



October 25, 2023

Via E-Mail and U.S. Mail

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

Re: Draft Rotation Concept Language, September 11, 2023

Dear Director Morrow and Ms. McMillen:

This letter is sent on behalf of our three cardrooms: Seven Mile Casino, The Saloon at Stones Gambling Hall, and The Tavern at Stones Gambling Hall. Collectively, we employ over 750 hard-working Californians in our cardrooms and provide almost one million dollars in table taxes and other fees to our local communities.

We write this comment letter to strongly oppose the draft rotation concept language. We agree with the statements and legal authority set forth in and incorporate by reference the letter submitted by Munger, Tolles & Olson LLP on behalf of multiple cardroom industry associations.

For almost a decade the Bureau has held meetings, conducted workshops, and participated in other means of informal rule making. Throughout that process, the industry, both individual members and collectively as a group, has submitted reams of information that articulates the statutory and case law that supports the legality of our games and the approvals under which we currently offer games to the public. To date, the Bureau and the various Attorneys General who have held the role, have failed to provide any written legal response that contradicts this analysis. If the Bureau is genuine in its interest for a meaningful rulemaking process, it must provide the actual reasons for the need for these new regulations, its statutory authority to move forward, and an explanation regarding why these regulations are the least restrictive means for achieving its goal. Without this information, it is impossible for the industry to provide

meaningful comments to assist the Bureau in obtaining the required Standardized Regulatory Impact Assessment (SRIA).

The proposed regulations appear to both contradict and disregard two decades of regulatory approvals, and ignore the clear legislative intent of the Gambling Control Act (the “Act”).

California Government Code section 11346.2 has very specific requirements for an agency that wishes to adopt new regulations. Subdivision (a), paragraph 2 states:

The agency shall include a notation following the express terms of each California Code of Regulations section, listing the specific statutes or other provisions of law authorizing the adoption of the regulation and listing the specific statutes or other provisions of law being implemented, interpreted, or made specific by that section in the California Code of Regulations.

(Cal. Gov. Code § 11346.2(a)(2).)

The authorizing statutes and case law cited in the concept regulations do not meet this standard. Further, the proposed language is contradictory to existing statutes within the Act and the regulations already promulgated by the Commission implementing its provisions.

Section 11346.2, subdivision (b), also requires, in pertinent part:

An initial statement of reasons for proposing the adoption, amendment, or repeal of a regulation. This statement of reasons shall include, but not be limited to, all of the following:

(1) A statement of the specific purpose of each adoption, amendment, or repeal, the problem the agency intends to address, and the rationale for the determination by the agency that each adoption, amendment, or repeal is reasonably necessary to carry out the purpose and address the problem for which it is proposed. The statement shall enumerate the benefits anticipated from the regulatory action, including the benefits or goals provided in the authorizing statute. These benefits may include, to the extent applicable, nonmonetary benefits such as the protection of public health and safety, worker safety, or the environment, the prevention of discrimination, the promotion of fairness or social equity, and the increase in openness and transparency in business and government, among other things. Where the adoption or amendment of a regulation would mandate the use of specific technologies or equipment, a statement

of the reasons why the agency believes these mandates or prescriptive standards are required.

(2) ...

(B) For a major regulation proposed on or after November 1, 2013, the standardized regulatory impact analysis required by subdivision (c) of Section 11346.3.

(3) An identification of each technical, theoretical, and empirical study, report, or similar document, if any, upon which the agency relies in proposing the adoption, amendment, or repeal of a regulation.

(4)

**(A) A description of reasonable alternatives to the regulation and the agency's reasons for rejecting those alternatives.** Reasonable alternatives to be considered include, but are not limited to, alternatives that are proposed as less burdensome and equally effective in achieving the purposes of the regulation in a manner that ensures full compliance with the authorizing statute or other law being implemented or made specific by the proposed regulation. In the case of a regulation that would mandate the use of specific technologies or equipment or prescribe specific actions or procedures, the imposition of performance standards shall be considered as an alternative.

(B) A description of reasonable alternatives to the regulation that would lessen any adverse impact on small business and the agency's reasons for rejecting those alternatives.

(C) Notwithstanding subparagraph (A) or (B), an agency is not required to artificially construct alternatives or describe unreasonable alternatives.

...

(Cal. Gov. Code § 11346.2, subd. (b), *emphasis added*.) The Bureau is required to identify the problem it needs to address, the rationale for its determination, and the explanation of why its proposal is reasonably necessary to effectuate its purpose. To date, none of this information has been provided. Further, the Bureau has provided zero explanation as to why the regulations are not consistent with the framework used from approvals to date. In order to create a meaningful informal process, the Bureau must provide these explanations now with actual legal analysis and supporting information for their interpretation. Its failure to do so during the last ten years has only confirmed the

industry's conclusion that this is regulatory action is purely political, not actually supported by any defensible legal reasoning or purpose.

We look forward to an interactive process; however, it should begin with the Bureau complying with the statutory mandates outlined in the Government Code for all agency rulemaking.

Sincerely,

Heather U. Guerena