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SB-549 Gaming: Tribal Nations Access to Justice Act. (2023-2024)

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Senate Bill No. 549

CHAPTER 860

An act to amend Section 19804 of the Business and Professions Code, and to add Chapter 2 (commencing with Section 98020) to Title 16 of the Government Code, relating to gaming.

[Approved by Governor September 28, 2024. Filed with Secretary of State September 28, 2024.]

LEGISLATIVE COUNSEL'S DIGEST

SB 549, Newman. Gaming: Tribal Nations Access to Justice Act.

The existing federal 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 prohibits the Legislature from authorizing casinos of the type operating in Nevada and New Jersey and authorizes the Governor to negotiate and conclude tribal-state gaming compacts, subject to ratification by the Legislature. Existing law expressly ratifies a number of tribal-state gaming compacts between the State of California and specified Indian tribes.

Existing law, the Gambling Control Act, provides for the regulation, oversight, and licensure of gambling establishments by the California Gambling Control Commission. Existing law prohibits a list of specified gambling games or any banking or percentage game played with cards, dice, or any device, for money, checks, credit, or any representative of value, and provides that any person who offers for play or participates in these games is guilty of a misdemeanor and is punishable as specified. Existing law authorizes gambling establishments to operate controlled games utilizing a player-dealer position, as defined, and to contract with a third party for the provision of proposition player services subject to specified conditions and regulatory requirements.

Existing law generally specifies the persons or entities that may bring a civil action as prescribed for relief. Existing law authorizes a court to grant a preliminary injunction or temporary restraining order at any time prior to judgment, if the verified complaint or affidavits provide sufficient grounds to do so and the opposing party has been given notice.

This bill would authorize a California Indian tribe, under certain conditions, to bring an action solely against licensed California card clubs and third-party proposition player services providers to seek a declaration as to whether a controlled game operated by a licensed California card club and banked by a third-party proposition player services provider constitutes a banking card game that violates state law, including tribal gaming rights under the constitutional provisions described above, and to request injunctive relief. The bill would require that any review of such a challenge be conducted de novo. The bill would prohibit a claim for money damages, penalties, or attorney's fees and would require that actions be filed no later than April 1, 2025, as specified. The bill would clarify that it does not intend to authorize an action, or otherwise impose any liability, against the state and would prohibit a court from issuing a preliminary injunction or temporary restraining order under certain circumstances.

This bill would provide that its provisions are severable.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. This act shall be known and may be cited as the Tribal Nations Access to Justice Act.

SEC. 2. The purpose and intent of the Tribal Nations Access to Justice Act is to authorize a limited declaratory and injunctive relief action before the California courts, filed solely against licensed California card clubs and third-party proposition player services providers, to determine whether certain controlled games operated by California card clubs are illegal banking card games or legal controlled games, thereby resolving a decade-long dispute between California tribes and California card clubs concerning the legality of those controlled games and whether they violate state law, including tribal gaming rights under Section 19 of Article IV of the California Constitution.

SEC. 3. Section 19804 of the Business and Professions Code is amended to read:

19804. (a) In any action for declaratory or injunctive relief, or for relief by way of any extraordinary writ, other than an action initiated pursuant to Section 19932, wherein the construction, application, or enforcement of this chapter, or any regulation adopted pursuant thereto, or any order of the department or the commission issued pursuant thereto, is called into question, a court shall not grant any preliminary or permanent injunction, or any peremptory writ of mandate, certiorari, or prohibition, in connection therewith, except as follows:

(1) Upon proof by clear and convincing evidence that the department or the commission is abusing or threatens to abuse its discretion.

(2) Upon proof by clear and convincing evidence that the department or the commission is exceeding or threatens to exceed its jurisdiction.

(b) No temporary injunction or other provisional order shall issue to restrain, stay, or otherwise interfere with any action by the department or the commission, except upon a finding by the court, based on clear and convincing evidence, that the public interest will not be prejudiced thereby, and, except for preliminary injunctions, no order may be effective for more than 15 calendar days, except by stipulation of the department or commission. No preliminary order may be effective for more than 45 days, except by stipulation of the department or commission.

(c) This section does not relieve a petitioner's obligation to exhaust administrative remedies.

(d) In an action for relief of any nature wherein the construction, application, or enforcement of this chapter, or any regulation adopted pursuant thereto, or any order of the department or commission issued pursuant thereto, is called into question, the party filing the pleading shall furnish a copy thereof to the department and to the commission. The copy shall be furnished by the party filing the pleading within 10 business days after filing.

(e) This section does not apply to an action for declaratory or injunctive relief authorized by Section 98020 of the Government Code.

SEC. 4. Chapter 2 (commencing with Section 98020) is added to Title 16 of the Government Code, to read:

CHAPTER 2. Tribal Nations Access to Justice Act

98020. (a) A California Indian tribe that is party to a current ratified tribal-state gaming compact, or that is party to current secretarial procedures pursuant to Chapter 29 of Title 25 of the United States Code, may bring an action in superior court, filed solely against licensed gambling enterprises and third-party providers of proposition player services seeking a declaration as to whether a controlled game operated by a licensed gambling establishment and banked by a third-party provider of proposition player services constitutes a banking card game that violates state law, including tribal gaming rights under Section 19 of Article IV of the California Constitution, and may also request injunctive relief.

(b) The court may make a binding declaration in either affirmative or negative form and effect, which shall have the force of a final judgment, and may issue injunctive relief enjoining further operation of the controlled game or grant any other relief the court deems appropriate. No claim for money damages, penalties, or attorney's fees shall be permitted under this section.

(c) Any review as to whether a controlled game operated by a licensed gambling establishment and banked by a third-party provider of proposition player services constitutes a banking card game that violates state law, including tribal gaming rights under Section 19 of Article IV of the California Constitution, shall be conducted de novo.

(d) An action under this section shall be filed no later than April 1, 2025, in the Superior Court of California, County of Sacramento.

(e) If multiple actions are commenced under this section, they shall be consolidated for all purposes, including trial to avoid the risk of inconsistent declarations.

(f) Notwithstanding Section 387 of the Code of Civil Procedure, the state, any California Indian tribe that is party to a current ratified tribal-state gaming compact or that is party to current secretarial procedures, any licensed gambling enterprise, and any third-party provider of proposition player services shall be entitled to intervene as a matter of right in an action commenced under this section.

(g) Nothing herein is intended to authorize an action for declaratory or injunctive relief against the state, or otherwise impose any liability against the state or its officers.

(h) Notwithstanding Section 527 of the Code of Civil Procedure, in an action filed pursuant to this section, a court shall not issue a preliminary injunction or a temporary restraining order to stop an increase in the number of gambling tables authorized at an establishment pursuant to Section 19961.07 or 19962 of the Business and Professions Code.

(i) As used in this section, the terms "gambling enterprise," "gambling establishment," and "third-party provider of proposition player services" have the same meanings as in the Gambling Control Act (Chapter 5 (commencing with Section 19800) of Division 8 of the Business and Professions Code).

(j) A court order issued pursuant to this section that declares a controlled game to be in violation of state law or enjoins further operation of a controlled game found to be in violation of state law shall not take effect until 60 days following entry of the order.

SEC. 5. If any provision of this act, or part thereof, is for any reason held to be invalid or unconstitutional, the remaining provisions shall not be affected, but shall remain in full force and effect, and to this end the provisions of this act are severable. The Legislature declares that this act, and each section, subdivision, sentence, clause, phrase, part, or portion thereof, would have been passed irrespective of the fact that any one or more sections, subdivisions, sentences, clauses, phrases, parts, or portions are found to be invalid. If any provision of this act is held invalid as applied to any person or circumstance, that invalidity does not affect any application of this act that can be given effect without the invalid application.