

AMENDED IN ASSEMBLY JUNE 13, 2012

AMENDED IN SENATE MAY 25, 2012

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 gambling.

LEGISLATIVE COUNSEL'S DIGEST

SB 1390, as amended, Wright. Gambling: sports wagering.

(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 ~~department~~ *commission* and the board to adopt regulations to implement these provisions. The bill would authorize the ~~department~~ *commission* and the board to adopt regulations establishing fees in a reasonable amount to recover their costs relating to the administration ~~and enforcement~~ of 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~~ *provide that the Department of Justice and the board are responsible for the enforcement of sports wagering activities, as specified, and would authorize the department and the board to adopt regulations establishing fees in a reasonable amount necessary to recover costs incurred relating*

to the enforcement of these 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.

(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.

(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:

CHAPTER 4.7. SPORTS WAGERING

19750. The following entities may conduct wagering on professional and collegiate sports or athletic events as authorized pursuant to this chapter:

(a) The owner or operator of a gambling establishment with a current license issued by the California Gambling Control Commission pursuant to Chapter 5 (commencing with Section 19800).

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

19751. 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 (18 U.S.C. Secs. 1166 to 1168, incl., and 25 U.S.C. Sec. 2701 et seq.), and under terms no more stringent than those applicable to any other owner or operator in the state.

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

(a) “Board” means the California Horse Racing Board.

(b) “Commission” means the California Gambling Control Commission.

(c) “Department” means the Department of Justice.

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

(e) “Sports event” shall include any professional sports or athletic event, and any collegiate sports or athletic event.

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

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

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

(b) The board or the commission, as the case may be, shall hear and decide promptly, and in reasonable order, all applications to conduct sports wagering from owners and operators of licensed gambling establishments, licensed horse racing tracks, and satellite wagering facilities. Authorization to conduct sports wagering shall not be unreasonably withheld for any applicant that is in good 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 ~~department~~ *commission* shall adopt regulations for the administration ~~and enforcement~~ of this chapter, and may adopt regulations establishing fees in a reasonable amount necessary to recover costs incurred by the board or the ~~department~~ *commission* relating to the administration ~~and enforcement~~ of this chapter.

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

19760. The regulations adopted by the board and the ~~department~~ *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 (1) The extension of credit.

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

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

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

10 19762. (a) The sports wagering authorized pursuant to this
11 chapter may be conducted only at the gambling establishment,
12 horse racing track, or satellite *wagering* facility of the licensed
13 operator, or on Indian lands consistent with the federal Indian
14 Gaming Regulatory Act of 1988 (18 U.S.C. Secs. 1166 to 1168,
15 incl., and 25 U.S.C. Sec. 2701 et seq.).

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

21 (c) *The proceeds of any sports wagering conducted at a horse*
22 *racing track or a satellite wagering facility shall be allocated*
23 *equally to each racing meeting conducted at that track or facility*
24 *on that day and shall be distributed as part of the handle, as*
25 *described in Chapter 4 (commencing with Section 19400). For a*
26 *joint sports wagering operation conducted at a horse racing track*
27 *pursuant to subdivision (b), the distribution required pursuant to*
28 *this subdivision shall be applied to the share of proceeds belonging*
29 *to each participating horse racing track and satellite wagering*
30 *facility, but not the share of proceeds belonging to any*
31 *participating gambling establishment.*

32 19764. A licensed operator shall not accept a wager on a sports
33 event from any person who is not physically present at the facility
34 where the sports wagering is conducted.

35 19766. A licensed operator shall establish the odds it will pay
36 on wagers placed on sports events.

37 19768. (a) A licensed operator shall not conduct any sports
38 wagering in violation of any provision of this chapter, any
39 regulation adopted pursuant to this chapter, or any governing local
40 ordinance.

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

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

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

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

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

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

~~(5) To initiate, where appropriate, disciplinary actions. In connection with any disciplinary action, the department may seek restriction, limitation, suspension, or revocation of any license, permit, authorization, or approval pursuant to this chapter, Chapter 4 (commencing with Section 19400), or Chapter 5 (commencing with Section 19800), or the imposition of any fine upon any person licensed, permitted, authorized, or approved pursuant to those chapters.~~

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

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

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

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

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

~~(3) To aid in adopting regulations.~~

~~(b) If, after any investigation, the department is satisfied that a license, permit, authorization, or approval pursuant to this chapter, Chapter 4 (commencing with Section 19400), or Chapter 5~~

1 ~~(commencing with Section 19800) should be suspended or revoked,~~
2 ~~it shall file an accusation in accordance with Chapter 5~~
3 ~~(commencing with Section 11500) of Part 1 of Division 3 of Title~~
4 ~~2 of the Government Code.~~

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

11 19770. (a) *The department shall be responsible for the*
12 *enforcement of sports wagering activities conducted at a gambling*
13 *establishment. The department may adopt regulations establishing*
14 *fees in a reasonable amount necessary to recover costs incurred*
15 *by the department relating to the enforcement of this chapter in*
16 *connection with gambling establishments.*

17 (b) *The board shall be responsible for the enforcement of sports*
18 *wagering activities conducted at a horse racing track or a satellite*
19 *wagering facility. The board may adopt regulations establishing*
20 *fees in a reasonable amount necessary to recover costs incurred*
21 *by the board relating to the enforcement of this chapter in*
22 *connection with horse racing tracks and satellite wagering*
23 *facilities.*

24 SEC. 2. Section 19868 of the Business and Professions Code
25 is amended to read:

26 19868. (a) Within a reasonable time after the filing of an
27 application and any supplemental information the department may
28 require, and the deposit of any fee required pursuant to Section
29 19867, the department shall commence its investigation of the
30 applicant and, for that purpose, may conduct any proceedings it
31 deems necessary. To the extent practicable, all applications shall
32 be acted upon within 180 calendar days of the date of submission
33 of a completed application. If an investigation has not been
34 concluded within 180 days after the date of submission of a
35 completed application, the department shall inform the applicant
36 in writing of the status of the investigation and shall also provide
37 the applicant with an estimated date on which the investigation
38 may reasonably be expected to be concluded.

39 (b) If denial of the application, or approval of the license with
40 restrictions or conditions on the license, is recommended, the chief

1 shall prepare and file with the commission his or her written
2 reasons upon which the recommendation is based, together with
3 all relevant documents and information.

4 (1) Prior to filing his or her recommendation with the
5 commission, the chief shall meet with the applicant, or the
6 applicant's duly authorized representative, and inform him or her
7 generally of the basis for any proposed recommendation that the
8 application be denied, restricted, or conditioned.

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

13 (3) This section requires the department neither to divulge to
14 the applicant any confidential information received from any law
15 enforcement agency or any information received from any person
16 with assurances that the information would be maintained
17 confidential, nor to divulge any information that might reveal the
18 identity of any informer or jeopardize the safety of any person.

19 (c) If a restriction or condition on the license is recommended,
20 the chief shall prepare and file with the commission his or her
21 written reasons upon which the recommendation is based, together
22 with all relevant documents and information.

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

30 (2) This section does not require the department to divulge to
31 the applicant any confidential information received from any law
32 enforcement agency or any information received from any person
33 with assurances that the information would be maintained
34 confidential, or to divulge any information that might reveal the
35 identity of any informer or jeopardize the safety of any person.

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

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

1 336.9. (a) Notwithstanding Section 337a, and except as
2 provided in subdivision (b), any person who, not for gain, hire, or
3 reward other than that at stake under conditions available to every
4 participant, knowingly participates in any of the ways specified in
5 paragraph (2), (3), (4), (5), or (6) of subdivision (a) of Section
6 337a in any bet, bets, wager, wagers, or betting pool or pools made
7 between the person and any other person or group of persons who
8 are not acting for gain, hire, or reward, other than that at stake
9 under conditions available to every participant, upon the result of
10 any lawful trial, or purported trial, or contest, or purported contest,
11 of skill, speed, or power of endurance of person or animal, or
12 between persons, animals, or mechanical apparatus, is guilty of
13 an infraction, punishable by a fine not to exceed two hundred fifty
14 dollars (\$250).

15 (b) Subdivision (a) does not apply to any of the following
16 situations:

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

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

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

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

25 337a. (a) Except as provided in Section 336.9 and as authorized
26 pursuant to Chapter 4.7 (commencing with Section 19750) of
27 Division 8 of the Business and Professions Code, every person
28 who engages in one of the following offenses shall be punished
29 for a first offense by imprisonment in a county jail for a period of
30 not more than one year or in the state prison, or by a fine not to
31 exceed five thousand dollars (\$5,000), or by both imprisonment
32 and fine:

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

35 (2) Whether for gain, hire, reward, or gratuitously, or otherwise,
36 keeps or occupies, for any period of time whatsoever, any room,
37 shed, tenement, tent, booth, building, float, vessel, place, stand,
38 or enclosure, of any kind, or any part thereof, with a book or books,
39 paper or papers, apparatus, device, or paraphernalia, for the purpose
40 of recording or registering any bet or bets, any purported bet or

bets, wager or wagers, any purported wager or wagers, selling pools, or purported pools, upon the result, or purported result, of any trial, purported trial, contest, or purported contest, of skill, speed, or power of endurance of person or animal, or between persons, animals, or mechanical apparatus, or upon the result, or purported result, of any lot, chance, casualty, unknown, or contingent event whatsoever.

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

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

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

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

(b) In any accusatory pleading charging a violation of this section, if the defendant has been once previously convicted of a

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

18 (c) In any accusatory pleading charging a violation of this
19 section, if the defendant has been previously convicted two or
20 more times of a violation of any subdivision of this section, each
21 previous conviction shall be charged in the accusatory pleadings.
22 If two or more of the previous convictions are found to be true by
23 the jury, upon a jury trial, or by the court, upon a court trial, or are
24 admitted by the defendant, the defendant shall, if he or she is not
25 imprisoned in the state prison, be imprisoned in ~~the~~ a county jail
26 for a period of not more than one year or pay a fine of not less than
27 one thousand dollars (\$1,000) nor more than fifteen thousand
28 dollars (\$15,000), or be punished by both imprisonment and fine.
29 Nothing in this paragraph shall prohibit a court from placing a
30 person subject to this subdivision on probation. However, that
31 person shall be required to pay a fine of not less than one thousand
32 dollars (\$1,000) nor more than fifteen thousand dollars (\$15,000),
33 or be imprisoned in ~~the~~ a county jail for a period of not more than
34 one year as a condition thereof. In no event does the court have
35 the power to absolve a person convicted and subject to this
36 subdivision from either being imprisoned or from paying a fine of
37 not more than fifteen thousand dollars (\$15,000).

38 (d) Except where the existence of a previous conviction of any
39 subdivision of this section was not admitted or not found to be true
40 pursuant to this section, or the court finds that a prior conviction

1 was invalid, the court shall not strike or dismiss any prior
2 convictions alleged in the information or indictment.

3 (e) This section applies not only to persons who commit any of
4 the acts designated in paragraphs (1) to (6), inclusive, of
5 subdivision (a), as a business or occupation, but also applies to
6 every person who in a single instance engages in any one of the
7 acts specified in paragraphs (1) to (6), inclusive, of subdivision
8 (a).

9 SEC. 5. No reimbursement is required by this act pursuant to
10 Section 6 of Article XIII B of the California Constitution because
11 the only costs that may be incurred by a local agency or school
12 district will be incurred because this act creates a new crime or
13 infraction, eliminates a crime or infraction, or changes the penalty
14 for a crime or infraction, within the meaning of Section 17556 of
15 the Government Code, or changes the definition of a crime within
16 the meaning of Section 6 of Article XIII B of the California
17 Constitution.