

AMENDED IN SENATE MAY 16, 2011

AMENDED IN SENATE MARCH 31, 2011

SENATE BILL

No. 40

Introduced by Senator Correa

December 6, 2010

An act to add Chapter 5.2 (commencing with Section 19990) to Division 8 of the Business and Professions Code, relating to Internet gambling, *and declaring the urgency thereof, to take effect immediately.*

LEGISLATIVE COUNSEL'S DIGEST

SB 40, as amended, Correa. Internet poker.

The Gambling Control Act provides for the licensure of certain individuals and establishments that conduct controlled games, as defined, and for the regulation of these gambling activities by the California Gambling Control Commission. Existing law provides for the enforcement of those regulations by the Department of Justice. Any violation of these provisions is punishable as a misdemeanor, as specified.

This bill would establish a framework to authorize intrastate Internet poker, as specified. The bill would require the department to adopt regulations, in consultation with the California Gambling Control Commission, governing the intrastate play of poker games on the Internet, and would provide for licensed entities to operate up to 5 intrastate Internet poker Web sites, as described below. The bill would make it a misdemeanor for any person or entity to offer or participate in any form of illegal Internet gambling, as defined, or to process any financial transaction arising out of participation in illegal Internet gambling. By creating new crimes, this bill would impose a state-mandated local program.

This bill would permit these Internet Web sites to conduct a live online nonbanked, nonpercentage version of the card game poker within the borders of the State of California under the same rules, and with the same manner of compensation, as apply to poker games currently conducted in licensed gambling establishments and tribal class II gaming facilities. The bill would require the department to issue up to 3 licenses to own and operate intrastate Internet poker Web sites to eligible entities, as specified. The bill would require the department to report to the Legislature within 3 years if it has the capacity to regulate up to 2 additional Internet poker Web sites, and would authorize the department to issue licenses for up to 2 additional Internet poker Web sites upon subsequent legislative authorization.

The bill would authorize the department to assess fees on licensed entities in an amount reasonably necessary to reimburse the department for its costs in implementing and administering these provisions, including a registration fee. The bill also would require a licensed entity to pay a license fee equal to 10% of the fees collected by the licensed entity from players participating in poker games conducted on its Internet Web site. ~~By imposing this fee, the bill would constitute a change in state statute that would result in a taxpayer paying a higher tax within the meaning of Section 3 of Article XIII A of the California Constitution, and thus would require for passage the approval of $\frac{2}{3}$ of the membership of each house of the Legislature.~~ The bill would provide for all fees to be remitted to the Internet Gambling Fund, as established by this bill and administered by the Controller, subject to annual appropriation by the Legislature.

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.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

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

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:

1 (a) Leading gaming consultants estimate that in 2005, United
2 States citizens illegally wagered four billion dollars
3 (\$4,000,000,000) online at off-shore, non-United States Internet
4 gambling Web sites, and that every week more than 1,000,000
5 California citizens play poker on the Internet.

6 (b) Currently, 2,300 Internet gambling Web sites operate outside
7 the United States, unregulated by any United States governmental
8 entity and in violation of United States laws. Questions often arise
9 about the honesty and the fairness of the games played on these
10 Internet Web sites, and about the true purpose for, and use of,
11 proceeds generated by these unregulated Internet Web sites.

12 (c) In 2006, Congress passed, and the President signed, the
13 Unlawful Internet Gambling Enforcement Act of 2006 (UIGEA).
14 While UIGEA prohibits the use of banking instruments such as
15 credit cards, checks, or fund transfers for interstate Internet
16 gambling, the statute has not eliminated illegal, unregulated Internet
17 gambling, nor has it provided any increased protection for
18 participants from game operators and others who would impair
19 the integrity of online gambling activity.

20 (d) Congress included specific provisions in the UIGEA for
21 individual states to permit intrastate Internet gambling, provided
22 that state laws permitting and regulating that activity could impose
23 reasonable protections against participation by underage persons
24 or by persons located outside the boundaries of the states
25 authorizing that activity.

26 (e) It is in the best interest of the state and its citizens to permit
27 operation of government-regulated intrastate Internet poker
28 wagering Web sites because only through that authorization and
29 regulation can Californians be ensured that the games they are
30 playing are honest, that winners are paid when and in amounts
31 due, and that the state and its citizens, rather than illegal off-shore
32 companies operating outside the reach of, and contrary to, state
33 and federal laws, will benefit from economic activity in the state.
34 Further, it is in the interest of the state to adopt a statutory basis
35 for the regulation of intrastate Internet poker adequate to shield
36 the state and players from organized crime and other corrupting
37 influences, ensure that intrastate Internet poker is conducted fairly
38 and honestly by both licensed entities and the players, confirm the
39 integrity of all activities conducted pursuant to this act, and protect
40 the public health, welfare, and safety of all Californians.

1 (f) The California Constitution provides that “slot machines”
2 can only be played if located on Indian lands and offered by an
3 Indian tribe pursuant to a tribal-state gaming compact, and thus,
4 the use of the devices connected to the Internet for gambling would
5 violate the California Constitution unless those devices are solely
6 used for the conveyance of information related to the play of
7 nonbanked, nonpercentage poker games.

8 (g) The only practical and economically feasible way to ensure
9 that Internet poker conducted entirely within California’s borders
10 receives governmental oversight adequate to ensure that the Internet
11 Web site offering the gaming remains honest, safe, and in
12 compliance with all applicable state and federal laws, and that the
13 State of California receives the economic benefits from that activity
14 to which the state is entitled, would be to limit that activity to up
15 to five Internet Web sites owned and operated by entities formed
16 under the laws of this state, or otherwise qualified to do business
17 in this state, and owned and operated by business entities licensed
18 under the Gambling Control Act to own and operate gambling
19 establishments in this state as of January 1, 2011, and the
20 governments or wholly owned subentities of federally recognized
21 California tribal governments. Because California law permits the
22 operation of poker and other nonbanking, nonpercentage card
23 games, those tribal governments are entitled under the federal
24 Indian Gaming Regulatory Act (IGRA), to operate poker and other
25 nonbanking and nonpercentage card games without having to enter
26 into class III gaming compacts with the State of California.

27 (h) There is statutory precedent for the state to authorize existing
28 entities to form associations or corporations to offer simulcast
29 wagering and advance deposit wagering over the Internet on live
30 horse racing meetings.

31 (i) Because the game of poker will be played live over the
32 Internet pursuant to this act, it is the intent of the Legislature that
33 similar authorization be given to California’s existing poker
34 industry to form business entities that may be licensed to conduct
35 the live online play of poker under this act.

36 (j) There are 109 federally recognized tribal governments in
37 California and 91 California licensed gambling establishments.
38 To provide the broadest distribution of these Internet poker
39 licenses, recognize the large number of establishments and tribal
40 governments offering or authorized to offer the game of poker in

land-based operations, and maximize revenue to the State of California, the eligible entities that include the greatest numbers of licensed gambling establishments and federally recognized California tribal governments shall be selected for licensure to own and operate intrastate Internet poker Web sites pursuant to this act.

(k) The purpose of this act is to provide persons over 21 years of age who are physically present within the State of California and desire to use the Internet to play poker games that are not prohibited by California law, and in a manner consistent with existing law, with a lawful, highly regulated means of doing so in conformity with all applicable laws and regulations. Therefore, nothing in this act, which authorizes the intrastate use of the Internet to conduct poker games, shall be construed to expand the term “gambling,” as used in Article 13 (commencing with Section 19960) of Chapter 5 of Division 8 of the Business and Professions Code.

(l) It is in the interest of the state and its citizens to increase sources of nontax, nonstate revenue for tribal governments to enhance their ability to provide services to their communities.

(m) By enacting this act, the Legislature is expressly authorizing intrastate Internet poker within the State of California only in the limited and regulated form provided herein. This express authorization does not authorize any other form or type of gambling over the Internet.

SEC. 2. Chapter 5.2 (commencing with Section 19990) is added to Division 8 of the Business and Professions Code, to read:

CHAPTER 5.2. INTRASTATE INTERNET POKER

19990. The following terms shall have the following meanings:

(a) “Department” means the Department of Justice and the entity within the department that is responsible for fulfilling the obligations imposed upon the department by this chapter.

(b) “Eligible entity” means a business entity formed under the laws of this state, or qualified to do business in this state, that is owned by persons or entities licensed by the California Gambling Control Commission to own gambling establishments as of January 1, 2011, or by the government or governments of federally recognized California Indian tribes, or the wholly owned subentities

1 of those tribes, or by any combination of those gambling
2 establishment licensees and California tribal governments or wholly
3 owned subentities of those tribes.

4 (c) “Gambling” has the same meaning as set forth in subdivision
5 (l) of Section 19805.

6 (d) “Gambling establishment” has the same meaning as set forth
7 in subdivision (o) of Section 19805.

8 (e) “Illegal gambling” means participating in, or engaging in
9 conduct that materially aids, any form of gambling that is not
10 conducted pursuant to a tribal-state gaming compact or not
11 otherwise authorized by the laws of this state or the laws of the
12 United States.

13 (f) “Illegal Internet gambling” means illegal gambling conducted
14 over the Internet.

15 (g) “Internet” means the international computer network of
16 interoperable packet switched data networks.

17 (h) “Intrastate” means within the geographical borders of the
18 State of California.

19 (i) “Intrastate Internet poker” means any nonbanked,
20 nonpercentage poker game approved for play through use of the
21 Internet within the state by the department, and that is conducted
22 in accordance with this chapter.

23 (j) “Licensed entity” means an eligible entity to which the
24 department has issued a license pursuant to this chapter for the
25 purpose of operating an Internet Web site offering persons over
26 21 years of age who are physically present within the State of
27 California the opportunity to play approved poker games on the
28 Internet within the geographical boundaries of the State of
29 California.

30 (k) “Person” means an individual, partnership, corporation,
31 limited liability company, or other business entity, including a
32 federally recognized California Indian tribe or a subentity of such
33 a tribe that is wholly owned by the tribe.

34 (l) “Web site” means the unique Uniform Resource Locator of
35 a licensed entity through which the licensed entity is authorized
36 to operate intrastate Internet poker games.

37 19991. (a) No person or other entity may operate, for
38 consideration, poker games over the Internet in California unless
39 licensed to provide those games by the department pursuant to this
40 chapter and any regulations adopted thereunder. Intrastate Internet

1 poker is hereby authorized, but only to the extent, and in the
2 manner, prescribed in this chapter.

3 (b) Any person or entity that offers or participates in illegal
4 Internet gambling, or processes any financial transactions arising
5 out of, or in connection with, participation in illegal Internet
6 gambling, is guilty of a misdemeanor, and shall be punished by a
7 fine of up to ten thousand dollars (\$10,000) and imprisonment in
8 a county jail for up to one year.

9 19992. (a) Within 90 days of the effective date of the act
10 adding this chapter, the department shall adopt regulations, in
11 consultation with the California Gambling Control Commission,
12 governing the intrastate play of poker games on the Internet to
13 provide persons over 21 years of age who are physically present
14 in California with the same protections enjoyed by persons playing
15 in gambling establishments or in tribally owned gaming facilities.
16 The department may issue licenses and promulgate regulations as
17 it determines may be necessary to implement the provisions of this
18 chapter, protect that gaming from criminal influences, and protect
19 the public health, welfare, and safety of the people of California,
20 but shall give priority in the adoption of regulations to the licensing
21 of the three categories of entities enumerated in paragraph (1) of
22 subdivision (b). However, persons licensed by the California
23 Gambling Control Commission to own or operate a gambling
24 establishment, the governments of California Indian tribes
25 recognized by the United States Department of the Interior, Bureau
26 of Indian Affairs, or the wholly owned subentities of those tribal
27 governments shall not be required to apply for or obtain licenses
28 to own interests in a licensed entity.

29 (b) The regulations adopted pursuant to subdivision (a) shall
30 provide both of the following:

31 (1) Procedures by which an entity may apply for a license to
32 operate an Internet Web site through which persons over 21 years
33 of age and physically present within the state may play intrastate
34 Internet poker, with the objective of facilitating the commencement
35 of operation of the licensed entity's authorized Internet Web site
36 as quickly as possible, thereby accelerating the receipt of revenues
37 by the state.

38 (2) Procedures by which persons over 21 years of age who are
39 physically present in the state may register to lawfully engage in

1 intrastate Internet poker games through an Internet Web site owned
2 and operated by a licensed entity.

3 (c) The intrastate Internet poker games shall be honestly and
4 fairly run.

5 (d) A licensed entity may offer intrastate Internet poker games
6 pursuant to this chapter only on a network approved by the
7 department containing an Internet Web site that is registered with
8 the department to offer that service. A licensed entity shall not
9 offer, for consideration, any form of Internet poker game
10 independent of that network.

11 (e) A person desiring to play intrastate Internet poker shall
12 register with a licensed entity by presenting documentation, upon
13 logging on to the licensed entity's intrastate Internet poker Web
14 site, that the person is at least 21 years of age and is physically
15 present within the state. After verifying the validity of the proffered
16 documentation and confirming the person's physical presence
17 within this state, the person may be permitted to play any intrastate
18 Internet poker game provided by the licensed entity, subject to the
19 licensed entity's right to exclude from participation in intrastate
20 Internet poker games any person reasonably determined to be
21 unsuitable to participate in those games, or whose participation
22 would be contrary to requests concerning self-exclusion or limits
23 on losses, amounts wagered, or playing time.

24 (f) A licensed entity's intrastate Internet poker Web site shall
25 use the services of an independent third party licensed by the
26 department to perform identification, physical presence in the state,
27 and age verification services for persons registering to play
28 intrastate Internet poker games.

29 (g) A licensed entity's intrastate Internet poker Web site shall
30 use personal identification numbers and other technology so that
31 only the registered person has access to his or her wagering
32 account, and that games can be played only from within the
33 geographical borders of the state.

34 (h) A licensed entity shall provide for withdrawals from the
35 wagering account only by check, made payable to the account
36 holder and sent to the address of the account holder in the state,
37 or by an electronic transfer to an account held by the verified
38 account holder at a financial institution located within the state.
39 The account holder also may withdraw funds from the wagering
40 account at a licensed gambling establishment or tribal gaming

1 facility participating in a licensed entity by presenting valid
2 identification and verifiable personal and account information.

3 (i) A licensed entity's intrastate Internet poker Web site shall
4 provide information on problem gambling, including a problem
5 gambling hotline telephone number that a person may call to seek
6 information and assistance for a potential gambling addiction, and
7 shall offer responsible gambling services, such as self-exclusion,
8 limits on losses, amounts wagered, and playing time, and other
9 services as the department reasonably may determine are
10 appropriate.

11 (j) A licensed entity shall allow the department access to its
12 operating premises at any time and without notice to visit,
13 investigate, and place expert accountants and other persons it deems
14 necessary to ensure strict compliance with its regulations
15 concerning game integrity, credit authorization, account access,
16 and other security provisions, if those activities do not interfere
17 with the normal lawful functioning of the licensed entity's
18 operations.

19 (k) A licensed entity shall offer, at the time of registration, the
20 option to place a limitation on the amount of funds that may be
21 transferred into a wagering account within any 24-hour period.
22 The licensed entity shall adopt procedures to ensure that the player
23 may not deposit more funds into the account than the amount
24 specified. If, after the wagering account is opened, a person wishes
25 to increase the amount of funds that may be transferred, the
26 licensed entity may increase the amount after obtaining and
27 verifying the validity of identification and personal information.
28 However, that increase shall not be effective until at least 48 hours
29 after the change is requested.

30 (l) A licensed entity shall conduct intrastate Internet poker games
31 in the same manner as those games are conducted in licensed
32 gambling establishments or tribally owned gaming facilities in the
33 state, except that the games shall be played with computers, rather
34 than with tangible cards and chips, and the virtual cards shall be
35 shuffled and dealt by the licensed entity's computer system, rather
36 than by a natural person. Only nonbanked, nonpercentage poker
37 games approved for play within the state by the department may
38 be offered for play on a licensed entity's intrastate Internet Web
39 site. A licensed entity's intrastate Internet Web site may collect
40 fees from players in authorized poker games pursuant to the same

1 player fee collection methods approved by the department under
2 state law for use within nontribal licensed gambling establishments
3 in California.

4 (m) The department shall assess fees on licensed entities in the
5 amounts reasonably necessary to reimburse the department for its
6 costs in implementing and administering this chapter, protecting
7 that gaming from criminal influences, and protecting the public
8 health, welfare, and safety of the people of California.

9 19992.5. (a) There shall be authorized up to five Internet Web
10 sites to conduct a live online nonbanked, nonpercentage version
11 of the card game poker pursuant to this chapter within the borders
12 of the State of California under the same rules, and with the same
13 manner of compensation, as apply to poker games currently
14 conducted in licensed gambling establishments and tribal class II
15 gaming facilities.

16 (b) The department shall issue up to three licenses to own and
17 operate intrastate Internet poker Web sites pursuant to this chapter
18 to eligible entities consisting of any of the following:

19 (1) Licensed gambling establishments and federally recognized
20 California tribal governments.

21 (2) Federally recognized California tribal governments.

22 (3) Licensed gambling establishments.

23 (c) The department shall select the eligible entities that include
24 the greatest numbers of individual entities as specified *in*
25 subdivision (b).

26 (d) Notwithstanding Section 10231.5 of the Government Code,
27 within three years of commencing the play of live online Internet
28 poker pursuant to this chapter, the department shall report to the
29 Legislature if it has the capacity to regulate up to two additional
30 Internet poker Web sites. The department may issue licenses for
31 up to two additional Internet poker Web sites upon subsequent
32 legislative authorization.

33 19993. After the regulations required by subdivision (a) of
34 Section 19992 are adopted pursuant to the Administrative
35 Procedure Act (Chapter 3.5 (commencing with Section 11340) of
36 Part 1 of Division 3 of Title 2 of the Government Code), an entity
37 seeking to be licensed to offer intrastate Internet poker games shall
38 apply to the department for licensure to engage in that activity.
39 The department shall charge the entity a registration fee sufficient

1 to cover all costs associated with the issuance of the license,
2 including any necessary background investigation.

3 19994. In addition to any licensing or other administrative fees
4 that the department may assess as reimbursement for the costs of
5 implementing this chapter, a licensed entity shall pay to the state
6 a license fee equal to 10 percent of the fees collected by the
7 licensed entity from players participating in poker games conducted
8 on its Internet Web site.

9 19995. In the event that any federal statute now in effect or
10 hereafter enacted either affirmatively authorizes, or repeals existing
11 prohibitions against, the interstate or international play on the
12 Internet of house-banked or percentage games of chance, or games
13 such as poker in which there is an element of chance but a player's
14 skill predominates over the element of chance in determining the
15 outcome of the game, and the federal statute allows a state to be
16 excluded from application of that statute, the Governor and the
17 Legislature shall take any action necessary to opt out of the
18 application of that statute to persons physically present within the
19 geographical borders of the state.

20 19996. Nothing in this chapter shall be interpreted to authorize
21 the play of intrastate Internet poker in a manner that circumvents
22 the limitation on gambling establishments, or the limitation on
23 gambling tables, pursuant to Chapter 5 (commencing with Section
24 19800), and related state and local laws, or to authorize the
25 operation of public or private facilities the primary purpose of
26 which is the online play for consideration of poker or other forms
27 of gaming.

28 19997. If a court of competent jurisdiction determines that the
29 enactment or implementation of this chapter entitles any California
30 Indian tribe that is a party to a class III tribal-state gaming compact
31 with the state to terminate or reduce payments to the Indian Gaming
32 Revenue Sharing Trust Fund required by the compact on the ground
33 that the state has breached the compact by enacting or
34 implementing this chapter, all funds then on deposit in the Indian
35 Gaming Revenue Trust Fund shall continue to be distributed
36 quarterly in equal shares to all federally recognized California
37 Indian tribes entitled to receive disbursements from the fund until
38 all funds on deposit in the fund have been disbursed.

39 19998. (a) The state's percentage of player fees collected by
40 licensed entities, and any other fees paid by licensed entities, shall

1 be remitted to the Controller for deposit in the Internet Gambling
2 Fund, which is hereby created in the State Treasury. The fund shall
3 be administered by the Controller for the purposes of this chapter,
4 subject to annual appropriation by the Legislature.

5 (b) On or before March 31 of each year, each state agency with
6 responsibilities imposed under this chapter shall submit a revenue
7 needs request to fulfill those duties for the next fiscal year to the
8 Senate Committee on Budget and Fiscal Review, the Assembly
9 Committee on Budget, the Senate and Assembly Committees on
10 Governmental Organization, and the Department of Finance. Each
11 submission of revenue needs shall specify the justification for
12 those costs.

13 (c) On or before March 31 of each year, the State Department
14 of Alcohol and Drug Programs, Office of Problem Gambling shall
15 submit a revenue needs request for programs to address problem
16 gambling that results from the offering of authorized games for
17 the next fiscal year to the Senate Committee on Budget and Fiscal
18 Review, the Assembly Committee on Budget, the Senate and
19 Assembly Committees on Governmental Organization, the Senate
20 and Assembly Committees on Human Services, and the Department
21 of Finance. Each submission of revenue needs shall specify the
22 justification for those costs.

23 (d) All remaining proceeds not allocated pursuant to subdivisions
24 (b) and (c) shall remain in the Internet Gambling Fund, subject to
25 appropriation by the Legislature for purposes related to this chapter.

26 19999. A city, county, or city and county shall not regulate,
27 tax, or enter into a contract with respect to any matter related to
28 this chapter.

29 SEC. 3. No reimbursement is required by this act pursuant to
30 Section 6 of Article XIII B of the California Constitution because
31 the only costs that may be incurred by a local agency or school
32 district will be incurred because this act creates a new crime or
33 infraction, eliminates a crime or infraction, or changes the penalty
34 for a crime or infraction, within the meaning of Section 17556 of
35 the Government Code, or changes the definition of a crime within
36 the meaning of Section 6 of Article XIII B of the California
37 Constitution.

38 SEC. 4. *This act is an urgency statute necessary for the*
39 *immediate preservation of the public peace, health, or safety within*

1 *the meaning of Article IV of the Constitution and shall go into*
2 *immediate effect. The facts constituting the necessity are:*
3 *In order to ensure that California is able to provide consumer*
4 *gaming protections from illegal operators, it is necessary for this*
5 *act to take effect immediately.*

O