

AMENDED IN SENATE AUGUST 30, 1999

AMENDED IN ASSEMBLY MAY 24, 1999

AMENDED IN ASSEMBLY APRIL 5, 1999

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1517**

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**Introduced by Assembly Member Firebaugh**

February 26, 1999

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An act to add Section 19826 to the Business and Professions Code, and to add Section 319.1 to the Penal Code, relating to gambling.

LEGISLATIVE COUNSEL'S DIGEST

AB 1517, as amended, Firebaugh. Gambling: ~~jackpot poker~~ *progressive pool games*.

Existing law generally prohibits anyone, other than the California State Lottery, from contriving, preparing, setting up, proposing, or drawing any lottery, defined to be any scheme for the disposal or distribution of property by chance among persons who have paid or promised to pay any valuable consideration for the chance of obtaining all or a portion of the property, with a violation of these and other related provisions punishable as a misdemeanor. The California Constitution provides that the Legislature has no power to authorize lotteries. Existing case law provides that the card game of jackpot poker, *a form of progressive pool game*, is an unlawful lottery because the game is dominated by chance.

The Gambling Control Act provides for the establishment of the Gambling Control Commission, and provides that the commission has jurisdiction over the operation of gambling establishments in this state.

This bill would ~~state findings and declarations of the Legislature, and would~~ provide that a ~~jackpot, player pool, or~~ progressive pool game played in a gambling establishment licensed by the commission is not unlawful if the game contains an element of skill. The bill would require the commission to adopt regulations as specified, relating to the collection, accounting, and disbursal of all funds held for ~~jackpot or~~ progressive pool payouts. The bill would ~~authorize~~ *provide that the commission, by regulation, shall authorize* a gambling establishment to ~~deduct no more than 15% from the~~ ~~jackpot or~~ *make a monthly deduction from the funds in the* progressive pool for ~~its administrative~~ *specified* expenses, would allow the local government entity in which the establishment is located to ~~claim~~ *require the gambling establishment to make a monthly deduction of up to 5% of the* ~~jackpot or~~ funds in the progressive pool, to be paid to that local government entity as a licensing fee or for administrative costs, and would provide that after these deductions the remaining funds shall be irrevocably dedicated to augment or otherwise fund the winnings of players. The bill would enact other related provisions.

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

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

1     ~~SECTION 1. (a) The Legislature finds and declares~~  
 2     ~~that numerous California cities are dependent on~~  
 3     ~~revenues from gambling establishments to support~~  
 4     ~~essential municipal services. A number of cities receive in~~  
 5     ~~excess of 40 percent of their general fund revenues from~~  
 6     ~~fees collected from gambling establishments licensed~~  
 7     ~~pursuant to the Gambling Control Act (Chapter 5~~  
 8     ~~(commencing with Section 19800) of Division 8 of the~~  
 9     ~~Business and Professions Code). The prohibition against~~  
 10    ~~smoking in places of employment has caused the~~



1 revenues paid to municipalities by gambling  
2 establishments to decline in some locations by as much as  
3 12 percent. The continued loss of these revenues will  
4 require the reduction of essential services in these  
5 municipalities, including law enforcement, fire, and gang  
6 prevention activities. Therefore, it is the intent of the  
7 Legislature to clarify the law to restore the play of jackpot  
8 poker, and to allow cities and counties to assess fees and  
9 taxes on the funds placed in the jackpot poker pools  
10 authorized by the California Gambling Control  
11 Commission.

12 (b) The Legislature finds and declares that Section 2  
13 of this act is intended to clarify the law in light of the  
14 decision of the Second District Court of Appeals in the  
15 case of Bell Gardens Bicycle Club v. Department of  
16 Justice (1995) 36 Cal.App.4th 717, and the decision of the  
17 California Supreme Court in the case of Western Teleon,  
18 Inc. v. California State Lottery (1996) 13 Cal.4th 475. In  
19 the Bell Gardens case, the court determined that jackpot  
20 poker was an illegal lottery because the dominant feature  
21 in the play of jackpot poker is chance. In the Western  
22 Teleon decision, the California Supreme Court, in  
23 distinguishing between gaming, lotteries, and betting,  
24 stated that lottery games and banking games are  
25 exclusive of one another, and can surely be distinguished  
26 by the nature of the betting itself. It is the intent of the  
27 Legislature to authorize jackpot poker, and other player  
28 pooled games, as banking games that are banked by  
29 players, or by pools which are irrevocably dedicated to  
30 the benefit of players.

31 ~~SEC. 2.~~

32 *SECTION 1.* Section 19826 is added to the Business  
33 and Professions Code, to read:

34 19826. The commission shall adopt regulations  
35 providing for the collection, accounting, and disbursal of  
36 all funds held for ~~jackpot or progressive pool~~ payouts. The  
37 ~~gambling establishment may deduct no more than 15~~  
38 ~~percent from the jackpot or pool for its administrative~~  
39 ~~expenses~~ *commission shall, by regulation, authorize a*  
40 *gambling establishment to make a monthly deduction of*



1 funds from the pool sufficient to cover the expenses of the  
2 establishment in collecting, disbursing, and accounting  
3 for the funds in the pool. The city, county, or city and  
4 county in which the gambling establishment is located  
5 may ~~claim~~ require the establishment to make a monthly  
6 deduction of up to 5 percent of the ~~jackpot or progressive~~  
7 ~~pool~~ funds in the progressive pool to be paid to that city,  
8 county, or city and county as a licensing fee or for  
9 administrative costs. Funds remaining in the ~~jackpot or~~  
10 progressive pool after these two deductions shall be  
11 irrevocably dedicated to augment or otherwise fund the  
12 winnings of players. The gambling establishment shall  
13 record the name, address, and driver's license or state  
14 identification card number for each winner of a ~~jackpot~~  
15 ~~or~~ progressive pool that exceeds five thousand dollars  
16 (\$5,000). This information shall be provided to the  
17 commission once each quarter. The regulations adopted  
18 by the commission shall (a) require a gambling  
19 establishment to use separate collection boxes for ~~jackpot~~  
20 ~~or~~ progressive pool funds and for other funds, (b) require  
21 the collections in ~~jackpot or~~ progressive pool funds to be  
22 counted separately from the other funds, and (c) require  
23 the use and implementation of electronic accounting  
24 devices at the gambling tables which will ensure the  
25 integrity and accuracy of the accounting of funds in the  
26 progressive pool.

27 SEC. 3. Section 319.1 is added to the Penal Code, to  
28 read:

29 319.1. Notwithstanding any other provision of this  
30 chapter, it is not unlawful for a ~~jackpot, player pool, or~~  
31 progressive pool game to be played with cards consistent  
32 with regulations adopted pursuant to Section 19826 of the  
33 Business and Professions Code, in a gambling  
34 establishment that is licensed by the California Gambling  
35 Control Commission pursuant to the Gambling Control  
36 Act (Chapter 5 (commencing with Section 19800) of  
37 Division 8 of the Business and Professions Code), if the  
38 game contains an element of skill.

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