

AMENDED IN SENATE AUGUST 13, 1998

AMENDED IN SENATE JUNE 25, 1998

AMENDED IN SENATE JUNE 17, 1998

AMENDED IN ASSEMBLY MAY 20, 1997

AMENDED IN ASSEMBLY MAY 5, 1997

CALIFORNIA LEGISLATURE—1997–98 REGULAR SESSION

ASSEMBLY BILL

No. 518

Introduced by Assembly Member Brown

February 24, 1997

An act to amend Section 19801 of the Business and Professions Code, and to amend Section 337j of the Penal Code, relating to gaming, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 518, as amended, Brown. Gaming clubs.

Existing law, the Gambling Control Act, states various findings and declarations of the Legislature regarding the public policy of the state regarding gambling.

This bill would make technical, nonsubstantive changes to these findings and declarations.

Existing law *prohibits the playing, operation, or conducting of several specified games, and banking or percentage games generally*. Existing law defines the term “controlled game” as any game of chance, and provides that it is unlawful for any person to collect any fee in connection with a controlled game

unless the method of collection conforms with regulations adopted by the Division of Gambling Control of the Department of Justice of the California Gambling Control Commission. Existing law also provides that until these regulations become operative, an owner licensee may collect fees in the same manner as that establishment collected fees as of January 1, 1997, provided that this method was expressly permitted under existing local regulations, the method meets certain specified requirements, including that the fee is fixed in advance of the game, the fee is the same for all players and is not deducted from the amount wagered, and there is no minimum wager on any game, round, or hand, or the method is otherwise authorized by law.

This bill would expand the definition of “controlled game” to include a ~~“game of skill,” which is defined as a lawful game~~ *any game of chance, including a gambling device, that is played for currency, check, credit, or any other thing of value, and played with tiles or one or more decks of cards, where players compete against each other for a sum of money contributed to by the players, and where the winner is determined to some degree by the skill of the players.* This bill would also provide that ample notice to be given to the patrons of gambling establishments regarding the assessment of fees, that applicable fees may vary from table to table and may vary with each wager placed, and that fees for all wagers be determined and collected prior to the start of play of any hand or round. The bill would require the California Gambling Control Commission to adopt regulations to implement these provisions, but would allow gambling establishments to collect fees in accordance with these or other existing provisions until such regulations are adopted. ~~that is not prohibited and made unlawful by statute or local ordinance. The bill would prohibit any person from collecting fees in connection with controlled games except as authorized by regulations of the Division of Gambling Control or the Gambling Control Commission, but would authorize fees to be collected in the same manner as they were on a specified date, subject to certain conditions and only until these regulations are adopted. The bill would dispositively require that patrons be given ample notice regarding the collection~~



of fees, that fees must be determined and collected prior to the start of play, that fees may not be calculated as a portion of wagers made or winnings earned exclusive of charges or fees for the use of space and facilities, and that fees may be assessed at up to 3 different rates per table. The bill would declare that the Legislature’s intent in enacting these provisions is to codify the holding in a specified case. By changing the definition of an existing crime, this bill would impose a state-mandated local program.

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.

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

Vote: ²/₃. Appropriation: no. Fiscal committee: yes.
State-mandated local program: ~~no~~ yes.

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

1 SECTION 1. Section 19801 of the Business and
2 Professions Code is amended to read:
3 19801. The Legislature hereby finds and declares all
4 of the following:
5 (a) The longstanding public policy of this state
6 disfavors the business of gambling. State law prohibits
7 commercially operated lotteries, banked or percentage
8 games, and gambling machines, and strictly regulates
9 parimutuel wagering on horse racing. To the extent that
10 state law categorically prohibits certain forms of
11 gambling and prohibits gambling devices, nothing herein
12 shall be construed, in any manner, to reflect a legislative
13 intent to relax those prohibitions.
14 (b) Gambling can become addictive and is not an
15 activity to be promoted or legitimized as entertainment
16 for children and families.
17 (c) Unregulated gambling enterprises are inimical to
18 the public health, safety, welfare, and good order.



1 Accordingly, no person in this state has a right to operate
2 a gambling enterprise except as may be expressly
3 permitted by the laws of this state and by the ordinances
4 of local governmental bodies.

5 (d) It is the policy of this state that gambling activities
6 that are not expressly prohibited or regulated by state law
7 may be prohibited or regulated by local government.
8 Moreover, it is the policy of this state that no new
9 cardroom gambling establishment may be opened in a
10 city, county, or city and county in which a cardroom
11 gambling establishment was not operating on and before
12 January 1, 1984, except upon the affirmative vote of the
13 electors of that city, county, or city and county.

14 (e) It is not the purpose of this chapter to expand
15 opportunities for gambling, or to create any right to
16 operate a gambling enterprise in this state or to have a
17 financial interest in any gambling enterprise. Rather, it is
18 the purpose of this chapter to regulate businesses that
19 offer otherwise lawful forms of gambling games.

20 (f) Public trust that permissible gambling will not
21 endanger public health, safety, or welfare requires that
22 comprehensive measures be enacted to ensure that such
23 gambling is free from criminal and corruptive elements,
24 that it is conducted honestly and competitively, and that
25 it is conducted in suitable locations.

26 (g) Public trust and confidence can only be
27 maintained by strict and comprehensive regulation of all
28 persons, locations, practices, associations, and activities
29 related to the operation of lawful gambling
30 establishments and the manufacture or distribution of
31 permissible gambling equipment.

32 (h) All gambling operations, all persons having a
33 significant involvement in gambling operations, all
34 establishments where gambling is conducted, and all
35 manufacturers, sellers, and distributors of gambling
36 equipment must be licensed and regulated to protect the
37 public health, safety, and general welfare of the residents
38 of this state as an exercise of the police powers of the state.

39 (i) To ensure that gambling is conducted honestly,
40 competitively, and free of criminal and corruptive



1 elements, all licensed gambling establishments in this
2 state must remain open to the general public and the
3 access of the general public to licensed gambling
4 activities must not be restricted in any manner, except as
5 provided by the Legislature. However, subject to state
6 and federal prohibitions against discrimination, nothing
7 herein shall be construed to preclude exclusion of
8 unsuitable persons from licensed gambling
9 establishments in the exercise of reasonable business
10 judgment.

11 (j) In order to effectuate state policy as declared
12 herein, it is necessary that gambling establishments,
13 activities, and equipment be licensed, that persons
14 participating in those activities be licensed or registered,
15 that certain transactions, events, and processes involving
16 gambling establishments and owners of gambling
17 establishments be subject to prior approval or permission,
18 that unsuitable persons not be permitted to associate with
19 gambling activities or gambling establishments, and that
20 gambling activities take place only in suitable locations.
21 Any license or permit issued, or other approval granted
22 pursuant to this chapter, is declared to be a revocable
23 privilege, and no holder acquires any vested right therein
24 or thereunder.

25 (k) The location of lawful gambling premises, the
26 hours of operation of those premises, the number of tables
27 permitted in those premises, and wagering limits in
28 permissible games conducted in those premises are
29 proper subjects for regulation by local governmental
30 bodies. However, consideration of those same subjects by
31 a state regulatory agency, as specified in this chapter, is
32 warranted when local governmental regulation
33 respecting those subjects is inadequate or the regulation
34 fails to safeguard the legitimate interests of residents in
35 other governmental jurisdictions.

36 (l) The exclusion or ejection of certain persons from
37 gambling establishments is necessary to effectuate the
38 policies of this chapter and to maintain effectively the
39 strict regulation of licensed gambling.



1 (m) Records and reports of cash and credit
2 transactions involving gambling establishments may
3 have a high degree of usefulness in criminal and
4 regulatory investigations and, therefore, licensed
5 gambling operators may be required to keep records and
6 make reports concerning significant cash and credit
7 transactions.

8 SEC. 2. Section 337j of the Penal Code is amended to
9 read:

10 337j. (a) It is unlawful for any person, as owner,
11 lessee, or employee, whether for hire or not, either solely
12 or in conjunction with others, to do any of the following
13 without having first procured and thereafter maintained
14 in effect all federal, state, and local licenses required by
15 law:

16 (1) To deal, operate, carry on, conduct, maintain, or
17 expose for play in this state any controlled game.

18 (2) To receive, directly or indirectly, any
19 compensation or reward or any percentage or share of the
20 revenue, for keeping, running, or carrying on any
21 controlled game.

22 (3) To manufacture, distribute, or repair any
23 gambling equipment within the boundaries of this state,
24 or to receive, directly or indirectly, any compensation or
25 reward for the manufacture, distribution, or repair of any
26 gambling equipment within the boundaries of this state.

27 (b) It is unlawful for any person to knowingly permit
28 any controlled game to be conducted, operated, dealt, or
29 carried on in any house or building or other premises that
30 he or she owns or leases, in whole or in part, if that activity
31 is undertaken by a person who is not licensed as required
32 by state law, or by an employee of that person.

33 (c) It is unlawful for any person to knowingly permit
34 any gambling equipment to be manufactured, stored, or
35 repaired in any house or building or other premises that
36 the person owns or leases, in whole or in part, if that
37 activity is undertaken by a person who is not licensed as
38 required by state law, or by an employee of that person.

39 (d) Any person who violates, attempts to violate, or
40 conspires to violate this section shall be punished by



1 imprisonment in a county jail for not more than one year,
2 or by a fine of not more than five thousand dollars
3 (\$5,000), or by both that imprisonment and fine.

4 (e) (1) As used in this section, “controlled game”
5 means any game of chance ~~or skill~~, including any
6 gambling device, played for currency, check, credit, or
7 any other thing of value that is not prohibited and made
8 unlawful by statute or local ordinance.

9 (2) As used in this section, “controlled game” does not
10 include any of the following:

11 (A) The game of bingo conducted pursuant to Section
12 326.5.

13 (B) Parimutuel racing on horse races regulated by the
14 California Horse Racing Board.

15 (C) Any lottery game conducted by the California
16 State Lottery.

17 (D) Games played with cards in private homes or
18 residences, in which no person makes money for
19 operating the game, except as a player.

20 ~~(3) As used in this section, “game of skill” is a game
21 that is not prohibited or made unlawful by statute or local
22 ordinance, which is played for currency, check, credit, or
23 any other thing of value, and is played with tiles or one or
24 more decks of cards, where each player plays against the
25 other players, and competes for a sum or sums of money
26 to which the player has contributed, and the winner is
27 determined to some degree by the skill of the players.~~

28 (f) It is unlawful for any person to collect any fee in
29 connection with a controlled game authorized pursuant
30 to Chapter 5 (commencing with Section 19800) of
31 Division 8 of the Business and Professions Code unless the
32 method of fee collection conforms to regulations adopted
33 by the Division of Gambling Control of the Department
34 of Justice or the California Gambling Control
35 Commission. Until those regulations become operative,
36 an owner licensee may continue to collect fees, in
37 accordance with any of the following provisions:

38 (1) In the same manner as fees were collected in the
39 establishment as of January 1, 1997, if the method of fee
40 collection is permitted by ordinance, resolution, letter, or



1 other written authorization of the local governmental
 2 entity having regulatory jurisdiction or law enforcement
 3 authority over the gambling establishment.

4 (2) In the same manner as fees were collected in the
 5 establishment as of January 1, 1997, if all of the following
 6 are true:

7 (A) The amount of the fee is fixed in advance of the
 8 game.

9 (B) There is no minimum wager in any game, round,
 10 or hand.

11 (C) No fee is deducted from the amount wagered.

12 (D) In any game or round, the same fixed fee is
 13 collected from all players at the table.

14 (E) The method of fee collection has not been
 15 challenged by, and is not prohibited by any ordinance or
 16 resolution of, the local governmental entity having
 17 regulatory jurisdiction or law enforcement authority over
 18 the gambling establishment.

19 (3) Using any method of fee collection that is
 20 otherwise authorized by law.

21 ~~(g) This subdivision and subdivision (f) are intended~~
 22 ~~to be dispositive of the law relating to the collection of~~
 23 ~~fees in gambling establishments. Ample notice shall be~~
 24 ~~provided to the patrons of gambling establishments~~
 25 ~~relating to the assessment of fees. Fees applicable to a~~
 26 ~~particular type of game may vary from table to table and~~
 27 ~~may vary with each wager placed. Fees charged for all~~
 28 ~~wagers shall be determined and collected prior to the~~
 29 ~~start of play of any hand or round. The California~~
 30 ~~Gambling Control Commission shall adopt regulations to~~
 31 ~~implement these provisions. Until these regulations are~~
 32 ~~adopted, gambling establishments may collect fees as~~
 33 ~~provided in this subdivision or subdivision (f).~~

34 *(g) This subdivision is intended to be dispositive of the*
 35 *law relating to the collection of player fees in gambling*
 36 *establishments. No fee may be calculated as a portion of*
 37 *wagers made or from winnings earned. Fees charged for*
 38 *all wagers shall be determined and collected prior to the*
 39 *start of play of any hand or round. Ample notice shall be*
 40 *provided to the patrons of gambling establishments*



1 relating to the assessment of fees. Flat fees on each wager
2 may be assessed at different collection rates, but no more
3 than three collection rates may be established per table.
4 This legislation codifies the holding in *Sullivan v. Fox*
5 (1987) 189 Cal.App.3d 673, as to the collection of player
6 fees in licensed gambling establishments, that no fee shall
7 be calculated as a portion of wagers made or winnings
8 earned, exclusive of charges or fees for the use of space
9 and facilities.

10 SEC. 3. No reimbursement is required by this act
11 pursuant to Section 6 of Article XIII B of the California
12 Constitution because the only costs that may be incurred
13 by a local agency or school district will be incurred
14 because this act creates a new crime or infraction,
15 eliminates a crime or infraction, or changes the penalty
16 for a crime or infraction, within the meaning of Section
17 17556 of the Government Code, or changes the definition
18 of a crime within the meaning of Section 6 of Article
19 XIII B of the California Constitution.

20 Notwithstanding Section 17580 of the Government
21 Code, unless otherwise specified, the provisions of this act
22 shall become operative on the same date that the act
23 takes effect pursuant to the California Constitution.

24 SEC. 4. This act is an urgency statute necessary for the
25 immediate preservation of the public peace, health, or
26 safety within the meaning of Article IV of the
27 Constitution and shall go into immediate effect. The facts
28 constituting the necessity are:

29 ~~In order to allow the California Gambling Control~~
30 ~~Commission to proceed with the adoption of regulations,~~
31 ~~and to provide relief to gambling establishments~~
32 ~~negatively affected by the lack of regulations, at the~~

33 *In order to clarify the law with regard to the collection*
34 *of player fees in gambling establishments and to address*
35 *the legality of those fees, at the earliest possible time, it*
36 *is necessary that this act take effect immediately.*

