

AMENDED IN SENATE APRIL 19, 2012

AMENDED IN SENATE APRIL 9, 2012

AMENDED IN SENATE MARCH 28, 2012

SENATE BILL

No. 1390

**Introduced by Senator Wright
(Coauthor: Senator Anderson)**

February 24, 2012

An act to amend Section 19868 of, and 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 ~~sports wagering~~ *gambling*.

LEGISLATIVE COUNSEL'S DIGEST

SB 1390, as amended, Wright. ~~Sports-Gambling: sports wagering.~~
~~The~~

(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, horse racing track, or satellite wagering facility, with a current license, to conduct wagering on professional and collegiate sports or athletic events by applying to the California Gambling Control Commission or the California Horse Racing Board, as specified, for authorization to conduct sports wagering. The bill would require the commission and the board to adopt regulations to implement these provisions. The bill would require the department to, among other things, investigate any request made by the board or the commission in connection with an application for authorization, and to investigate alleged violations of the above provisions. 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.

Existing

(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 provide that a federally recognized Indian tribe may conduct sports wagering on Indian lands 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 Gambling Control Act requires the Department of Justice to investigate an applicant for a gambling license. Existing law provides that, if denial of the application, or approval of the license with restrictions or conditions on the license, is recommended, the chief of the entity within the department that is responsible for enforcing these provisions shall prepare and file with the commission his or her written reasons upon which the recommendation is based.

This bill would require the chief of that entity within the department to file with the commission the written reasons upon which the recommendation is based, together with all relevant documents and information.

The

(4) 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.

Vote: majority. 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
8 professional and collegiate sports or athletic events as authorized
9 pursuant to this chapter:

10 (a) The owner or operator of a gambling establishment with a
11 current license issued by the California Gambling Control

1 Commission pursuant to Chapter 5 (commencing with Section
2 19800).

3 (b) The owner or operator of a horse racing track or satellite
4 wagering facility with a current license issued by the California
5 Horse Racing Board pursuant to Chapter 4 (commencing with
6 Section 19400).

7 19751. A federally recognized Indian tribe may conduct sports
8 wagering on Indian lands consistent with the requirements of the
9 *federal* Indian Gaming Regulatory Act of 1988 (18 U.S.C. Secs.
10 1166 to 1168, incl., and 25 U.S.C. Sec. 2701 et seq.), and under
11 terms no more stringent than those applicable to any other owner
12 or operator in the state.

13 19752. As used in this chapter, the following definitions shall
14 apply:

15 (a) "Board" means the California Horse Racing Board.

16 (b) "Commission" means the California Gambling Control
17 Commission.

18 (c) "Department" means the Department of Justice.

19 (d) "Licensed operator" means any of the entities listed in
20 Section 19750 that is authorized pursuant to this chapter to conduct
21 sports wagering.

22 (e) "Sports event" shall include any professional sports or
23 athletic event, and any collegiate sports or athletic event.

24 (f) "Sports wagering" means the business of accepting wagers
25 on a sports event by any legal system or method of wagering,
26 including, but not limited to, exchange wagering, parlays, over
27 and under, money line, and straight bets.

28 19754. (a) (1) An owner or operator of a gambling
29 establishment seeking to conduct sports wagering shall apply to
30 the commission for authorization to conduct sports wagering.

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

34 (b) The board or the commission, as the case may be, shall hear
35 and decide promptly, and in reasonable order, all applications to
36 conduct sports wagering from owners and operators of licensed
37 gambling establishments, licensed horse racing tracks, and satellite
38 wagering facilities. Authorization to conduct sports wagering shall
39 not be unreasonably withheld for any applicant that is in good
40 standing and has a current license issued pursuant to Chapter 4

(commencing with Section 19400) or Chapter 5 (commencing with Section 19800).

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

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

(1) The name of the licensee.

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

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

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

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

19758. (a) The board and the commission shall adopt regulations for the administration and enforcement of this chapter.

(b) The board and the commission shall consult with each other, and the department, in the adoption of regulations pursuant to this section, and may adopt joint regulations.

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

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

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

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

(3) The method of issuing tickets.

(b) Govern all of the following:

(1) The extension of credit.

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

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

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

19762. (a) The sports wagering authorized pursuant to this chapter may be conducted only at the gambling establishment,

1 horse racing track, or satellite facility of the licensed operator, or
2 on Indian lands consistent with the federal Indian Gaming
3 Regulatory Act of 1988 (18 U.S.C. Secs. 1166 to 1168, incl., and
4 25 U.S.C. Sec. 2701 et seq.).

5 (b) The licensed operators of horse racing tracks, satellite
6 wagering facilities, and gambling establishments may enter into
7 an agreement to jointly conduct a sports wagering operation. Any
8 joint sports wagering operation authorized pursuant to this
9 subdivision shall be conducted only at a horse racing track.

10 19764. A licensed operator shall not accept a wager on a sports
11 event from any person who is not physically present at the facility
12 where the sports wagering is conducted.

13 19766. A licensed operator shall establish the odds it will pay
14 on wagers placed on sports events.

15 19768. (a) A licensed operator shall not conduct any sports
16 wagering in violation of any provision of this chapter, any
17 regulation adopted pursuant to this chapter, or any governing local
18 ordinance.

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

21 19770. (a) The department shall have all of the following
22 responsibilities:

23 (1) To investigate any request made by the board or the
24 commission in connection with an application for authorization
25 pursuant to this chapter. The department may recommend the
26 denial or the limitation, conditioning, or restriction of any
27 authorization.

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

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

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

35 (5) To initiate, where appropriate, disciplinary actions. In
36 connection with any disciplinary action, the department may seek
37 restriction, limitation, suspension, or revocation of any license,
38 permit, authorization, or approval pursuant to this chapter, Chapter
39 4 (commencing with Section 19400), or Chapter 5 (commencing
40 with Section 19800), or the imposition of any fine upon any person

1 licensed, permitted, authorized, or approved pursuant to those
2 chapters.

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

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

8 19772. (a) The department shall make appropriate
9 investigations as follows:

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

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

15 (3) To aid in adopting regulations.

16 (b) If, after any investigation, the department is satisfied that a
17 license, permit, authorization, or approval pursuant to this chapter,
18 Chapter 4 (commencing with Section 19400), or Chapter 5
19 (commencing with Section 19800) should be suspended or revoked,
20 it shall file an accusation in accordance with Chapter 5
21 (commencing with Section 11500) of Part 1 of Division 3 of Title
22 2 of the Government Code.

23 (c) In addition to any action that the board or commission may
24 take against a license, permit, finding of suitability, or approval,
25 the board or commission may also require the payment of fines or
26 penalties. However, no fine imposed shall exceed twenty thousand
27 dollars (\$20,000) for each separate violation of any provision of
28 this chapter or any regulation adopted under this chapter.

29 *SEC. 2. Section 19868 of the Business and Professions Code*
30 *is amended to read:*

31 19868. (a) Within a reasonable time after the filing of an
32 application and any supplemental information the department may
33 require, and the deposit of any fee required pursuant to Section
34 19867, the department shall commence its investigation of the
35 applicant and, for that purpose, may conduct any proceedings it
36 deems necessary. To the extent practicable, all applications shall
37 be acted upon within 180 calendar days of the date of submission
38 of a completed application. If an investigation has not been
39 concluded within 180 days after the date of submission of a
40 completed application, the department shall inform the applicant

1 in writing of the status of the investigation and shall also provide
2 the applicant with an estimated date on which the investigation
3 may reasonably be expected to be concluded.

4 (b) If denial of the application, or approval of the license with
5 restrictions or conditions on the license, is recommended, the chief
6 shall prepare and file with the commission his or her written
7 reasons upon which the recommendation is based, *together with*
8 *all relevant documents and information*.

9 (1) Prior to filing his or her recommendation with the
10 commission, the chief shall meet with the applicant, or the
11 applicant's duly authorized representative, and inform him or her
12 generally of the basis for any proposed recommendation that the
13 application be denied, restricted, or conditioned.

14 (2) Not less than 10 business days prior to the meeting of the
15 commission at which the application is to be considered, the
16 department shall deliver to the applicant a summary of the chief's
17 final report and recommendation.

18 (3) This section requires the department neither to divulge to
19 the applicant any confidential information received from any law
20 enforcement agency or any information received from any person
21 with assurances that the information would be maintained
22 confidential, nor to divulge any information that might reveal the
23 identity of any informer or jeopardize the safety of any person.

24 (c) If a restriction or condition on the license is recommended,
25 the chief shall prepare and file with the commission his or her
26 written reasons upon which the recommendation is based, *together*
27 *with all relevant documents and information*.

28 (1) Prior to filing his or her recommendation with the
29 commission, and not less than 10 business days prior to the meeting
30 of the commission at which the application is to be considered,
31 the chief shall inform the applicant in writing generally of the basis
32 for any proposed recommendation that the application be restricted
33 or conditioned, including the legal and factual grounds on which
34 the recommendation is based.

35 (2) This section does not require the department to divulge to
36 the applicant any confidential information received from any law
37 enforcement agency or any information received from any person
38 with assurances that the information would be maintained
39 confidential, or to divulge any information that might reveal the
40 identity of any informer or jeopardize the safety of any person.

1 (d) A recommendation of denial of an application shall be
2 without prejudice to a new and different application filed in
3 accordance with applicable regulations.

4 ~~SEC. 2.~~

5 *SEC. 3.* Section 336.9 of the Penal Code is amended to read:

6 336.9. (a) Notwithstanding Section 337a, and except as
7 provided in subdivision (b), any person who, not for gain, hire, or
8 reward other than that at stake under conditions available to every
9 participant, knowingly participates in any of the ways specified in
10 paragraph (2), (3), (4), (5), or (6) of subdivision (a) of Section
11 337a in any bet, bets, wager, wagers, or betting pool or pools made
12 between the person and any other person or group of persons who
13 are not acting for gain, hire, or reward, other than that at stake
14 under conditions available to every participant, upon the result of
15 any lawful trial, or purported trial, or contest, or purported contest,
16 of skill, speed, or power of endurance of person or animal, or
17 between persons, animals, or mechanical apparatus, is guilty of
18 an infraction, punishable by a fine not to exceed two hundred fifty
19 dollars (\$250).

20 (b) Subdivision (a) does not apply to any of the following
21 situations:

22 (1) Any bet, bets, wager, wagers, or betting pool or pools made
23 online.

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

26 (3) Any sports wagering authorized pursuant to Chapter 4.7
27 (commencing with Section 19750) of Division 8 of the Business
28 and Professions Code.

29 ~~SEC. 3.~~

30 *SEC. 4.* Section 337a of the Penal Code is amended to read:

31 337a. (a) Except as provided in Section 336.9 and as authorized
32 pursuant to Chapter 4.7 (commencing with Section 19750) of
33 Division 8 of the Business and Professions Code, every person
34 who engages in one of the following offenses; shall be punished
35 for a first offense by imprisonment in a county jail for a period of
36 not more than one year or in the state prison, or by a fine not to
37 exceed five thousand dollars (\$5,000), or by both imprisonment
38 and fine:

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

1 (2) Whether for gain, hire, reward, or gratuitously, or otherwise,
2 keeps or occupies, for any period of time whatsoever, any room,
3 shed, tenement, tent, booth, building, float, vessel, place, stand,
4 or enclosure, of any kind, or any part thereof, with a book or books,
5 paper or papers, apparatus, device, or paraphernalia, for the purpose
6 of recording or registering any bet or bets, any purported bet or
7 bets, wager or wagers, any purported wager or wagers, selling
8 pools, or purported pools, upon the result, or purported result, of
9 any trial, purported trial, contest, or purported contest, of skill,
10 speed, or power of endurance of person or animal, or between
11 persons, animals, or mechanical apparatus, or upon the result, or
12 purported result, of any lot, chance, casualty, unknown, or
13 contingent event whatsoever.

14 (3) Whether for gain, hire, reward, or gratuitously, or otherwise,
15 receives, holds, or forwards, or purports or pretends to receive,
16 hold, or forward, in any manner whatsoever, any money, thing, or
17 consideration of value, or the equivalent or memorandum thereof,
18 staked, pledged, bet, or wagered, or to be staked, pledged, bet, or
19 wagered, or offered for the purpose of being staked, pledged, bet,
20 or wagered, upon the result, or purported result, of any trial, or
21 purported trial, or contest, or purported contest, of skill, speed, or
22 power of endurance of person or animal, or between persons,
23 animals, or mechanical apparatus, or upon the result, or purported
24 result, of any lot, chance, casualty, unknown, or contingent event
25 whatsoever.

26 (4) Whether for gain, hire, reward, or gratuitously, or otherwise,
27 at any time or place, records, or registers any bet or bets, wager
28 or wagers, upon the result, or purported result, of any trial, or
29 purported trial, or contest, or purported contest, of skill, speed, or
30 power of endurance of person or animal, or between persons,
31 animals, or mechanical apparatus, or upon the result, or purported
32 result, of any lot, chance, casualty, unknown, or contingent event
33 whatsoever.

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

1 (6) Lays, makes, offers, or accepts any bet or bets, or wager or
2 wagers, upon the result, or purported result, of any trial, or
3 purported trial, or contest, or purported contest, of skill, speed, or
4 power of endurance of person or animal, or between persons,
5 animals, or mechanical apparatus.

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

26 (c) In any accusatory pleading charging a violation of this
27 section, if the defendant has been previously convicted two or
28 more times of a violation of any subdivision of this section, each
29 previous conviction shall be charged in the accusatory pleadings.
30 If two or more of the previous convictions are found to be true by
31 the jury, upon a jury trial, or by the court, upon a court trial, or are
32 admitted by the defendant, the defendant shall, if he or she is not
33 imprisoned in the state prison, be imprisoned in the county jail for
34 a period of not more than one year or pay a fine of not less than
35 one thousand dollars (\$1,000) nor more than fifteen thousand
36 dollars (\$15,000), or be punished by both imprisonment and fine.
37 Nothing in this paragraph shall prohibit a court from placing a
38 person subject to this subdivision on probation. However, that
39 person shall be required to pay a fine of not less than one thousand
40 dollars (\$1,000) nor more than fifteen thousand dollars (\$15,000),

1 or be imprisoned in the county jail for a period of not more than
2 one year as a condition thereof. In no event does the court have
3 the power to absolve a person convicted and subject to this
4 subdivision from either being imprisoned or from paying a fine of
5 not more than fifteen thousand dollars (\$15,000).

6 (d) Except where the existence of a previous conviction of any
7 subdivision of this section was not admitted or not found to be true
8 pursuant to this section, or the court finds that a prior conviction
9 was invalid, the court shall not strike or dismiss any prior
10 convictions alleged in the information or indictment.

11 (e) This section applies not only to persons who commit any of
12 the acts designated in paragraphs (1) to (6), inclusive, of
13 subdivision (a), as a business or occupation, but also applies to
14 every person who in a single instance engages in any one of the
15 acts specified in paragraphs (1) to (6), inclusive, of subdivision
16 (a).

17 ~~SEC. 4.~~

18 *SEC. 5.* No reimbursement is required by this act pursuant to
19 Section 6 of Article XIII B of the California Constitution because
20 the only costs that may be incurred by a local agency or school
21 district will be incurred because this act creates a new crime or
22 infraction, eliminates a crime or infraction, or changes the penalty
23 for a crime or infraction, within the meaning of Section 17556 of
24 the Government Code, or changes the definition of a crime within
25 the meaning of Section 6 of Article XIII B of the California
26 Constitution.