

CALIFORNIA DEPARTMENT OF JUSTICE
TITLE 11. LAW
DIVISION 3. GAMBLING CONTROL
CHAPTER 1. THE BUREAU OF GAMBLING CONTROL

INITIAL STATEMENT OF REASONS

PROBLEM STATEMENT

The California Department of Justice (Department), is charged with the investigation and enforcement of controlled gambling activities in California as set forth in the Gambling Control Act (Act), codified at Business and Professions Code section 19800, et seq. (Gov. Code, § 15001.1.) The Department’s Bureau of Gambling Control (Bureau) carries out those investigative and enforcement activities. (Gov. Code, § 15002.5.) In enacting this measure, the Legislature declared that “[u]nregulated gambling enterprises are inimical to the public health, safety, welfare, and good order.” (Bus. & Prof. Code, § 19801, subds. (a), (d).) The Legislature also declared that “[p]ublic trust and confidence can only be maintained by strict and comprehensive regulation of all persons, locations, practices, associations, and activities related to the operation of lawful gambling establishments” (*Id.*, subd. (h).) The Act “is an exercise of the police power of the state for the protection of the health, safety, and welfare of the people of the State of California and shall be liberally construed to effectuate those purposes.” (Bus. & Prof. Code, § 19971.)

THE BUREAU REVIEWS AND APPROVES GAMES AND GAME RULES

Under the Act, the Department has the exclusive authority and responsibility to “[a]pprove the play of any controlled game,¹ including placing restrictions and limitations on how a controlled game may be played.” (Bus. & Prof. Code, §§ 19826, subd. (g), 19943.5.) The Department is directed to “adopt regulations reasonably related to its functions and duties as specified in [the Act].”² (Bus. & Prof. Code, § 19826, subd. (f).)

The Department is thus responsible for the regulation of gambling activities in California, including ensuring that cardroom games: (1) do not contravene California law; (2) are not

¹ A “controlled game” is defined as “any poker or Pai Gow game, and any other game played with cards or tiles, or both, and approved by the Department of Justice, and any game of chance, including any gambling device, played for currency, check, credit, or any other thing of value that is not prohibited and made unlawful by statute or local ordinance.” (Pen. Code, § 337j, subd. (e)(1).)

² The Act also provides that the California Gambling Control Commission, to the extent that it adopts regulations, shall provide that the Department has the authority to approve game rules “to ensure fairness to the public and *compliance with state laws.*” (Bus. & Prof. Code, § 19841, subd. (b), italics added.)

contrary to or inconsistent with policies and concerns embodied in the Act and relevant regulations; and (3) are not likely to foster gambling activities inimical to the public health, safety, or welfare, or undermine public trust and confidence in the play of controlled gambling in the state. (Bus. & Prof. Code, §§ 19801, subds. (g), (h); 19826, subd. (b).) Gambling enterprises,³ which own and operate gambling establishments,⁴ must first obtain the Bureau's approval of a controlled game before offering the game for play. (Pen. Code, § 337j, subd. (e)(1); Cal. Code Regs., tit. 11, § 2038.)

BLACKJACK IS A PROHIBITED GAME OF TWENTY-ONE UNDER CALIFORNIA LAW

The California Constitution⁵ and Penal Code section 330 prohibits the play of specifically enumerated games, among them “*any game of . . . twenty-one . . .*” (Italics added.) At the time that twenty-one was added to the list of games prohibited by Penal Code section 330,⁶ a number of name variations of twenty-one had been recognized, including “Vingt-Un,” “Vingt-et-Un,” “Van John,” and “Blackjack.”⁷ Additionally, the game of “Blackjack” has been referred to interchangeably with the game of “twenty-one” for decades in general parlance, in numerous

³ See Business and Professions Code section 19805, subdivision (m).

⁴ See Business and Professions Code section 19805, subdivision (o).

⁵ California Constitution, article IV, section 19, subdivision (e) requires the state to prohibit casinos that are the type currently operating in Nevada and New Jersey. This provision “was intended, in part, to constitutionalize Penal Code section 330.” (*Hotel Employees and Restaurant Employees Inter. Union v. Davis* (1999) 21 Cal.4th 585, 609 fn. 5.)

⁶ See Stats. 1885, ch. 145, § 1.

⁷ See Scarne, Scarne's New Complete Guide to Gambling (1974) pp. 342, 350 (Scarne); Trumps, The Modern Pocket Hoyle; Containing all the Games of Skill and Chance as Played in this Country at the Present Time (1868) pp. 186-189; Trumps, The Modern Pocket Hoyle; Containing all the Games of Skill and Chance as Played in this Country at the Present Time, 10th Ed. (1880) pp. 186-189; Frere, Hoyle's Games. Containing all the Modern Methods of Playing the Latest and Most Fashionable Games, Improved Ed. (1875) pp. 73-76; U.S. Playing Card Co., The Official Rules of Card Games Hoyle Up-to-Date, 17th Ed. (1913) pp. 207-208.

California judicial decisions,⁸ under the Indian Gaming Regulatory Act,⁹ and in Nevada¹⁰ and New Jersey. Tribal casinos have likewise referred to Blackjack as twenty-one.¹¹

The Bureau does not currently have regulations governing the approval of blackjack-style games and permissible variations. In the absence of regulations, Bureau-approved games styled after Blackjack have become indistinguishable from the prohibited game of twenty-one. Gambling

⁸ See *Kelly v. First Astri Corp.* (1999) 72 Cal.App.4th 462, 473 (“[Penal Code] section 330 specifies a number of illegal games, including the game of twenty-one (or blackjack)[.]”); *Hotel Employees & Restaurant Employees Internat. Union v. Davis* (1999) 21 Cal.4th 585, 600, fn. 1 (“The record does not contain an exhaustive list of the card games played at tribal casinos on or before January 1, 1998, but there is no dispute they included one or more forms of blackjack or twenty-one.”); *Oliver v. County of L.A.* (1998) 66 Cal.App.4th 1397, 1401, fn. 1 (“‘Blackjack’ is another name for the game of ‘21.’”); *Sullivan v. Fox* (1987) 189 Cal.App.3d 673, 681 (“the category of percentage games prohibited by [Penal Code] section 330 is restricted to casino games . . ., such as roulette, craps, blackjack, or keno . . .”); *Merandette v. City and County of San Francisco* (1979) 88 Cal.App.3d 105, 108 (“Appellants are the owners of coin-operated, video ‘21’ or ‘Blackjack’ game machines[.]”); *Tokar v. Redman* (1956) 138 Cal.App.2d 350, 354 (“All of the games mentioned in the amended complaint are gambling games, . . . the playing of them, as well as the playing of blackjack (twenty-one), for money is unlawful as contrary to the policy of express law and good morals[.]”).

⁹ See 25 U.S.C. § 2703, subd. (7)(B)(i) (defining “Blackjack (21)” as a Class III game).

¹⁰ *Nevada Tax Comm’n v. Mackie* (1958) 74 Nev. 273, 275; *D’Anna v. Sheriff, Clark County* (1970) 86 Nev. 756, 756-757; *Department of Indus. Relations v. Circus Circus Enterprises* (1985) 101 Nev. 405, 407 see also *Busefink v. State* (2012) 128 Nev. 525, 528; see, e.g., Luxor Hotel & Casino (“Blackjack, sometimes called Twenty-One, is a popular and fun casino game.”); <https://luxor.mgmresorts.com/en/casino/table-games.html>, last visited December 4, 2024; Caesars Palace Las Vegas Hotel & Casino (“Of all the casino table games, there is none more classic than Blackjack, also known as 21.”); <https://www.caesars.com/caesars-palace/casino#.XcSct1dKhGM>, last visited December 4, 2024; Harrah’s Las Vegas (“Of all the casino table games, there is none more classic than Blackjack, also known as 21.”); <https://www.caesars.com/harrahs-las-vegas/casino#.XcSdi1dKhGM>, last visited December 4, 2024.

¹¹ See, e.g., Red Hawk Casino (“Blackjack, also known as ‘21,’ has become the most popular casino table game, largely due to the fact that it’s easy, fast and fun to play.”); <https://www.redhawkcasino.com/wp-content/uploads/2022/10/rhc-howtoplayBlackjack.pdf>, last visited December 4, 2024; Chumash Casino Resort https://ccr.azureedge.net/ccr-website-preview/docs/default-source/table-games-guides/blackjack_guide.pdf, last visited December 4, 2024; Hard Rock Hotel & Casino at Fire Mountain (“Commonly referred to as 21, Blackjack is one of the most popular table games you will find on the casino floor and offers a simple concept for gamblers to enjoy.”); <https://casino.hardrock.com/sacramento/casino/table-games/Blackjack>, last visited December 4, 2024; Harrah’s Northern California (“Of all the casino table games, there is none more classic than Blackjack, also known as 21.”); <https://www.caesars.com/harrahs-northern-california/casino>, last visited December 4, 2024.

enterprises have adopted game rules that mimic those applicable to Blackjack, or which merely give the impression that the games are played in a manner different from the prohibited game.

Whether a game is prohibited by law depends on the manner of play, not the name of the game. (60 Ops.Cal.Atty.Gen. 130, 132 (1977), citing *California Gasoline Retailers v. Regal Petroleum Corp.* (1958) 50 Cal.2d 844, 859; *People v. Shira* (1976) 62 Cal.App.3d 442, 461.) The California Supreme Court has also held that variations in the play of a prohibited game do not, by virtue of those variations, take those games out of the prohibition when the game is otherwise played in the conventional manner:

[W]hen a prohibited game is played in all other respects in the usual way, and according to its established rules, the purpose of the law cannot be thwarted by the simple device of playing it with one or two cards less than the number usually employed. Otherwise no statute against a particular game would be of any value.

(*People v. Gosset* (1892) 93 Cal. 641, 643.)

The established rules for twenty-one or Blackjack have remained consistent for over a century. These rules may be summarized as follows:¹²

1. Players place a wager against the dealer, or player-dealer in games featuring a rotating player-dealer position.
2. The game is played with one or more standard 52-card decks. Point values are assigned to each of the cards, with cards numbered 2 through 10 having a point value matching the number of the card (e.g., the number 2 card is assigned 2 points), face cards are assigned a value of 10, and the ace is assigned a value of 1 or 11, at the option of the player.
3. The object of the game is to obtain a point value closer to 21 than the dealer/player-dealer.
4. Each player and the dealer/player-dealer are dealt two cards.
5. Players may draw cards, one at a time, in order to improve their point count to a number closer to 21.
6. If a player goes over a point count of 21, the player loses.
7. The best hand that can be obtained consists of a ten-point card (i.e., a 10 or face card) and an ace on the initial deal.

¹² See footnote 6, *supra*.

The blackjack-style games that were previously approved by the Department also follow the same basic rules, albeit with variations that do not materially affect those basic rules.¹³ The variations may be categorized as follows:

1. The addition or removal of cards to or from a standard deck, and the game is played thereafter by the established Blackjack rules;
2. Markings affixed to cards in a standard deck, providing those marked cards with a different point value that is operative only on the initial deal, and the game is played thereafter by the established Blackjack rules;
3. Changes to the target point count which may only be obtained on the first two cards dealt on the initial deal, and the game is played thereafter by the established Blackjack rules;
4. The game is played by the established Blackjack rules but includes a rule that provides a limited relief from going over the target point count whereby the player will not lose, but may tie and not lose their wager.

These variations to the game rules do not differentiate the Bureau-approved games from the manner in which Blackjack is traditionally played because the game is thereafter played with a functional target point count of 21. They are thus “played in all other respects in the usual way, and according to its established rules.” (*Gosset, supra*, at p. 643.)

These proposed regulations would address the proliferation of blackjack-style games in California gambling establishments, including Bureau-approved games, that too closely resemble traditional Blackjack by implementing new restrictions and limitations on what the rules of a blackjack-style game must omit or include to obtain Bureau approval going forward.

BENEFITS ANTICIPATED FROM REGULATORY ACTION

The Act recognizes that “state law categorically prohibits certain forms for gambling,” and the Act shall not “be construed, in any manner, to reflect a legislative intent to relax those prohibitions.” (Bus. & Prof. Code, § 19801, subd. (a).) The purpose of the Act is not to expand opportunities for gambling, or to create any right to operate a gambling enterprise in the state, or to have a financial interest in any gambling enterprise, but rather to regulate businesses that offer

¹³ Blackjack is also played in a substantially similar manner both in New Jersey and Nevada. See N.J. Admin. Code, §§ 13:47-20.2 (“‘Blackjack’ means a card game in which a player attempts to draw cards that total 21 or that come closer to 21 than the dealer.”), 13:47-20.22 (rules of the game of Blackjack); *Campione v. Adamar, Inc.* (1998) 155 N.J. 245, 249; Ocean Resort Casino Atlantic City, How to Play Blackjack at a Casino, <https://www.theoceanac.com/casino/table-games/how-to-play-Blackjack-at-a-casino>, last visited December 4, 2024, Ocean Resort Casino Atlantic City Blackjack Gaming Guide, <https://www.theoceanac.com/sites/default/files/2022-03/Blackjack.pdf>, last visited December 4, 2024; Hard Rock Hotel & Casino Atlantic City, Blackjack at Hard Rock Atlantic City, <https://casino.hardrock.com/atlantic-city/casino/table-games/Blackjack-at-hard-rock-atlantic-city>, last visited December 4, 2024.

otherwise *lawful* forms of gambling games. (Bus. & Prof. Code, § 19801, subd. (f).) The Act also provides that public trust requires comprehensive measures be enacted to ensure that permissible gambling will not endanger public health, safety, or welfare, is free from criminal and corruptive elements, and conducted honestly and competitively. (Bus. & Prof. Code § 19801, subd. (g).)

The proposed regulations will provide a clear definition of what constitutes the prohibited game of Blackjack or twenty-one while providing standards for the manner in which the Bureau will review, and if compliant with the regulations, approve, a permissible alternative to Blackjack as opposed to a prohibited form of Blackjack, for the benefit of both the regulated industry and the public. The proposed regulations will assist the regulated entities and the public avoid engaging in unlawful gambling activities, thereby protecting the public health, safety, and welfare. The regulated industry will be on notice of what game rules will not be approved, thereby avoiding wasted time and resources when submitting applications. Under the regulations, the Bureau will expedite review of game modifications and waive application fees and deposits.¹⁴

The regulations will also provide the benefit of consistent and fair evaluations of these games using a known and established set of standards. Without regulations, individual game disapprovals would result in litigation for each and every currently approved game that meets the proposed definition of Blackjack and twenty-one, and so the regulations would provide additional transparency and fairness. And, in order to ensure that “permissible gambling will not endanger public health, safety, or welfare” (Bus. & Prof. Code, § 19801, subd. (g)), the regulated industry and the public will, via the proposed regulations, be more fully informed of the standards that the Department applies to the games it approves or disapproves. This provides notice to the public and the regulated industry as to the legality of games, specifically with regard to Blackjack and twenty-one, allowed to be played in California gambling establishments.

SPECIFIC PURPOSE AND NECESSITY OF EACH SECTION

The general purpose of these regulations is to establish and clarify the restrictions and limitations on what games will be approved by the Bureau with respect to blackjack-style games and permissible alternatives to Blackjack. The regulations would define the traditional rules of play for Blackjack and would specify that any game with those rules shall not be approved by the Bureau. The regulations would also specify what rule changes would be required to obtain Bureau approval of a blackjack-style game. Under the regulations, a gambling establishment can seek review of a previously Bureau-approved game that would otherwise be prohibited as a game of Blackjack, and can modify the game rules to comply with the regulations. If a previously

¹⁴ Game approval requests require that the applicant submit a deposit of \$550 for the review of a game, and \$450 for a request to modify an approved game. (Cal. Code. Reg., tit. 11, § 2037, subds. (a)(1)(K), (a)(1)(L).)

Bureau-approved game is not modified, but is now prohibited by the regulations, the Bureau will withdraw its previous approval.¹⁵

AMEND CALIFORNIA CODE OF REGULATIONS, TITLE 11, SECTION 2010

Section 2010 sets forth the definitions for specified terms used in the Bureau's regulations. The purpose of these proposed amendments is to add definitions for terms that are used in proposed new sections 2073 and 2074. These amendments are necessary to provide a clear definition of terms used in proposed sections 2073 and 2074 so that the regulated industry and the public will be able to understand the regulations.

Subdivision (g) adds a definition of the term "initial deal," a term that is used in proposed sections 2073 and 2074. This term is necessary in order to explain the game rules of Blackjack, as prohibited by proposed section 2073, and to explain permissible rule variations in proposed section 2074.

Subdivision (h) adds a definition of the term "round of play," a term that is used in proposed sections 2073 and 2074. This term is necessary in order to explain the game rules of Blackjack, as prohibited by proposed section 2073, and to explain permissible rule variations in proposed section 2074.

Subdivision (i) adds a definition of the term "standard deck," a term that is used in proposed sections 2073 and 2074. This term is necessary in order to explain the game rules of Blackjack, as prohibited by proposed section 2073, and to explain permissible rule variations in proposed section 2074.

Subdivision (j) adds a definition of the term "target point count," a term that is used in proposed sections 2073 and 2074. This term is necessary in order to explain the game rules of Blackjack, as prohibited by proposed section 2073, and to explain permissible rule variations in proposed section 2074.

Subdivision (k) renumbers former subdivision (h), defining the term "wager," with no other changes to the language. This is a non-substantive change within the meaning of California Code of Regulations, title 1, section 100, subdivision (a)(1).

¹⁵ California currently has 86 licensed gambling establishments. The Bureau has previously approved 169 Blackjack and blackjack-style games. As of March 31, 2024, the Bureau has 68 Blackjack game applications pending review.

ADD CALIFORNIA CODE OF REGULATIONS, TITLE 11, SECTION 2073

The State Constitution¹⁶ and Penal Code section 330 prohibits “*any* game of . . . twenty-one” (Italics added.) The purpose of proposed section 2073 is to establish what game rules constitute the game of twenty-one, or Blackjack, and to establish that a game of Blackjack will not be approved for play. This regulation is necessary to inform the regulated industry as to what game rules will constitute a game of Blackjack, in order to clearly set forth what rules may result in a game either being disapproved or result in the game approval being withdrawn as provided in proposed section 2075. This regulation is also necessary to identify specified game rule variations currently in use that only superficially change the manner in which a game is played, and to specify that those superficial changes will not be considered a differentiation of the rules of Blackjack.

Preamble provides that any game of Blackjack shall not be approved for play. This language is necessary to make clear that the Bureau will not approve the game of Blackjack for play in California gambling establishments.

Subdivision (a) describes the basic rules of the prohibited form of Blackjack for purposes of game review and approval. (See footnote 6.) This language is necessary to provide notice and clarity to the public and the regulated industry that the game rules described in proposed section 2073 are not intended to apply in other contexts, and thus should not be relied upon for purposes other than game approvals.

Subdivision (a)(1) describes the wagering structure of a Blackjack game. This language is necessary to distinguish the play of Blackjack from other games with different wagering conventions.

Subdivision (a)(2) describes the number of decks and the point system used in the play of Blackjack, and the object of the game. This language is necessary to distinguish the play of Blackjack from other cardroom games.

Subdivision (a)(3) describes how cards are initially dealt in Blackjack, how points in a player’s hand are calculated, the order in which players take turns, and a player’s options (hit, stand, double down, or split) when it’s their turn. This language is necessary to distinguish the play of Blackjack from other cardroom games.

Subdivision (a)(4) describes how a player can win, lose or tie against the player-dealer in Blackjack. This language is necessary to distinguish the play of Blackjack from other cardroom games.

¹⁶ See fn. 8.

Subdivision (b) describes the modifications to the game rules identified in subdivision (a) that will not differentiate a cardroom game from the prohibited game of Blackjack. This language is necessary to identify certain variations of the cards used in currently approved Blackjack games which do not materially change the game from the rules described in subdivision (a). Additionally, this language is necessary to prevent the employment of an artifice to attempt to distinguish a currently approved, new, or pending blackjack-style game from the prohibited form of Blackjack.

Subdivision (b)(1) describes changes to a “standard deck” as defined by proposed section 2010, that do not differentiate a blackjack-style game from the prohibited form of Blackjack. This language is necessary because the addition, removal or marking of cards in a standard deck do not materially change the game from the rules described in subdivision (a). Additionally, this language is necessary to prevent the employment of an artifice to attempt to distinguish a currently approved, new, or pending blackjack-style game from the prohibited form of Blackjack.

Subdivision (b)(2) provides that assigning a different point value to specified cards that is only operative on the initial deal does not differentiate a blackjack-style game from the prohibited form of Blackjack. This language is necessary because the assignment of a different point value to specified cards on the initial deal does not materially change the game from the rules described in subdivision (a). Additionally, this language is necessary to prevent the employment of an artifice to attempt to distinguish a currently approved, new, or pending blackjack-style game from the prohibited form of Blackjack.

Subdivision (b)(3) provides that a game rule offering limited forgiveness to a player whose hand exceeds the target point count does not differentiate a blackjack-style game from the prohibited form of Blackjack. This language is necessary because the operation of a limited forgiveness to a player whose hand exceeds the target point count does not materially change the game from the rules described in subdivision (a). Additionally, this language is necessary to prevent the employment of an artifice to attempt to distinguish a currently approved, new, or pending blackjack-style game from the prohibited form of Blackjack.

Subdivision (b)(4) provides that a target point count other than 21 that is only operative on the initial deal, and is impossible to obtain thereafter, does not differentiate a blackjack-style game from the prohibited form of Blackjack. This language is necessary because the setting of a target point count other than 21, when operative only on the initial deal and can't be obtained thereafter, does not materially change the game from the rules described in subdivision (a). Additionally, this language is necessary to prevent the employment of an artifice to attempt to distinguish a currently approved, new, or pending blackjack-style game from the prohibited form of Blackjack.

Subdivision (b)(5) provides that a change in the number of cards dealt on the initial deal does not differentiate a cardroom game from the prohibited form of Blackjack. This language is

necessary because a change in the number of cards dealt on the initial deal does not materially change the game from the rules in subdivision (a). Additionally, this language is necessary to prevent the employment of an artifice to attempt to distinguish a currently approved, new, or pending blackjack-style game from the prohibited form of Blackjack.

Subdivision (b)(6) provides that the removal or modification of a player's options on their turn, whether to hit, stand, double down, or split, does not differentiate a game from the prohibited form of Blackjack. This language is necessary because the modification or removal of these player actions does not materially change the game from the rules described in subdivision (a). Additionally, this language is necessary to prevent the employment of an artifice to attempt to distinguish a currently approved, new, or pending blackjack-style game from the prohibited form of Blackjack.

Subdivision (c) defines a prohibited game of Blackjack to include any game with the words, or variations of the words, "21" or "Blackjack." This language is necessary to preclude Bureau approval of any game named after a prohibited game of twenty-one in order to protect the public from being confused or misled as to which games are offered by a gambling establishment, and which games are legally permissible.

ADD CALIFORNIA CODE OF REGULATIONS, TITLE 11, SECTION 2074

The purpose of this regulation is to clearly set forth what rules, or rule changes, will be required for Bureau approval of a blackjack-style game with permissible variations. This regulation promotes transparency and gives notice to the regulated industry and the public as to what forms of blackjack-style games, with permissible variations, will be allowed to be offered for play in gambling establishments.

Subdivision (a)(1) prohibits any blackjack-style game from including a game rule that if a player exceeds the target point count, they will automatically lose (bust) or they will lose if the player-dealer does not exceed the target point count. Subdivision (a)(1) also requires a rule that whether a player will win or lose must be determined solely by whether the player is closer to the target point count than the player-dealer. The bust rule is an essential rule of Blackjack. (See footnote 6.) The purpose of this language is to differentiate a blackjack-style game from the prohibited game of Blackjack by prohibiting the bust feature in permissible blackjack-style games.

Subdivision (a)(2) prohibits any blackjack-style game from including a target point count of 21 (or any point value more than 20 and less than 22) and requires the alternative target point count to remain the same throughout the game. Subdivision (a)(2) also requires the point values assigned to each card to remain the same throughout the game. The target point count of 21 is an essential characteristic of twenty-one and Blackjack. (See footnote 6.) In many of the current Bureau-approved Blackjack games, specified cards are assigned a point value that is obtainable only on the initial deal, which coincide with a target point count greater than 20 and less than 22, and after the initial deal, are played with the same point value as the prohibited game of

Blackjack. This language is necessary to differentiate blackjack-style games from the prohibited form of Blackjack by prohibiting the use of 21 as a target point count in any deal of the game.

Subdivision (a)(3) prohibits any blackjack-style game from including a game rule that a player or player-dealer will automatically win with an ace and a 10-point card (known as a “natural” or “Blackjack”) in their hand on the initial deal. An ace and a 10-point card as an automatically winning hand is an essential characteristic of twenty-one and Blackjack. (See footnote 6.) This language is necessary to differentiate blackjack-style games from the prohibited form of Blackjack.

Subdivision (a)(4) requires any blackjack-style game to include a game rule that in the event of a tie between a player and the player-dealer, the player will win. A tie with a player-dealer resulting in a push (no win or loss) is an essential characteristic of twenty-one and Blackjack. (See footnote 6.) The purpose and necessity of this game rule is to differentiate blackjack-style games from the prohibited form of Blackjack. This rule also has the added benefit of giving players a better advantage and more opportunities to win than in the prohibited form of Blackjack where the player-dealer has the built-in advantage of wagering against multiple players.

Subdivision (b) prohibits any blackjack-style game from including “21” or “Blackjack” in the game’s name. The purpose of this language is to exclude from approval any game which has the same name as the game prohibited by Penal Code section 330 and the State Constitution. This language is necessary to protect the public from being confused or misled as to which games are offered by gaming establishments, and which games are legally permissible.

ADD CALIFORNIA CODE OF REGULATIONS, TITLE 11, SECTION 2075

The Department is responsible for approving the play of any controlled game. Gambling enterprises¹⁷ are required to submit applications to the Bureau for the review of a controlled game or to modify a previously approved controlled game, and to pay a fee and a deposit.¹⁸ The purpose of this regulation is to expedite requests for Bureau review of a previously approved blackjack-style game, or modifications to the game, to bring the game into compliance with the proposed regulations. The application fees shall be waived for a limited period of time. This regulation is necessary to establish a procedure and timeline for reevaluating previously approved Blackjack games, and for applicants to appeal the Bureau’s determination.

¹⁷ Bus. & Prof. Code, § 19805, subd. (m); see also Cal. Code Regs., tit. 4, § 12002, subds. (j), (l), (n), (aj).

¹⁸ Cal. Code Regs., tit. 11, §§ 2037, subd. (a)(1)(K), (a)(1)(L), 2038.

Subdivision (a) requires a gambling enterprise that offers a previously approved blackjack-style game for play to submit a written request for review of the game or to modify the game and submit an “Application for Controlled Game Review,” BGC-APP-026 (Rev. 09/17)¹⁹ form within 60 days of the effective date of the regulation. The purpose and necessity of this language is to provide a process for the review of a game that would otherwise be noncompliant with these regulations, as well as notice to the regulated industry as to the time limitation and manner to make a request. The proposed 60-day timeframe is necessary to allow gambling enterprises a reasonable time period to submit a request or application.

Subdivision (b) requires the Bureau to approve or disapprove a request to review a previously approved game, or an application to modify a previously approved game, within 90 days of receipt of the request or application. The purpose of this language is to provide the regulated industry with a reasonable time period in which to expect a determination from the Bureau. Currently, there are 194 Bureau approved blackjack-style games across all licensed gambling enterprises in California. Given the specific rule changes and the number of blackjack-style games currently approved that would require changes to comply with section 2074, a 90-day review period is a reasonable time period for the Bureau to adequately conclude its review and process anticipated written requests for game modifications, taking into account its existing resources and personnel capacity.

Subdivision (c) addresses blackjack-style games that are pending review when section 2074 becomes effective. The Bureau shall only approve the game if it complies with section 2074 and, if not, a gambling enterprise shall modify the game rules or withdraw the application. Refunds for a request to withdraw shall be made in accordance with existing regulations. This language is necessary to provide the regulated industry with notice of how pending games will be reviewed and with the opportunity to modify any pending games. This language is also necessary to provide notice to the regulated industry that if they withdraw a pending application, they may be entitled to a refund.

Subdivision (d) requires previously approved games with a name that includes “21” or “Blackjack” to rename the game within one year of the effective date of section 2075 by submitting an “Application for Controlled Game Review,” BGC-APP-026 (Rev. 09/17). The name change may be done separately and apart from the request for modification identified in proposed section 2075, subdivision (a). The purpose of this language is to explain the process for renaming a blackjack-style game that has a name prohibited under the regulations. The one-year time frame allows the regulated industry additional time to consider and conduct research on new names for previously approved games.

Subdivision (e) requires the Bureau to withdraw approval of previously approved blackjack-style game if it does not receive a request to review or an application to modify the game within

¹⁹ This existing form is incorporated by reference in California Code of Regulations, title 11, section 2038.

the time specified in proposed section 2074, subdivision (a). Within 10 days of service of the notice from the Bureau withdrawing authorization for a previously approved game, an objection may be filed with the Bureau Chief, who may grant or deny the objection. (Cal. Code Regs, tit. 11, § 2071, subd. (e).) Review of the Chief’s decision is subject to the limitations imposed by Business and Professions Code section 19804. The purpose of this language is to provide notice to the regulated industry of the consequences of not submitting a request for review pursuant to proposed section 2075, subdivision (a). This language is necessary to discontinue non-complaint blackjack-style games once the regulations become effective.

Subdivision (f) waives the application fee that would normally be required when submitting an Application for Controlled Game Review,” BGC-APP-026 (Rev. 09/17) for a game that has been requested to be reviewed or modified pursuant to proposed section 2075, subdivision (a). This language is necessary to provide a form of relief for the regulated industry for a review that is being required due to the new regulations. This provides cost-savings for the industry where the applicant would otherwise be required to begin the game approval process with the payment of fees and deposits. The waiver also provides incentive for gambling establishments to comply with the new regulations.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDIES, REPORTS, OR SIMILAR DOCUMENTS RELIED UPON

California Department of Justice, Bureau of Gambling Control, *Public Comments Received Before Rulemaking Process*. See Appendix A and [<https://oag.ca.gov/gambling/regulations#registration>]

Caesars Palace Las Vegas Hotel & Casino (“Of all the casino table games, there is none more classic than Blackjack, also known as 21.”); <https://www.caesars.com/caesars-palace/casino#.XcSct1dKhGM>, last visited December 4, 2024

Chumash Casino Resort, https://ccr.azureedge.net/ccr-website-preview/docs/default-source/table-games-guides/blackjack_guide.pdf, last visited December 4, 2024

Frere, Hoyle’s Games. Containing all the Modern Methods of Playing the Latest and Most Fashionable Games, Improved Ed. (1875) pp. 73-76

Hard Rock Hotel & Casino at Fire Mountain (“Commonly referred to as 21, Blackjack is one of the most popular table games you will find on the casino floor and offers a simple concept for gamblers to enjoy.”); <https://casino.hardrock.com/sacramento/casino/table-games/Blackjack>, last visited December 4 2024

Hard Rock Hotel & Casino Atlantic City, How to Play Blackjack, <https://casino.hardrock.com/atlantic-city/-/media/project/shrss/hri/casinos/hard-rock/atlantic-city/casino/table->

[games/pdf/blackjack_gamingguide_2022.pdf?rev=c0bc3fdb705f400ea84d5c8ede814891](https://www.caesars.com/harrahs-las-vegas/casino#/XcSdi1dKhGM), last visited December 4, 2024

Harrah's Las Vegas ("Of all the casino table games, there is none more classic than Blackjack, also known as 21."); <https://www.caesars.com/harrahs-las-vegas/casino#/XcSdi1dKhGM>, last visited December 4, 2024

Harrah's Northern California ("Of all the casino table games, there is none more classic than Blackjack, also known as 21."); <https://www.caesars.com/harrahs-northern-california/casino>, last visited December 4, 2024

Luxor Hotel & Casino ("Blackjack, sometimes called Twenty-One, is a popular and fun casino game."); <https://luxor.mgmresorts.com/en/casino/table-games.html>, last visited December 4, 2024

Ocean Resort Casino Atlantic City (<https://www.theoceanac.com/casino/table-games/how-to-play-Blackjack-at-a-casino>), last visited December 4, 2024

Ocean Resort Casino Atlantic City, Blackjack Gaming Guide, <https://www.theoceanac.com/sites/default/files/2022-03/Blackjack.pdf>, last visited December 4, 2024

Red Hawk Casino ("Blackjack, also known as '21,' has become the most popular casino table game, largely due to the fact that it's easy, fast and fun to play."); <https://www.redhawkcasino.com/wp-content/uploads/2022/10/rhc-howtoplayBlackjack.pdf>, last visited August 6, 2024

Scarne, Scarne's New Complete Guide to Gambling (1974) pp. 342, 350
Trumps, The Modern Pocket Hoyle; Containing all the Games of Skill and Chance as Played in this Country at the Present Time (1868) pp. 186-189

Trumps, The Modern Pocket Hoyle; Containing all the Games of Skill and Chance as Played in this Country at the Present Time, 10th Ed. (1880) pp. 186-189

U.S. Playing Card Co., The Official Rules of Card Games Hoyle Up-to-Date, 17th Ed. (1913) pp. 207-208

STANDARDIZED REGULATORY IMPACT ANALYSIS

The standardized regulatory impact analysis (SRIA) required by Government Code section 11346.3, subdivision (c), the Department of Finance's comment letter on the SRIA, the Department's response to the comment letter and the revised SRIA (11.19.2024), are attached to this ISOR as Appendix B, C, and D respectively.

DETERMINATION OF SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

The Department has made an initial determination that the proposed action may have a significant, statewide adverse economic impact directly affecting business, as described in the attached SRIA.

REASONABLE ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESS

The Department finds that no reasonable alternatives were presented to, or considered by, the Department that would lessen any adverse impact on small business.

REASONABLE ALTERNATIVES TO THE PROPOSED ACTION AND THE AGENCY'S REASON FOR REJECTING THOSE ALTERNATIVES

The Department considered several alternatives in drafting the proposed regulations. In considering the following alternatives, the Department sought to balance the health, safety and welfare of the public, the benefits to consumers, the burden to businesses, and the purposes of the proposed regulatory action. The alternatives considered and rejected are below.

Section 2074, subdivision (a) – Required Rules

Alternative: The Department considered and rejected alternative rules required to be included in a permissible alternative to Blackjack. These alternatives included a rule that would have required that the values of the king, queen, and jack cards be assigned a value other than 10, that an ace have a value that cannot be one or 11, and that the ace must have a set value.

Reasoning: The Department rejected both of these alternatives. As to the first alternative, it was the Department's view that these requirements would be too restrictive and would stifle innovation and ingenuity in the development of new card games and was not necessary to differentiate Blackjack as defined in section 2073 from a permissible alternative to Blackjack. The game of Blackjack is characterized as having three essential elements: (1) a player who exceeds the target point count will automatically lose, (2) a target point count that is 21, or that is functionally 21, and (3) a hand that consists of an ace and a 10-point card will automatically win. (See footnote 6.) That is the basis for the rules set forth in proposed section 2073, and for the variations in proposed section 2074. Because these three essential elements of Blackjack are addressed in proposed section 2074, it was deemed unnecessary to include this proposed alternative.

As to the second alternative, it was the Department's view that requiring only one or two of the rule changes specified in proposed section 2074, subdivision (a)(1) through (a)(3) would still leave intact an essential rule or rules that typifies Blackjack. Thus, it was determined that in

order to fully implement the policies under the Act, it is necessary to ensure that a permissible alternative to Blackjack not include any of those three rules.

Section 2074, subdivision (a)(3) – Required Rules

Alternative: The Department considered and rejected an alternative rule for a permissible alternative to Blackjack with respect to the points assigned to the king, queen, and jack cards. This alternative would have required that those cards have a point value other than 10, and that those cards shall each have a different point value.

Reasoning: The Department rejected this alternative. It was Department's view that this rule requirement did not address an essential element of twenty-one or Blackjack, and would be unreasonably burdensome to the regulated industry, and the public, who take part in those games. It was also Department's view that this additional rule would not be necessary to ensure that a game is not played as an illegal game of twenty-one.

Performance Standard as Alternative:

The regulations do not use performance standards, but instead prescribe specific rules to differentiate permissible blackjack-style games from the prohibited form of Blackjack.