

GAMING ACTIVITY AUTHORIZATION SUMMARY OF PROPOSED REGULATIONS

INTRODUCTION:

Purpose and Rationale for Proposed Regulations

The Department of Justice, Bureau of Gambling Control (Bureau) is considering amendments to section 2071 of Title 11, Division 3, Chapter 1, Article 7 of the California Code of Regulations related to gaming activity authorization. The proposed amendments to the regulation would better reflect Penal Code section 337j(f) which provides for the optional waiver of collection of the fee or portion of the collection fee.

This rulemaking proposal is intended to clarify the Bureau's requirements for the approval of gaming activity/activities offered for play at licensed gambling establishments within California.

The Bureau has not made any significant changes to this section of its regulations since the section was enacted in the late 1990s. Changes in statute as well as the evolution of the industry necessitate an update to the Bureau's regulations.

Background and Existing Law

The Gambling Control Act (Act) (Business and Professions Code section 19800 *et seq.*) established statewide regulation of legal gambling under a bifurcated system of administration involving the Division of Gambling Control within the Attorney General's Office and the five-member California Gambling Control Commission appointed by the governor.

Business and Professions Code section 19826 (g) vests to the Bureau the responsibility of approving the play of any controlled game, including placing restrictions and limitations on the play of the game and the approval of collection rates for each gaming activity. The Bureau is also responsible for posting on its website the rules of play and the collection rates for each gaming activity approved for play at each gambling establishment.

Business and Professions Code section 19984 permits licensed gambling enterprises to contract with a third party for the purpose of providing proposition player services subject to approval by the Bureau.

Penal Code section 330.11 provides that banked games do not include those games where the published rules feature a player-dealer position provided that the opportunity to serve as the player-dealer position is "continuously and systematically rotated" amongst each of the players of the game at the table. However, a player is not mandated to accept the deal when it falls to him or her as the deal is rotated amongst the players, if the Bureau "finds that the rules of the game render the maintenance of or operation of a bank impossible by other means."

Penal Code section 330.11 and Business and Professions Code section 19984 were added to statute in 2000, with the enactment of Assembly Bill 1416 (Wesson), authorizing gambling establishments to operate controlled games utilizing a player-dealer position, as defined, and to contract with a third party provider of proposition player services for the provision of proposition player services, subject to specified conditions and regulatory requirements. This bill also

defined "player-dealer" as found presently in Business and Professions Code section 19805 (ag).¹.

Penal Code section 337j(f) provides that the gambling establishment may waive collection of the fee or portion of the fee in any hand or round of play after the hand or round has begun pursuant to the published rules of the game and the notice provided to the public.

Penal Code section 337j was first added to statute in 1997 with the enactment of Senate Bill 8 (Lockyer), and has subsequently been amended eight times². In 2003, Assembly Bill 278 (Bermudez) amended subdivision (f), adding the following language:

"The amount of fees charged for all wagers shall be determined prior to the start of play of any hand or round. However, the gambling establishment may waive collection of the fee or portion of the fee in any hand or round of play after the hand or round has begun pursuant to the published rules of the game and the notice provided to the public." (Emphasis added)

In an analysis prepared for the Senate Governmental Organization Committee, the amendment to this section was purported to be "a 'player-friendly' change benefitting those players who do not receive action on their wager, or where a hand folds and there is no betting."³

Statute vests to the Bureau the responsibility to approve the play of any controlled game, including placing limitations or restriction on how any game is played, and to approve collection rates. Current Bureau regulations do not specifically address collection rates for games that include the player-dealer position and dual rates for the player and the player-dealer positions. A regulatory change is necessary to effectively identify collection rate criteria so as to ensure compliance with collect rate maximums proscribed in statute.

In addition, Bureau regulations do not adequately address how to effectuate existing statute to provide a better likelihood that more players may accept the deal as it is continuously and systematically rotated amongst all the players. One way to better ensure the likelihood more players at the table in a game will accept the deal when it is rotated is for collection rates to be more equitable between players and the player-dealer position.

Statute also requires the Bureau to post on its website the rules of play and the collection rates for each gaming activity approved for play at each gambling establishment. One aspect of game approvals that has not been adequately addressed in the Bureau's regulation is identification of the criteria upon which a collection fee may be waived, as allowed for in Penal

¹ Business and Professions Code section 19805 (ag) "Player-dealer" and "controlled game featuring 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 amongst the other seated players in the game.

² 1998 – AB 518; 2001 – AB 54; 2003 – AB 278; 2004 – SB 1796; 2005 – AB 1753; 2007 – SB 82; 2007 – AB 356; 2008 – SB 1369

³State of California, Legislative Counsel, "Official California Legislative Information http://www.leginfo.ca.gov/pub/03-04/bill/asm/ab_0251-0300/ab_278_cfa_20030709_094258_sen_comm.html

Code. Requiring licensees to identify the criteria and having this criterion readily available in the approved, posted game rules will ensure that the public is noticed of instances when the collection fee may be waived in a live game setting and others when it is not.

Collection rates and continuous and systematic rotation of the bank to avoid prohibited sole-source banking of games go hand-in-hand. The gambling enterprise licensee's option to waive the collection of a fee in a live-game setting still remains a "business friendly" aspect of controlled gambling. Bureau regulations should address the elements of a live-game waiver, collection rates, and continuous and systematic rotation of the deal to ensure that the manner of collection of fees, the games approved, the method of play, and the rotation of the deal are consistent with legal framework of permitted controlled gaming.

In 2011, the Bureau first contemplated changes to the scope of collection rate approvals and how such approvals were conducted. After further discussion with members of the cardroom industry and Bureau management, it was decided at that time that changes to the Bureau's regulation would be necessary to provide clarification and guidelines on collection rates.

In 2013, Bureau management met with members of the cardroom industry to discuss collection rates and a static "zero collection" rate versus what is outlined in Penal Code section 337j(f). It was determined at that time that changes to the Bureau's regulations would be necessary to address the waiver of collection fees provided for in Penal Code section 337j(f).

Rather than initiating separate rulemaking proceedings to address the issue of collection rates and the waiver of collection fees, the Bureau is pursuing pre-notice activities towards a single rulemaking in the coming months.

In May 2014, the Bureau hosted a roundtable discussion on changes to its regulations for approval of gaming activities. During this roundtable, the Bureau received several comments from the cardroom industry about the potential impacts change to the Bureau's regulations could pose. Other comments from the cardroom industry related that collection rates are established by cardroom licensees in light of pricing to the customer. Other comments related that every cardroom in California charges a collection fee for players. Moreover, other comments highlighted the differences between the games offered at licensed cardrooms and those offered at tribal casinos. The primary difference highlighted was the player-dealer position in California-specific games, whereas tribal casinos do not offer this type of game.

Proposed Changes

The addition of the phrase "controlled game" was added throughout the proposed regulation to add clarity of the scope of the Bureau's approval process. Also included in the proposal is the requirement only for the licensee to identify in their submission to the Bureau for controlled game approval and modifications the parameters for which the licensee may waive the collection fee, pursuant to Penal Code section 337j(f).

The proposed regulatory change consists of three options to amend section 2071.

Option 1:

Option 1 incorporates several parameters outlined in legislation that did not pass in 2014 (Assembly Bill 820). Option 1 includes the requirement that if a fee had not been waived pursuant to the game rules that each player, including the player-dealer position, must pay a fee

from his or her own funds; and, that the fee assessed to the players shall not be less than one-third of the amount of the fee assessed to the player-dealer position in each hand or round of play. The proposed text would “cap” the increase of the collection rate so that the difference between the rates does not make acceptance of the player-dealer position cost prohibitive to all the players of the game at the table. Option 1 also includes a definition for collection rate or rate.

The pertinent selection for Option 1 is as follows for (a)(2)

- (2) The rules for each controlled game and gaming activity, including, where applicable, a description of the event that determines the winner of the controlled game and gaming activity, the wagering conventions, and the fee collection and assessment methods, including the criteria upon which a fee may be waived and the procedures for implementing the waiver;
 - (A) If a fee has not been waived pursuant to approved game rules, each player shall pay a fee from his or her own funds to the gambling enterprise.
 - (B) If a fee has not been waived pursuant to approved game rules, in games that feature a player-dealer position, the player-dealer and each player shall pay a fee, from his or her own funds, to the gambling enterprise for each hand or round of play. An authorized player as defined in Section 12200(b)(3) may use the funds of a registered or licensed TPPPS or a Gambling Business.
 - (i) The fee assessed to each player for his/her wager shall not be less than one-third of the amount of the fee assessed to the player-dealer in each hand or round of play; and
 - (ii) The criteria upon which the fee is determined must be the same for the player(s) and the player-dealer.
 - (C) For purposes of this section, collection rate or rate means the fee charged for playing in the controlled game in combination with the criteria upon which it was determined.

The pertinent selection for Option 1 is as follows for (b)(2):

- (2) The rules for each controlled game and gaming activity, including, where applicable, a description of the event that determines the winner of the controlled game and gaming activity, the wagering conventions, and the fee collection and assessment methods, including the criteria upon which a fee may be waived and the procedures for implementing the waiver;
 - (A) If a fee has not been waived pursuant to approved game rules, each player shall pay a fee from his or her own funds to the gambling enterprise.
 - (B) If a fee has not been waived pursuant to approved game rules, in games that feature a player-dealer position, the player-dealer and each player shall pay a fee, from his or her own funds, to the gambling enterprise for each hand or round of play. An authorized player as defined in Section 12200(b)(3) may use the funds of a registered or licensed TPPPS or a Gambling Business.
 - (i) The fee assessed to each player for his/her wager shall not be less than one-third of the amount of the fee assessed to the player-dealer in each hand or round of play.

(ii) The criteria upon which the fee is determined must be the same for the player(s) and the player-dealer.

Option 1 – Pros/Cons

Pro

- Preserves the “business friendly” option for waiver of the collection fee, pursuant to Penal Code section 337j(f)
- Provides guideline for the incremental increase of collection fees
- Provides notice via posted game rules of instances when the collection fee may be waived in a live game setting and others when it is not.
- Ensures that licensees receive a collection for all players at the table when the fee is not waived in a live-game setting.

Con

- Does not provide enough guidance to licensees for the establishment of collection rates so as not to exceed the maximum proscribed by Penal Code section 337j(f).
- The measure used to establish fee increase may not be viewed by players as equitable between all the players.

Option 2:

Is similar to what is proposed in Option 1, however, Option 2 establishes that the increments used to increase the collection rate be capped at the lowest fee charged for that table or that game. Option 2 would “cap” the increase of the collection rate at the lowest collect rate assessed as the measure for incremental increases from rate to rate. This rate establishment scheme provides some guideline to establish collection fee schedules that might lend the acceptance of the player-dealer position less cost prohibitive to all the players of the game at the table. Option 2 also includes a definition for collection rate or rate, which varies from what is proposed for other options.

The pertinent selection for Option 2 is as follows for (a)(2)

- (2) The rules for each **controlled game and** gaming activity, including, where applicable, a description of the event that determines the winner of the **controlled game and** gaming activity, the wagering conventions, and the fee collection and assessment methods, **including the criteria upon which a fee may be waived and the procedures for implementing the waiver;**
- (A) If a fee has not been waived pursuant to approved game rules, each player shall pay a fee from his or her own funds to the gambling enterprise.**
- (B) If a fee has not been waived pursuant to approved game rules, in games that feature a player-dealer position, the player-dealer and each player shall pay a fee, from his or her own funds, to the gambling enterprise for each hand or round of play. An authorized player as defined in Section 12200(b)(3) may use the funds of a registered or licensed TPPPS or a Gambling Business.**
- (i) If more than one fee is taken per table, the increase from rate to rate shall not increase by more than the amount of the lowest fee.**
- (C) For purposes of this section, collection rate or rate means the amount of the fee charged for playing in the controlled game.**

The pertinent selection for Option 2 is as follows for (b)(2)

- (2) The rules for each controlled game and gaming activity, including, where applicable, a description of the event that determines the winner of the controlled game and gaming activity, the wagering conventions, and the fee collection and assessment methods, including the criteria upon which a fee may be waived and the procedures for implementing the waiver;
- (A) If a fee has not been waived pursuant to approved game rules, each player shall pay a fee from his or her own funds to the gambling enterprise.
- (B) If a fee has not been waived pursuant to approved game rules, in games that feature a player-dealer position, the player-dealer and each player shall pay a fee, from his or her own funds, to the gambling enterprise for each hand or round of play. An authorized player as defined in Section 12200(b)(3) may use the funds of a registered or licensed TPPPS or a Gambling Business.
- (i) If more than one fee is taken per table, the increase from rate to rate shall not increase by more than the amount of the lowest fee.

Option 2 – Pros/Cons

Pro

- Preserves the “business friendly” option for waiver of the collection fee, pursuant to Penal Code section 337j(f)
- Provides guideline for the incremental increase of collection fees
- Provides notice via posted game rules of instances when the collection fee may be waived in a live game setting and others when it is not.
- Ensures that licensees receive a collection for all players at the table when the fee is not waived in a live-game setting.

Con

- Could be viewed as restrictive to business as it eliminates one player, typically the third-party provider of proposition player services, paying all collection fees at the table.

Option 3:

This option expands on Option 2, in that it specifically addresses the rate of increase between the lowest collection rate to the highest collection rate. In addition, Option 3 requires that all players at the table be charged the same fee for the same level of wager, with no differential rate between the player and the player-dealer position. Option 3 includes a definition for collection rate and rate.

The pertinent selection for Option 3 is as follows for (a)(2)

- (2) The rules for each controlled game and gaming activity, including, where applicable, a description of the event that determines the winner of the controlled game and gaming activity, the wagering conventions, and the fee collection and assessment methods, including the criteria upon which a fee may be waived and the procedures for implementing the waiver;
- (A) If a fee has not been waived pursuant to approved game rules, each player shall pay a fee from his or her own funds to the gambling enterprise.

- (B)** If a fee has not been waived pursuant to approved game rules, in games that feature a player-dealer position, the player-dealer and each player shall pay a fee, from his or her own funds, to the gambling enterprise for each hand or round of play. An authorized player as defined in Section 12200(b)(3) may use the funds of a registered or licensed TPPPS or a Gambling Business.
- (i)** All players, including the player-dealer, shall be charged the same fee for the same level of wager; and
- (ii)** If more than one fee is taken per table, the increase from rate to rate shall not increase by more than the amount of the lowest fee.
- (C)** For purposes of this section, collection rate or rate means the fee charged for playing in the controlled game in combination with the criteria upon which it was determined.

The pertinent selection for Option 3 is as follows for (b)(2)

- (2)** The rules for each controlled game and gaming activity, including, where applicable, a description of the event that determines the winner of the controlled game and gaming activity, the wagering conventions, and the fee collection and assessment methods, including the criteria upon which a fee may be waived and the procedures for implementing the waiver;
- (A)** If a fee has not been waived pursuant to approved game rules, each player shall pay a fee from his or her own funds to the gambling enterprise.
- (B)** If a fee has not been waived pursuant to approved game rules, in games that feature a player-dealer position, the player-dealer and each player shall pay a fee, from his or her own funds, to the gambling enterprise for each hand or round of play. An authorized player as defined in Section 12200(b)(3) may use the funds of a registered or licensed TPPPS or a Gambling Business.
- (i)** All players, including the player-dealer, shall be charged the same fee for the same level of wager; and
- (ii)** If more than one fee is taken per table, the increase from rate to rate shall not increase by more than the amount of the lowest fee.

Option 3 – Pros/Cons

Pro

- Requires a collection from all players, if the fee has not been waived pursuant to Penal Code section 337j(f) and as approved by the Bureau.
- Preserves the “business friendly” option for waiver of the collection fee, pursuant to Penal Code section 337j(f)
- Provides guideline for the specific, incremental increase of collection fees
- Provides notice via posted game rules of instances when the collection fee may be waived in a live game setting and others when it is not.
- Ensures that licensees receive a collection for all players at the table when the fee is not waived in a live-game setting.
- Anticipated increase in players accepting the deal when it is rotated amongst all the players at the table.

Con

- Could be viewed as restrictive to business as it eliminates one player, typically the third-party provider of proposition player services, paying all collection fees at the table.