



ICLG

The International Comparative Legal Guide to:

Gambling 2019

5th Edition

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USA – California

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1 Relevant Authorities and Legislation

1.1 Which entities regulate what type of gambling and social/skill gaming activity in your jurisdiction?

Relevant Product		Who regulates it in digital form?	Who regulates it in land-based form?
Gaming	Casino gaming (including slots and casino table games such as roulette & blackjack)	Does not apply.	California Gambling Control Commission (“CGCC”), Attorney General’s Bureau of Gambling Control, and various tribal gaming authorities.
	Poker		
	Bingo		Municipal governing authorities.
Betting	Betting	Does not apply.	Does not apply.
	Sports/horse race betting (if regulated separately to other forms of betting)		California Horse Racing Board.
	Fantasy betting (payment to back a ‘league’ or ‘portfolio’ selection over a period of time, for example in relation to sport or shares)		Does not apply.
Lotteries	Lotteries	Does not apply.	California Lottery.
Social/Skill arrangements	“Social” gaming with no prize in money or money’s worth	Does not apply.	Does not apply.
	Skill games and competitions with no element of chance		

1.2 Specify: (i) the law and regulation that applies to the Relevant Products in your jurisdiction; and (ii) – in broad terms – whether it permits or prohibits the offer of Relevant Products to persons located in your jurisdiction.

The California State Constitution makes gambling illegal. Cal. Const. Art. IV. However, certain forms of gambling, regulated by the state or the state’s Native American tribes, are permitted. Specifically, California permits card rooms, tribal casinos, a state-run lottery, bingo, and *pari-mutuel* wagering on horseracing.

The Gambling Control Act (“GCA”), Cal. Bus. & Prof. Code § 19800 *et seq.* sets out, as part of the state’s Business and Professional Code, licensing terms for entities involved with the gaming market. It also establishes the potential enforcement and disciplinary actions and restrictions on certain transactions. This Act establishes the law for all state card rooms, state relations with tribal casinos, and bingo. The GCA also established the California Gambling Control Commission, which issues regulations and gaming licences.

In addition to the GCA, California allows tribal casinos to offer card games and slots. These casinos are owned and operated by the state’s Native American tribes. The terms, limitations, and regulations pertaining to the tribal casinos are set forth in compacts negotiated between the state and each tribe that runs a casino.

The California Horse Racing Law controls all aspects of horse racing in the state, including *pari-mutuel* wagering. Under the California State Lottery Act, the California State Lottery operates the only lawful lottery in the state.

Consistent with the constitutional prohibition on gambling, the California Penal Code, Cal. Penal Code §§ 330 *et seq.*, provides that it is a misdemeanour for a person to facilitate, sponsor, run, or otherwise operate an illegal gambling operation, including an unlicensed card room or an unauthorised lottery.

At this time, California does not have any online gaming legislation. However, the state has tried many times over the past several years to legalise online poker and other online games.

2 Application for a Licence and Licence Restrictions

2.1 What regulatory licences, permits, authorisations or other official approvals (collectively, “Licences”) are required for the lawful offer of the Relevant Products to persons located in your jurisdiction?

The Gambling Control Act requires that the owner of a card room

apply for and obtain a state gambling licence through the California Gambling Control Commission (“GCC”). In addition to owners, each key employee at the card rooms and gambling equipment manufacturers and distributors must be licensed.

California also requires registration of certain entities involved in the gaming business that are not directly involved with operating a gaming establishment. Specifically, gaming resource suppliers and third-party proposition player services must be registered with the state.

The state’s tribal casinos are regulated separately, through tribal gaming commissions. The licences necessary to operate a casino on Native American lands are determined by tribal commissions and the state-tribe gaming compacts.

The California Horse Racing Board oversees licensing for all racetracks in the state, including for *pari-mutuel* wagering, and state municipalities have licensing authority over bingo games.

2.2 Where Licences are available, please outline the structure of the relevant licensing regime.

There is currently a moratorium on further card room licences in California until January 2020. However, parties interested in operating a card room can acquire a licence from a currently operating card room. Licences for other casinos are only available for the state’s tribes. There are currently 63 active tribal licences, which are negotiated through a compact between the tribe and the state. Compacts set out the terms of the relationship between the state and the operating casino, including revenue sharing, licensing terms, and other specific details for operating a casino on tribal land.

2.3 What is the process of applying for a Licence for a Relevant Product?

When licences for card rooms are available, entities must apply to the GCC for licensure. The card room owner, the owner’s spouse, and key employees must complete individual investigations, which include disclosure of any personal civil or criminal court matters and details on personal assets. Applications for businesses and individuals are all available on the GCC’s website.

Upon submission of the materials, the GCC may schedule an interview with the owners and key personnel. The interview can be conducted in person or over the phone.

2.4 Are any restrictions placed upon licensees in your jurisdiction?

Based on the current moratorium, there are no licences available for card rooms in the state until January 2020.

2.5 Please give a summary of the following features of any Licences: (i) duration; (ii) vulnerability to review, suspension or revocation.

Licences must be renewed bi-annually. The initial licence fee is \$6,000, plus a \$1,000 non-refundable deposit. The renewal fee is \$1,000. Further, because California is a community property state, spouses of card room owners must also register with the state.

Licences are a privilege and are held based on the continued compliance and good conduct of the licence holder. They can be revoked by the GCC for a number of reasons, but licence holders are entitled to due process prior to any suspension or revocation action being taken.

2.6 By Relevant Product, what are the key limits on providing services to customers? Please include in this answer any material promotion and advertising restrictions.

For currently operating card rooms and casinos, the minimum age to play is 18, although many establishments voluntarily raised the age to 21 to comply with state alcohol law.

Advertising and marketing materials must be approved by the GCC prior to use. The materials cannot be deceptive or misleading to customers, or target children. Advertisements that appeal to children or adolescents or offer gambling as a means of becoming wealthy are presumptively deceptive.

2.7 What are the tax and other compulsory levies?

California law empowers municipalities to collect taxes on card rooms in their jurisdictions. The municipalities set the tax rate for the approved card rooms, which is generally around 15%. In *pari-mutuel* wagering, the state collects a total of 36% of revenue on on-track wagers and about 21% on off-track wagers. Tribal casinos do not pay taxes to the state, but they do make payments to the state and municipalities based on the terms of the compact.

2.8 What are the broad social responsibility requirements?

California has a self-exclusion programme, which does not encompass tribal casinos or *pari-mutuel* horse wagering. The programme allows for a one-year or lifetime exclusion. Most tribal casinos offer their own self-exclusion programmes as well.

2.9 How do any AML, financial services regulations or payment restrictions restrict or impact on entities supplying gambling? Does your jurisdiction permit virtual currencies to be used for gambling and are they separately regulated?

California does not have any state-level AML, financial services regulations, or payment restrictions specific to the gaming industry. Card room and tribal casino operators are obligated to adhere to federal AML, financial services, and payment restrictions.

At this time, California does not permit virtual currencies for gambling as there is no online gambling in the state. In the social gaming space, some courts have concluded that awards of virtual currency (including just virtual coins and tokens that lack a stated real-world value) in social gaming render such games illegal gambling. The courts considering this question were not considering California law or based in California, but are federal courts with authority over California, so the full impact of these decisions is still unclear at this time.

There are no separate regulations specific to using virtual currencies at a land-based casino in California. However, to accept virtual currencies, casinos may need to adhere to the state’s new financial laws and regulations on virtual currencies, specifically the licensing and regulatory requirements for financial institutions that serve as exchanges for virtual currency. Exchanging virtual currency in California requires a money transmitter licence prior to operation.

3 Online/Mobile/Digital/Electronic Media

3.1 How does local law/regulation affect the provision of the Relevant Products in online/mobile/digital/electronic form, both from: (i) operators located inside your jurisdiction; and (ii) operators located outside your jurisdiction?

Online, real-money gaming is not legal in California. Operators that offer real-money gaming in California are subject to state and federal criminal laws, which make such activity punishable with fines and imprisonment.

Free-to-play social gaming and skill-based gaming are permitted in the state and are not regulated.

3.2 What other restrictions have an impact on Relevant Products supplied via online/mobile/digital/electronic means?

As online, real-money gaming is not permitted, there are no applicable restrictions.

3.3 What terminal/machine-based gaming is permitted and where?

Terminal- and machine-based gaming is not permitted in California.

4 Enforcement and Liability

4.1 Who is liable under local law/regulation?

Licence holders are liable under local laws and regulations for violations of California law. The laws are set forth in the California penal code.

4.2 What form does enforcement action take in your jurisdiction?

While the GCC has licensing authority, the Bureau of Gambling Control within the Attorney General's office is charged with enforcement in the state. It investigates suspected violations of the Gambling Control Act and complaints lodged by customers, and recommends and prosecutes cases that are found to have resulted in a violation of state law. Further, the Bureau coordinates multi-jurisdictional investigations with local, state, and federal agencies. The Bureau also assists the GCC with investigations into qualifications of applicants for licensing and conducts ongoing compliance investigations throughout the state.

4.3 Do other non-national laws impact upon liability and enforcement?

No other non-national laws impact upon liability and enforcement.

4.4 Are gambling debts enforceable in your jurisdiction?

No. Further, although gaming establishments are permitted to extend credit to patrons, California courts have refused to enforce gambling debts based on extension of credit.

5 Anticipated Reforms

5.1 What (if any) intended changes to the gambling law/regulations are being discussed currently?

The status of land-based gaming has been largely consistent in modern California history. The most recent change came in 2000, with Proposition 1A, which amended the state constitution to allow tribal casinos on Native American land. However, there have been efforts in recent years to legalise online gaming, and now that the federal ban on sports betting has been struck down, there has been renewed interest in legalising sports betting.

In 2016, State Assemblyman Adam Gray pushed Assembly Bill 2863 out of committee with unanimous support. Also known as the "Gray Bill", the legislation would have legalised online poker. It seemed poised for success, having gained support from key factions in the state, namely the horse racing industry. For years, the racing industry has worried that online poker and other forms of online gaming present a threat to their industry. The Gray Bill provided an annual \$60 million payment to horse racing from online poker, thus garnering support from that industry.

However, in addition, the state faces issues with the so-called "bad actor" issue. There has been significant opposition in allowing online poker companies that operated in the state after the passage of the Unlawful Internet Gaming Enforcement Act (a federal Act outlawing online poker), to seek licensing if online poker became legal. The Gray Bill allowed the "bad actors" to seek licences, but also empowered state regulators to conduct investigations into these applicants to determine their present suitability. However, this bill died before the full legislature in September 2016. A similar bill was presented in 2017, but also failed to pass.

Since the decision from the Supreme Court in *Murphy v. NCAA*, California – like many other states – has considered legalising sports betting. However, California will need a constitutional amendment to begin sports betting. Such an amendment must pass through the state legislature and then a state-wide voter referendum. Assemblyman Adam Gray introduced this constitutional amendment, but it failed to pass out of the state legislature in 2018, meaning it will be over another year until the citizens can vote on the issue.

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Considered one of the world's foremost attorneys in online gaming law, Jeff Ifrah is nationally ranked by *Chambers USA*, which states he "is noted for his sophisticated gaming and licensing practice that emphasises novel areas of the sector [like] cryptocurrency issues, internet sports betting and social media integration". His firm Ifrah Law has been at the centre of most of the important prosecutions and lawsuits in the iGaming industry.

Jeff leverages his decades of experience in betting and wagering law to counsel established gaming companies and startups throughout the business cycle, focusing on compliance with state and federal legislation and avoiding future litigation. He has also gained a strong reputation in other related internet-based industries such as payment processing and money transmission. Jeff is a founding member of iDevelopment and Economic Association (iDEA), a non-profit association seeking to grow jobs and expand online interactive entertainment business through advocacy and education.

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A rising star in the area of online gaming law, Jessica Feil of Ifrah Law works with all sectors of the industry from sports books to online marketing agencies to platform providers. She advises online gaming companies on the sports betting and online gaming licensing process, and counsels international gaming companies on requirements for money transmitter licensing and compliance with federal and state laws in relation to cryptocurrency.

Jessica is frequently asked to present at industry events around the country and has published extensively on the blog, *Ifrah on iGaming* on cutting-edge topics like initial coin offerings (ICOs) and skin betting. She is a member of the Video Game Bar Association and the Esports Bar Association.



Ifrah Law has represented online gaming clients since the inception of the industry, and now represents many of the largest iGaming companies and industry associations around the world. The firm was instrumental in the creation of the legislative and regulatory frameworks in three U.S. states which currently permit online gaming.

Ifrah Law advises online casino operators, poker and fantasy sports sites, and payment processors on class action lawsuits, mergers and acquisitions, vendor and supplier issues, government investigations and criminal matters. Its attorneys are known for representing clients in cases involving progressive areas of the gaming industry, such as sports betting, social gaming, skins betting, iGaming, online sweepstakes and lotteries, peer-to-peer betting and mobile gaming.

Ifrah Law publishes the blog, *Ifrah on iGaming*. The firm also submitted an *amicus* brief to the Supreme Court in the groundbreaking case which finally led to legalisation of sports betting across the U.S.

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