

AMENDED IN SENATE SEPTEMBER 6, 2001

AMENDED IN ASSEMBLY MARCH 13, 2001

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 54

Introduced by Assembly Member Wesson

December 4, 2000

An act to amend Section 19805 of the Business and Professions Code, ~~and to amend Section~~ *Sections 330.11 and 337j* of the Penal Code, *and to amend Section 1 of Chapter 1023 of the Statutes of 2000*, relating to gambling clubs.

LEGISLATIVE COUNSEL'S DIGEST

AB 54, as amended, Wesson. Gaming clubs.

Existing law provides that every person who deals, plays, carries on, opens, or conducts, or who plays or bets at or against any banking game is guilty of a misdemeanor. A “banking game” or a “banked game” is one in which the bank is involved in play and serves as the ultimate source and repository of funds, dwarfing that of all other participants in the game.

This bill would change the definition of “banking game” or “banked game” by no longer requiring that the bank serve as the ultimate source and repository of funds or dwarf all other participants. By changing the definition of a crime, this bill would impose a state-mandated local program.

With respect to the collection of player fees in gambling establishments, existing law provides that no fee may be calculated as a portion of wagers made or from winnings earned. Existing law

provides that fees charged for all wagers be determined and collected prior to the start of play of any hand or round. Violation of these provisions is punishable by imprisonment in a county jail for not more than one year, or by a fine of not more than \$5,000, or by both that imprisonment and fine. Existing law also provides that its provisions codify the holding in Sullivan v. Fox (1987) 189 Cal.App.3d 673, as to the collection of player fees.

This bill would provide that no fee may be calculated as a fraction or percentage of wagers or winnings earned. This bill would provide that fees must be determined before the start of play, but may be collected before or after the start of play. This bill also would remove provisions concerning codification of court decisions. This bill would further revise statements of intent.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 19805 of the Business and Professions
- 2 Code is amended to read:
- 3 19805. As used in this chapter, the following definitions shall
- 4 apply:
- 5 (a) "Affiliate" means a person who, directly or indirectly
- 6 through one or more intermediaries, controls, is controlled by, or
- 7 is under common control with, a specified person.
- 8 (b) "Applicant" means any person who has applied for, or is
- 9 about to apply for, a state gambling license, a key employee
- 10 license, a registration, a finding of suitability, a work permit, a
- 11 manufacturer's or distributor's license, or an approval of any act
- 12 or transaction for which the approval or authorization of the
- 13 commission or division is required or permitted under this chapter.
- 14 (c) "Banking game" or "banked game" does not include a
- 15 controlled game if the published rules of the game feature a
- 16 player-dealer position and provide that this position must be



1 continuously and systematically rotated amongst each of the
2 participants during the play of the game, ensure that the
3 player-dealer is able to win or lose only a fixed and limited wager
4 during the play of the game, and preclude the house, another entity,
5 a player, or an observer from maintaining or operating as a bank
6 during the course of the game. For purposes of this section it is not
7 the intent of the Legislature to mandate acceptance of the deal by
8 every player if the division finds that the rules of the game render
9 the maintenance of or operation of a bank impossible by other
10 means. The house shall not occupy the player-dealer position.

11 (d) “Board” means the California Gambling Control Board.

12 (e) “Commission” means the California Gambling Control
13 Commission.

14 (f) “Controlled gambling” means to deal, operate, carry on,
15 conduct, maintain, or expose for play any controlled game.

16 (g) “Controlled game” means any controlled game, as defined
17 by subdivision (e) of Section 337j of the Penal Code.

18 (h) “Director,” when used in connection with a corporation,
19 means any director of a corporation or any person performing
20 similar functions with respect to any organization. In any other
21 case, “director” means the Director of the Division of Gambling
22 Control.

23 (i) “Division” means the Division of Gambling Control in the
24 Department of Justice.

25 (j) “Finding of suitability” means a finding that a person meets
26 the qualification criteria described in subdivisions (a) and (b) of
27 Section 19848, and that the person would not be disqualified from
28 holding a state gambling license on any of the grounds specified
29 in subdivision (a) of Section 19850.

30 (k) “Game” and “gambling game” means any controlled
31 game.

32 (l) “Gambling” means to deal, operate, carry on, conduct,
33 maintain, or expose for play any controlled game.

34 (m) “Gambling enterprise employee” means any natural
35 person employed in the operation of a gambling enterprise,
36 including, without limitation, dealers, floormen, security
37 employees, countroom personnel, cage personnel, collection
38 personnel, surveillance personnel, data-processing personnel,
39 appropriate maintenance personnel, waiters and waitresses, and
40 secretaries, or any other natural person whose employment duties



1 require or authorize access to restricted gambling establishment
2 areas.

3 (n) “Gambling establishment,” “establishment,” or “licensed
4 premises” means one or more rooms where any controlled
5 gambling or activity directly related thereto occurs.

6 (o) “Gambling license” or “state gambling license” means
7 any license issued by the state that authorizes the person named
8 therein to conduct a gambling operation.

9 (p) “Gambling operation” means exposing for play one or
10 more controlled games that are dealt, operated, carried on,
11 conducted, or maintained for commercial gain.

12 (q) “Gross revenue” means the total of all compensation
13 received for conducting any controlled game, and includes interest
14 received in payment for credit extended by an owner licensee to
15 a patron for purposes of gambling, except as provided by
16 regulation.

17 (r) “House” means the gambling establishment, and any
18 owner, shareholder, partner, key employee, or landlord thereof.

19 (s) “Independent agent,” except as provided by regulation,
20 means any person who does either of the following:

21 (1) Collects debt evidenced by a credit instrument.

22 (2) Contracts with an owner licensee, or an affiliate thereof, to
23 provide services consisting of arranging transportation or lodging
24 for guests at a gambling establishment.

25 (t) “Institutional investor” means any retirement fund
26 administered by a public agency for the exclusive benefit of
27 federal, state, or local public employees, any investment company
28 registered under the Investment Company Act of 1940 (15 U.S.C.
29 Sec. 80a-1 et seq.), any collective investment trust organized by
30 banks under Part Nine of the Rules of the Comptroller of the
31 Currency, any closed-end investment trust, any chartered or
32 licensed life insurance company or property and casualty
33 insurance company, any banking and other chartered or licensed
34 lending institution, any investment advisor registered under the
35 Investment Advisors Act of 1940 (15 U.S.C. Sec. 80b-1 et seq.)
36 acting in that capacity, and other persons as the board may
37 determine for reasons consistent with the policies of this chapter.

38 (u) “Key employee” means any natural person employed in
39 the operation of a gambling enterprise in a supervisory capacity or
40 empowered to make discretionary decisions that regulate



1 gambling operations, including, without limitation, pit bosses,
2 shift bosses, credit executives, cashier operations supervisors,
3 gambling operation managers and assistant managers, managers
4 or supervisors of security employees, or any other natural person
5 designated as a key employee by the division for reasons consistent
6 with the policies of this chapter.

7 (v) “Key employee license” means a state license authorizing
8 the holder to be associated with a gambling enterprise as a key
9 employee.

10 (w) “Licensed gambling establishment” means the gambling
11 premises encompassed by a state gambling license.

12 (x) “Limited partnership” means a partnership formed by two
13 or more persons having as members one or more general partners
14 and one or more limited partners.

15 (y) “Limited partnership interest” means the right of a general
16 or limited partner to any of the following:

17 (1) To receive from a limited partnership any of the following:

18 (A) A share of the revenue.

19 (B) Any other compensation by way of income.

20 (C) A return of any or all of his or her contribution to capital
21 of the limited partnership.

22 (2) To exercise any of the rights provided under state law.

23 (z) “Owner licensee” means an owner of a gambling enterprise
24 who holds a state gambling license.

25 (aa) “Person,” unless otherwise indicated, includes a natural
26 person, corporation, partnership, limited partnership, trust, joint
27 venture, association, or any other business organization.

28 (ab) “Player” means a patron of a gambling establishment who
29 participates in a controlled game.

30 (ac) “Player-dealer” and “controlled game featuring a
31 player-dealer position” refer to a position in a controlled game, as
32 defined by the approved rules for that game, in which seated player
33 participants are afforded the temporary opportunity to wager
34 against multiple players at the same table, provided that this
35 position is rotated amongst the other seated players in the game.

36 (ad) “Publicly traded racing association” means a corporation
37 licensed to conduct horse racing and simulcast wagering pursuant
38 to Chapter 4 (commencing with Section 19400) whose stock is
39 publicly traded.



1 (ae) “Qualified racing association” means a corporation
2 licensed to conduct horse racing and simulcast wagering pursuant
3 to Chapter 4 (commencing with Section 19400) that is a wholly
4 owned subsidiary of a corporation whose stock is publicly traded.

5 (af) “Work permit” means any card, certificate, or permit
6 issued by the division or by a county, city, or city and county,
7 whether denominated as a work permit, registration card, or
8 otherwise, authorizing the holder to be employed as a gambling
9 enterprise employee or to serve as an independent agent. A
10 document issued by any governmental authority for any
11 employment other than gambling is not a valid work permit for the
12 purposes of this chapter.

13 SEC. 2. Section 330.11 of the Penal Code is amended to read:

14 330.11. “Banking game” or “banked game” does not include
15 a controlled game if the published rules of the game feature a
16 player-dealer position and provide that this position must be
17 continuously and systematically rotated amongst each of the
18 participants during the play of the game, ensure that the
19 player-dealer is able to win or lose only a fixed and limited wager
20 during the play of the game, and preclude the house, another entity,
21 a player, or an observer from maintaining or operating as a bank
22 during the course of the game. For purposes of this section it is not
23 the intent of the Legislature to mandate acceptance of the deal by
24 every player if the division finds that the rules of the game render
25 the maintenance of or operation of a bank impossible by other
26 means. The house shall not occupy the player-dealer position.

27 SEC. 3. *Section 337j of the Penal Code is amended to read:*

28 337j. (a) It is unlawful for any person, as owner, lessee, or
29 employee, whether for hire or not, either solely or in conjunction
30 with others, to do any of the following without having first
31 procured and thereafter maintained in effect all federal, state, and
32 local licenses required by law:

33 (1) To deal, operate, carry on, conduct, maintain, or expose for
34 play in this state any controlled game.

35 (2) To receive, directly or indirectly, any compensation or
36 reward or any percentage or share of the revenue, for keeping,
37 running, or carrying on any controlled game.

38 (3) To manufacture, distribute, or repair any gambling
39 equipment within the boundaries of this state, or to receive,
40 directly or indirectly, any compensation or reward for the



1 manufacture, distribution, or repair of any gambling equipment
2 within the boundaries of this state.

3 (b) It is unlawful for any person to knowingly permit any
4 controlled game to be conducted, operated, dealt, or carried on in
5 any house or building or other premises that he or she owns or
6 leases, in whole or in part, if that activity is undertaken by a person
7 who is not licensed as required by state law, or by an employee of
8 that person.

9 (c) It is unlawful for any person to knowingly permit any
10 gambling equipment to be manufactured, stored, or repaired in any
11 house or building or other premises that the person owns or leases,
12 in whole or in part, if that activity is undertaken by a person who
13 is not licensed as required by state law, or by an employee of that
14 person.

15 (d) Any person who violates, attempts to violate, or conspires
16 to violate this section shall be punished by imprisonment in a
17 county jail for not more than one year, or by a fine of not more than
18 five thousand dollars (\$5,000), or by both that imprisonment and
19 fine.

20 (e) (1) As used in this section, “controlled game” means any
21 game of chance, including any gambling device, played for
22 currency, check, credit, or any other thing of value that is not
23 prohibited and made unlawful by statute or local ordinance.

24 (2) As used in this section, “controlled game” does not include
25 any of the following:

26 (A) The game of bingo conducted pursuant to Section 326.5.

27 (B) Parimutuel racing on horse races regulated by the
28 California Horse Racing Board.

29 (C) Any lottery game conducted by the California State
30 Lottery.

31 (D) Games played with cards in private homes or residences,
32 in which no person makes money for operating the game, except
33 as a player.

34 (f) This subdivision is intended to be dispositive of the law
35 relating to the collection of player fees in gambling
36 establishments. No fee may be calculated as a ~~portion~~ *fraction or*
37 *percentage* of wagers made or ~~from~~ *winnings earned*. Fees charged
38 for all wagers shall be determined ~~and collected~~ prior to the start
39 of play of any hand or round. *The actual collection of the fee may*
40 *occur before or after the start of play.* Ample notice shall be



1 provided to the patrons of gambling establishments relating to the
2 assessment of fees. Flat fees on each wager may be assessed at
3 different collection rates, but no more than three collection rates
4 may be established per table. ~~This legislation codifies the holding
5 in Sullivan v. Fox (1987) 189 Cal.App.3d 673, as to the collection
6 of player fees in licensed gambling establishments, that no fee
7 shall be calculated as a portion of wagers made or winnings earned,
8 exclusive of charges or fees for the use of space and facilities.~~

9 *SEC. 4. Section 1 of Chapter 1023 of the Statutes of 2000, is*
10 *amended to read:*

11 SECTION 1. The Legislature finds and declares as follows:

12 (a) In 1983 and 1984 California card clubs played games with
13 cards involving a player-dealer position in which players were
14 afforded the temporary opportunity to wager against multiple
15 players at the table where the player-dealer position continuously
16 and systematically rotated among the players, prior to the
17 amendment of Section 19 of Article IV of the California
18 Constitution by the California State Lottery Act in 1984. This
19 method of play was ~~approved~~ *not found to be inconsistent with*
20 *current law* by the Courts of Appeal in Sullivan v. Fox (1987) 189
21 Cal.App.3d 673, Walker v. Meehan (1987) 194 Cal.App.3d 1290,
22 City of Bell Gardens v. County of Los Angeles (1991) 231
23 Cal.App.3d 1563, and Huntington Park Club Corp. v. County of
24 Los Angeles (1988) 206 Cal.App.3d 241.

25 (b) The amendment to Section 19 of Article IV of the
26 Constitution declared:

27
28 “The Legislature has no power to authorize, and shall prohibit
29 casinos of the type currently operating in Nevada and New
30 Jersey.”

31
32 Casinos operating in 1983 and 1984 in the States of Nevada and
33 New Jersey did not include card games featuring a player-dealer
34 position which continuously and systematically rotates among the
35 players. In Nevada and New Jersey, comparable games are banked
36 only by the house, which is a participant in the game, with an
37 interest in its outcome, and which covers all bets in the game,
38 paying all winners and collecting from all losers.

39 (c) In *Hotel Employees & Restaurant Employees v. Davis*
40 (1999) 21 Cal. 4th 585, the California Supreme Court recently



1 stated at page 605 that:

2

3 “...(t)he type” of casino “operating in Nevada and New Jersey”
4 presumably refers to a gambling facility that did not legally
5 operate in California; something other, that is, than “the type” of
6 casino “operating” in California.”

7 *SEC. 5.* No reimbursement is required by this act pursuant to
8 Section 6 of Article XIII B of the California Constitution because
9 the only costs that may be incurred by a local agency or school
10 district will be incurred because this act creates a new crime or
11 infraction, eliminates a crime or infraction, or changes the penalty
12 for a crime or infraction, within the meaning of Section 17556 of
13 the Government Code, or changes the definition of a crime within
14 the meaning of Section 6 of Article XIII B of the California
15 Constitution.

O

