

AMENDED IN ASSEMBLY JULY 10, 2023

AMENDED IN ASSEMBLY JUNE 19, 2023

AMENDED IN SENATE MARCH 20, 2023

## SENATE BILL

**No. 549**

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### **Introduced by Senator Newman**

*(Principal coauthor: Assembly Member Aguiar-Curry)*

***(Coauthors: Senators Atkins and Wilk)***

*(Coauthors: Assembly Members Haney, Mathis, Sanchez, Waldron,  
Wallis, and Ward)*

February 15, 2023

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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.

#### LEGISLATIVE COUNSEL'S DIGEST

SB 549, as amended, Newman. Gaming: Tribal Declaratory Relief Act of 2023.

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.

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~~ *third-party* proposition player services provider constitutes a banking card game that violates state law and tribal gaming exclusivity under Section 19 of Article IV of the California Constitution and a tribal-state gaming compact or secretarial procedures. *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, 2024, as specified. *The bill would clarify that it does not intend to authorize an action against the state.*

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

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

- 1 SECTION 1. This act shall be known and may be cited as the
- 2 Tribal Declaratory Relief Act of 2023.
- 3 SEC. 2. The purpose and intent of the Tribal Declaratory Relief
- 4 Act of 2023 is to authorize a limited declaratory and injunctive
- 5 relief action before the California ~~courts~~ *courts, filed solely against*
- 6 *licensed California card clubs and third-party proposition player*
- 7 *services providers*, to determine whether certain controlled games
- 8 operated by California card clubs are illegal banking card games
- 9 or legal controlled games, thereby resolving a decade-long dispute
- 10 between California tribes and California card clubs concerning the

1 legality of those controlled games and whether they infringe upon  
2 exclusive tribal gaming rights.

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

5 19804. (a) In any action for declaratory or injunctive relief,  
6 or for relief by way of any extraordinary writ, other than an action  
7 initiated pursuant to Section 19932, wherein the construction,  
8 application, or enforcement of this chapter, or any regulation  
9 adopted pursuant thereto, or any order of the department or the  
10 commission issued pursuant thereto, is called into question, a court  
11 shall not grant any preliminary or permanent injunction, or any  
12 peremptory writ of mandate, certiorari, or prohibition, in  
13 connection therewith, except as follows:

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

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

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

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

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

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

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

CHAPTER 2. TRIBAL DECLARATORY RELIEF ACT OF 2023

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~~ court, *filed solely against licensed California card clubs and third-party proposition player services providers*, seeking 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 and tribal gaming exclusivity under Section 19 of Article IV of the California Constitution and a tribal-state gaming compact or secretarial procedures, 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 California card club and banked by a third-party proposition player services provider constitutes a banking card game that violates state law and tribal gaming exclusivity under Section 19 of Article IV of the California Constitution and a tribal-state gaming compact or secretarial procedures shall be conducted de novo.*

~~(e)~~

(d) An action under this section shall be filed no later than April 1, 2024, in the Superior Court of California, County of Sacramento.

~~(d)~~

(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.

~~(e)~~

(f) Notwithstanding Section 387 of the Code of Civil Procedure, the state, any California Indian tribe that is party to a current

1 ratified tribal-state gaming compact or that is party to current  
2 secretarial procedures, any licensed California card club, and any  
3 third-party proposition player services provider shall be entitled  
4 to intervene as a matter of right in an action commenced under  
5 this section.

6 *(g) Nothing herein is intended to authorize an action for*  
7 *declaratory or injunctive relief against the state.*

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