

Introduced by Senator WrightFebruary 7, 2013

An act to add Chapter 4.7 (commencing with Section 19750) to Division 8 of the Business and Professions Code, and to amend Sections 336.9 and 337a of the Penal Code, relating to gambling, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 190, as introduced, Wright. Gambling: sports wagering.

(1) The California Constitution prohibits various gaming activities within the state, including casino-style gaming, but authorizes the Governor, subject to ratification by the Legislature, to negotiate and conclude compacts for the operation of slot machines and the conduct of lottery games and banking and percentage card games by federally recognized Indian tribes on Indian lands in California in accordance with federal law. The California Constitution also authorizes the Legislature to provide for the regulation of horse racing, charitable bingo games, the California State Lottery, and charitable raffles.

Existing law prohibits a person, whether or not for gain, hire, or reward, from making a betting pool or placing a bet or wager on the result of any contest or event, including a sporting event, as specified.

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.

The Horse Racing Law provides for the licensure of every person who participates in, or has anything to do with, the racing of horses, and every employee of a parimutuel department by the California Horse Racing Board. The board is responsible for adopting rules and regulations for the protection of the public, the control of horse racing, and parimutuel wagering, as well as enforcing all laws, rules, and regulations dealing with horse racing and parimutuel wagering. The law permits the board to authorize an association licensed to conduct a racing meeting to also operate a satellite wagering facility at its racetrack inclosure, and for fairs to locate a satellite wagering facility at their fairgrounds, under specified conditions. Any violation of these provisions is punishable as a misdemeanor.

This bill would authorize the owner or operator of a gambling establishment, or the owner or operator of a horse racing track, including a horse racing association, or of a satellite wagering facility, with a current license, to conduct wagering on professional and collegiate sports or athletic events, other than on collegiate sports or athletic events that take place in California or in which any California college team participates, by applying to the California Gambling Control Commission or the California Horse Racing Board, as specified, for authorization to conduct sports wagering, and by paying an annual fee for deposit in the Gambling Addiction Program Fund. The bill would require each licensed entity to remit to the treasurer on a monthly basis for deposit in the general fund, an amount equal to 7.5% of its gross revenues. The bill would require the commission, the board, and the department to adopt regulations to implement these provisions, including authority to adopt regulations establishing fees in a reasonable amount to recover costs incurred performing their duties pursuant to these provisions.

The bill would require the department, among other things, to investigate any request made by the board or the commission in connection with an application for authorization, and to investigate suspected violations of the above provisions. The bill would authorize the board, commission, and department to regulate sports wagering to the same extent these entities currently regulate other legal gambling in this state, including the ability to audit the books and records of a licensed entity. The bill would also prohibit a licensed entity from, among other things, accepting a wager from any person who is under 21 years of age or whose name appears on a self-exclusion list. Any

violation of these provisions would be punishable as a crime. By creating a new crime, the bill would impose a state-mandated local program.

(2) Existing federal law, the Indian Gaming Regulatory Act of 1988, provides for the negotiation and execution of tribal-state gaming compacts for the purpose of authorizing certain types of gaming on Indian lands within a state. The California Constitution authorizes the Governor to negotiate and conclude compacts, subject to ratification by the Legislature. Existing law expressly ratifies a number of tribal-state gaming compacts, and amendments of tribal-state gaming compacts, between the State of California and specified Indian tribes.

This bill would authorize a federally recognized Indian tribe that is not a gambling establishment or a horse racing track to conduct sports wagering consistent with the requirements of the federal Indian Gaming Regulatory Act of 1988, and under terms no more stringent than those applicable to any other owner or operator in the state.

(3) 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.

(4) 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. Chapter 4.7 (commencing with Section 19750)
2 is added to Division 8 of the Business and Professions Code, to
3 read:

4

5

CHAPTER 4.7. SPORTS WAGERING

6

7 19750. The following entities may conduct wagering on sports
8 events as authorized pursuant to this chapter:

9 (a) The owner or operator of a gambling establishment with a
10 current license issued by the California Gambling Control
11 Commission pursuant to Chapter 5 (commencing with Section
12 19800).

1 (b) The owner or operator of a horse racing track, including a
2 horse racing association, or of a satellite wagering facility, with a
3 current license issued by the California Horse Racing Board
4 pursuant to Chapter 4 (commencing with Section 19400). A
5 licensed horse racing track is authorized to conduct sports wagering
6 pursuant to this subdivision if it has an agreement in place with
7 the organization recognized by the board that is responsible for
8 negotiating purse agreements, satellite wagering agreements, and
9 all other business agreements on behalf of the horsemen and
10 horsewomen participating in a racing meeting.

11 (c) A federally recognized Indian tribe that is not authorized
12 pursuant to subdivision (a) or (b) may conduct sports wagering as
13 authorized by the federal Indian Gaming Regulatory Act of 1988
14 (18 U.S.C. Secs. 1166 to 1168, incl., and 25 U.S.C. Sec. 2701 et
15 seq.), and under terms no more stringent than those applicable to
16 any other owner or operator of a gambling establishment in the
17 state.

18 19752. As used in this chapter, the following definitions apply:

19 (a) “Board” means the California Horse Racing Board.

20 (b) “Commission” means the California Gambling Control
21 Commission.

22 (c) “Department” means the Department of Justice.

23 (d) “Licensed operator” means any of the entities listed in
24 Section 19750 that is authorized pursuant to this chapter to conduct
25 sports wagering.

26 (e) “Prohibited sports event” means any collegiate sport or
27 athletic event that takes place in California, or a sports event in
28 which any California college team participates, regardless of the
29 location at which the event takes place.

30 (f) “Sports event” shall include any professional sports or
31 athletic event, and any collegiate sports or athletic event, except
32 a prohibited sports event.

33 (g) “Sports wagering” means the business of accepting wagers
34 on a sports event by any legal system or method of wagering,
35 including, but not limited to, exchange wagering, parlays, over
36 and under, money line, and straight bets.

37 19754. (a) (1) An owner or operator of a gambling
38 establishment seeking to conduct sports wagering shall apply to
39 the commission for authorization to conduct sports wagering.

1 (2) An owner or operator of a horse racing track or satellite
2 wagering facility seeking to conduct sports wagering shall apply
3 to the board for authorization to conduct sports wagering.

4 (b) The board or the commission, as the case may be, shall hear
5 and decide promptly, and in reasonable order, all applications to
6 conduct sports wagering from owners and operators of licensed
7 gambling establishments, licensed horse racing tracks, and satellite
8 wagering facilities. Authorization to conduct sports wagering shall
9 not be unreasonably withheld for any applicant that is in good
10 standing and has a current license issued pursuant to Chapter 4
11 (commencing with Section 19400) or Chapter 5 (commencing with
12 Section 19800).

13 (c) An owner or operator of a gambling establishment and an
14 owner or operator of a horse racing track or satellite wagering
15 facility that conducts sports wagering shall pay an annual fee of
16 three thousand dollars (\$3,000) to the State Department of Alcohol
17 and Drug Programs for deposit in the Gambling Addiction Program
18 Fund.

19 (d) Each licensed operator shall remit to the treasurer on a
20 monthly basis for deposit in the general fund an amount equal to
21 7.5 percent of its gross revenues. Each monthly payment shall be
22 due on the 10th day of the following month. For the purposes of
23 determining gross revenues, the licensed operator and the treasurer
24 shall use generally accepted accounting principles.

25 19756. (a) Application for authorization to conduct sports
26 wagering shall be made on forms furnished by the board and the
27 commission.

28 (b) The application for authorization to conduct sports wagering
29 shall include all of the following:

30 (1) The name of the licensee.

31 (2) The name and location of the gambling establishment, horse
32 racing track, or satellite wagering facility.

33 (3) The names of all persons directly or indirectly interested in
34 the business and the nature of the interest.

35 (4) A description of the proposed sports wagering operation.

36 (5) Any other information and details the board or the
37 commission may require in order to discharge its duty properly.

38 19758. The board and the commission shall adopt regulations
39 for the administration of this chapter, and may adopt regulations
40 establishing fees in a reasonable amount necessary to recover costs

1 incurred by the board or the commission relating to the
2 administration of this chapter. The board and the commission shall
3 consult with each other in the adoption of regulations pursuant to
4 this section, and may adopt joint regulations.

5 19760. The regulations adopted by the board and the
6 commission shall do all of the following:

7 (a) Provide for the approval of wagering rules and equipment
8 by the department to ensure fairness to the public and compliance
9 with state law, including, but not limited to, all of the following:

10 (1) Acceptance of wagers on a series of sports events.

11 (2) Types of wagering tickets that may be used.

12 (3) The method of issuing tickets.

13 (b) Govern all of the following:

14 (1) The extension of credit.

15 (2) The cashing, deposit, and redemption of checks or other
16 negotiable instruments.

17 (3) The amount of cash reserves to be maintained by licensed
18 operators to cover winning wagers.

19 (4) The provision of reliable records, accounts, and reports of
20 transactions, operations, and events, the method of accounting to
21 be used by licensed operators, and the types of records required
22 to be maintained.

23 19762. The sports wagering authorized pursuant to this chapter
24 may be conducted only at the gambling establishment, horse racing
25 track, or satellite wagering facility of the licensed operator, or on
26 Indian lands consistent with the federal Indian Gaming Regulatory
27 Act of 1988 (18 U.S.C. Secs. 1166 to 1168, incl., and 25 U.S.C.
28 Sec. 2701 et seq.).

29 19764. A licensed operator shall not do any of the following:

30 (a) Accept a wager on a sports event from any person who is
31 not physically present at the facility where the sports wagering is
32 conducted.

33 (b) Accept a wager from a person using any form of credit to
34 place the wager.

35 (c) Accept a wager from a person who is under 21 years of age.

36 (d) Admit into the sports wagering facility, or accept wagers
37 from, any person whose name appears on any self-exclusion list.

38 19766. A licensed operator shall establish the odds it will pay
39 on wagers placed on sports events.

1 19768. (a) A licensed operator shall not conduct any sports
2 wagering in violation of any provision of this chapter, any
3 regulation adopted pursuant to this chapter, or any governing local
4 ordinance.

5 (b) Any person who willfully violates any provision of this
6 chapter is guilty of a misdemeanor.

7 19770. (a) The department shall have all of the following
8 responsibilities:

9 (1) To investigate any request made by the board or the
10 commission in connection with an application for authorization
11 pursuant to this chapter. The department may recommend the
12 denial or the limitation, conditioning, or restriction of any
13 authorization.

14 (2) To monitor the conduct of all licensed operators and other
15 persons having a material involvement, directly or indirectly, with
16 a sports wagering operation.

17 (3) To investigate suspected violations of this chapter.

18 (4) To investigate complaints that are lodged against licensed
19 operators, or other persons associated with a sports wagering
20 operation, by members of the public.

21 (5) To initiate, when appropriate, disciplinary actions. In
22 connection with any disciplinary action, the department may seek
23 restriction, limitation, suspension, or revocation of any license,
24 permit, authorization, or approval pursuant to this chapter, Chapter
25 4 (commencing with Section 19400), or Chapter 5 (commencing
26 with Section 19800), or the imposition of any fine upon any person
27 licensed, permitted, authorized, or approved pursuant to those
28 chapters.

29 (6) To adopt regulations reasonably related to its functions and
30 duties as specified in this chapter.

31 (7) To adopt regulations establishing fees in the reasonable
32 amount necessary to recover costs incurred by the department
33 relating to the enforcement of this chapter.

34 (b) The department has all powers necessary and proper to
35 enable it to carry out fully and effectually its duties and
36 responsibilities specified in this chapter.

37 19772. (a) The department shall make appropriate
38 investigations as follows:

39 (1) To determine whether there has been any violation of this
40 chapter or any regulations adopted under this chapter.

1 (2) To determine any facts, conditions, practices, or matters that
2 it may deem necessary or proper to aid in the enforcement of this
3 chapter or any regulation adopted under this chapter.

4 (3) To aid in adopting regulations.

5 (b) If, after any investigation, the department is satisfied that a
6 license, permit, authorization, or approval pursuant to this chapter,
7 Chapter 4 (commencing with Section 19400), or Chapter 5
8 (commencing with Section 19800) should be suspended or revoked,
9 it shall file an accusation in accordance with Chapter 5
10 (commencing with Section 11500) of Part 1 of Division 3 of Title
11 2 of the Government Code.

12 (c) In addition to any action that the board or commission may
13 take against a license, permit, finding of suitability, or approval,
14 the board or commission may also require the payment of fines or
15 penalties. However, any fine imposed shall not exceed twenty
16 thousand dollars (\$20,000) for each separate violation of any
17 provision of this chapter or any regulation adopted under this
18 chapter.

19 19773. The board, commission, and department shall have the
20 authority to regulate sports wagering to the same extent that these
21 entities regulate other legal gambling in this state, including the
22 ability to audit the books and records of a licensed operator.

23 SEC. 2. Section 336.9 of the Penal Code is amended to read:

24 336.9. (a) Notwithstanding Section 337a, and except as
25 provided in subdivision (b), any person who, not for gain, hire, or
26 reward other than that at stake under conditions available to every
27 participant, knowingly participates in any of the ways specified in
28 paragraph (2), (3), (4), (5), or (6) of subdivision (a) of Section
29 337a in any bet, bets, wager, wagers, or betting pool or pools made
30 between the person and any other person or group of persons who
31 are not acting for gain, hire, or reward, other than that at stake
32 under conditions available to every participant, upon the result of
33 any lawful trial, or purported trial, or contest, or purported contest,
34 of skill, speed, or power of endurance of person or animal, or
35 between persons, animals, or mechanical apparatus, is guilty of
36 an infraction, punishable by a fine not to exceed two hundred fifty
37 dollars (\$250).

38 (b) Subdivision (a) does not apply to ~~either~~ any of the following
39 situations:

1 (1) Any bet, bets, wager, wagers, or betting pool or pools made
2 ~~online~~ *via the Internet*.

3 (2) Betting pools with more than two thousand five hundred
4 dollars (\$2,500) at stake.

5 (3) *Any sports wagering authorized pursuant to Chapter 4.7*
6 *(commencing with Section 19750) of Division 8 of the Business*
7 *and Professions Code.*

8 SEC. 3. Section 337a of the Penal Code is amended to read:

9 337a. (a) Except as provided in Section 336.9, *and as*
10 *authorized pursuant to Chapter 4.7 (commencing with Section*
11 *19750) of Division 8 of the Business and Professions Code*, every
12 person who engages in one of the following offenses; shall be
13 punished for a first offense by imprisonment in a county jail for a
14 period of not more than one year or in the state prison, or by a fine
15 not to exceed five thousand dollars (\$5,000), or by both
16 imprisonment and fine:

17 (1) Pool selling or bookmaking, with or without writing, at any
18 time or place.

19 (2) Whether for gain, hire, reward, or gratuitously, or otherwise,
20 keeps or occupies, for any period of time whatsoever, any room,
21 shed, tenement, tent, booth, building, float, vessel, place, stand,
22 or enclosure, of any kind, or any part thereof, with a book or books,
23 paper or papers, apparatus, device, or paraphernalia, for the purpose
24 of recording or registering any bet or bets, any purported bet or
25 bets, wager or wagers, any purported wager or wagers, selling
26 pools, or purported pools, upon the result, or purported result, of
27 any trial, purported trial, contest, or purported contest, of skill,
28 speed, or power of endurance of person or animal, or between
29 persons, animals, or mechanical apparatus, or upon the result, or
30 purported result, of any lot, chance, casualty, *or* unknown or
31 contingent event whatsoever.

32 (3) Whether for gain, hire, reward, or gratuitously, or otherwise,
33 receives, holds, or forwards, or purports or pretends to receive,
34 hold, or forward, in any manner whatsoever, any money, thing, or
35 consideration of value, or the equivalent or memorandum thereof,
36 staked, pledged, bet, or wagered, or to be staked, pledged, bet, or
37 wagered, or offered for the purpose of being staked, pledged, bet,
38 or wagered, upon the result, or purported result, of any trial, or
39 purported trial, or contest, or purported contest, of skill, speed, or
40 power of endurance of person or animal, or between persons,

1 animals, or mechanical apparatus, or upon the result, or purported
2 result, of any lot, chance, casualty, *or* unknown or contingent event
3 whatsoever.

4 (4) Whether for gain, hire, reward, or gratuitously, or otherwise,
5 at any time or place, records, or registers any bet or bets, wager
6 or wagers, upon the result, or purported result, of any trial, or
7 purported trial, or contest, or purported contest, of skill, speed, or
8 power of endurance of person or animal, or between persons,
9 animals, or mechanical apparatus, or upon the result, or purported
10 result, of any lot, chance, casualty, *or* unknown or contingent event
11 whatsoever.

12 (5) Being the owner, lessee, or occupant of any room, shed,
13 tenement, tent, booth, building, float, vessel, place, stand,
14 enclosure, or grounds, or any part thereof, whether for gain, hire,
15 reward, or gratuitously, or otherwise, permits that space to be used
16 or occupied for any purpose, or in any manner prohibited by
17 paragraph (1), (2), (3), or (4).

18 (6) Lays, makes, offers, or accepts any bet or bets, or wager or
19 wagers, upon the result, or purported result, of any trial, or
20 purported trial, or contest, or purported contest, of skill, speed, or
21 power of endurance of person or animal, or between persons,
22 animals, or mechanical apparatus.

23 (b) In any accusatory pleading charging a violation of this
24 section, if the defendant has been once previously convicted of a
25 violation of any subdivision of this section, the previous conviction
26 shall be charged in the accusatory pleading, and, if the previous
27 conviction is found to be true by the jury, upon a jury trial, or by
28 the court, upon a court trial, or is admitted by the defendant, the
29 defendant shall, if he or she is not imprisoned in the state prison,
30 be imprisoned in ~~the~~ a county jail for a period of not more than
31 one year and pay a fine of not less than one thousand dollars
32 (\$1,000) and not to exceed ten thousand dollars (\$10,000). Nothing
33 in this paragraph shall prohibit a court from placing a person
34 subject to this subdivision on probation. However, that person
35 shall be required to pay a fine of not less than one thousand dollars
36 (\$1,000) nor more than ten thousand dollars (\$10,000) or be
37 imprisoned in ~~the~~ a county jail for a period of not more than one
38 year, as a condition thereof. In no event does the court have the
39 power to absolve a person convicted pursuant to this subdivision
40 from either being imprisoned or from paying a fine of not less than

1 one thousand dollars (\$1,000) and not more than ten thousand
2 dollars (\$10,000).

3 (c) In any accusatory pleading charging a violation of this
4 section, if the defendant has been previously convicted two or
5 more times of a violation of any subdivision of this section, each
6 previous conviction shall be charged in the accusatory pleadings.
7 If two or more of the previous convictions are found to be true by
8 the jury, upon a jury trial, or by the court, upon a court trial, or are
9 admitted by the defendant, the defendant shall, if he or she is not
10 imprisoned in ~~the~~ a state prison, be imprisoned in ~~the~~ a county jail
11 for a period of not more than one year or pay a fine of not less than
12 one thousand dollars (\$1,000) nor more than fifteen thousand
13 dollars (\$15,000), or be punished by both imprisonment and fine.
14 Nothing in this paragraph shall prohibit a court from placing a
15 person subject to this subdivision on probation. However, that
16 person shall be required to pay a fine of not less than one thousand
17 dollars (\$1,000) nor more than fifteen thousand dollars (\$15,000),
18 or be imprisoned in ~~the~~ a county jail for a period of not more than
19 one year as a condition thereof. In no event does the court have
20 the power to absolve a person convicted and subject to this
21 subdivision from either being imprisoned or from paying a fine of
22 not more than fifteen thousand dollars (\$15,000).

23 (d) Except where the existence of a previous conviction of any
24 subdivision of this section was not admitted or not found to be true
25 pursuant to this section, or the court finds that a prior conviction
26 was invalid, the court shall not strike or dismiss any prior
27 convictions alleged in the information or indictment.

28 (e) This section applies not only to persons who commit any of
29 the acts designated in paragraphs (1) to (6), inclusive, of
30 subdivision (a), as a business or occupation, but also applies to
31 every person who in a single instance engages in any one of the
32 acts specified in paragraphs (1) to (6), inclusive, of subdivision
33 (a).

34 SEC. 4. No reimbursement is required by this act pursuant to
35 Section 6 of Article XIII B of the California Constitution because
36 the only costs that may be incurred by a local agency or school
37 district will be incurred because this act creates a new crime or
38 infraction, eliminates a crime or infraction, or changes the penalty
39 for a crime or infraction, within the meaning of Section 17556 of
40 the Government Code, or changes the definition of a crime within

1 the meaning of Section 6 of Article XIII B of the California
2 Constitution.

3 SEC. 5. This act is an urgency statute necessary for the
4 immediate preservation of the public peace, health, or safety within
5 the meaning of Article IV of the Constitution and shall go into
6 immediate effect. The facts constituting the necessity are:

7 In order to protect the liberty interests of Californians, to ensure
8 that the state realizes significant revenues from this popular,
9 pervasive, and legitimate activity, and to ensure that suitable and
10 qualified persons operate sports betting venues, it is necessary that
11 this act take effect immediately.

O