

Assembly Bill No. 1416

CHAPTER 1023

An act to amend Sections 19805, 19851.5, and 19950.2 of, and to add 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.

[Approved by Governor September 30, 2000. Filed
with Secretary of State September 30, 2000.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1416, 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 systematically and continuously rotates 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.

(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.

(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.

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

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

SECTION 1. The Legislature finds and declares as follows:

(a) In 1983 and 1984 California card clubs played games with cards involving a player-dealer position in which players were afforded the temporary opportunity to wager against multiple players at the table where the player-dealer position continuously and systematically rotated among the players, prior to the amendment of Section 19 of



Article IV of the California Constitution by the California State Lottery Act in 1984. This method of play was approved by the Courts of Appeal in *Sullivan v. Fox* (1987) 189 Cal.App.3d 673, *Walker v. Meehan* (1987) 194 Cal.App.3d 1290, *City of Bell Gardens v. County of Los Angeles* (1991) 231 Cal.App.3d 1563, and *Huntington Park Club Corp. v. County of Los Angeles* (1988) 206 Cal.App.3d 241.

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

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

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

(c) In *Hotel Employees & Restaurant Employees v. Davis* (1999) 21 Cal. 4th 585, the California Supreme Court recently stated at page 605 that:

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

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

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

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

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

(c) “Banking game” or “banked game,” as used in this chapter and in Section 330 of the Penal Code, refers to a game in which the house, a player, or other entity is a participant in the game, taking on all comers, paying all winners, and collecting from all losers. The bank is actually involved in the play, and serves as the ultimate source and repository of funds, dwarfing that of all other participants in the game. “Banking game” or “banked game” does not include a



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

(d) "Board" means the California Gambling Control Board.

(e) "Commission" means the California Gambling Control Commission.

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

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

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

(i) "Division" means the Division of Gambling Control in the Department of Justice.

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

(k) "Game" and "gambling game" means any controlled game.

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

(m) "Gambling enterprise employee" means any natural person employed in the operation of a gambling enterprise, including, without limitation, dealers, floormen, security employees, countroom personnel, cage personnel, collection personnel, surveillance personnel, data processing personnel, appropriate maintenance personnel, waiters and waitresses, and secretaries, or any other natural person whose employment duties require or authorize access to restricted gambling establishment areas.

(n) "Gambling establishment," "establishment," or "licensed premises" means one or more rooms where any controlled gambling or activity directly related thereto occurs.

(o) "Gambling license" or "state gambling license" means any license issued by the state that authorizes the person named therein to conduct a gambling operation.



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

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

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

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

(1) Collects debt evidenced by a credit instrument.

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

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

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

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

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

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

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

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



- (A) A share of the revenue.
- (B) Any other compensation by way of income.
- (C) A return of any or all of his or her contribution to capital of the limited partnership.
- (2) To exercise any of the rights provided under state law.
- (z) “Owner licensee” means an owner of a gambling enterprise who holds a state gambling license.
- (aa) “Person,” unless otherwise indicated, includes a natural person, corporation, partnership, limited partnership, trust, joint venture, association, or any other business organization.
- (ab) “Player” means a patron of a gambling establishment who participates in a controlled game.
- (ac) “Player-dealer” and “controlled game featuring a player-dealer position” refer to a position in a controlled game, as defined by the approved rules for that game, in which seated player participants are afforded the temporary opportunity to wager against multiple players at the same table, provided that this position is rotated amongst the other seated players in the game.
- (ad) “Publicly traded racing association” means a corporation licensed to conduct horse racing and simulcast wagering pursuant to Chapter 4 (commencing with Section 19400) whose stock is publicly traded.
- (ae) “Qualified racing association” means a corporation licensed to conduct horse racing and simulcast wagering pursuant to Chapter 4 (commencing with Section 19400) that is a wholly owned subsidiary of a corporation whose stock is publicly traded.
- (af) “Work permit” means any card, certificate, or permit issued by the division or by a county, city, or city and county, whether denominated as a work permit, registration card, or otherwise, authorizing the holder to be employed as a gambling enterprise employee or to serve as an independent agent. A document issued by any governmental authority for any employment other than gambling is not a valid work permit for the purposes of this chapter.

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

19851.5. Notwithstanding subdivision (i) of Section 19801, the division or commission shall not deny a license to a gambling establishment solely because it is not open to the public, provided that all of the following are true: (a) the gambling establishment is situated in a local jurisdiction that has an ordinance allowing only private clubs, and the gambling establishment was in operation as a private club under that ordinance on December 31, 1997, and met all applicable state and local gaming registration requirements; (b) the gambling establishment consists of no more than five gaming tables; (c) videotaped recordings of the entrance to the gambling room or rooms and all tables situated therein are made during all hours of operation by means of closed circuit television cameras, and these



tapes are retained for a period of 30 days and are made available for review by the division or commission upon request; and (d) the gambling establishment is open to members of the private club and their spouses in accordance with membership criteria in effect as of December 31, 1997.

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

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

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

(b) No ordinance in effect on January 1, 1996, that authorizes legal gaming within a city, county, or city and county may be amended to expand gaming in that jurisdiction beyond that permitted on January 1, 1996.

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

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

19950.3. (a) In addition to any other limitations on the expansion of gambling imposed by Section 19950.2 or any provision of this chapter, neither the commission nor the division shall issue a gambling 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.

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

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

19980. Notwithstanding any other provision of law, a licensed gambling establishment may contract with a third party for the



purpose of providing proposition player services, subject to the following conditions:

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

(b) The commission shall establish reasonable criteria for, and require the licensure and registration of, any person or entity that provides proposition player services to gambling establishments pursuant to this section, including owners, supervisors, and players. Those employed by a third-party provider of proposition player services, including owners, supervisors, observers, and players, shall wear a badge which clearly identifies them as proposition players whenever they are present within a gambling establishment. The commission may impose licensing requirements, disclosures, approvals, conditions, or limitations as it deems necessary to protect the integrity of controlled gambling in this state, and may assess and collect reasonable fees and deposits as necessary to defray the costs of providing this regulation and oversight.

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

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

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

330.11. "Banking game" or "banked game," as those terms are used in Section 330 and in the Gambling Control Act (Chapter 5 (commencing with Section 19800) of Division 8 of the Business and Professions Code), refers to a game in which the house, a player, or other entity is a participant in the game, taking on all comers, paying all winners, and collecting from all losers. The bank is actually involved in the play, and serves as the ultimate source and repository of funds, dwarfing that of all other participants in the game. "Banking game" or "banked game" does not include a controlled game if the published rules of the game feature a player-dealer position and provide that this position must be continuously and systematically



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

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

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

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

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

