

AMENDED IN SENATE JUNE 13, 2000  
AMENDED IN ASSEMBLY MAY 2, 2000  
AMENDED IN ASSEMBLY APRIL 11, 2000

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2179**

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**Introduced by Assembly Member Wesson**

February 23, 2000

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An act to add Section 330d to the Penal Code, relating to gambling.

LEGISLATIVE COUNSEL'S DIGEST

AB 2179, as amended, Wesson. Gambling: prohibited online gambling games.

(1) Existing law prohibits, *with the exception of specified games conducted on Indian lands*, banking or percentage games played with cards, dice, or devices, including roulette, faro, and twenty-one, lottery games, other than charitable bingo, *raffles*, and the games of the California State Lottery, the operation, possession, sale or control of slot machines, as defined, and sports wagering and other forms of bookmaking and pool selling, other than licensed parimutuel wagering on horse races, and provides that any person who operates or bets at these prohibited gambling games is guilty of a crime and is punishable by a misdemeanor or felony, as specified. Existing court decisions generally provide that contracts concerning illegal gambling transactions, and any losses or debts thereby

incurred, are against public policy and are unenforceable in this state.

This bill would state finding and declarations of the Legislature with regard to online gambling games, and would provide that it is unlawful for any person to operate or bet against any prohibited online gambling game, as defined, for money, checks, credit, or any other representative of value. This bill would provide that every person who operates or offers for play any prohibited online gambling game to any person physically located in this state at the time of the transaction, or who operates such a game from a host server, as defined, that is physically located in this state at the time of the transaction, is guilty of a misdemeanor and is punishable by imprisonment in a county jail not to exceed 90 days, a fine not to exceed \$1,000 per transaction, *as defined*, or by both that fine and imprisonment. By creating a new crime, this bill would impose a state-mandated local program.

This bill would provide that every person or entity who ~~knowingly solicits or facilitates~~ *aid and abets* another person who is physically located in this state to play or bet at any prohibited online gambling game in violation of this section is guilty of a misdemeanor punishable by imprisonment in a county jail not to exceed 90 days, a fine not to exceed \$1,000 per violation, or by both that fine and imprisonment. ~~This bill would make it a conclusive presumption that a person or entity acted “knowingly” if they received a warning from the Attorney General or a local district attorney that online gambling is illegal.~~ This bill would provide that these provisions shall not apply with respect to advertisements that are not specifically directed towards this state and which contain adequate disclosure of the illegality of these games, ~~or~~ to Internet service providers, web pages and search engines, or other indexes, networks, or network equipment which act as mere functional intermediaries between a patron and an online gambling enterprise and which do not reasonably constitute an advertisement or promotion of that enterprise. By creating a new crime, this bill would impose a state-mandated local program.

This bill would provide that every person who plays or bets at or against a prohibited online gambling game while



physically located within this state is guilty of an infraction punishable by a fine not to exceed \$100 per transaction. By creating a new crime, this bill would impose a state-mandated local program.

~~This bill would also provide that, notwithstanding any other provision of law, and in addition to any other limitation on the enforceability of gambling debts, losses, and transactions, debts incurred as a result of wagering on a prohibited online gambling game are not enforceable in this state.~~

This bill would also provide that notwithstanding any other provision of law, the Attorney General is expressly authorized to enforce these provisions, and in addition to bringing criminal actions shall have the authority to file civil actions, issue cease and desist letters, and take other actions as necessary to maximize compliance with these provisions by ~~both~~ online gambling enterprises, *intermediaries*, and individual citizens of this state, and would specifically authorize the Attorney General to review electronic, print, and other advertisements of online gambling enterprises for accuracy, and demand that advertisements appearing in this state disclose that these online games are illegal in this state. This bill would provide that ~~this~~ *the authority thereby provided to the Attorney General shall not be construed to limit the* ~~current~~ authority of a district attorney to enforce these provisions.

This bill would provide that its provisions are severable, and that if any of its provision or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect.

~~This bill would declare the intent of the findings and declarations of the Legislature to codify court decisions insofar as they hold that with respect to the enforceability of gambling losses and debts from illegal gambling in this state, from online gambling in particular, are unenforceable, and would state the intent of the Legislature that credit card issuers financial institutions and other lenders intermediaries doing business in this state shall take notice that these gambling debts in general, and debts are from illegal online gambling in particular, may be unenforceable, and to~~



accordingly encourage these entities to take appropriate action to protect their legitimate business interests.

(2) 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. (a) The Legislature finds and declares  
2 the following:

3 (1) Online gambling threatens the health, safety, and  
4 welfare of the citizens of this state, because, unlike  
5 controlled gambling conducted within licensed gambling  
6 establishments and tribal casinos, online gambling is  
7 completely unregulated.

8 (2) The unregulated nature of online gambling  
9 enterprises, combined with the fact that many online  
10 gambling providers are located beyond the criminal  
11 jurisdiction of this state or of the United States, poses an  
12 unacceptable risk of fraudulent business practices to  
13 patrons of these establishments.

14 (3) Due to the anonymous nature of the Internet,  
15 online gambling establishments are unable to accurately  
16 assess the age or identity of online patrons, and thus these  
17 enterprises facilitate illegal gambling by minors and  
18 other persons prohibited from engaging in gambling.

19 (4) Online gambling enterprises routinely and  
20 incorrectly assert that persons in this state can legally  
21 participate in online gambling games, and thus these  
22 enterprises engage in false and misleading advertising.

23 (b) It is the intent of the Legislature in enacting this  
24 act to remove any ambiguity as to the illegality of online  
25 gambling in this state.

26 SEC. 2. Section 330d is added to the Penal Code, to  
27 read:



1 330d. (a) Notwithstanding any other provision of  
2 law, and in addition to the prohibitions and limitations on  
3 gambling contained in this chapter and in Chapter 9  
4 (commencing with Section 319), it is unlawful for any  
5 person to operate or bet at or against any prohibited  
6 online gambling game, as defined in subdivision (f), for  
7 money, checks, credit, or any other representative of  
8 value.

9 (b) Every person who deals, carries on, opens or  
10 causes to be opened, or who conducts, operates, or offers  
11 for play any prohibited online gambling game played for  
12 money, checks, credit, or any other representative of  
13 value, to any person that he or she knows or has reason to  
14 know is physically located within this state at the time of  
15 the transaction, is guilty of a misdemeanor punishable by  
16 imprisonment in a county jail not to exceed 90 days, a fine  
17 not to exceed one thousand dollars (\$1,000) per  
18 transaction, or by both that imprisonment and fine.

19 (c) Every person who deals, carries on, opens or causes  
20 to be opened, or who conducts, operates, or offers for play  
21 any prohibited online gambling game played for money,  
22 checks, credit, or any other representative of value, from  
23 a host server, as defined in subdivision (g), that is  
24 physically located within this state at the time of the  
25 transaction, is guilty of a misdemeanor punishable by  
26 imprisonment in a county jail not to exceed 90 days, a fine  
27 not to exceed one thousand dollars (\$1,000) per  
28 transaction, or by both that imprisonment and fine.

29 (d) (1) Every person or entity who ~~knowingly solicits~~  
30 ~~or facilitates~~ *aids and abets* another person who is  
31 physically located in this state to play or bet at any  
32 prohibited online gambling game in violation of this  
33 section is guilty of a misdemeanor punishable by  
34 imprisonment in a county jail not to exceed 90 days, a fine  
35 not to exceed one thousand dollars (\$1,000) per violation,  
36 or by both that fine and imprisonment. ~~For purposes of~~  
37 ~~this subdivision, if a person or entity has received a~~  
38 ~~warning from the Attorney General or local district~~  
39 ~~attorney that online gambling is illegal, it shall be~~



1 ~~conclusively presumed that any solicitation or facilitation~~  
2 ~~of a violation of this provision was done knowingly.~~

3 (2) This subdivision shall not apply with respect to  
4 advertisements that are not specifically directed towards  
5 the residents of this state and which contain adequate  
6 disclosure of the illegality of these games, nor shall this  
7 subdivision apply with respect to Internet service  
8 providers, web pages containing hypertext links, web  
9 search engines, networks, routers, hubs, or other  
10 directories, indexes, devices, or equipment which act as  
11 mere functional intermediaries between a patron and an  
12 online gambling enterprise and which do not reasonably  
13 constitute an advertisement or promotion of that  
14 enterprise.

15 (e) Every person who plays or bets at or against any  
16 prohibited online gambling game for money, checks,  
17 credit, or any other representative of value, while that  
18 person is physically located within this state, is guilty of an  
19 infraction punishable by a fine not to exceed one hundred  
20 dollars (\$100) per transaction.

21 (f) ~~A prohibited online gambling game, for purposes~~  
22 ~~of this section, means any banking or percentage game~~  
23 ~~played with dice, cards, or devices, as well as any of the~~  
24 ~~following games, including any common variations~~  
25 ~~thereon or facsimiles thereof, that are conducted,~~  
26 ~~operated, or offered for play over the Internet, including,~~  
27 ~~but not limited to, the following:~~ *of this section, includes,*  
28 *but is not limited to, any of the following games and any*  
29 *common variations thereon or facsimiles thereof, as well*  
30 *as any banking or percentage game played with dice,*  
31 *cards, or devices, that is conducted, operated, or offered*  
32 *for play over the Internet for money, checks, credit, or*  
33 *any other representative of value:*

34 (1) Craps.

35 (2) Roulette.

36 (3) Blackjack or twenty-one.

37 (4) Slot machines.

38 (5) Poker, including stud poker, draw poker,  
39 Caribbean stud poker, or Pai gow poker.

40 (6) Baccarat.



1 (7) Bingo, including bingo pulltab games.

2 (8) Sportsbook wagering, including wagering on the  
3 outcome, statistics, or any other aspect of a sporting  
4 event, other than lawful wagering on a horse race.

5 (9) Lottery games, other than games lawfully  
6 conducted by the California State Lottery.

7 (g) A host server, for purposes of this section, means  
8 the computer or network of computers on which an  
9 online gambling game is operated. Host server does not  
10 include any computer, hub, or other device, or any  
11 independent computer network, that acts as an  
12 intermediary in the transfer of Internet Protocol (IP)  
13 packets to and from the host server, provided that the  
14 intermediary device is not owned or controlled by the  
15 person or entity, or a subsidiary thereof, that owns or  
16 controls the host server.

17 ~~(h) Notwithstanding any other provision of law, and in  
18 addition to any other limitation on the enforceability of  
19 gambling debts, losses, and transactions, debts incurred as  
20 a result of wagering on a prohibited online gambling  
21 game, as defined in subdivision (d), are not enforceable  
22 in this state.~~

23 *(h) A transaction, for purposes of this section, means  
24 each transfer of funds or other valuable consideration for  
25 use in, or in connection with, the making of a wager, series  
26 of wagers, or parlay wager.*

27 (i) Notwithstanding any other provision of law, the  
28 Attorney General is expressly authorized to enforce this  
29 section, and in addition to bringing criminal actions shall  
30 have the authority to file civil actions, issue cease and  
31 desist letters, and take other actions as necessary to  
32 maximize compliance with these provisions by ~~both~~  
33 online gambling enterprises, *intermediaries*, and  
34 individual citizens of this state. The Attorney General is  
35 specifically authorized to review electronic, print, and  
36 other advertisements of online gambling enterprises for  
37 accuracy, and may demand that advertisements  
38 appearing in this state disclose that these online games  
39 are illegal in this state. Nothing in this subdivision shall be  
40 ~~interpreted to limit the current~~ *construed to limit the*



1 authority of a district attorney to enforce the provisions  
2 of this section.

3 (j) The provisions of this section are severable. If any  
4 provision of this section or its application is held invalid,  
5 that invalidity shall not affect other provisions or  
6 applications that can be given effect without the invalid  
7 provision or application.

8 ~~SEC. 3. It is the intent of the Legislature in enacting  
9 Section 330d of the Penal Code to codify decisions of the  
10 courts of this state insofar as they hold that gambling  
11 losses and debts from illegal gambling, from online  
12 gambling in particular, are unenforceable. It is also the~~

13 *SEC. 3. The Legislature finds and declares that  
14 pursuant to the long-standing public policy of this state,  
15 as interpreted by its courts, losses and debts from  
16 gambling generally are not enforceable in California. It  
17 is the intent of the Legislature in enacting this section that  
18 credit card issuers and other lenders financial institutions  
19 and other intermediaries doing business in the State of  
20 California take notice that these debts are gambling  
21 debts in general, and debts from illegal online gambling  
22 in particular, may be unenforceable and, and accordingly  
23 these entities are encouraged to take appropriate action  
24 to protect their legitimate business interests.*

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

