the public. The Bureau has no specific basis or procedures to utilize in making consistent determinations for purposes of enforcement, which this regulatory proposal seeks to establish. Furthermore, owner category licensees have little guidance and requirements to refer to in the creation and dissemination of an advertisement other than industry best practices and general state and federal laws.

**ANTICIPATED BENEFITS OF THE PROPOSED REGULATIONS:**

The proposed regulations will establish necessary criteria for the Bureau to use in determining if an advertisement is deceptive and provide the cardroom industry guidance through standards (including specific safe harbors and prohibited statements) concerning the content, dissemination, and control of an advertisement. Further, this proposal provides additional protection to the more impressionable youth by explicitly prohibiting advertisements from being displayed, broadcasted, or disseminated on the premises of any K-12 school or at any function primarily held for youth participation. The requirements are intended to dissuade and reduce dissemination of gambling advertisements that are determined to be deceptive to the public. This includes advertisements that inappropriately appeal to persons under the age of 21, entice gambling as a means of becoming wealthy, contain false or misleading claims, or refer to a game prohibited by Penal Code section 330. The proposal provides the Bureau procedures for notifying an owner category licensee if it determines that an advertisement is deceptive and specifies the potential disciplinary actions that may be exercised as a result of a failure to correct a deceptive advertisement. Implementing the proposed regulations will fulfill the Commission’s statutory mandate, better protect the health, safety, and general welfare of the public, and maintain integrity within the cardroom industry.

**CONSISTENCY WITH EXTERNAL GAMBLING REGULATIONS:**

B&P Code section 19841, subdivision (f), requires that the proposed advertising regulations be “consistent with” (not identical to) the advertising regulations adopted by CHRB and the Lottery. While the Lottery has not adopted any advertising regulations, CHRB has several regulations related to advertising. However, many of CHRB’s advertising regulations are inapplicable to advertising a controlled game or gaming activity, such as the requirements prohibiting the use of symbols or markings on uniforms and prohibiting the use of a stable name registration for advertising purposes (Title 4, CCR, Div, 4, Art. 12).

California Horse Racing Board

The proposed regulations are consistent with those regulations adopted by CHRB, and specifically in the following areas:

- *Underage gambling.* Both CHRB and the Commission prohibit and discourage gambling by persons under 21. For example, CHRB regulations in Title 4, CCR, Section 2066(d), require that all advertisements “contain a statement that persons under 21 are not allowed access to the minisatellite wagering site.” Similarly, the proposed language in Section 12092(c)(2)(A) provides that advertisements must include a “statement that participants must be 21 or older to gamble.”
- *Problem Gambling.* The Commission’s proposed regulations are consistent with the regulations adopted by the CHRB in that they both require advertisements to contain contact information for problem gambling support. CHRB regulations in Title 4, CCR, Sections 2066(d), 2071(h), and 2072(h), require that all advertisements must “contain contact information for a recognized problem-gambling support organization.” Similarly, the proposed language in Section 12092(c)(2)(B) requires that all advertisements include a responsible gambling message and a reference to one of the help services for problem gamblers approved by the Office of Problem Gambling.

#### California State Lottery Commission

Presently, there are no regulations by The Lottery that relate to the Commission’s proposed regulations that provide for the disapproval of advertising. A majority of the Lottery’s requirements pertaining to advertising are located within statute and not regulation. For example, Government Code section 8880.24, requires the Lottery to comply with both the letter and spirit of the laws governing false and misleading advertising, including B&P Code section 17500 et seq.

Notably, California Lottery Regulations section 7.5.7, requires retailers to post “Play Responsibly” signage and other related point-of-sale materials at play centers, including maintaining and making available to players, responsible gaming awareness brochures and related publications supplied by the Lottery. This requirement is similar in nature to the Commission’s existing and proposed regulations in Sections 12092 and 12461.

#### **PROPOSED ACTION:**

##### General Notes

A general change has been made in the proposal to remove the word “shall.” Shall is a potentially ambiguous word. In most connotations it is used to convey an obligation. However, the word has been used in a variety of contexts to convey a range of ideas including “may,” defining a term, meaning “should,” etc. In an effort to foreclose any such ambiguity, shall is replaced throughout the text with other words subject to less interpretation. These changes are non-substantive and clarifying in nature.

Additionally, while B&P Code section 19841, subdivision (f) applies to “licensed gambling establishments,” the terms “gambling enterprise” and “gambling establishment” are inconsistently used throughout the Act. For consistency in the regulations, gambling enterprise has been used in other regulatory packages adopted by the Commission to refer to the person or entity that conducts a gambling operation; whereas a gambling establishment has been used to refer to one or more of the physical rooms where the controlled gambling or activity occurs. As

such, this practice has been carried forward throughout these proposed regulations, where appropriate.

Lastly, non-substantive changes have been made to certain defined terms and section numbers in the proposed draft Text to reflect the changes in the Licensing regulations package (CGCC-GCA-2020-01-R), which became effective January 1, 2021. Further, certain previously proposed amendments in the November 14, 2019 Text version (relocation of “gaming activity” from Ch. 7 to Ch. 1 and updates to terms in § 12461(a)) have been removed entirely as the changes are no longer necessary due to the Licensing regulations package provisions.

## **CHAPTER 1. GENERAL PROVISIONS.**

### **ARTICLE 1. DEFINITIONS AND GENERAL PROVISIONS.**

#### **Amend Section 12002. General Definitions.**

This section provides general definitions for this division. New definitions are proposed to be added. These terms are necessary to define for purposes of applicability of the proposed regulations. Non-substantive changes have been applied throughout to renumber the existing definitions accordingly.

**Subsection (b)** would add the definition of “advertise” or “advertising” to mean the publication or dissemination of an “advertisement,” which is defined in subsection (c). Adding this definition simply allows the use of the verb form of advertisement throughout the regulations. Breaking up the term advertisement into its verb and noun forms is common in many regulatory schemes and provides for ease of understanding.

**Subsection (c)** would add the definition of “advertisement,” which is necessary because the term is used throughout the proposed regulations. The definition includes the following components of what constitutes an advertisement:

- *“Any written or verbal statement, illustration, or depiction...”* This language targets a broad range of instances in which a gambling activity is portrayed through written or spoken words, images or graphics. As methods of advertising are broad, varied, and complex, this scope is necessary to capture all potential forms of advertising.
- *“...that is disseminated to the public...”* This language is added so that the requirements do not apply to advertisements under development or in draft form which have not yet been released to the public, such as instances where draft advertisements may be displayed in the back office of a gambling establishment for review by employees.
- *“...which is intended to solicit participation in a controlled game or gaming activity...”* This language ensures that the regulations are specific enough to target only advertising intended to encourage or promote participation in gambling. This language is necessary because many gambling establishments offer more than just gambling and want to drive business to other commerce within the establishment. The exception also ensures that the

regulations remain within the scope of enabling legislation.

- “...without limitation, any written, printed, graphic, or other material, billboard, sign, or other outdoor display, periodical literature, publication, or in a radio or television broadcast, or in any other media.” This language captures the various mediums by which an advertisement may be distributed or displayed. The provision ensures regulatory clarity regarding the various mediums over which an advertisement may be disseminated. Again, as the various mediums for advertising are broad, varied, and complex, this breadth is necessary to capture any means by which advertising content reaches the public.
- **Paragraph (c)(1)** provides additional clarity and specificity to the definition of an advertisement by expressly providing what does not constitute an advertisement and ensures the regulations do not exceed the authority provided by enabling legislation. The proposed advertising requirements are not to apply to the following:
  - **Subparagraph (c)(1)(A):** “*The solicitation of activities, events, or services that do not relate to the conduct of or participation in a controlled game or gaming activity and may otherwise be provided on the licensed premises including, but not limited to, restaurant dining, concerts, trade shows, business conferences, and non-gambling related promotions and contests.*” The term “licensed premises” has the same meaning as “gambling establishment” pursuant to the definition provided in B&P Code section 19805, subdivision (o). These terms are used to describe one or more rooms where any controlled gambling or activity directly related thereto occurs (as specified). The express language clarifies that other advertisements used to solicit non-gambling related activities at a gambling establishment (e.g. restaurant dining, concerts, trade shows, etc.) are not subject to the same regulatory restrictions and requirements.
  - **Subparagraph (c)(1)(B):** “*Exclusive use of the name, nickname, alias, or any other name by which the gambling establishment is commonly known, including its logo or trademark.*” This language is necessary to ensure the regulations do not encroach on commercial speech rights and overstep the statutory directives as the mere display or use of a gambling establishment’s name(s)/logo/trademark is generally not inherently deceptive.
  - **Subparagraph (c)(1)(C):** “*Any editorial or other reading material, such as a news release, in any periodical, publication, or newspaper for the publication of which no money or valuable consideration is paid or promised, directly or indirectly, by any owner category licensee, and which is not written by or at the direction of the owner category licensee.*” This language broadly exempts reading materials about a gambling establishment written independently and without direction or compensation from an owner category licensee. The language was adapted from the definition of an advertisement in Cannabis Law. There are many types of publications outside of the control of an owner category licensee such as news articles, business listings, information identifying charitable contributions, etc. Because such reading materials may discuss or highlight information, events,

or features of a gambling establishment that could be interpreted to fall under the definition of an advertisement, this exemption clarifies and ensures an owner category licensee is not subject to discipline for published information outside of their control.

- **Subparagraph (c)(1)(D):** *“The distribution of informational material that is not targeted at persons under 21 years of age for purposes of recognizing a donation, gift, or charitable contribution. The information provided may include the name, logo, and trademark of a gambling establishment and may be provided in informational material including, but not limited to, a program pamphlet or informational handout for an event, a posting on a charitable organization’s website, etc.”* This provision exempts materials that may recognize a gambling establishment for its donation, gift, or charitable contribution so long as the material does not target persons under 21 years of age. It would be inappropriate to apply the advertising requirements to materials such as a non-gaming related event handout or program pamphlet.
- **Subparagraph (c)(1)(E):** *“Any job postings for employment opportunities.”* This provision provides a commonsense clarification that job postings for employment would not be subject to the requirements for advertisements.
- **Subparagraph (c)(1)(F):** *“Any notices or postings otherwise required by the Act, this Division, or Title 11, Division 3 of the California Code of Regulations, such as posted game rules.”* This exclusion is necessary because content requirements for notices and postings are contained in other regulatory sections. Further, the Bureau’s regulations in Title 11 require the posting of game play rules. It is not intended that these notices and postings be subject to the content requirements for advertisements.
- **Paragraph (c)(2)** clarifies that anything meeting the definition of an advertisement that is included with or attached to the items exempted under paragraph (c)(1) above, must comply with Article 4. The Commission has found several examples of business signage located on the exterior of a gambling establishment that also contains advertisements for games and gaming activities offered at the gambling establishment. The format of these advertisements are typically appended to the business signage and have been found in the form of static signs, digital billboards, and scrolling marquees that advertise various games and gaming activities. Many of these advertisements use misleading names of the games that a gambling establishment is allowed to offer (Bureau-approved games) or advertise phrases such as “Vegas style” or Nevada style.” The proposed provision is necessary to ensure an owner category licensee is not able to side-step the requirements when appending advertisements to items such as business signage, business listings, job postings, etc.



**CHAPTER 1. GENERAL PROVISIONS.**

**ARTICLE 4: ADVERTISING**

**Add Section 12090. General Requirements.**

Section 12090 provides general advertising requirements and responsibilities of all owner category licensees.

**Subsection (a)** applies the requirements within this Article to all owner category licensees and specifies that the requirements are mandatory. This language is necessary for clarity as to who this section is applicable to and makes clear the compliance requirement.

**Subsection (b)** clarifies that any act, omission, or failure of an advertising agent, representative, or contractor retained by the owner category licensee, will be deemed an act, omission, or failure of the owner category licensee. It is common for owner category licensees to contract with other agents, representatives, or consultants for advertising and marketing services. Accordingly, this section is necessary for the Bureau to assure that all advertising and marketing done on behalf of an owner category licensee satisfies the requirements of the regulations. This will avoid situations in which owner category licensees attempt to avoid responsibility for violations of the regulations by having another party advertise or market on their behalf.

**Add Section 12091. Specific TPPPS Business Requirements**

Section 12091 provides specific advertising requirements and responsibilities for all TPPPS business licensees.

**Subsection (a)** contains requirements exclusive to a TPPPS business licensee, as discussed below:

- **Paragraph (a)(1).** B&P Code section 19984 provides that a licensed gambling enterprise may contract with a TPPPS. Current regulations require that all financial arrangements between the cardroom business licensee and TPPPS business licensee, including advertising, must be disclosed in the TPPPS contract. This paragraph is necessary to clarify that in order for the cardroom business licensee and TPPPS business licensee to comply with existing Commission regulations, the advertisement costs must be included in the TPPPS contract.
- **Paragraph (a)(2)** requires the TPPPS business licensee to provide the cardroom business licensee copies of all advertisements used to promote a gaming activity that the TPPPS business licensee has, or has caused to be, created, purchased, placed, or disseminated for the cardroom business licensee. The phrase “or has caused to be” ensures that advertisements the TPPPS has caused to be created, purchased, placed, or disseminated through the services of a third-party advertising company are also subject to the regulations. This provision is necessary to remain consistent with existing Bureau regulations in Title 11, CCR, Section 2072(e), which requires each licensed gambling establishment to submit a biannual report to the Bureau that includes copies or transcripts of all advertisements used to promote a gaming activity in the prior six months. Without

this requirement, the cardroom business licensee may unknowingly omit a gaming activity advertisement that was under the control of a TPPPS from its biannual report.

**Add Section 12092. Advertising Content and Dissemination.**

This section establishes content and dissemination requirements for gambling advertisements. The section is also necessary to provide the Bureau with criteria to reference in justifying its determination to disapprove an advertisement that is deceptive to the public. While the First Amendment provides protection for commercial speech, it does not protect the expression of deceptive speech.

**Subsection (a)** provides general criteria applicable to presenting the required information in all advertisements and ensures that the required information is legible and readable or audible and intelligible. This regulation is necessary to provide guidance to the regulated community as well as protect the health, safety, and welfare of the public from deceptive advertisements so that the public has adequate notice. This requirement is intentionally broad to stay within the parameters of enabling legislation and avoid infringing on commercial speech rights.

**Subsection (b)** specifies that certain portions of the information required to be presented in an advertisement must be in the same language as all of the languages used in the advertisement. Specifically, the statement that participants must be 21 or older to gamble and the problem gambling statement are required to be presented in all used languages. Conversely, requiring the contact information for problem gambler referral services in a language other than English is unnecessary and would likely lead to confusion when trying to navigate to those provided services. This provision is necessary because many gambling advertisements use languages other than or in addition to English for targeting groups of people who are only fluent in languages other than English. For their own health, welfare, and protection, these individuals should be presented with the required information in a language they fully understand.

**Subsection (c)** sets forth the following specific content requirements for all advertisements:

- **Paragraph (c)(1)** requires that all advertisements state the name, nickname, alias, or any other name by which the gambling establishment is commonly known. Providing this information is necessary to be able to identify the party responsible for the advertisement so that, in the event that an advertisement is determined by the Bureau to be deceptive to the public, the Bureau may contact the owner category licensee(s) and/or issue a letter of warning.
- **Paragraph (c)(2)** requires that advertisements include a statement that participants must be 21 or older to gamble. This statement is necessary to align with the existing requirements in B&P Code section 19921. Further, the provision is necessary to reduce the likelihood of an individual under 21 from being deceived into thinking they may legally participate in a controlled game or gaming activity at a gambling establishment.
- **Paragraph (c)(3)** references the requirements of Section 12461(b)(1) and (3), which provides advertisements must contain a responsible gambling message and reference one of the information and referral services approved by the Office of Problem Gambling (or

its successor). The provision provides clarity by ensuring all requirements related to gambling establishment advertising are included or referenced within the same section.

- **Paragraph (c)(4)** provides three approved ways to reference games within an advertisement. The game advertised must be referred to in accordance with one of the three clauses discussed below. These clauses have been written to provide flexibility in the language used to advertise a game while preventing the use of untrue or misleading statements or references to games prohibited by Penal Code section 330 or the California Constitution.
  - **Subparagraphs (A) and (B)** contain requirements for referencing Bureau-approved games within advertisements. The provision requires that when an advertisement references a game, the name of the Bureau-approved game or Bureau-approved alternative game name must be included. The Penal Code provides limitations on the types of games that are permissible and the Bureau must approve any game before it can be offered for play in a licensed gambling establishment. While this provision also provides additional flexibility by allowing for the potential use of alternative game names in the future, a policy and process for approval would first need to be established by the Bureau before alternative game names could be allowed. If this were implemented, the Bureau would likely need to establish limits on the number of alternative game names that would be allowed.
  - **Subparagraph (C)** contains requirements that allow an advertisement to refer to a game or group of games using any name if certain safe harbor statements identified under clauses (i) through (iv) are included. This section also allows for the Bureau to publish additional safe harbor statements at its discretion. These safe harbor statements make it clear to the public that the types of games advertised and offered are distinguished from games that may not lawfully be offered at California gambling establishments.
- **Paragraph (c)(5)** provides two options for referencing gaming activities within an advertisement. The gaming activity advertised must be referred to in accordance with one of the two clauses discussed below. These clauses have been written to afford flexibility in the requirements, while providing the public a way to identify the gaming activity and contact the gambling establishment or the Bureau to obtain the approved rules.
  - **Subparagraph (A)** requires the use of the Bureau-approved gaming activity name. The approved gaming activity name can be used to obtain the approved gaming activity rules from the Bureau or the gambling establishment.
  - **Subparagraph (B)** provides that any gaming activity name may be used if the Bureau-approved identification number is provided with it. This clause is consistent with the Bureau's current policy for advertising gaming activities. The identification number can be used to obtain the approved gaming activity rules from the Bureau or the gambling establishment.

**Subsection (d)** provides specific exemptions for certain types of advertisements that are currently located in Section 12461(c)(1) and (2), which are being proposed to be relocated and amended as follows:

- **Paragraph (d)(1)** contains express language that provides the requirements of paragraphs (c)(2) through (5) do not apply to any small tangible items upon which the information would be impracticable to print, display, or present, including, but not limited to: apparel, hats, pens, key chains, dishware, drinking glasses, coffee mugs, etc. This exception is necessary due to the size limitations of small items when printing the information would be infeasible and/or the information would take up an unreasonable or impractical amount of space. However, this provision does not allow small tangible items to omit the name of the gambling establishment, as required by paragraph (c)(1). Further, the required information must still be presented in accordance with the general “clear and conspicuous” criteria established by subsection (a). Maintaining this requirement for advertisements in the form of a small tangible item ensures that the gambling establishment is properly identified and can be contacted if the Bureau disapproves of the item.
- **Paragraph (d)(2)** provides the requirements of paragraph (3) of subsection (c) do not apply to any digital material with limited characters or space that provides a link to a website that complies with paragraphs (1) and (2) of subsection (b) of Section 12461. This exception is necessary due to the character and space limitations associated with digital advertising materials such as those found on social media platforms like Twitter. However, this provision does not allow these types of digital materials to omit the name of the gambling establishment, as required by paragraph (c)(1), or the statement that participants must be 21 or older to gamble. Further, the required information must still be presented in accordance with the general “clear and conspicuous” criteria established by subsection (a). Maintaining this requirement for advertisements in the form of a digital materials with limited characters or space ensures that the gambling establishment is properly identified and can be contacted if the Bureau disapproves of the advertisement. It also ensures readers of the advertisement understand they must be 21 years of age or older to participate in gambling and that these advertisements provide a way for problem gamblers to access the information and referral services provided by the Office of Problem Gambling.

**Subsection (e)** states that an advertisement must not be deceptive to the public and specifies what constitutes a deceptive advertisement subject to the Bureau’s determination. This subsection provides owner category licensees a set of guidelines of what to avoid in the creation of an advertisement.

- **Paragraph (e)(1)** provides that any advertisement is deceptive if it depicts gambling as a means to become wealthy or resolve a financial burden. This provision addresses the language in B&P Code section 19841, subdivision (f), which states that an advertisement that offers gambling as a means to become wealthy is presumptively deceptive. Further,

this provision specifies that gambling should not be viewed as a means to make money to pay off existing debts.

- **Paragraph (e)(2)** provides that any advertisement is deceptive if it specifically targets or appeals to children or adolescents or encourages persons under 21 years of age to engage in controlled gambling and provides specific examples in the subparagraphs that follow. This provision is necessary to specify B&P Code section 19841, subdivision (f), which states an advertisement that appeals to children or adolescents is presumably deceptive. The provisions provide clarification on how licensees may assure their advertising is tailored to appropriate audiences and not minors.
  - **Subparagraph (e)(2)(A)** specifies that an advertisement is deceptive if it uses depictions, images, appearances, or voice-over services of anyone less than 21 years old<sup>2</sup>. It is a generally accepted view that youth are particularly susceptible to the influence of peers. This regulation is necessary because advertisements that use models or actors under 21 carry a special risk of appealing to youth.
  - **Subparagraph (e)(2)(B)** specifies that an advertisement is deceptive if it uses objects such as toys, inflatables, movie characters, cartoon characters, or any other display, depiction, or image designed in a manner likely to be substantially or predominately appealing to minors or anyone under 21 years of age<sup>3</sup>. This language is necessary to prohibit objects from being used in advertisements that have special attractiveness to persons less than 21 beyond the general attractiveness it has for persons 21 years of age or older.
  - **Subparagraph (e)(2)(C)** specifies that any advertisement must not be disseminated on the premises of any day care center, youth center, preschool, or kindergarten through 12<sup>th</sup> grade school or related function thereto, or at any function that is being primarily held for persons under 21 years old. This regulation is necessary because advertisements disseminated at youth functions must be prohibited due to the vulnerability of the impressionable youth and to meet the legislative intent to protect children and adolescents.
- **Paragraph (e)(3)** specifies what terms are prohibited from being used to describe any games or gaming activities. This provision is necessary to provide the licensee additional guidance in the development of an advertisement and gives the Bureau specific criteria to cite if it disapproves of an advertisement. It provides specific examples of common statements that have been used in gambling establishment advertisements, which are misleading. Misleading statements are not constitutionally protected forms of commercial speech and therefore, do not receive any first amendment protections. The terms “Nevada Style,” and “Vegas style” are misleading because, pursuant to the California Constitution and the Penal Code, gambling establishments are prohibited from offering banking or percentage games like casinos of the type currently operating in Nevada and New Jersey.

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<sup>2</sup> This provision was adapted from alcohol industry guidelines.

<sup>3</sup> This provision was adapted from the United States Federal Trade Commission v R.J. Reynolds Tobacco, Docket No. 9285, 1997. <https://www.ftc.gov/sites/default/files/documents/cases/1997/05/d9285cmp.pdf>

Notably, in consideration of previous public comments, “casino style” has been removed from the list of prohibited terms because “casino” is commonly used to broadly refer to a location where gambling is conducted in and is not inherently deceptive.

- **Paragraph (e)(4)**, in alignment with B&P Code section 17508, provides that an advertisement is deceptive if it makes any false or misleading claim. False or misleading claims are not constitutionally protected forms of commercial speech and do not receive any first amendment protections. By utilizing some of the pertinent language found in Section 17508, rather than directly referencing the section, the provision maintains the Bureau’s discretion concerning its disapproval and avoids creating any implication of civil liabilities resulting from a violation of the statute. Avoiding the statutory reference keeps the regulations specific to the administrative and licensing process and prevents unintentionally supporting potential civil lawsuits.
- **Paragraph (e)(5)** provides that an advertisement is deceptive if the advertisement depicts, illustrates, portrays, or references an illegal game as specified in Penal Code section 330. The provision provides the Bureau necessary discretion and flexibility to make such a determination, especially for advertisements that may not explicitly advertise the name of an illegal game, but may imply such a game is offered at a gambling establishment through the use of illustrations or pictures.
- **Paragraph (e)(6)** is added and is necessary to clarify that an advertisement that fails to provide the required disclosures is inherently deceptive.

**Add Section 12093. Age Confirmation in Advertising.**

This section establishes age confirmation requirements for advertising involving direct, individualized communication or dialogue and for accessing gambling establishment websites and social media landing pages.

**Subsection (a)** requires that the owner category licensee must use age affirmation to verify that the recipient is 21 years of age or older prior to any advertising involving direct, individualized communication or dialogue. Further, the provision clarifies what forms of communication must utilize age verification methods (communication through in-person, telephone, physical mail, or electronic). These methods allow for communication to be focused on a particular individual; thus, allow for direct communication. This section is necessary in providing specific requirements to implement B&P Code section 19841(f) and is consistent with related legislative findings and declarations in Section 19801.

**Subsection (b)** is necessary to address situations where a recipient has already gone through age verification. Specifically, subsection (b) does not require age verification if the owner category licensee can verify that the recipient has already undergone a method of age affirmation and has been verified to be 21 or older, and the communication is reasonably certain to only reach the intended recipient.

**Subsection (c)** is necessary to clarify age verification is required prior to adding a potential customer to a mailing list or subscription to receive direct communications controlled by the

owner category licensee. The requirement addresses the fact that licensees develop mailing lists for targeted marketing or advertising communications and complements existing Self-Restriction and Exclusion regulations in Article 9 of Chapter 7.

**Subsection (d)** provides age gating requirements for visiting gambling websites and social media landing pages operated by or for an owner category licensee consistent with the requirements for other age-restricted industries. This regulation is necessary to protect the more impressionable youth from accessing such websites and social media landing pages where they may be encouraged or influenced to participate in controlled gambling.

**Add Section 12094. Disapproval of Deceptive Advertising.**

This section explains the procedure for the Bureau to notify an owner category licensee if the Bureau determines an advertisement is deceptive and provides potential disciplinary and enforcement actions that a licensee may be subject to for failing to correct an advertisement. This section does not expand nor diminish the Commission or Bureau's existing authority and is consistent with current processes for dealing with other violations.

-----*Beginning of Options*-----

***Option 1:*** *This option would carry forward the original proposed changes in the November 14, 2019 Text.*

**Subsection (a)** provides the Bureau may issue a letter of warning to the owner category licensee for an advertisement that is determined by the Bureau to be deceptive pursuant to the regulations or any other state or federal laws. If the Bureau decides to issue a letter of warning, at a minimum, the letter must provide: (1) A legal citation of the violation, (2) A description of each part of the advertisement that is deceptive, and (3) A specific deadline for correcting the deceptive advertisement. This provision is necessary to specify a mechanism whereby the Bureau may document and notify the owner category licensee of an advertisement that has been determined to be deceptive. Further, it provides the owner category licensee important guidance and information on exactly what it must correct by the specified deadline before disciplinary action is taken. Due to the wide variation in types of gambling advertisements, more specific requirements and correction deadlines for the letter of warning have been left out. Flexibility in the requirements is necessary considering Bureau discretion and how quickly some deceptive advertisements may be corrected versus others. For example, a deceptive online advertisement may be easily and quickly corrected, while a printed billboard would likely take more time to correct, and a mailer may be impossible to correct. This provision provides the Bureau flexibility in requiring reasonable deadlines for the responsible party. Further, it allows the Bureau to require other actions of the owner category licensee in its letter of warning, such as the submission of a corrective action plan.

**Subsection (b)** requires the Bureau to issue a notice of disapproval and failure to correct to the owner category licensee if the advertisement was not corrected in accordance with the letter of warning. The provision also specifies that the Bureau has the discretion to take any action, including existing disciplinary actions, if an advertisement is not corrected in accordance with the letter of warning. The requirements of this provision are necessary to provide the Bureau

with enforcement options if the licensee fails to take corrective action pursuant to the issuance of a letter of warning. The provision is also necessary so that the licensee understands the potential disciplinary actions that may be utilized if it fails to correct a deceptive advertisement.

**Subsection (c)** requires that the following be included in the Bureau’s report to the Commission for consideration during an owner category licensee’s initial or renewal license application:

- Any notice of disapproval and failure to correct;
- Any instances of repeated advertising violations pursuant to the regulations; and,
- Any subsequent actions by the licensee, owner, and or Bureau.

The provision further specifies that the above items may be considered a factor in determining the suitability for licensure of an applicant. This regulation is necessary so that the Bureau knows specifically what information is pertinent and required to be reported to the Commission for considering an applicant’s suitability for licensure. This subsection also informs the licensee that if advertisements are not corrected or if repeated violations are made, it may be considered a factor in determining their suitability.

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***Option 2 (Commission Staff Recommendation):** This option differs from Option 1 in that it removes unnecessary language concerning the Bureau’s existing authority to determine if an advertisement is deceptive. Further, other language is removed to keep the Bureau from having to rely upon statutory requirements outside of the Act and regulation. This option also adds a clause to clarify that the regulations will not be interpreted to create or imply a private cause of action.*

**Subsection (a)** is modified to remove the reference to the Bureau’s determination because the language is unnecessary. As previously discussed, B&P section 19841(f) already provides the Bureau the authority for determining that an advertisement is deceptive pursuant to Commission regulations. Additionally, this option removes the reference to the Bureau’s disapproval based on compliance with other state and federal laws for advertising because the language is unnecessary and likely overbroad. It is inappropriate for the regulation to necessitate the Bureau rely upon any requirement outside of the regulation itself. This is why language from a statute outside of the Act (e.g., “false or misleading claims” in B&P Code sections 17508) has been incorporated into the proposed regulations in lieu of simply providing a citation.

**Subsection (b)** contains non-substantive changes and removes unnecessary language provided in Option 1 that is duplicative of the Bureau’s existing authority for taking action against an owner category licensee.

**Subsection (c)** provides additional clarity that nothing in this article shall be construed to limit the Bureau from filing a disciplinary action pursuant to existing laws and regulations.

**Subsection (e)** is added to in response to industry comments to ensure that the exclusive remedy for any violation of the regulation is a disciplinary action and does not leave gambling



enterprises vulnerable to potential lawsuits and litigation costs that could be brought on competitors or members of the public.

-----*End of Options*-----

## **Chapter 7. Conditions of Operation for Gambling Establishments.**

### **Article 6. Program for Responsible Gambling.**

#### **Amend Section 12461. Posting Referral Information.**

This section contains requirements for posting information and referral information for problem gamblers. Throughout this section “on behalf of” is replaced with “for” because the term “for” may be subject to broader interpretation than “on behalf of.”

**Subsection (b)** requires specific information to be displayed on websites operated by or for any cardroom business licensee or TPPPS business licensee.

This section is being amended to add social media landing pages to the requirement. Social media accounts for businesses are now commonplace and accessible to anyone with access to the Internet. The addition of social media landing pages to this requirement is necessary to ensure that these types of advertising mediums contain problem gambling information to help protect the public.

This section is also being amended to require the information be displayed in a clear and conspicuous manner and presented in all languages used in the advertisement, as specified in Section 12092, subsections (a) and (b). This provides additional clarity and specificity to the regulation and ensures the required information is presented to the public in a legible and readable or audible and intelligible manner, as applicable.

Further, the subsection is being updated and expanded upon to include additional information and referral services that are currently available for problem gamblers. The updated information and referral services being added in paragraph (3) provide the public more direct and readily accessible ways to get immediate help with a gambling addiction problem, rather than having to navigate to the Office of Problem Gambling website to search for the same information. The additional services are necessary to list due to the proliferation of modern-day smartphones and tablets that are commonly used to access websites and social media, which have become a popular medium for disseminating advertisements.

In the Act, the Legislature expressed concerns regarding the relationship between advertising and problem gambling. Specifically, in B&P Code section 19801(c), the Legislature found and declared that “gambling can become addictive and is not an activity to be promoted or legitimized as entertainment for children or families.” The Legislature’s mandate that the Commission adopt regulations for the disapproval of deceptive advertising by the Bureau addresses the promotion of controlled gambling, which may lead to addictive and underage gambling. Notably, the Legislature also expressed concerns with problem gambling in Section 19954, which requires that gambling enterprises pay an additional \$100 per table to the State Department of Public Health for deposit in the Gambling Addiction Program Fund, to benefit

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those who have a gambling addiction problem. The additional information and referral services are necessary to maintain and update existing requirements and carry out the Commission's duty to protect the health, safety, and welfare of the public concerning problem gambling.

**Subsection (c)** provides problem gambling information and referral requirements for advertisements distributed by television, radio, outdoor display, flyer, mail or digitally. This section is being repealed due to the amendments proposed to subsection (b) and the more specific and extensive advertising content requirements in Article 4. The requirements that were previously in this section have been modified, clarified, and expanded upon to reduce ambiguity. Placing advertising content requirements and exceptions in one place within the regulations provides clarity and avoids duplication and potential conflicts.