

AMENDED IN SENATE AUGUST 30, 2000

AMENDED IN SENATE JULY 5, 2000

AMENDED IN SENATE MAY 16, 2000

AMENDED IN SENATE MAY 3, 2000

AMENDED IN SENATE APRIL 25, 2000

AMENDED IN SENATE APRIL 6, 2000

AMENDED IN SENATE MARCH 29, 2000

AMENDED IN SENATE MARCH 23, 2000

AMENDED IN ASSEMBLY MAY 3, 1999

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1416**

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**Introduced by Assembly Member Wesson**  
(Principal coauthor: Senator Perata)

February 26, 1999

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An act to amend Sections 19805, *19851.5*, and 19950.2 of, and to add ~~Sections 19950.3 and 19980 to~~, *Section 19950.3 to*, and to add and repeal *Section 19980* of the Business and Professions Code, and to add Section 330.11 to the Penal Code, relating to gambling establishments, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 1416, as amended, Wesson. Gambling establishments.

(1) Existing law, the Gambling Control Act, provides for the regulation, oversight, and licensure of gambling establishments, and the owners and employees thereof, by the California Gambling Control Commission and the Division of Gambling Control. Existing law prohibits a list of specified gambling games or any banking or percentage game played with cards, dice, or any device, for money, checks, credit, or any representative of value, and provides that any person who offers for play or participates in these games is guilty of a misdemeanor and is punishable as specified.

This bill would authorize gambling establishments to operate controlled games utilizing a player-dealer position, as defined, and to contract with a 3rd party for the provision of proposition player services subject to specified conditions and regulatory requirements.

(2) Existing law generally requires voter approval of an amendment to a local ordinance that would result in the expansion of gambling, as defined, but exempts licensed gambling establishments with 5 or fewer tables from this restriction. Existing law also provides that until January 1, 2001, no local jurisdiction that had not authorized legal gaming prior to January 1, 1996, shall do so, and that no gaming ordinance in effect on that date may be amended to expand gaming. Existing law extends this moratorium until January 1, 2003, with respect to the Counties of Alameda, Contra Costa, Los Angeles, San Mateo, and Santa Clara.

This bill would provide that the above restriction shall apply in all counties until January 1, 2007, and would additionally provide that until January 1, 2007, neither the commission nor the division shall issue a license for a gambling establishment that was not licensed to operate on December 31, 1999, unless an application to operate that establishment was on file with the division prior to September 1, 2000.

(3) 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 and is punishable as specified.

This bill would provide that “banking game” or “banked game,” as used in the above prohibition and in the Gambling Control Act, does not include any game where the *rules*



*provide that the player-dealer position that systematically and continuously rotates, in compliance with specified case law authority amongst the participants, the player-dealer is able to only win or lose a fixed and limited wager, and prohibits the house, another entity, a player or an observer from maintaining or operating as a bank during the play of the game. By changing the definition of a crime, this bill would impose a state-mandated local program.*

*(4) Existing law generally requires gambling establishments to be open to the public, but authorizes a private club to continue to operate, provided it meets specified criteria, until July 1, 2000, or until the ownership or operation of the club changes from that of January 1, 1998, whichever occurs first.*

*This bill would extend that date until November 30, 2003. This bill would also provide that prior to issuing a license to a private club, the division shall ensure that the ownership of the gambling establishment has not changed since January 1, 1998, and that the operation has not been leased to any third party.*

*(5) This bill would provide that if any of its provisions, or the application thereof, are held invalid, that these provisions are severable from the remainder of the provisions.*

~~(5)~~

*(6) This bill would make various technical changes to the act to implement these provisions, as well as technical, nonsubstantive changes, as specified. Because this bill would impose new regulatory requirements, violations of which would be punishable as misdemeanors, this bill would impose a state-mandated local program.*

~~(6)~~

*(7) 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.*

~~(7)~~

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



Vote: 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 as  
2 follows:  
3 (a) In 1983 and 1984 California card clubs played  
4 games with cards involving a player-dealer position in  
5 which players were afforded the temporary opportunity  
6 to wager against multiple players at the table where the  
7 player-dealer position continuously and systematically  
8 rotated among the players, prior to the amendment of  
9 Section 19 of Article IV of the California Constitution by  
10 the California State Lottery Act in 1984. This method of  
11 play was approved by the Courts of Appeal in *Sullivan v.*  
12 *Fox* (1987) 189 Cal.App.3d 673, *Walker v. Meehan* (1987)  
13 194 Cal.App.3d 1290, *City of Bell Gardens v. County of Los*  
14 *Angeles* (1991) 231 Cal.App.3d 1563, and *Huntington*  
15 *Park Club Corp. v. County of Los Angeles* (1988) 206  
16 Cal.App.3d 241.  
17 (b) The amendment to Section 19 of Article IV of the  
18 Constitution declared:  
19  
20 “The Legislature has no power to authorize, and shall  
21 prohibit casinos of the type currently operating in  
22 Nevada and New Jersey.”  
23  
24 Casinos operating in 1983 and 1984 in the States of  
25 Nevada and New Jersey did not include card games  
26 featuring a player-dealer position which continuously  
27 and systematically rotates among the players. In Nevada  
28 and New Jersey, comparable games are banked only by  
29 the house, which is a participant in the game, with an  
30 interest in its outcome, and which covers all bets in the  
31 game, paying all winners and collecting from all losers.  
32 (c) In *Hotel Employees & Restaurant Employees v.*  
33 *Davis* (1999) 21 Cal. 4th 585, the California Supreme  
34 Court recently stated at page 605 that:  
35



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

5 SEC. 2. Section 19805 of the Business and Professions  
6 Code is amended to read:

7 19805. As used in this chapter, the following  
8 definitions shall apply:

9 (a) “Affiliate” means a person who, directly or  
10 indirectly through one or more intermediaries, controls,  
11 is controlled by, or is under common control with, a  
12 specified person.

13 (b) “Applicant” means any person who has applied  
14 for, or is about to apply for, a state gambling license, a key  
15 employee license, a registration, a finding of suitability, a  
16 work permit, a manufacturer’s or distributor’s license, or  
17 an approval of any act or transaction for which the  
18 approval or authorization of the commission or division is  
19 required or permitted under this chapter.

20 (c) “Banking game” or “banked game,” as used in this  
21 chapter and in Section 330 of the Penal Code, ~~does not~~  
22 ~~include a controlled game that features a player-dealer~~  
23 ~~position that rotates amongst the players as provided for~~  
24 ~~in *Huntington Park Club Corp. v. County of Los Angeles*~~  
25 ~~(1988) 206 Cal.App.3d 241 and *Oliver v. County of Los*~~  
26 ~~*Angeles* (1998) 66 Cal.App.4th 1397. refers to a game in~~  
27 ~~which the house, a player, or other entity is a participant~~  
28 ~~in the game, taking on all comers, paying all winners, and~~  
29 ~~collecting from all losers. The bank is actually involved in~~  
30 ~~the play, and serves as the ultimate source and repository~~  
31 ~~of funds, dwarfing that of all other participants in the~~  
32 ~~game. “Banking game” or “banked game” does not~~  
33 ~~include a controlled game if the published rules of the~~  
34 ~~game feature a player-dealer position and provide that~~  
35 ~~this position must be continuously and systematically~~  
36 ~~rotated amongst each of the participants during the play~~  
37 ~~of the game, ensure that the player-dealer is able to win~~  
38 ~~or lose only a fixed and limited wager during the play of~~  
39 ~~the game, and preclude the house, another entity, a~~  
40 ~~player, or an observer from maintaining or operating as~~



1 a bank during the course of the game. For purposes of this  
2 section it is not the intent of the Legislature to mandate  
3 acceptance of the deal by every player if the division finds  
4 that the rules of the game render the maintenance of or  
5 operation of a bank impossible by other means. The house  
6 shall not occupy the player-dealer position.

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

9 (e) “Commission” means the California Gambling  
10 Control Commission.

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

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

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

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

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

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

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

35 (m) “Gambling enterprise employee” means any  
36 natural person employed in the operation of a gambling  
37 enterprise, including, without limitation, dealers,  
38 floormen, security employees, countroom personnel,  
39 cage personnel, collection personnel, surveillance  
40 personnel, data processing personnel, appropriate



1 maintenance personnel, waiters and waitresses, and  
2 secretaries, or any other natural person whose  
3 employment duties require or authorize access to  
4 restricted gambling establishment areas.

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

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

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

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

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

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

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

28 (2) Contracts with an owner licensee, or an affiliate  
29 thereof, to provide services consisting of arranging  
30 transportation or lodging for guests at a gambling  
31 establishment.

32 (t) “Institutional investor” means any retirement  
33 fund administered by a public agency for the exclusive  
34 benefit of federal, state, or local public employees, any  
35 investment company registered under the Investment  
36 Company Act of 1940 (15 U.S.C. Sec. 80a-1 et seq.), any  
37 collective investment trust organized by banks under  
38 Part Nine of the Rules of the Comptroller of the  
39 Currency, any closed-end investment trust, any  
40 chartered or licensed life insurance company or property



1 and casualty insurance company, any banking and other  
2 chartered or licensed lending institution, any investment  
3 advisor registered under the Investment Advisors Act of  
4 1940 (15 U.S.C. Sec. 80b-1 et seq.) acting in that capacity,  
5 and other persons as the board may determine for reasons  
6 consistent with the policies of this chapter.

7 (u) “Key employee” means any natural person  
8 employed in the operation of a gambling enterprise in a  
9 supervisory capacity or empowered to make  
10 discretionary decisions that regulate gambling  
11 operations, including, without limitation, pit bosses, shift  
12 bosses, credit executives, cashier operations supervisors,  
13 gambling operation managers and assistant managers,  
14 managers or supervisors of security employees, or any  
15 other natural person designated as a key employee by the  
16 division for reasons consistent with the policies of this  
17 chapter.

18 (v) “Key employee license” means a state license  
19 authorizing the holder to be associated with a gambling  
20 enterprise as a key employee.

21 (w) “Licensed gambling establishment” means the  
22 gambling premises encompassed by a state gambling  
23 license.

24 (x) “Limited partnership” means a partnership  
25 formed by two or more persons having as members one  
26 or more general partners and one or more limited  
27 partners.

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

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

32 (A) A share of the revenue.

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

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

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

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



1 (aa) "Person," unless otherwise indicated, includes a  
2 natural person, corporation, partnership, limited  
3 partnership, trust, joint venture, association, or any other  
4 business organization.

5 (ab) "Player" means a patron of a gambling  
6 establishment who participates in a controlled game.

7 (ac) "Player-dealer" and "controlled game featuring  
8 a player-dealer position" refer to a position in a controlled  
9 game, as defined by the approved rules for that game, in  
10 which ~~players seated player participants~~ are afforded the  
11 temporary opportunity to wager against multiple players  
12 at the same table, provided that this position is rotated  
13 ~~among the~~ *amongst the other* seated players in the game.

14 (ad) "Publicly traded racing association" means a  
15 corporation licensed to conduct horse racing and  
16 simulcast wagering pursuant to Chapter 4 (commencing  
17 with Section 19400) whose stock is publicly traded.

18 (ae) "Qualified racing association" means a  
19 corporation licensed to conduct horse racing and  
20 simulcast wagering pursuant to Chapter 4 (commencing  
21 with Section 19400) that is a wholly owned subsidiary of  
22 a corporation whose stock is publicly traded.

23 (af) "Work permit" means any card, certificate, or  
24 permit issued by the division or by a county, city, or city  
25 and county, whether denominated as a work permit,  
26 registration card, or otherwise, authorizing the holder to  
27 be employed as a gambling enterprise employee or to  
28 serve as an independent agent. A document issued by any  
29 governmental authority for any employment other than  
30 gambling is not a valid work permit for the purposes of  
31 this chapter.

32 SEC. 3. *Section 19851.5 of the Business and*  
33 *Professions Code is amended to read:*

34 19851.5. Notwithstanding subdivision (i) of Section  
35 19801, the division or commission shall not deny a license  
36 to a gambling establishment solely because it is not open  
37 to the public, provided that all of the following are true:

38 (a) the gambling establishment is situated in a local  
39 jurisdiction that has an ordinance allowing only private  
40 clubs, and the gambling establishment was in operation



1 as a private club under that ordinance on December 31,  
2 1997, and met all applicable state and local gaming  
3 registration requirements; (b) the gambling  
4 establishment consists of no more than five gaming tables;  
5 (c) videotaped recordings of the entrance to the  
6 gambling room or rooms and all tables situated therein  
7 are made during all hours of operation by means of closed  
8 circuit television cameras, and these tapes are retained  
9 for a period of 30 days and are made available for review  
10 by the division or commission upon request; and (d) the  
11 gambling establishment is open to members of the  
12 private club and their spouses in accordance with  
13 membership criteria in effect as of December 31, 1997.

14 A gambling establishment meeting these criteria, in  
15 addition to the other requirements of this chapter, may  
16 be licensed to operate as a private club gambling  
17 establishment until ~~July 1, 2000~~ *November 30, 2003*, or  
18 until the ownership or operation of the gambling  
19 establishment changes from the ownership or operation  
20 as of January 1, 1998, whichever occurs first. Operation of  
21 the gambling establishments after this date shall only be  
22 permitted if the local jurisdiction approves an ordinance,  
23 pursuant to Sections 19950.1 and 19950.2, authorizing the  
24 operation of gambling establishments that are open to the  
25 public. The commission shall adopt regulations  
26 implementing this section. *Prior to issuing a license to a*  
27 *private club, the division shall ensure that the ownership*  
28 *of the gambling establishment has remained constant*  
29 *since January 1, 1998, and the operation of the gambling*  
30 *establishment has not been leased to any third party.*

31 *SEC. 4.* Section 19950.2 of the Business and  
32 Professions Code is amended to read:

33 19950.2. (a) On and after the effective date of this  
34 chapter, neither the governing body nor the electors of  
35 a county, city, or city and county that has not authorized  
36 legal gaming within its boundaries prior to January 1,  
37 1996, shall authorize legal gaming.

38 (b) No ordinance in effect on January 1, 1996, that  
39 authorizes legal gaming within a city, county, or city and



1 county may be amended to expand gaming in that  
2 jurisdiction beyond that permitted on January 1, 1996.

3 (c) This section shall remain operative only until  
4 January 1, 2007, and as of that date is repealed.

5 ~~SEC. 4.~~

6 SEC. 5. Section 19950.3 is added to the Business and  
7 Professions Code, to read:

8 19950.3. (a) In addition to any other limitations on  
9 the expansion of gambling imposed by Section 19950.2 or  
10 any provision of this chapter, neither the commission nor  
11 the division shall issue a gambling license for a gambling  
12 establishment that was not licensed to operate on  
13 December 31, 1999, unless an application to operate that  
14 establishment was on file with the division prior to  
15 September 1, 2000.

16 (b) This section shall remain in effect only until  
17 January 1, 2007, and as of that date is repealed, unless a  
18 later enacted statute, that is enacted before January 1,  
19 2007, deletes or extends that date.

20 ~~SEC. 5.~~

21 SEC. 6. Section 19980 is added to the Business and  
22 Professions Code, to read:

23 19980. Notwithstanding any other provision of law, a  
24 licensed gambling establishment may contract with a  
25 third party for the purpose of providing proposition  
26 player services, subject to the following conditions:

27 (a) Any agreement, contract, or arrangement  
28 between a gambling establishment and a third-party  
29 provider of proposition player services shall be approved  
30 in advance by the division, and in no event shall a  
31 gambling establishment or the house have any interest,  
32 whether direct or indirect, in funds wagered, lost, or won  
33 ~~by any proposition player.~~

34 (b) ~~The division~~ *commission* shall establish reasonable  
35 criteria for, and require the licensure and registration of,  
36 any person or entity that provides proposition player  
37 services to gambling establishments pursuant to this  
38 section, including owners, supervisors, and players. ~~The~~  
39 ~~division~~ *Those employed by a third-party provider of*  
40 *proposition player services, including owners,*



1 supervisors, observers, and players, shall wear a badge  
2 which clearly identifies them as proposition players  
3 whenever they are present within a gambling  
4 establishment. The commission may impose licensing  
5 requirements, disclosures, approvals, conditions, or  
6 limitations as it deems necessary to protect the integrity  
7 of controlled gambling in this state, and may assess and  
8 collect reasonable fees and deposits as necessary to defray  
9 the costs of providing this regulation and oversight.

10 (c) The division, pursuant to regulations of the  
11 commission, is empowered to perform background  
12 checks, financial audits, and other investigatory services  
13 as needed to assist the commission in regulating third  
14 party providers of proposition player services, and may  
15 assess and collect reasonable fees and deposits as  
16 necessary to defray the costs of providing this regulation  
17 and oversight. The division shall adopt emergency  
18 regulations in order to implement this section in an  
19 expeditious manner.

20 (d) No agreement or contract between a licensed  
21 gambling establishment and a third party concerning the  
22 provision of proposition player services shall be  
23 invalidated or prohibited by the division pursuant to  
24 ~~subdivision (a) until the division establishes this section~~  
25 *until the commission establishes* criteria for, and makes  
26 determinations regarding the licensure or registration of,  
27 the provision of these services pursuant to subdivision  
28 (b).

29 ~~SEC. 6. Section 330.11 is added to the Penal Code, to~~  
30 ~~read:~~

31 ~~330.11. "Banking game," as used in Section 330, does~~  
32 ~~not include a controlled game that features a~~  
33 ~~player dealer that rotates amongst the players as~~  
34 ~~provided for in Huntington Park Club Corp. v. County of~~  
35 ~~Los Angeles (1988) 206 Cal.App.3d 241 and Oliver v.~~  
36 ~~County of Los Angeles (1998) 66 Cal.App.4th 1397.~~

37 ~~SEC. 7. Section 330.11 is added to the Penal Code, to~~  
38 ~~read:~~

39 ~~330.11. "Banking game" or "banked game," as those~~  
40 ~~terms are used in Section 330 and in the Gambling~~



1 *Control Act (Chapter 5 (commencing with Section*  
2 *19800) of Division 8 of the Business and Professions*  
3 *Code), refers to a game in which the house, a player, or*  
4 *other entity is a participant in the game, taking on all*  
5 *comers, paying all winners, and collecting from all losers.*  
6 *The bank is actually involved in the play, and serves as the*  
7 *ultimate source and repository of funds, dwarfing that of*  
8 *all other participants in the game. “Banking game” or*  
9 *“banked game” does not include a controlled game if the*  
10 *published rules of the game feature a player-dealer*  
11 *position and provide that this position must be*  
12 *continuously and systematically rotated amongst each of*  
13 *the participants during the play of the game, ensure that*  
14 *the player-dealer is able to win or lose only a fixed and*  
15 *limited wager during the play of the game, and preclude*  
16 *the house, another entity, a player, or an observer from*  
17 *maintaining or operating as a bank during the course of*  
18 *the game. For purposes of this section it is not the intent*  
19 *of the Legislature to mandate acceptance of the deal by*  
20 *every player if the division finds that the rules of the game*  
21 *render the maintenance of or operation of a bank*  
22 *impossible by other means. The house shall not occupy*  
23 *the player-dealer position.*

24 ~~SEC. 7.~~

25 *SEC. 8.* The provisions of this act are severable. If any  
26 provision of this act, or the application thereof, is held  
27 invalid, that invalidity shall not affect other provisions or  
28 applications that can be given effect without the invalid  
29 provision or application.

30 ~~SEC. 8.~~

31 *SEC. 9.* No reimbursement is required by this act  
32 pursuant to Section 6 of Article XIII B of the California  
33 Constitution because the only costs that may be incurred  
34 by a local agency or school district will be incurred  
35 because this act creates a new crime or infraction,  
36 eliminates a crime or infraction, or changes the penalty  
37 for a crime or infraction, within the meaning of Section  
38 17556 of the Government Code, or changes the definition  
39 of a crime within the meaning of Section 6 of Article  
40 XIII B of the California Constitution.



1 ~~SEC. 9.~~

2 *SEC. 10.* This act is an urgency statute necessary for  
3 the immediate preservation of the public peace, health,  
4 or safety within the meaning of Article IV of the  
5 Constitution and shall go into immediate effect. The facts  
6 constituting the necessity are:

7 In order to reduce confusion and to ensure at the  
8 earliest possible time that gambling establishments are  
9 able to operate within the law with respect to controlled  
10 games featuring a player dealer position, to provide the  
11 California Gambling Control Commission and Division  
12 of Gambling Control with necessary regulatory  
13 guidelines and enforcement powers, and to impose  
14 reasonable limits on the further expansion of gambling, it  
15 is necessary that this act take effect immediately.

