

CALIFORNIA

I. The Gambling Control Act

A. Who needs a License

i. Cal. Business & Professional Code § 19850 mandates that everyone who is engaged in the carrying on of a controlled game in California must apply for and receive a license to do so.

ii. Owners: "The owner of a gambling enterprise shall apply for and obtain a state gambling license. *Id.* at §19851.

iii. Key Employees: "Every key employee shall apply for and obtain a key employee license." *Id.* at §19854.

B. License Requirements

i. Anyone who is required to get a license must do so before they engage in the activity. *Id.* at §19855.

ii. The requirements for approval of a license and the grounds under which a license can be revoked are found in Sections 19856 through 19862, as well as 19808 through 19893.

iii. In order to apply for a license, each application must contain:

1. "The name of the proposed licensee.

2. The name and location of the proposed gambling establishment.

3. The gambling games proposed to be conducted.

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

5. A description of the proposed gambling establishment and operation.

6. Any other information and details the commission may require in order to discharge its duty properly." *Id.* at §19864.

II. Definition of Gambling

A. Gambling is defined in §330 of the California Penal Code. One engages in gambling when he or she "deals, plays, carries on, opens, causes to be opened, or conducts . . . [a] game of faro, monte, roulette, lansquenet, rouge et noire, rondo, tan, fan-fan, seven-and-a-half, twenty-one, hokey-pokey, or any banking or percentage game played with cards, dice, or any device, for money, checks, credit, or other representative of value"

B. In California, a game constitutes gambling when it is predominantly determined by chance. There can be some skill to the game, but the result rests on chance. *Bell Gardens Bicycle Club v. Department of Justice*, 42 Cal.Rptr.2d 730, 749 (1995); *See also* 17 Op.Atty.Gen. 63 (1881).

C. There are three elements to any gambling scheme:

i. Prize

ii. Chance

iii. Consideration. *California Gasoline Retailers v. Regal Petroleum Corp.*, 50 Cal.2d 844, 851 (1958).

D. The elements of an illegal lottery are consideration, prize and chance. 17 Op.Atty.Gen. 63.

E. A thing of value is "any money, coin, currency, check, chip, allowance, token, credit, merchandise, property, or any representative of value." §330.2 of the California Penal Code.

III. Definition of Bookmaking

A. Although perhaps oversimplified, bookmaking means "the making of a betting book." *People v. Cahan*, 273 P.2d 64, 69 (Cal. App. 1954). Bookmaking has also been described as the making of a betting book and the taking of bets. *People v. Thompson*, 24 Cal. Rptr. 101, 104 (Cal. App. 1962).

IV. Specific gaming device definitions

A. A slot machine or device is defined as "a machine, apparatus, or device that is adapted, or may readily be converted, for use in a way that, as a result of the insertion of any piece of money or coin or other object, or by any other means, the machine or device is caused to operate or may be operated, and by reason of any element of hazard or chance or of other outcome of operation unpredictable by him or her, the user may receive or become entitled to receive any piece of money, credit, allowance, or thing of value, or additional chance or right to use the slot machine or device, or any check, slug, token, or memorandum, whether of value or otherwise, which may be exchanged for any money, credit, allowance, or thing of value, or which may be given in trade, irrespective of whether it may, apart from any element of hazard or chance or unpredictable outcome of operation, also sell, deliver, or present some merchandise, indication of weight, entertainment, or other thing of value." §330b of the California Penal Code.

B. A gambling device is "any equipment or mechanical, electromechanical, or electronic contrivance, component or machine used remotely or directly in connection with gaming or any game which affects the result of a wager by determining win or loss. The term includes any of the following:

i. A slot machine.

ii. A collection of two or more of the following components:

1. An assembled electronic circuit which cannot be reasonably demonstrated to have any use other than in a slot machine.
2. A cabinet with electrical wiring and provisions for mounting a coin, token, or currency acceptor and provisions for mounting a dispenser of coins, tokens, or anything of value.
3. A storage medium containing the source language or executable code of a computer program that cannot be reasonably demonstrated to have any use other than in a slot machine.
4. An assembled video display unit.
5. An assembled mechanical or electromechanical display unit intended for use in gambling.
6. An assembled mechanical or electromechanical unit which cannot be demonstrated to have any use other than in a slot machine.

iii. Any mechanical, electrical, or other device that may be connected to or used with a slot machine to alter the normal criteria of random selection or affect the outcome of a game.

iv. A system for the accounting or management of any game in which the result of the wager is determined electronically by using any combination of hardware or software for computers.

v. Any combination of one of the components set forth in subparagraphs (A) to (F), inclusive, of paragraph (2) and any other component that the commission determines, by regulation, to be a machine used directly or remotely in connection with gaming or any game which affects the results of a wager by determining a win or loss." 337t(f) of the California Penal Code.

C. Basically, it is any machine that one can insert a thing of value and have the chance of winning a thing of value.

D. A punch board is a slot machine under §330c of the California Penal Code. It is defined as "any card, board or other device which may be played or operated by pulling, pressing, punching out or otherwise removing any slip, tab, paper or other substance therefrom to disclose any concealed number, name or symbol."

V. Bucket Shop Laws

A. A Bucket shop is "any room, office, store, building, or other place where any bucketing or bucket shopping contract is made or offered to be made."

B. "Bucketing" or "bucket shopping" means either (1) "The sale by a keeper of any security or commodity purchased by him for the account of or upon the order of another when the proceeds of the sale are not immediately credited by the keeper to the account of the other person and when a report or statement in writing of the sale is not rendered to the other person by the keeper

on the next business day following the sale;" or (2) "Making or offering to make any contract respecting the purchase or sale of any securities or commodities:

i. wherein both parties intend, or the keeper intends, that the contract shall be, or may be, terminated, closed, or settled according to or upon the basis of the public market quotations of prices made on any board of trade or exchange upon which the securities or commodities are dealt in, without a bona fide purchase or sale of the securities or commodities; or

ii. wherein both parties intend, or the keeper intends, that the contract shall be, or may be, deemed terminated, closed, or settled when the public market quotations of prices for the securities or commodities named in the contract reach a certain figure without a bona fide purchase or sale of the securities or commodities, or

iii. wherein both parties do not intend, or such keeper does not intend, the actual or bona fide receipt or delivery of the securities or commodities, but do intend, or the keeper does intend, a settlement of the contract based upon the differences in the public market quotations of prices at which the securities or commodities are or are asserted to be bought and sold. *Id.* at 29008.

VI. Prohibition of Games of Skill

A. Poker / Card Games / Dice / Billiards / Bowling / Darts

i. The definition of gambling includes paying a game of "cards, dice, or any device, for money, checks, credit, or other representative of value." §330 of the California Penal Code.

ii. Even if broad prohibition against illegal lotteries under statute and State Constitution were deemed ambiguous, lottery ban was not limited only to widespread ticket lotteries in which winner was not present, but rather could be applied to jackpot poker game in which card club operator would pay cash prize to losing player holding particular hand if another player won common pot with another particular hand. Bell Gardens Bicycle Club v. Department of Justice (App. 2 Dist. 1995) 42 Cal.Rptr.2d 730, 36 Cal.App.4th 717,

iii. §337s of the California Penal Code states that in counties with a population exceeding four million it is unlawful for anyone to play any game of draw poker.? The only way that it can become lawful in a county of that size is if the issue is placed on the ballot as follows and it is passed by the majority of voters:?

"Shall draw poker, including lowball poker, be prohibited in _____ County? Yes _____ No _____."

VII. Express Exemptions

A. Social Gaming

i. California law does not have a separate distinction for social gaming.

B. Charity Gaming

i. "[T]he Legislature by statute may authorize cities and counties to provide for bingo games, but only for charitable purposes." Cal. Const. Ann. Art. 4, Sec. 19(c).

ii. Qualifying organizations can hold raffles "as a funding mechanism" for their own purposes if:

1. No less than 90% of the gross receipts are spent in California for "beneficial or charitable purposes"; and

2. Compensation for being involved with the raffle is only paid to an employee of the qualifying organization. Cal. Const. Ann. Art. 4, Sec. 19(f).

iii. It is not lawful for people to play keno by making a donation to a charity in order to win prizes, even though proceeds go to the charity. 64 Op.Atty.Gen 114 (Feb. 6, 1981).

C. Chucky Cheese Exemptions

i. Slot machines and gambling devices do not include "music machines, weighing machines and machines that vend cigarettes, candy, ice cream, food, confections or other merchandise" as long as every customer has to put in the same consideration and gets what he or she purchases.

ii. "Pin ball and other amusement machines or devices which are predominantly games of skill, whether affording the opportunity of additional chances or free plays or not" are not considered to be slot machines. §330.5 of the California Penal Code.

iii. The game of razzle-dazzle is unlawful and cannot be played in an amusement setting. "Razzle-dazzle means a series of games of skill or chance in which the player pays money or other valuable consideration in return for each opportunity to make successive attempts to obtain points by the use of dice, darts, marbles or other implements, and where such points are accumulated in successive games by the player toward a total number of points, determined by the operator, which is required for the player to win a prize or other valuable consideration." §334 of the California Penal Code.

D. Commercial Gaming

i. A business owner cannot enter a customer in a drawing to win a prize because the customer made a purchase. Op.Atty.Gen. No. 02-809 (December 10, 2002).

E. Lottery

i. The California state lottery was established in 1984 by the passage of Proposition 37, the California State Lottery Act.?? It was passed by 58% of the vote. This Act requires that 34% of Lottery revenues be applied to public education. California State Lottery, <http://www.calottery.com/AboutUs>.

ii. The lottery is run by a commission that is appointed by the Governor. The legislature has a limited role in the State Lottery. It can only amend the Act to better further its purposes. California State Lottery, <http://www.calottery.com/AboutUs>.

iii. Cal. Const. Ann. Art. 4, Sec. 19 states that the legislature does not have the power to authorize a lottery. However, the constitution goes on to say that a California State Lottery has been established, regardless of that provision.

F. Horseracing

i. "The Legislature may provide for the regulation of horse races and horse race meetings and wagering on the results." Cal. Const. Ann. Art. 4, Sec. 19(b).

ii. The Horse Racing Law was established to "allow pari-mutuel wagering on horse races, while:

1. Assuring protection of the public.
2. Encouraging agriculture and the breeding of horses in this state.
3. Supporting the network of California fairs.
4. Providing for maximum expansion of horse racing opportunities in the public interest.
5. Providing uniformity of regulation for each type of horse racing." Cal. Business and Professional Code §19401.

iii. In California, pari-mutuel wagering is defined as "a form of wagering in which bettors either purchase tickets of various denominations, or issue wagering instructions leading to the placement of wagers, on the outcome of one or more horse races. When the outcome of the race or races has been declared official, the association distributes the total wagers comprising each pool, less the amounts retained for purposes specified in this chapter, to winning bettors." *Id.* at §19411.

G. Greyhound Racing

i. Greyhound racing does not exist in California because it was rejected by voters at a general election in 1976. Cal. Business and Professional Code §19700 .

H. Mule Racing

i. Mule racing exists in California. *See* Cal. Business and Professional Code §19700.

VIII. Specific Internet Prohibition

A. California has no internet prohibition in statute, case law, or attorney general opinion.

IX. Statute of Anne / Recovery of Debts

A. Both a person who wishes to enforce a gambling debt and a person who wishes to recover gambling losses has no judicial forum in which to bring his claim. *See* Cal. Civ. Code § 1607 (explaining that contracts are not valid where unlawful consideration is given), §1667 (explaining what constitutes unlawful consideration), Cal. Penal Code § 330 (defining gambling). *See also* Kelly v. First Astri Corp., 72 Cal. App. 4th 462, 476 (1999).

X. Lawful Commercial Casino Gaming

A. Cal. Const. Ann. Art. 4, Sec. 19(e) states that "the legislature has no power to authorize, and shall prohibit casinos of the type currently in Nevada and New Jersey.

B. "The type [of casino] operating in Nevada and New Jersey . . . refers to one or more buildings, rooms, or facilities, whether separate or connected, that offer gambling activities including those statutorily prohibited in California in 1984, especially banked table games and slot machines." *Hotel Employees and Restaurant Employees Intern. Union v. Davis*, 88 Cal.Rptr2d 56 (1999).

C. It is also unlawful to engage in gambling on a gambling ship. *See* Cal. Penal Code § 11300.

XI. Gaming Crimes and Penalties

A. A person who engages in gambling is guilty of a misdemeanor. This offense is punishable by a fine between \$100 and \$1,000, or by six months in county jail, or both. Cal. Penal Code § 330.

B. Cal. Business & Professional Code §19940 makes it a misdemeanor to knowingly enter the premises of a licensed gambling establishment if the person has been placed on a list of people to be excluded or ejected from the establishment.

C. It is a misdemeanor for someone under 21 years of age to play a gambling game, loiter around the gambling games, work at a licensed gambling establishment, or use a fake form of identification to gain access. *Id.* at §19941.

D. "Any person who willfully fails to report, pay, or truthfully account for and pay over any license fee imposed by this chapter, or who willfully attempts in any manner to evade or defeat the license fee or payment thereof, shall be punished by imprisonment in a county jail, by a fine of not more than five thousand dollars (\$5,000), or by both that imprisonment and fine." *Id.* §19942.

E. Violating any part of the Gambling Control Act that does not have an expressed penalty is a misdemeanor. *Id.*

F. Any person or business that engages in gambling and knows of the requirements of the Gambling Control Act is engaged in unlawful activity if that person or business does not comply with the Act. A monetary penalty can be imposed for every violation. There is a cap of \$10,000

for the first proceeding, \$25,000 for two proceedings, and \$100,000 for more than two proceedings. *Id.* at §19943.

G. "Any person who willfully resists, prevents, impedes, or interferes with the division or the commission or any of their agents or employees in the performance of duties pursuant to [the Gambling Control Act] is guilty of a misdemeanor, punishable by imprisonment in a county jail for not more than six months, by a fine not exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine." *Id.* at §19944.

H. Anyone who possesses a gambling device "is guilty of a misdemeanor, and shall be punishable by a fine not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000), or by imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment." §330a of the California Penal Code.

I. It is a misdemeanor, punishable by a fine of no more than \$1,000 and imprisonment in a county jail for up to six months, to "manufacture, own, store, keep, possess, sell, rent, lease, let on shares, lend or give away, transport or expose for sale or lease or offer to sell, rent, lease, let on shares, lend or give away . . . any slot machine or device . . ." *Id.*

J. It is not unlawful to transport a slot machine in interstate commerce as long as it is locked up and not used in California. Cal. Penal Code §330.6 .

K. It is not unlawful to have slot machines and other gambling devices at a trade show or for demonstration purposes. *Id.* at §330.9.

L. "Every person who knowingly permits any of the games mentioned in Sections 330 and 330a [of the California Penal Code] to be played, conducted, or dealt in any house owned or rented by such person, in whole or in part, is punishable as provided in Sections 330 and 330a." *Id.* at §331.

M. Any person who wins by fraud, trick, or cheating if liable for a penalty of \$5,000 for the first offense and \$10,000 for the second offense. *Id.* at §332.

Anyone who owns or operates a game of razzle-dazzle is guilty of a misdemeanor. *Id.* at §334.
See chunky-cheese exceptions above.

O. A person who engages in pool selling or bookmaking may be subject to imprisonment in a county jail for up to a year or to a fine of not more than \$5,000.

P. Any person involved in bucketing (see Bucket Shops, above) is guilty of a felony. Cal. Corp. Code § 29100.