



CALIFORNIA CITIES GAMING AUTHORITY

October 18, 2023

Yolanda Morrow
Director, Bureau of Gambling Control
Department of Justice
P.O. Box 168024
Sacramento, California 95816-8024

Re: Proposed Regulations on Rotation and Blackjack

Director Morrow,

The California Cities Gaming Authority ("CCGA") has reviewed the Bureau's proposed Regulation 2077 that seeks to impose extreme restrictions on the rotation of the Player-Dealer Position in all non-banked games and the Bureau's proposed Regulations 2073, 2074 and 2075 that seek to eliminate the play of all blackjack styled games except one specific game defined by the Bureau.

The CCGA is a joint powers authority comprised of the California Cities of Gardena, Inglewood, Colma, San Jose and Bell. Each City member of the CCGA has an adopted gaming ordinance through which it licenses, regulates and taxes card rooms within its boundaries.

The CCGA submits this letter to the Bureau to express its disbelief that the Bureau, an agency within the Department of Justice, is proposing regulations that will eliminate or greatly restrict the play of most card games that are lawful, and that the Bureau has approved since the adoption of the Gambling Control Act.

Hence, the CCGA seeks to know why the Bureau proposes regulations that are likely to devastate the play of card games in card rooms across California, impose huge financial deficits on CCGA City member general funds and other card room cities, cause card rooms to shut down and eliminate the card room workforce in California.

Yes. This is the CCGA's genuine impression of the impact of the Bureau's proposed regulations. For this reason, the CCGA requests the Bureau to respond to the questions in this letter, all of which relate to the Bureau's obligations regarding the adoption of regulations by all state agencies.

The CCGA and its members also intend to provide data on the adverse impact of the proposed regulations with the expectation the Bureau will consider it and be persuaded

to revise the regulations so as to eliminate the sting of the proposed regulations or abandon them altogether.

As summarized below, the impacts of the Bureau's proposed regulations are adverse to California business enterprises and individuals in an amount exceeding \$50 million, constituting a major regulation. As the Bureau goes forward, it can expect to receive more data about the adverse impacts to CCGA's member Cities. Government Code Section 11342.548; 1 CCR §2000(g).

Bureau's Intent to Promulgate Card Game Regulations

On September 11, 2023, the Bureau of Gambling Control within the Department of Justice announced its intent to promulgate regulations concerning the "rotation" of the player-dealer position in all controlled games. The announcement was accompanied by a proposed regulation that requires the inclusion of new rules in all games that restrict the use of the player-dealer position ("PDP"). Thus, the regulation effectively prohibits the rotation of the PDP in all games wherein the rotation of the PDP is statutorily authorized and heretofore approved by the Bureau for every current game.

On September 11, 2023, the Bureau of Gambling Control within the Department of Justice also announced its intent to promulgate regulations governing the "approval" of blackjack-style games. The announcement was accompanied by proposed regulations that compel the conversion of all existing California games to one new Bureau created game. Thus, these regulations effectively prohibit all games that are statutorily authorized for play in California and heretofore approved for play by the Bureau.

Both announcements state that the Bureau has not yet initiated the formal rule making process for the regulations but is presenting "concept language for the benefit of stakeholders and interested persons so they may provide proposed amendments of, or alternatives to, the concept language." In addition, the announcements invite the submission of questions concerning the rulemaking process or future rulemaking activities.

New Rules for Games Featuring a Player-Dealer Position (PDP)

Proposed Regulation 2077 would require all gaming establishments to change their rules for the play of all games that feature a Player-Dealer Position (PDP). The essence of the new game rules may be summarized as follows:

1. The game's rules must specify how the PDP position is selected at the opening of a new game and upon rotation of the PDP to the next player;
2. Before every hand, the dealer must offer the PDP to every seated player;
3. The PDP must rotate to at least 2 players other than the TPPS every 40 minutes – or the game ends;

4. If rotation of the PDP has not occurred and the game ends, the game play must stop and the table must be cleared. The game may resume when another person accepts the PDP;
5. If only one player and the TPPS are at a table, the PDP must rotate to the player a minimum of 2 times every 40 minutes – or the game ends;
6. Only one TPPS may offer services at a table;
7. Rules permitting additional wagers by players other than the PDP.

As authority, Regulation 2077 cites Business & Professions Code Section 19826. It also references Business & Professions Code Sections 19805 and 19826 and *Oliver v. County of Los Angeles* (1998) 66 Cal.App.4th 1397, but not as authority for the regulation nor as the specific statutes to be implemented, interpreted or made specific by the regulation.

Required Conversion of Existing California Games to a Single Bureau-Created Game

Proposed Regulations 2073, 2074 and 2075 would require all gaming establishments to convert their approved California games to a new single game created by the Bureau. The proposed regulations are presented in the three parts:

1. Rule 2073 defines the game of "blackjack" or "21" that is prohibited by Penal Code Section 330.
2. Rule 2074 defines a single new permitted game with the following variations to the game of blackjack: (a) the "Bust" feature is replaced with a "win" feature for the player or dealer whose cards are closest to the target point count; (b) the target point count of "21" is removed; (c) the win feature of a hand of "21" consisting of an ace and a 10 or a face card is removed; and (d) the "tie" feature is replaced with a "win" feature for the player whose point count ties the point count of the dealer.
3. Rule 2075 requires gambling establishments to submit requests to modify their previously approved "blackjack-style" games to the game described in Rule 2074 within 60 days of the effective date of these rules, while the Bureau will have 90 days thereafter to approve or disapprove the request.

As authority, Regulation 2074 cites Business & Professions Code Section 19826. It also references Business & Professions Code Sections 19826 and 19866 and *People v. Gosset* (1892) 93 Cal. 641, but not as authority for the regulation nor as the specific statutes to be implemented, interpreted or made specific by the regulation.

As authority, Regulation 2075 also cites Business & Professions Code Section 19826. It references Business & Professions Code Sections 19801, 19826 and 19866, but not as

authority for the regulation nor as the specific statutes to be implemented, interpreted or made specific by the regulation.

No Authority to Adopt Proposed Regulations

The Bureau, as a state agency, is required to establish the statutory authority to adopt the foregoing regulations. Government Code Section 11349.1.

Under the "Authority" section to the regulations, the Bureau cites only Section 19826 of the Business & Professions Code; but Section 19826 does not authorize the Bureau to adopt regulations pertaining to the play of games.

While Section 19826(f) grants responsibility to the Bureau to "adopt regulations reasonably related to its functions and duties as specified in this chapter," it does not authorize the Bureau to adopt regulations regarding the play of any games. Clearly, Section 19826(f) does not direct the Bureau to adopt regulations that would prohibit the play of any permitted games or that impose restrictions on how they are played including restrictions on the use of the PDP - neither does any other subsection of Section 19826.

Thus, the Bureau's reliance on Business & Professions Code Section 19826 is misplaced.

Due to the devastation that would befall the Member Cities of the CCGA and their licensed cardrooms, the CCGA and its Member Cities respectfully request the Bureau to articulate the basis of its authority to adopt these regulations before proceeding further.

No Statute Implemented, Interpreted or Made Specific

The Bureau, as a state agency, also is required to identify the statute(s) that will be implemented, interpreted or made specific by the proposed regulation. It has not done so. Government Code Section 11349.1.

Nothing in the Bureau's proposed regulations discloses the specific statute(s) that will be implemented, interpreted or made specific. Regulation 2077 restricts the rotation of the PDP, but the Bureau does not disclose any statute regarding the PDP that will be implemented, interpreted or made specific. Regulation 2077 does not state that it will implement, interpret or make specific any part of Penal Code Section 330.11, which was adopted to confirm, not restrict, the rotation of the PDP.

Likewise, Regulations 2074 and 2075 limit the play of all blackjack style games to one such game. Again, the Bureau does not disclose any statute regarding blackjack style games that will be implemented, interpreted or made specific. Regulations 2074 and 2075 do not state that they will implement, interpret or make specific any part of Penal Code Section 330, which was adopted to limit specific games, including twenty-one, and permit all other games.

Again, the CCGA and its member cities respectfully request the Bureau to describe the statutes that are to be implemented, interpreted or made specific by its regulations before proceeding further.

No Need for Regulations

The Bureau, as a state agency, must demonstrate by substantial evidence the need for a regulation to effectuate the purpose of a statute, court decision, or other provision of law. The Bureau has not done so. Government Code Section 11349.1.

The Bureau is required to prepare, submit and make public upon request an initial statement of reasons for proposing the adoption of any regulation that includes:

1. The specific purpose of each regulation, the problem the Bureau intends to address, the rationale for the determination by the Bureau that each regulation is reasonably necessary to carry out the purpose and address the problem for which it is purposed, and the enumeration of the benefits anticipated from the regulation.
2. For a major regulation, a standardized regulatory impact analysis is required by Section 11346.3(c).
3. An identification of each technical, theoretical, and empirical study, report, or similar document, in any, upon which the Bureau relies in proposing the adoption of a regulation.
4. A description of reasonable alternatives to the regulation and the agency's reasons for rejecting those alternatives, and a description of reasonable alternatives to the regulation that would lessen any adverse impact on small business and the agency's reasons for rejecting those alternatives.
5. Facts, evidence, documents, testimony, or other evidence on which the Bureau relies to support an initial determination that the action will not have a significant adverse economic impact on business. Government Code Sections 11346.2.

The proposed regulations do not provide the foregoing information and analysis. Most fundamentally, the Bureau has omitted declaring the actual purpose or need for the proposed regulations.

It also appears that the intent of the regulations is to impose prescriptive standards on card rooms in the play of games because all blackjack styled games are prohibited except one and the usual rotation of the PDP is effectively prohibited. Therefore, the Bureau's regulations are inconsistent with the legislative intent pertaining to the adoption of administrative regulations.

It is the intent of the legislature that agencies actively seek to reduce the unnecessary regulatory burden on private individuals and entities by substituting performance standards for prescriptive standards wherever performance standards can be reasonably expected to be as effective and less burdensome. Thus, the legislature seeks regulations that describe an objective with the criteria stated for achieving the objective over

regulations that specify the sole means of compliance by specific actions, measurements, or other quantifiable means. Government Code Section 11340.1.

The Bureau neither demonstrates the need for nor the purpose of the proposed regulations. Such deficiencies do not provide a basis for meaningful analysis. Thus, the CCGA and its Member Cities respectfully request the Bureau to provide such information and analysis about the proposed regulations before proceeding further.

No Assessment of Significant Adverse Economic Impact

The Bureau is required to assess the potential for adverse economic impact on California business enterprises and individuals due to the proposed regulations. Government Code Section 11346.3.

As to the major regulations proposed by the Bureau, the Bureau is required to prepare a standardized regulatory impact analysis ("SRIA") in the manner prescribed by the Department of Finance pursuant to Section 11346.36. The analysis must address several impacts including:

1. The creation or elimination of jobs within the state.
2. The creation of new businesses or the elimination of existing businesses within the state.
3. The competitive advantages or disadvantages for businesses currently doing business within the state.
4. The benefits of the regulation, including benefits to the health, safety and welfare of California residents, worker safety and the state's environment and quality of life.

Pursuant to Government Code Section 11346.36, the Department of Finance has adopted regulations for conducting a SRIA. 1 CCR §§2000-2005. The regulations assist agencies, like the Bureau, in specifying methodologies for:

- 1) Assessing and determining the benefits and costs of the proposed regulation.
- 2) Comparing proposed regulatory alternatives with an established baseline so agencies can make analytical decisions for the adoption of regulations necessary to determine that the proposed action is the most effective, or equally effective and less burdensome, alternative in carrying out the purpose for which the action is proposed.
- 3) Determining the impact of a regulatory proposal on the state economy, businesses, and the public welfare.

4) Assessing the effect of a regulatory proposal on the General Fund and special funds of the state and affected local government agencies attributable to the proposed regulation.

5) Determining the cost of enforcement and compliance to the agency and to the affected business enterprises and individuals.

The Department of Finance also is required to convene a public hearing or hearings and take public comment on any draft regulation. Representatives from the Bureau and the public at large shall be afforded the opportunity to review and comment on the draft regulation before the regulation is adopted in its final form.

Since the Bureau is required to prepare and submit an SRIA to the Department of Finance, the CCGA and its Members Cities hereby submit information pertaining to the adverse impacts of the proposed regulations such as the impacts on the general funds of CCGA City Members and other cardroom cities, their businesses and residents, elimination of jobs, elimination of existing businesses, disadvantages for businesses currently doing business within the state, and the cost of compliance with the regulations.

In summary form, the CCGA submits the following data from third party sources relevant to the adverse impacts of the Bureau's proposed regulations on such interests:

The 2006 Gambling in the Golden State 1998 Forward Report by Charlene Wear Simmons, Ph.D. found that:

- A 1995 survey found that California card clubs are the largest in the nation, with a total handle (wagering total) of \$8.9 million and gross revenues of \$711 million. According to the American Gaming Association, California cardrooms earned \$688 million in 2003, an increase from \$563 million in 2002, fueled by the popularity of poker and other table games.

The 2013 California Card Club Impact Study by Beacon Economics found that:

- California card club operations, which include not only the operations of card clubs themselves but also third-party proposition player services ("TPPPS") firms, in 2011 generated \$1.8 billion in economic output, supported over 22,700 jobs, and produced over \$270 million in tax revenue for the U.S. Federal Government, the State of California and municipalities throughout the state.
- Card club operations directly supported over 17,300 jobs in California, which the indirect and induced impacts of those operations supported over 5,400 jobs.
- Subtracting the input costs of card club operations, card clubs generated over \$1.1 billion in value-added economic activity in California, as well as over \$790 million in labor income for California workers.

- Together, the direct tax expenditures of card clubs and TPPPS, as well as the tax expenditures generated as a result of their operations, yielded approximately \$100.9 million tax revenue for state and local government.

The 2015 Economic Impact Study Analysis of the Cardroom Industry by Development Management Group, Inc. found that:

- By review, there are 89 total licensed cardrooms in California and 74 currently operating. Those currently operating host 1,815 tables of gaming in addition to the ancillary entertainment activities including casual and more formal dining, casual, lounge and sports bar amenities and hotel/lodging opportunities.
- At current, the 74 operating facilities have an economic impact to the overall economy of California of \$2.48 billion annually.
- The cardroom industry currently produces 17,959 direct and 28,107 total (direct, indirect and induced) jobs in the State of California.
- The currently operating cardrooms produce \$124.25 million annually in fees and taxes to local and state government agencies. This figure does not include the income taxes paid by almost 18,000 employees of cardrooms and Third Party Proposition Players.

The 2019 Overview of Gambling in California by the Legislative Analyst's Office found that:

- Currently, there are 88 cardrooms that operate in 32 counties in California. The industry generates roughly \$850 million in revenue after winnings.
- Cardrooms and their owners are subject to state business and income taxes. Additionally, about \$21.2 million in fees are projected to be collected from the industry in 2018-19 to support state regulatory and problem gaming costs.

The foregoing data demonstrates the enormity of the card club industry beneficial impact on the state's economy. Thus, the CCGA requests the Bureau to consider the impact of its proposed regulation on card room revenues and jobs as well as revenues paid to state and local governments by pursuing alternative regulations that achieve the Bureau's legitimate purpose and that remove the adverse impacts to the existing revenues and jobs created by California card rooms.

Alternative Regulations

None. Nothing is broken. Nothing needs fixing. Because of the enormity of the impact on normal gaming operations, as well as the failure of the Bureau to identify the source of its authority, the statutes to be implemented, interpreted or made specific and the need for such proposed regulations, it is impossible for the CCGA or its City Members to propose alternative regulations other than the alternative of "no regulations.

Conclusion

The CCGA and its City members request the Bureau to consider their concerns contained in this letter, the Bureau's obligations pertaining to the promulgation of regulations and to provide appropriate and meaningful responses thereto.

Sincerely,
Tasha Cerda, Chair
California Cities Gaming Authority
Mayor, City of Gardena