

Finding of Emergency – Regulations Concerning:

Division Schedule of Investigation and Processing Costs Title 11, California Code of Regulations, Chapter 1, Article 4, Section 2037

The Division of Gambling Control (Division) hereby finds that adoption on an emergency basis of Title 11, California Code of Regulations (CCR) (also known as Division Regulations) section 2037 is necessary for the immediate preservation of the public peace, health and safety, or general welfare.

The specific facts showing the need for immediate action on Section 2037 relating to Third-Party Provider of Proposition Player Services (TPPPPS) Contract Review include the following:

- Business and Professions Code section 19984, subd. (a) mandates that the Division approve, in advance, any agreement, contract or arrangement between a gambling establishment and a TPPPPS. Title 4, CCR, sections 12207 and 12208 (also known as California Gambling Control Commission (Commission) Regulations) went into effect in November 2003 on an emergency basis, for the regulation of contracts for proposition player services. These Commission emergency regulations triggered the responsibility of the Division to review and approve or disapprove proposition player contracts.
- In order to effectively protect the public from criminal or corruptive influences and to ensure compliance with Title 4, CCR, section 12207, the Division is responsible for reviewing any initial or amendment of a written contract between a gambling establishment and a TPPPPS in a California gambling establishment. These proposition player services can only be provided pursuant to a contract approved in advance by the Division.
- Pursuant to Business and Professions Code section 19984, the Division is authorized to adopt emergency regulations to assess and collect reasonable fees and deposits to defray the costs of regulating TPPPPS. In addition, Title 4, CCR, section 12208 subds. (a)(3), (b)(3)(E), and (f) authorizes the Division to require a deposit and any additional sums required to pay the anticipated and final costs to review and approve or disapprove a contract and an amendment to a contract.
- The Division's proposed emergency regulation section 2037 requires deposits for TPPPPS contract review. Deposits are based upon the actual costs and hours required to review and approve or disapprove the contracts. Although this is a new program, the Division has already received and reviewed over forty contracts.

- It is vital that the Division codify the deposits to ensure compliance with the dictates of Business and Professions Code 19984 and enforcement of Title 4, CCR, sections 12207 and 12208 and to receive revenue to pay the actual costs of processing the contracts.

The specific facts showing the need for immediate action on Section 2037 relating to Application Investigation and Processing Deposits include the following:

- Commission regulation Title 4, CCR, section 12250 went into effect in August 2003 on an emergency basis. As a part of this regulation, the Commission adopted the Division's supplemental application forms. These forms state that the applicant is required to deposit a sum of money established by the Director of the Division, adequate to pay the costs and charges of the investigation. It is the responsibility of the Division to inform applicants of the anticipated costs associated with the investigation to allow applicants to determine if it is economically feasible to apply for a license, finding of suitability, or approval. Therefore, it is imperative that the Division establishes a schedule of deposits that will be required of all applicants.
- The deposit amounts represent the average actual costs and number of hours required to complete a background investigation of an applicant. These costs and hours were derived from statistical data related to the processing of applications since the inception of the Division in 1998. The Division has been assessing these deposits on an ad hoc basis and refunding any excess deposits collected. We are requesting adoption of these emergency regulations to create consistency, in accordance with the Administrative Procedure Act.
- The above-referenced statutes and Commission regulations have created additional workload and costs to the Division, that need to be offset by revenue generated by fees to avoid depleting the Gambling Control Fund.

Division Required Forms

Title 11, California Code of Regulations, Chapter 1, Article 4, Section 2038

Title 11, California Code of Regulations, Chapter 1, Section 2010(f)

Pursuant to Business and Professions Code section 19826, subd. (g) and Division regulation section 2071(b), the Division has the responsibility to review the play of any controlled game. The enactment of Business and Professions Code section 19984 and recent adoption of Title 4, CCR, Chapter 2.1 have increased requests for Division approval of new games and gaming activities in the gambling establishments.

The specific facts showing the need for immediate action on Sections 2010 and 2038 include the following:

- Since the adoption of Division regulation section 2071(b) in 1999, the Division has had the responsibility to review requests by gambling establishments to authorize gaming activities not previously authorized by the Division. The term “gaming activity” has not been previously defined by the Division and is used within these regulations. Addition of this definition in section 2010 will ensure an understanding of the term by the general public and applicants.
- Section 2038 identifies the forms required to be completed by an applicant to request Division approval of games and gaming activities. Most applicants are currently providing the same information on Division forms. The deposit identified in Section 2037 has been incorporated in the forms to enable the Division to effectively oversee and regulate the gambling industry, conduct investigations, allow sufficient time to notify affected applicants of potential costs and required information, and meet the statutory requirements under Business and Professions Code section 19867. Immediate action is necessary on section 2038 to assure compliance with the Administrative Procedure Act.
- Due to the State of California budgetary crisis, it is imperative that the Division have clear authority collect deposits to offset investigative costs for the review of gaming activities to avoid depleting the Gambling Control Fund.
- As part of the regulatory and investigative process, gambling establishment applicants for state gambling licenses are required to provide the Division with information on the games and gaming activities currently conducted or proposed to be offered for play in the gambling establishments.
- All forms are incorporated by reference to ensure that applicants are providing the Division with the same required information in order to conduct a fair and impartial review.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

TPPPPS are companies who provide proposition player services to gambling establishments. A proposition player is one whose purpose is to stimulate play and act as a bank in controlled games using a rotating player-dealer position as permitted by Penal Code section 330.11. Proposition players use the TPPPPS’s funds to gamble. In most cases - generally with the large and medium-size gambling establishments - the TPPPPS pay the gambling establishments a monthly fee (for services, facilities, and advertising) to operate in the gambling establishments. TPPPPS do not have state gambling licenses. However, pursuant to Business and Professions Code section 19984, the Commission has promulgated emergency regulations (Title 4, CCR, Chapter 2.1) providing for the registration of TPPPPS and their employees. The Commission’s recent adoption of these

regulations triggered the Division's responsibilities under Business and Professions Code section 19984 to review and approve or disapprove contracts between the TPPPPS and the gambling establishment to provide proposition player services.

Existing law requires persons applying for initial or renewal of their state gambling or key employee license and persons seeking approval of a contract or an amendment of a contract to provide proposition player services to a gambling establishment to submit a deposit of a sum of money that, in the judgment of the Division Director, will be adequate to pay the anticipated costs and charges incurred by the Division to conduct the mandated investigation. The Division must investigate qualifications of applicants before any gambling license or approval can be issued. Effective with the recent adoption of Commission regulations, the Division is mandated by statute to review and approve any initial and amendments to written contracts before proposition player services can be provided in a California gambling establishment.

In addition, a comprehensive analysis of the rules of the games and gaming activities and the house rules is required to be performed by the Division to ensure that the operations and activities within each gambling establishment are conducted in a fair, honest, and suitable manner and do not violate any law, regulation, or local ordinance. Division forms are required to ensure that necessary information is provided to the Division to enable it to conduct a fair and impartial review of the game or gaming activity. Division regulation, section 2071 establishes the content and processing times for these forms.

The objective of this rulemaking is to adopt regulation sections 2037 and 2038, and amend regulation section 2010, related to the Division's functions and mandated duties as specified in the Business and Professions Code, and to implement and make specific the Division's schedule of investigation and processing costs and required forms.