

AMENDED IN ASSEMBLY JANUARY 4, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 1395

Introduced by Assembly Member Salas

February 27, 2015

An act to amend Section 17539.1 of the Government Code, relating to business; 186.9 of the Penal Code, relating to money laundering.

LEGISLATIVE COUNSEL'S DIGEST

AB 1395, as amended, Salas. ~~Unfair business practices: contests and sweepstakes.~~ *Money laundering: criminal activity: lotteries and gaming.*

Existing law makes it a felony or a misdemeanor to engage in money laundering, defined as conducting a transaction involving a monetary instrument of specified value through a financial institution with the specific intent to promote or facilitate criminal activity. Existing law defines criminal activity for these purposes as any criminal offense punishable as a felony.

This bill would expand the definition of criminal activity for purposes of money laundering to include various offenses punishable as infractions and misdemeanors related to illegal lotteries and gaming. By expanding the definition of a crime, this bill would impose a state-mandated local program.

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.

~~Existing law generally regulates false advertising and specifically prohibits certain unfair acts or practices undertaken by, or omissions of, a person in the operation of a contest or sweepstakes, including, among others, misrepresenting the number of participants in a contest or sweepstakes or representing, directly or by implication, that any tie breaker puzzle may be entered upon the payment of money qualifying the contestant for an extra cash or any other type prize or prizes except as specified.~~

~~This bill would make nonsubstantive changes to these provisions.~~

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

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

1 SECTION 1. Section 186.9 of the Penal Code is amended to
2 read:

3 186.9. As used in this chapter:

4 (a) “Conducts” includes, but is not limited to, initiating,
5 concluding, or participating in conducting, initiating, or concluding
6 a transaction.

7 (b) “Financial institution” means, when located or doing
8 business in this state, any national bank or banking association,
9 state bank or banking association, commercial bank or trust
10 company organized under the laws of the United States or any
11 state, any private bank, industrial savings bank, savings bank or
12 thrift institution, savings and loan association, or building and loan
13 association organized under the laws of the United States or any
14 state, any insured institution as defined in Section 401 of the
15 National Housing Act ~~(12~~ *(former 12 U.S.C. Sec. 1724(a))*, any
16 credit union organized under the laws of the United States or any
17 state, any national banking association or corporation acting under
18 Chapter 6 (commencing with Section 601) of Title 12 of the United
19 States Code, any agency, agent or branch of a foreign bank, any
20 currency dealer or exchange, any person or business engaged
21 primarily in the cashing of checks, any person or business who
22 regularly engages in the issuing, selling, or redeeming of traveler’s
23 checks, money orders, or similar instruments, any broker or dealer
24 in securities registered or required to be registered with the
25 Securities and Exchange Commission under the Securities
26 Exchange Act of 1934 or with the Commissioner of Corporations

1 under Part 3 (commencing with Section 25200) of Division 1 of
2 Title 4 of the Corporations Code, any licensed transmitter of funds
3 or other person or business regularly engaged in transmitting funds
4 to a foreign nation for others, any investment banker or investment
5 company, any insurer, any dealer in gold, silver, or platinum bullion
6 or coins, diamonds, emeralds, rubies, or sapphires, any pawnbroker,
7 any telegraph company, any person or business regularly engaged
8 in the delivery, transmittal, or holding of mail or packages, any
9 person or business that conducts a transaction involving the transfer
10 of title to any real property, vehicle, vessel, or aircraft, any personal
11 property broker, any person or business acting as a real property
12 securities dealer within the meaning of Section 10237 of the
13 Business and Professions Code, whether licensed to do so or not,
14 any person or business acting within the meaning and scope of
15 subdivisions (d) and (e) of Section 10131 and Section 10131.1 of
16 the Business and Professions Code, whether licensed to do so or
17 not, any person or business regularly engaged in gaming within
18 the meaning and scope of Section 330, any person or business
19 regularly engaged in pool selling or bookmaking within the
20 meaning and scope of Section 337a, any person or business
21 regularly engaged in horse racing whether licensed to do so or not
22 under the Business and Professions Code, any person or business
23 engaged in the operation of a gambling ship within the meaning
24 and scope of Section 11317, any person or business engaged in
25 controlled gambling within the meaning and scope of subdivision
26 (e) (f) of Section 19805 of the Business and Professions Code,
27 whether registered to do so or not, and any person or business
28 defined as a “bank,” “financial agency,” or “financial institution”
29 by Section 5312 of Title 31 of the United States Code or Section
30 ~~103.11~~ 1010.100 of Title 31 of the Code of Federal Regulations
31 and any successor provisions thereto.

32 (c) “Transaction” includes the deposit, withdrawal, transfer,
33 bailment, loan, pledge, payment, or exchange of currency, or a
34 monetary instrument, as defined by subdivision (d), or the
35 electronic, wire, magnetic, or manual transfer of funds between
36 accounts by, through, or to, a financial institution as defined by
37 subdivision (b).

38 (d) “Monetary instrument” means United States currency and
39 coin; the currency, coin, and foreign bank drafts of any foreign
40 country; payment warrants issued by the United States, this state,

1 or any city, county, or city and county of this state or any other
2 political subdivision thereof; any bank check, cashier's check,
3 traveler's check, or money order; any personal check, stock,
4 investment security, or negotiable instrument in bearer form or
5 otherwise in a form in which title thereto passes upon delivery;
6 gold, silver, or platinum bullion or coins; and diamonds, emeralds,
7 rubies, or sapphires. Except for foreign bank drafts and federal,
8 state, county, or city warrants, "monetary instrument" does not
9 include personal checks made payable to the order of a named
10 party which have not been endorsed or which bear restrictive
11 endorsements, and also does not include personal checks which
12 have been endorsed by the named party and deposited by the named
13 party into the named party's account with a financial institution.

14 (e) "Criminal activity" means a criminal offense punishable
15 under the laws of this state by death, imprisonment in the state
16 prison, or imprisonment pursuant to subdivision (h) of Section
17 1170 or ~~from~~ a criminal offense committed in another jurisdiction
18 punishable under the laws of that jurisdiction by death or
19 imprisonment for a term exceeding one year. "Criminal activity"
20 *also means a criminal offense specified in Chapter 9 (commencing*
21 *with Section 319) or Chapter 10 (commencing with Section 330)*
22 *of Title 9.*

23 (f) "Foreign bank draft" means a bank draft or check issued or
24 made out by a foreign bank, savings and loan, casa de cambio,
25 credit union, currency dealer or exchanger, check cashing business,
26 money transmitter, insurance company, investment or private bank,
27 or any other foreign financial institution that provides similar
28 financial services, on an account in the name of the foreign bank
29 or foreign financial institution held at a bank or other financial
30 institution located in the United States or a territory of the United
31 States.

32 *SEC. 2. No reimbursement is required by this act pursuant to*
33 *Section 6 of Article XIII B of the California Constitution because*
34 *the only costs that may be incurred by a local agency or school*
35 *district will be incurred because this act creates a new crime or*
36 *infraction, eliminates a crime or infraction, or changes the penalty*
37 *for a crime or infraction, within the meaning of Section 17556 of*
38 *the Government Code, or changes the definition of a crime within*
39 *the meaning of Section 6 of Article XIII B of the California*
40 *Constitution.*

1 SECTION 1. ~~Section 17539.1 of the Business and Professions~~
2 ~~Code is amended to read:~~

3 ~~17539.1. (a) The following unfair acts or practices undertaken~~
4 ~~by, or omissions of, any person in the operation of any contest or~~
5 ~~sweepstakes are prohibited:~~

6 ~~(1) Failing to clearly and conspicuously disclose, at the time of~~
7 ~~the initial contest solicitation, at the time of each precontest~~
8 ~~promotional solicitation and each time the payment of money is~~
9 ~~required to become or to remain a contestant, the total number of~~
10 ~~contestants anticipated based on prior experience and the~~
11 ~~percentages of contestants correctly solving each puzzle used in~~
12 ~~the three most recently completed contests conducted by the person.~~
13 ~~If the person has not operated or promoted three contests he or she~~
14 ~~shall disclose for each prior contest if any, the information required~~
15 ~~by this section.~~

16 ~~(2) Failing to promptly send to each member of the public upon~~
17 ~~his or her request, the actual number and percentage of contestants~~
18 ~~correctly solving each puzzle or game in the contest most recently~~
19 ~~completed.~~

20 ~~(3) Misrepresenting in any manner the odds of winning any~~
21 ~~prize.~~

22 ~~(4) Misrepresenting in any manner, the rules, terms, or~~
23 ~~conditions of participation in a contest.~~

24 ~~(5) Failing to clearly and conspicuously disclose with all contest~~
25 ~~puzzles and games and with all promotional puzzles and games~~
26 ~~all of the following:~~

27 ~~(A) The maximum number of puzzles or games that may be~~
28 ~~necessary to complete the contest and determine winners.~~

29 ~~(B) The maximum amount of money, including the maximum~~
30 ~~cost of any postage and handling fees, that a participant may be~~
31 ~~asked to pay to win each of the contest prizes then offered.~~

32 ~~(C) That future puzzles or games, if any, or tie breakers, if any,~~
33 ~~will be significantly more difficult than the initial puzzle.~~

34 ~~(D) The date or dates on or before which the contest will~~
35 ~~terminate and upon which all prizes will be awarded.~~

36 ~~(E) The method of determining prizewinners if a tie remains~~
37 ~~after the last tie breaker puzzle is completed.~~

38 ~~(F) All rules, regulations, terms, and conditions of the contest.~~

39 ~~(6) Failing to clearly and conspicuously disclose the exact nature~~
40 ~~and approximate value of the prizes when offered.~~

- 1 ~~(7) Failing to award and distribute all prizes of the value and~~
2 ~~type represented.~~
- 3 ~~(8) Representing directly or by implication that the number of~~
4 ~~participants has been significantly limited, or that any particular~~
5 ~~person has been selected to win a prize unless that is the fact.~~
- 6 ~~(9) Representing directly or by implication that any particular~~
7 ~~person has won any money, prize, thing, or other value in a contest~~
8 ~~unless there has been a real contest in which a meaningful~~
9 ~~percentage, which shall be at least a majority, of the participants~~
10 ~~in those contests have failed to win a prize, money, thing, or other~~
11 ~~value.~~
- 12 ~~(10) Representing directly or by implication that any particular~~
13 ~~person has won any money, prize, thing, or other value without~~
14 ~~disclosing the exact nature and approximate value thereof.~~
- 15 ~~(11) Using the word “lucky” to describe any number, ticket,~~
16 ~~coupon, symbol, or other entry, or representing in any other manner~~
17 ~~directly or by implication that any number, ticket, coupon, symbol,~~
18 ~~or other entry confers or will confer an advantage upon the recipient~~
19 ~~that other recipients will not have, that the recipient is more likely~~
20 ~~to win a prize than are others, or that the number, ticket, coupon,~~
21 ~~symbol, or other entry has some value that other entries do not~~
22 ~~have.~~
- 23 ~~(12) Using or offering for use any method intended to be used~~
24 ~~by a person interacting with an electronic video monitor to simulate~~
25 ~~gambling or play gambling-themed games in a business~~
26 ~~establishment that (A) directly or indirectly implements the~~
27 ~~predetermination of sweepstakes cash, cash-equivalent prizes, or~~
28 ~~other prizes of value, or (B) otherwise connects a sweepstakes~~
29 ~~player or participant with sweepstakes cash, cash-equivalent prizes,~~
30 ~~or other prizes of value. For the purposes of this paragraph,~~
31 ~~“business establishment” means a business that has any financial~~
32 ~~interest in the conduct of the sweepstakes or the sale of the products~~
33 ~~or services being promoted by the sweepstakes at its physical~~
34 ~~location. This paragraph does not make unlawful game promotions~~
35 ~~or sweepstakes conducted by for-profit commercial entities on a~~
36 ~~limited and occasional basis as an advertising and marketing tool~~
37 ~~that are incidental to substantial bona fide sales of consumer~~
38 ~~products or services and that are not intended to provide a vehicle~~
39 ~~for the establishment of places of ongoing gambling or gaming.~~

1 ~~(13) Failing to obtain the express written or oral consent of~~
2 ~~individuals before their names are used for a promotional purpose~~
3 ~~in connection with a mailing to a third person.~~

4 ~~(14) Using or distributing simulated checks, currency, or any~~
5 ~~simulated item of value unless there is clearly and conspicuously~~
6 ~~printed thereon the words: SPECIMEN—NONNEGOTIABLE.~~

7 ~~(15) Representing, directly or by implication, orally or in~~
8 ~~writing, that any tie breaker puzzle may be entered upon the~~
9 ~~payment of money qualifying the contestant for an extra cash or~~
10 ~~any other type prize or prizes unless:~~

11 ~~(A) It is clearly and conspicuously disclosed that the payments~~
12 ~~are optional and that contestants are not required to pay money,~~
13 ~~except for reasonable postage and handling fees, to play for an~~
14 ~~extra cash or any other type of prize or prizes; and~~

15 ~~(B) Contestants are clearly and conspicuously given the~~
16 ~~opportunity to indicate they wish to enter that phase of the contest~~
17 ~~for free, except for reasonable postage and handling fees the~~
18 ~~amount of which shall not exceed one dollar and fifty cents (\$1.50)~~
19 ~~plus the actual cost of postage and which shall be clearly and~~
20 ~~conspicuously disclosed at the time of the initial contest solicitation~~
21 ~~and each time thereafter that the payment of the fees is required.~~
22 ~~The contestants' opportunity to indicate they wish to enter for free~~
23 ~~shall be in immediate conjunction with and in a like manner as the~~
24 ~~contestants' opportunity to indicate they wish to play for an extra~~
25 ~~prize.~~

26 ~~(b) For the purposes of this section, "sweepstakes" means a~~
27 ~~procedure, activity, or event, for the distribution, donation, or sale~~
28 ~~of anything of value by lot, chance, predetermined selection, or~~
29 ~~random selection that is not unlawful under other provisions of~~
30 ~~law, including, but not limited to, Chapter 9 (commencing with~~
31 ~~Section 319) and Chapter 10 (commencing with Section 330) of~~
32 ~~Title 9 of Part 1 of the Penal Code.~~

33 ~~(c) This section does not apply to an advertising plan or program~~
34 ~~that is regulated by, and complies with, the requirements of Section~~
35 ~~17537.1.~~

36 ~~(d) Nothing in this section shall be deemed to render lawful any~~
37 ~~activity that is unlawful pursuant to other law, including, but not~~
38 ~~limited to, Section 320, 330a, 330b, 330.1, or 337j of the Penal~~
39 ~~Code.~~

1 ~~(e) Nothing in this section shall be deemed to render unlawful~~
2 ~~or restrict otherwise lawful games and methods used by a gambling~~
3 ~~enterprise licensed under the Gambling Control Act or operations~~
4 ~~of the California State Lottery.~~

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