

AMENDED IN ASSEMBLY JULY 3, 2012
AMENDED IN ASSEMBLY JUNE 27, 2012
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, *or the owner or operator of a horse racing track, or including a horse racing association, or of a satellite wagering facility,* with a current license, to conduct wagering on professional and collegiate sports or athletic events, *other than on collegiate sports or athletic events that take place in California or in which any California college team participates,* by applying to the California Gambling Control Commission or the California Horse Racing Board, as specified, for authorization to conduct sports wagering, and by paying an annual licensing fee, as specified. The bill would require the commission and the board to adopt regulations to implement these provisions. The bill would authorize the commission and the board to adopt regulations establishing fees in a reasonable amount to recover their costs relating to the administration of these provisions. *The bill would authorize the department to adopt regulations establishing fees in the reasonable amount necessary to recover costs incurred relating to the 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. The bill would authorize the board, commission, and department to regulate sports wagering to the same extent these entities currently regulate other legal gambling in this state, including the ability to audit the books and records of a licensed entity, as defined. The bill would also prohibit a licensed operator from, among other things, accepting a wager from any person who is under 21 years of age or whose name appears on a self-exclusion list. 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)

(3) 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:

SECTION 1. Chapter 4.7 (commencing with Section 19750) is added to Division 8 of the Business and Professions Code, to read:

CHAPTER 4.7. SPORTS WAGERING

19750. The following entities may conduct wagering on ~~professional and collegiate sports or athletic sports~~ 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~~, *including a horse racing association, or of a* satellite wagering facility, with a current license issued by the California Horse Racing Board pursuant to Chapter 4 (commencing with Section 19400). A licensed horse racing track or satellite wagering facility may qualify for an authorization to engage in sports wagering pursuant to this subdivision only if it has an agreement in place with the organization recognized by the board that is responsible for negotiating purse agreements, satellite wagering agreements, and all other business agreements on behalf of the horsemen participating in a racing meeting.

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.

1 19752. As used in this chapter, the following definitions shall
2 apply:

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

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

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

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

10 (e) “Prohibited sports event” means any collegiate sport or
11 athletic event that takes place in California, or a sports event in
12 which any California college team participates, regardless of where
13 the event takes place.

14 (f) “Sports event” shall include any professional sports or
15 athletic event, and any collegiate sports or athletic event, except
16 a prohibited sports event.

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

21 19754. (a) (1) An owner or operator of a gambling
22 establishment seeking to conduct sports wagering shall apply to
23 the commission for authorization to conduct sports wagering.

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

27 (b) The board or the commission, as the case may be, shall hear
28 and decide promptly, and in reasonable order, all applications to
29 conduct sports wagering from owners and operators of licensed
30 gambling establishments, licensed horse racing tracks, and satellite
31 wagering facilities. Authorization to conduct sports wagering shall
32 not be unreasonably withheld for any applicant that is in good
33 standing and has a current license issued pursuant to Chapter 4
34 (commencing with Section 19400) or Chapter 5 (commencing with
35 Section 19800).

36 (c) An owner or operator of a gambling establishment and an
37 owner or operator of a horse racing track or satellite wagering
38 facility that conducts sports wagering shall pay an annual licensing
39 fee of three thousand dollars (\$3,000) to the State Department of

1 Alcohol and Drug Programs for deposit in the Gambling Addiction
2 Program Fund.

3 19756. (a) Application for authorization to conduct sports
4 wagering shall be made on forms furnished by the board and the
5 commission.

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

8 (1) The name of the licensee.

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

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

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

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

16 19758. (a) The board and the commission shall adopt
17 regulations for the administration of this chapter, and may adopt
18 regulations establishing fees in a reasonable amount necessary to
19 recover costs incurred by the board or the commission relating to
20 the administration of this chapter.

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

24 19760. The regulations adopted by the board and the
25 commission shall do all of the following:

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

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

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

31 (3) The method of issuing tickets.

32 (b) Govern all of the following:

33 (1) The extension of credit.

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

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

38 (4) The provision of reliable records, accounts, and reports of
39 transactions, operations, and events, the method of accounting to

1 be used by licensed operators, and the types of records required
2 to be maintained.

3 19762. The sports wagering authorized pursuant to this chapter
4 may be conducted only at the gambling establishment, horse racing
5 track, or satellite wagering facility of the licensed operator, or on
6 Indian lands consistent with the federal Indian Gaming Regulatory
7 Act of 1988 (18 U.S.C. Secs. 1166 to 1168, incl., and 25 U.S.C.
8 Sec. 2701 et seq.).

9 19764. A licensed operator shall not do any of the following:

10 (a) Accept a wager on a sports event from any person who is
11 not physically present at the facility where the sports wagering is
12 conducted.

13 (b) Accept a wager from a person using any form of credit to
14 place the wager.

15 (c) Accept a wager from a person who is under 21 years of age.

16 (d) Admit into the sports wagering facility, or accept wagers
17 from, any person whose name appears on any self-exclusion list.

18 19766. A licensed operator shall establish the odds it will pay
19 on wagers placed on sports events.

20 19768. (a) A licensed operator shall not conduct any sports
21 wagering in violation of any provision of this chapter, any
22 regulation adopted pursuant to this chapter, or any governing local
23 ordinance.

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

26 19770. (a) The department shall have all of the following
27 responsibilities:

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

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

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

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

(5) To initiate, when 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.

(7) To adopt regulations establishing fees in the reasonable amount necessary to recover costs incurred by the department relating to the enforcement of 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 (commencing with Section 19800) should be suspended or revoked, it shall file an accusation in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(c) In addition to any action that the board or commission may take against a license, permit, finding of suitability, or approval, the board or commission may also require the payment of fines or penalties. However, any fine imposed shall not exceed twenty thousand dollars (\$20,000) for each separate violation of any provision of this chapter or any regulation adopted under this chapter.

19773. The board, commission, and department shall have the authority to regulate sports wagering to the same extent that these

1 entities currently regulate other legal gambling in this state,
2 including the ability to audit the books and records of a licensed
3 operator.

4 SEC. 2. ~~Section 19868 of the Business and Professions Code~~
5 ~~is amended to read:~~

6 ~~19868. (a) Within a reasonable time after the filing of an~~
7 ~~application and any supplemental information the department may~~
8 ~~require, and the deposit of any fee required pursuant to Section~~
9 ~~19867, the department shall commence its investigation of the~~
10 ~~applicant and, for that purpose, may conduct any proceedings it~~
11 ~~deems necessary. To the extent practicable, all applications shall~~
12 ~~be acted upon within 180 calendar days of the date of submission~~
13 ~~of a completed application. If an investigation has not been~~
14 ~~concluded within 180 days after the date of submission of a~~
15 ~~completed application, the department shall inform the applicant~~
16 ~~in writing of the status of the investigation and shall also provide~~
17 ~~the applicant with an estimated date on which the investigation~~
18 ~~may reasonably be expected to be concluded.~~

19 ~~(b) If denial of the application, or approval of the license with~~
20 ~~restrictions or conditions on the license, is recommended, the chief~~
21 ~~shall prepare and file with the commission his or her written~~
22 ~~reasons upon which the recommendation is based, together with~~
23 ~~all relevant documents and information.~~

24 ~~(1) Prior to filing his or her recommendation with the~~
25 ~~commission, the chief shall meet with the applicant, or the~~
26 ~~applicant's duly authorized representative, and inform him or her~~
27 ~~generally of the basis for any proposed recommendation that the~~
28 ~~application be denied, restricted, or conditioned.~~

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

33 ~~(3) This section requires the department neither to divulge to~~
34 ~~the applicant any confidential information received from any law~~
35 ~~enforcement agency or any information received from any person~~
36 ~~with assurances that the information would be maintained~~
37 ~~confidential, nor to divulge any information that might reveal the~~
38 ~~identity of any informer or jeopardize the safety of any person.~~

39 ~~(c) If a restriction or condition on the license is recommended,~~
40 ~~the chief shall prepare and file with the commission his or her~~

1 written reasons upon which the recommendation is based, together
2 with all relevant documents and information.

3 ~~(1) Prior to filing his or her recommendation with the~~
4 ~~commission, and not less than 10 business days prior to the meeting~~
5 ~~of the commission at which the application is to be considered,~~
6 ~~the chief shall inform the applicant in writing generally of the basis~~
7 ~~for any proposed recommendation that the application be restricted~~
8 ~~or conditioned, including the legal and factual grounds on which~~
9 ~~the recommendation is based.~~

10 ~~(2) This section does not require the department to divulge to~~
11 ~~the applicant any confidential information received from any law~~
12 ~~enforcement agency or any information received from any person~~
13 ~~with assurances that the information would be maintained~~
14 ~~confidential, or to divulge any information that might reveal the~~
15 ~~identity of any informer or jeopardize the safety of any person.~~

16 ~~(d) A recommendation of denial of an application shall be~~
17 ~~without prejudice to a new and different application filed in~~
18 ~~accordance with applicable regulations.~~

19 ~~SEC. 3.~~

20 *SEC. 2.* Section 336.9 of the Penal Code is amended to read:

21 336.9. (a) Notwithstanding Section 337a, and except as
22 provided in subdivision (b), any person who, not for gain, hire, or
23 reward other than that at stake under conditions available to every
24 participant, knowingly participates in any of the ways specified in
25 paragraph (2), (3), (4), (5), or (6) of subdivision (a) of Section
26 337a in any bet, bets, wager, wagers, or betting pool or pools made
27 between the person and any other person or group of persons who
28 are not acting for gain, hire, or reward, other than that at stake
29 under conditions available to every participant, upon the result of
30 any lawful trial, or purported trial, or contest, or purported contest,
31 of skill, speed, or power of endurance of person or animal, or
32 between persons, animals, or mechanical apparatus, is guilty of
33 an infraction, punishable by a fine not to exceed two hundred fifty
34 dollars (\$250).

35 (b) Subdivision (a) does not apply to any of the following
36 situations:

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

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

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

~~SEC. 4.~~

SEC. 3. Section 337a of the Penal Code is amended to read:

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

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

(2) Whether for gain, hire, reward, or gratuitously, or otherwise, keeps or occupies, for any period of time whatsoever, any room, shed, tenement, tent, booth, building, float, vessel, place, stand, or enclosure, of any kind, or any part thereof, with a book or books, paper or papers, apparatus, device, or paraphernalia, for the purpose 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 violation of any subdivision of this section, the previous conviction shall be charged in the accusatory pleading, and, if the previous conviction is found to be true by the jury, upon a jury trial, or by the court, upon a court trial, or is admitted by the defendant, the defendant shall, if he or she is not imprisoned in the state prison, be imprisoned in a county jail for a period of not more than one year and pay a fine of not less than one thousand dollars (\$1,000) and not to exceed ten thousand dollars (\$10,000). Nothing in this paragraph shall prohibit a court from placing a person subject to this subdivision on probation. However, that person shall be required to pay a fine of not less than one thousand dollars (\$1,000) nor more than ten thousand dollars (\$10,000) or be imprisoned in a county jail for a period of not more than one year, as a condition thereof. In no event does the court have the power to absolve a person convicted pursuant to this subdivision from either being imprisoned or from paying a fine of not less than one thousand dollars (\$1,000) and not more than ten thousand dollars (\$10,000).

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

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

19 (d) Except where the existence of a previous conviction of any
20 subdivision of this section was not admitted or not found to be true
21 pursuant to this section, or the court finds that a prior conviction
22 was invalid, the court shall not strike or dismiss any prior
23 convictions alleged in the information or indictment.

24 (e) This section applies not only to persons who commit any of
25 the acts designated in paragraphs (1) to (6), inclusive, of
26 subdivision (a), as a business or occupation, but also applies to
27 every person who in a single instance engages in any one of the
28 acts specified in paragraphs (1) to (6), inclusive, of subdivision
29 (a).

30 ~~SEC. 5.~~

31 *SEC. 4.* No reimbursement is required by this act pursuant to
32 Section 6 of Article XIII B of the California Constitution because
33 the only costs that may be incurred by a local agency or school
34 district will be incurred because this act creates a new crime or
35 infraction, eliminates a crime or infraction, or changes the penalty
36 for a crime or infraction, within the meaning of Section 17556 of
37 the Government Code, or changes the definition of a crime within

- 1 the meaning of Section 6 of Article XIII B of the California
- 2 Constitution.

O