

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

PROBLEM STATEMENT

Many currently approved controlled games featuring a rotating player-dealer position have game rules that provide for the *offer* of the opportunity to act as the player-dealer, without requiring that the player-dealer position actually rotate continuously and systematically among the seated participants during the play of the game. This has resulted in the player-dealer position remaining with one party for an unrestricted time during the play of a controlled game featuring a player-dealer position, which allows that person to maintain or operate a bank.¹ This is the type of game rule that was specifically held to be unlawful under Penal Code section 330. (*Oliver v. County of L.A.* (1998) 66 Cal.App.4th 1397.)

These proposed regulations would address the problem of allowing the maintenance or operation of a bank in controlled games featuring a rotating player-dealer position by requiring that the rules provide that rotation of the player-dealer position actually occur, as specified. The regulations would also prohibit specified forms of wagering in order to prevent the maintenance or operation of a bank by any person. The regulations would impose limitations on games featuring a rotating player-dealer position and the corresponding game rules.

A. THE GAMBLING CONTROL ACT

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. (See Gov. Code, § 15002.5.) In enacting this measure, the Legislature declared that "Unregulated 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 "Public 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.* § 19801, 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."

¹ This practice has been observed by the Bureau, and has been admitted to by the public and by members of the gambling industry itself. The gambling industry, TPPPS employees, and other interested parties, have referred to TPPPS players as the "bank," or "acting as the bank," and other words to that effect.

(*Id.*, § 19971.) 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 otherwise *lawful* forms of gambling games. (*Id.*, § 19801, subd. (f).) The Act also provides that public trust requires that 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 is conducted honestly and competitively. (*Id.*, § 19801, subd. (g).)

Under the Act, the Department has the exclusive authority and responsibility to “[a]pprove the play of any controlled game, including placing restrictions and limitations on how a controlled game may be played.” (Bus. & Prof. Code, §§ 19826, subd. (g) and 19943.5.² The Department is directed to “adopt regulations reasonably related to its functions and duties as specified in [the Act].”³ (Bus. & Prof. Code, § 19826, subd. (f).)

Pursuant to the authority vested in the Department under the Act, the Department proposes adopting regulations governing the rotation of the player-dealer position in controlled games that feature a player-dealer position, including establishing minimum standards requiring the rotation of the player-dealer position, as specified.

B. BANKING GAMES ARE PROHIBITED UNDER CALIFORNIA LAW

Banking games have long been prohibited in California⁴ by the California Constitution and Penal Code section 330.⁵ The Act recognizes that state law prohibits banked games, and that nothing in the Act “shall be construed, in any manner, to reflect a legislative intent to relax those prohibitions.” (Bus. & Prof. Code, § 19801, subd. (a).) A “banking game” has generally been described as a game in which the house, acting as the bank, “is a participant in the game, taking on all comers, paying all winners, and collecting from all losers.”⁶ This judicial construction of the term “banking game” or “banked game” was expanded upon by the court in *Oliver v. County of L.A.* (1998) 66 Cal.App.4th 1397 (*Oliver*). *Oliver* held that “a game will be determined to be a

² 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).)

³ 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.)

⁴ See Stats. 1860, ch. 99, § 1. See also, *Sullivan v. Fox* (1987) 189 Cal.App.3d 673, 678.

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 *Sullivan, supra*, 189 Cal.App.3d at p. 678; *Huntington Park Club Corp. v. County of Los Angeles* (1988) 206 Cal.App.3d 241, 250.

banking game if under the rules of that game, it is *possible* that the house, *another entity*, a *player*, or an *observer* can maintain a bank or operate as a bank during the play of the game.” (*Oliver, supra*, 66 Cal.App.4th at p. 1408, italics added). Thus, the *potential* that under the game’s rules a player may act as a bank determines whether the game is a banking game, not the current mode of play. (*Ibid.*) Accordingly, a game may be found to be an illegal banked game, no matter who is acting as the bank, and if the game’s rules allow the *possibility* that a person, entity, or an observer may maintain or operate a bank. (*Kelly v. First Astri Corp.* (1999) 72 Cal.App.4th 462, 492.) This definition of a banking game was adopted by the California Supreme Court in *Hotel Employees & Restaurant Employees Internat. Union v. Davis* (1999) 21 Cal.4th 585, 605 (*H.E.R.E.*).

In 2000, in reaction to *H.E.R.E.*, Assembly Bill 1416 (AB 1416) was passed by the California Legislature and then signed into law. AB 1416 amended the Act by (1) adding a definition of “banking game” or “banked game,” (2) adding a definition of “player-dealer” and “controlled game that features a player-dealer position,” and (3) codifying the practice in gambling establishments of contracting with third parties to provide “proposition player services.”⁷

Under the Act, “player-dealer” and “controlled game that features a player-dealer position” refer to a position in a controlled game, as defined by the approved rules for that game, in which seated player participants are afforded the temporary opportunity to wager against multiple players at the same table, provided that this position is rotated among the other seated players in the game. (Bus. & Prof. Code, § 19805, subd. (ag).) This definition thus has two requirements: (1) the opportunity to wager against multiple players at the same table is “temporary,” and (2) the opportunity to act as the player-dealer must be rotated “amongst the other seated players in the game.” This definition is consistent with the definition set forth in *Oliver*, because (1) a person cannot act as player-dealer indefinitely, i.e., the opportunity to act as player-dealer is temporary, and (2) the player-dealer position must be rotated among the other players seated at the table.

Under the Act, a controlled game is not a “banking game” or “banked game” if the published rules of the game feature a player-dealer position and provide that this position must be continuously and systematically rotated among each of the participants during the play of the game, ensure that the player-dealer is able to win or lose only a fixed and limited wager during the play of the game, and preclude the house, another entity, a player, or an observer from maintaining or operating as a bank during the course of the game. (Bus. & Prof. Code, § 19805, subd. (c).) The Act further provides that it is not the intent of the Legislature to mandate acceptance of the deal by every player if the Department finds that the rules of the game render the maintenance of or operation of a bank impossible by other means. (*Ibid.*)

Business and Professions Code section 19805, subdivision (c)’s definition of a “banking game” or “banked game” thus excludes any game if four elements in the game rules exist: (1) a player-

⁷ See Stats. 2000, ch. 1023, §§ 2, 6 (adding former section 19980 to the Business and Professions Code, renumbered to section 19984 by Assembly Bill 2431 in 2002. See Stats. 2002, ch. 738, § 127).

dealer position, (2) the player-dealer position continuously and systematically rotates among each of the participants during the play of the game, (3) the player-dealer is able to win or lose only a fixed and limited wager during the play of the game, and (4) the house,⁸ another entity, a player, or an observer is precluded from maintaining or operating as a bank during the course of the game.⁹ Alternatively, if the Department finds that the maintenance or operation of a bank is rendered impossible under the rules of a player-dealer game, acceptance of the player-dealer position is not required.

C. GENERAL PURPOSE OF PROPOSED REGULATIONS

The general purpose of these regulations is to specify minimum standards for rules of a controlled game featuring a rotating player-dealer position and how that position shall be rotated in order to prevent the maintenance or operation of a bank. The regulations are intended to better enforce the prohibition on banking games by disallowing a person from acting as the player-dealer for an unlimited amount of time, and to prohibit other forms of wagering that would allow a person to maintain or operate a bank.

BENEFITS ANTICIPATED FROM REGULATORY ACTION

The proposed regulations will have the benefit of codifying standards for Bureau review of controlled games featuring a player-dealer position. This will assist the regulated industry and the public to avoid engaging in unlawful gambling activities, thereby protecting the public health, safety, and welfare. The proposed regulations will provide clear rules and standards for what game rules are required in controlled games that feature a rotating player-dealer position. This has the additional benefit of putting the regulated industry on notice of what game rules will not be approved, thereby avoiding wasted time or resources in submitting applications.

The regulations will also provide the benefit of consistent and fair evaluations of controlled games featuring a player-dealer position by using a known and established set of standards. Without regulations, individual game disapprovals would result in litigation for each and every game that would otherwise be disapproved as an illegal banking game, 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 Bureau applies to the games it approves or disapproves, as well as clarity as to what games are allowed to be played in California gambling establishments.

⁸ “House” means the gambling enterprise, and any owner, shareholder, partner, key employee, or landlord thereof. (Bus. & Prof. Code, § 19805, subd. (t).)

⁹ Business and Professions Code section 19805, subdivision (c) mirrors Penal Code section 330.11, creating a limited exception to the banked game prohibition in Penal Code section 330. The two statutes specify a pivotal role for the Bureau to ensure a game is not banked through the game approval process. The Bureau has authority to investigate violations of Chapters 9 and 10 of the Penal Code, including section 330. (Bus. & Prof. Code, § 19826, subd. (c).)

SPECIFIC PURPOSE AND NECESSITY OF EACH SECTION

A. ADD CALIFORNIA CODE OF REGULATIONS, TITLE 11, SECTION 2076

Subdivision (a) establishes that a game featuring a rotating player-dealer position shall include specified rules. The purpose of this language is to specify the scope of the regulation's application, i.e., only to games that feature a rotating player-dealer position. This language is necessary to establish and explain the scope of proposed section 2076.

Subdivision (a)(1) provides that the player-dealer position may only be occupied by a person seated at the table, and that the position shall be offered to other seated players at the table before every hand. The purpose and necessity of this language is to specify that a player-dealer must be seated at the table, as required by the definition of "player-dealer" in Business and Professions Code section 19805, subdivision (ag). The required offer of the player-dealer position prior to the start of every hand is necessary to ensure that the player-dealer position is continuously rotated.

This subdivision further provides that the game rules shall specify how the player-dealer position is selected at the opening of a new game, and when rotating to the next person who will act as the player-dealer. The purpose of this language is to require that game rules specify how the player-dealer is initially selected in a new game (e.g., drawing cards, specifying a particular seat at the table), and how the next person to act as the player-dealer will be selected.

Subdivision (a)(2) provides that a written notice shall be placed at each table informing patrons when a player may accept the player-dealer position. The written notice shall provide a specific statement that: (1) any player can assume the player-dealer position when it is offered, and (2) the player-dealer cannot win or lose more than the amount the player-dealer wagers. This language is necessary to ensure that the game does not fall within the definition of a banking game or banked game under Business and Professions Code section 19805, subdivision (c).

Subdivision (a)(3) states that before every hand, the dealer shall offer the player-dealer position both verbally and physically to each of the seated players. The offer of the player-dealer position shall be visible to surveillance cameras. The purpose of this language is to continuously provide for patron participation as the player-dealer, with clear verbal and physical indications as to when a patron may occupy the player-dealer position. The required offer of the player-dealer position prior to the start of every hand is necessary to ensure that the player-dealer position is continuously rotated. The requirement that both verbal and physical offering of the player-dealer is necessary to ensure that patrons are advised of when they may occupy the player-dealer position in an overt and consistent manner. In particular, if any patrons have visual or auditory disabilities or impairments, the verbal and physical offering of the player-dealer position will accommodate those patrons.

The purpose of requiring that the offer of the player-dealer position be visible to surveillance cameras is to ensure that there is documentation of the dealers' compliance, or noncompliance, with the game rules. This is necessary for the Bureau to monitor compliance with the regulations.

Subdivision (a)(4) provides that the player-dealer position shall rotate to at least two players other than the TPPPS within a 40-minute period, or the game shall end. This subdivision also provides that if there is only one player at the table in addition to the TPPPS, the player-dealer position shall rotate to the other player at least two times within a 40-minute period.

Standard controlled gaming tables typically seat between six and eight players. At an estimated two to four minutes of time for a single round of play, or an average of three minutes, this would calculate to between 18 and 24 minutes for each of the six to eight seated players to potentially act as the player-dealer, and twice within an approximate 40-minute period. The proposed rotation requirement would thus require rotation of the player-dealer position between three players during an approximate two complete play-throughs of the six to eight seated positions, with the third player-dealer rotation beginning near the end of the 40-minute period.

The purpose of this language is to ensure that the player-dealer position is rotated among the players in a continuous and systematic manner. This is necessary to ensure that the game does not fall within the definition of a banking game or banked game under Business and Professions Code section 19805, subdivision (c). In other words, the player-dealer position would not remain with one party for an unrestricted time during the play of a controlled game featuring a player-dealer position, which allows that person to maintain or operate a bank.

Subdivision (a)(5) provides that if rotation of the player-dealer position has not occurred as prescribed in proposed subdivision (a)(4), play of the game shall stop, all cards and wagers shall be cleared, and no further cards may be dealt, or wagers made. This subsection also provides that no further play shall be allowed unless and until another person accepts the player-dealer position. The purpose of this language is to provide a self-executing means of enforcing the required rotation of the player-dealer position. Enforcement of the regulation would be implemented through mandated stoppage of game play. This subdivision is necessary to ensure that the player-dealer position actually rotates continuously and systematically so as not to bring a game within the definition of a banking game as specified in Business and Professions Code section 19805, subdivision (c).

Subdivision (a)(6) provides that if the rotation of the player-dealer position has not occurred as prescribed in proposed subdivision (a)(4), and there is an active round of play in progress, that round of play may be completed before the game ends as specified in proposed subdivision (a)(5). The purpose of this language is to allow a round of play that has commenced when the 40-minute mark is reached. This is necessary to avoid any actual or perceived unfairness that may result if a round of play is not complete when the game is required to stop (e.g., if the game were to stop while some players have been paid out while others have not).

Subdivision (a)(7) provides that if a TPPPS is acting as the player-dealer, the next person to act as the player-dealer shall not be the TPPPS. The purpose of this language is to ensure that the player-dealer position rotates to other players, and not just the TPPPS. Since the employees of a TPPPS are acting on behalf of the TPPPS, and not in their individual capacities, the TPPPS should be considered the player or player-dealer, and not the particular TPPPS employee. If, for example, the TPPPS were to simply change players in order to keep the player-dealer position without rotating to another player within the 40-minute period, this would in effect allow the

TPPPS to maintain or operate a bank. This rule is necessary to ensure that the player-dealer position actually rotates continuously and systematically so as not to bring a game within the definition of a banking game as specified in Business and Professions Code section 19805, subdivision (c).

Subdivision (b) imposes limitations in a game that features a rotating player-dealer position with respect to the payment of winnings to winning players, the collection of wagers from losing players, and the placement of wagers. The purpose of this language is to specify the scope of the regulation's application, i.e., only to games that feature a rotating player-dealer position.

Subdivision (b)(1) provides that a game featuring a rotating player-dealer position shall not allow any person to place a wager directly against the TPPPS when the TPPPS is not in the player-dealer position. This language is necessary to implement Business and Professions Code section 19805, subdivision (ag), and to prevent a TPPPS from maintaining or operating a bank even when not acting as the player-dealer.

Subdivision (b)(2) prohibits the TPPPS from settling any wagers at the table when they are not occupying the player-dealer position. The player-dealer is the only person permitted to wager against multiple players at the same table. The purpose of this language is to ensure that the player-dealer position is rotated among the players in a continuous and systematic manner. This is necessary to ensure that the rules of a game do not fall within the definition of a banking game or banked game under Business and Professions Code section 19805, subdivision (c). In other words, the player-dealer position would not remain with the TPPPS for an unrestricted time during the play of a controlled game featuring a player-dealer position, which allows that person to maintain or operate a bank.

Subdivision (c) provides that no more than one TPPPS may offer services at a table where a game featuring a rotating player-dealer position is offered for play. The purpose of this language is to limit the participation of the TPPPS to a single table. This language is necessary to prevent the employment of multiple TPPPS in an effort to avoid the continuous and systematic rotation of the player-dealer position among the other players at the table, in contravention of the regulation, and to ensure that the game does not fall within the definition of a banking game or banked game under Business and Professions Code section 19805, subdivision (c).

B. ADD CALIFORNIA CODE OF REGULATIONS, TITLE 11, SECTION 2077

The purpose of this regulation is to expedite Bureau review of a previously approved or pending game, or modification of a previously approved game to determine whether it is in compliance with proposed section 2076. The associated fees shall be waived for a limited period of time. This regulation is necessary to establish a procedure and timeline for reviewing previously approved games featuring a player-dealer position.

Subdivisions (a) requires a gambling enterprise that offers a previously been approved game featuring a player-dealer position to submit (1) a written request seeking to modify the games for compliance with section 2076, or (2) updated game rules that comply with section 2076, 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 60-day request period provides the regulated industry with a reasonable timeframe in which to modify their games to comply with section 2076.

Subdivision (b) requires the Bureau to approve or disapprove a request to review a previously approved game or modification within 120 days of receipt of the request. 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 622 Bureau approved games that feature a rotating player-dealer position, excluding blackjack-style games. Given the number of games that include a player-dealer position, the Bureau has determined that the 120-day review period would reasonably accommodate the additional workload required to conduct game reviews under this proposed section.

Subdivision (c) provides that a game featuring a rotating player-dealer position that is pending review when section 2076 becomes effective. The Bureau shall only approve the game if it complies with section 2076, and if not, a gambling enterprise shall modify the game's rules or withdraw the game. 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 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 game from review, they may be entitled to a refund.

Subdivision (d) provides that an "Application for Controlled Game Review," BGC-APP-026 (Rev. 09/17) is not required to submit a written request to modify a game. This language is necessary to describe how a request may be submitted to the Bureau to modify games featuring the player-dealer rotation for compliance with section 2076 and to reduce unnecessary paperwork.

Subdivision (e) provides that one written request for modification of all California games approved for a gambling enterprise is sufficient; however, individual games rules must be modified and submitted with the written request. The purpose and necessity of this language is to establish a process for reviewing modified games and ensuring the submission of all requisite documentation to the Bureau, thereby enabling an informed decision-making process.

Subdivision (f) provides that no other modifications shall be made to the game during the expedited review process. The purpose and necessity of this language is to specify that this review process is solely with respect to compliance with section 2076, and not for other modifications. Game modifications other than for purposes of compliance with section 2076 necessitate additional time for review to ensure that the proposed modification is compliant with the Act and other laws governing the play of controlled games. Thus, this requirement would restrict the modifications allowed to accommodate the anticipated high volume of submissions.

Subdivision (g) requires the Bureau to withdraw approval of previously approved games if it does not receive a request to review or modify the game within the time specified in proposed section 2076, 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. Review of the Chief's decision is subject to the limitations imposed by Business and Professions Code section 19804. This language is necessary to provide notice to the regulated industry that approval of a game may be withdrawn if the Bureau does not timely receive a request for review of a previously approved game and describes how to appeal a withdrawal.

Subdivision (h) waives the deposit required by section 2037, subdivision (a)(1)(L) for a game under review pursuant to proposed section 2076, 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.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDIES, REPORTS, OR 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>

STANDARDIZED REGULATORY IMPACT ANALYSIS

The standardized regulatory impact analysis (SRIA) required by Government Code section 11346.3, subdivision (c), and the Department of Finance's comment letter on the SRIA, and 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.

REASONABLE ALTERNATIVES AND THE REASONS 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.

A. Section 2076, subdivision (a)

Alternative: The Department considered and rejected an alternative rule with respect to the timing of the rotation of the player-dealer position. This alternative included requiring rotation of the player-dealer position after every hand, or after every two hands.

Reasoning: The Department rejected these alternatives. It was the Department's view that requiring rotation of the player-dealer position on a one-hand or two-hand basis would be disruptive to the play of the game, and would be unreasonably burdensome to the regulated industry and its patrons. It was also the Department's view that this stringent of a rotation basis would not be necessary to ensure that a game featuring a rotating player-dealer position would not fall within the definition of a banking game under Business and Professions Code section

19805, subdivision (c), since the rotation of the player-dealer position on a continuous and systematic basis could include less restrictive measures.

Alternative: The Department considered and rejected an alternative rule with respect to the consequences for failing to rotate the player-dealer position. This alternative would have required that the play of the game stop for a specified period of time before play could resume in the event that the player-dealer position did not rotate as required by the regulation.

Reasoning: The Department rejected implementing a specified time period during which no play of the game would be allowed when the player-dealer position did not rotate in accordance with the time period specified in the proposed regulation. This alternative was deemed to be too punitive and would not serve as a useful means of preventing the maintenance or operation of a bank, since less restrictive means could be implemented to ensure that rotation of the player-dealer position actually occur such that the game would remain within the exception to a banking game under Business and Professions Code section 19805, subdivision (c).

Performance Standard as Alternative:

The regulations do not use performance standards, but instead prescribe specific rules to differentiate permissible player-dealer games from prohibited banking games.