

103^D CONGRESS
1ST SESSION

S. 1035

To amend the Indian Gaming Regulatory Act, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 26 (legislative day, APRIL 19), 1993

Mr. REID (for himself, Mr. BRYAN, Mr. GRAHAM, and Mr. SIMPSON) introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

A BILL

To amend the Indian Gaming Regulatory Act, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. FINDINGS AND DECLARATION OF POLICY.**

4 (a) FINDINGS.—Section 2(5) of the Indian Gaming
5 Regulatory Act (25 U.S.C. 2701(5)) is amended by insert-
6 ing “subject to the provisions of this Act” after “Indian
7 lands”.

8 (b) POLICY.—Section 3(2) of such Act (25 U.S.C.
9 2702(2)) is amended by striking “by an Indian tribe”.

1 **SEC. 2. DEFINITIONS.**

2 (a) INDIAN LANDS.—Section 4(4) of the Indian Gam-
3 ing Regulatory Act (25 U.S.C. 2703(4)) is amended to
4 read as follows:

5 “(4) The term ‘Indian lands’ means lands over which
6 an Indian tribe exercises governmental power, and which
7 are located—

8 “(A) within the exterior boundaries of an In-
9 dian reservation and held in fee by the Indian tribe
10 for which such lands have been reserved;

11 “(B) within the exterior boundaries of the res-
12 ervation title to which is either held in trust by the
13 United States for the benefit of an Indian tribe or
14 member of such tribe or held by an Indian tribe or
15 member of such tribe subject to restriction by the
16 United States against alienation; or

17 “(C) outside the exterior boundaries of a recog-
18 nized reservation, as such boundaries existed on Oc-
19 tober 17, 1988, title to which is either held in trust
20 by the United States for the benefit of an Indian
21 tribe or held by an Indian tribe subject to restriction
22 by the United States against alienation.”.

23 (b) INDIAN TRIBE.—Section 4(5)(A) of such Act (25
24 U.S.C. 2703(5)(A)) is amended by inserting “before the
25 date of the enactment of this Act” after “recognized”.

1 (c) CLASS III GAMING.—Section 4 of such Act (25
2 U.S.C. 2703) is amended—

3 (1) in paragraph (7)(A)(i)—

4 (A) in the matter preceding subclause (I),
5 by inserting after “therewith)” the following:
6 “except video bingo”;

7 (B) in subclause (I), by inserting “(but not
8 limited to” after “including”;

9 (C) in the matter following subclause (III),
10 by inserting “, but not limited to,” after “loca-
11 tion)”;

12 (2) in paragraph (7)(A)(ii)(II), by striking “re-
13 garding” and inserting “including (but not limited
14 to)”;

15 (3) in paragraph (7)(B)(i), by inserting “(but
16 not limited to) house banking card games, pari-
17 mutuel wagering, casino games played with dice,
18 wheels and similar gaming equipment,” after “in-
19 cluding”;

20 (4) in paragraph (8), by inserting before the pe-
21 riod at the end the following: “including (but not
22 limited to) slot machines, electronic or
23 electromechanical facsimiles of any game of chance,
24 and any and all forms of electronic video games or

1 devices, such as video bingo, video pull-tabs, video
2 keno, and video blackjack”.

3 (d) SLOT MACHINE.—Section 4 of such Act (25
4 U.S.C. 2703) is amended by adding at the end thereof
5 the following:

6 “(11) The term ‘slot machine’ means any me-
7 chanical, electrical, or other device, contrivance, or
8 machine which, upon insertion of a coin, token, or
9 similar object therein, or upon payment of any con-
10 sideration whatsoever, is available to play or operate,
11 the play or operation of which, whether by reason of
12 the skill of the operator or application of the element
13 of chance, or both, may deliver or entitle the person
14 playing or operating the machine to receive cash or
15 tokens to be exchanged for cash or to receive mer-
16 chandise or any thing of value whatsoever, whether
17 the payoff is made automatically from the machine
18 or in any other manner whatsoever, including (but
19 not limited to) any and all forms of electronic video
20 games or devices such as video poker, video bingo,
21 video pull-tabs, video keno, and video blackjack.”.

22 **SEC. 3. CLASS II INDIAN GAMING RESTRICTED.**

23 (a) REGULATION OF CLASS II GAMING.—Section
24 11(b) of the Indian Gaming Regulatory Act (25 U.S.C.
25 2710(b)) is amended—

1 (1) in paragraph (1)—

2 (A) in subparagraph (A), by striking all
3 that follows after “entity” and inserting the fol-
4 lowing: “which conducts the authorized gaming
5 activity as part of a commercial, for-profit busi-
6 ness enterprise;”; and

7 (B) by redesignating subparagraph (B) as
8 subparagraph (D) and inserting the following:

9 “(B) such gaming is not otherwise specifically
10 prohibited on Indian lands by Federal law;

11 “(C) permissible gaming is limited to the spe-
12 cific games and methods of play of gaming activities
13 expressly authorized by the laws of the State; and”;
14 and

15 (2) in paragraph (2)—

16 (A) in subparagraph (E), by striking
17 “and” at the end;

18 (B) in subparagraph (F)—

19 (i) by amending clause (i) to read as
20 follows:

21 “(i) ensures that background investigations
22 are conducted on all financial backers, inves-
23 tors, mortgagees, lenders, security holders, and
24 other such persons or entities as well as on pri-
25 mary management officials, key employees of

1 the gaming enterprise, and any other person en-
2 gaged in the operation of gaming or the ac-
3 counting of gaming assets and that oversight of
4 such officials, persons, or entities is conducted
5 on an ongoing basis; and”;

6 (ii) in clause (ii)—

7 (I) by amending subclause (I) to
8 read as follows:

9 “(I) tribal licenses for primary man-
10 agement officials, key employees of the
11 gaming enterprise, and any other person
12 engaged in the operation of gaming or the
13 accounting of gaming assets, with prompt
14 notification to the Commission of the issu-
15 ance of such licenses;”;

16 (II) by striking the period at the

17 end and inserting “; and”;

18 (C) by adding at the end the following:

19 “(G) all gaming activities shall be con-
20 ducted in conformity with those laws and regu-
21 lations (if any) of the State regarding specific
22 games allowed and methods of play, including
23 (but not limited to) periods of operation, limita-
24 tion on wagers, pot sizes, and losses.”.

1 (b) LICENSING.—Section 11(b)(4)(A) of such Act (25
2 U.S.C. 2710(b)(4)(A)) is amended to read as follows:

3 “(4)(A) A tribal ordinance or resolution may provide
4 for the licensing or regulation of class II gaming activities
5 owned by any person or entity other than the Indian tribe
6 and conducted on Indian lands, only if—

7 “(i) the regulations require that nontribally
8 owned class II gaming be conducted pursuant to
9 limitations, including (but not limited to) those on
10 hours or periods of operation and wager or pot lim-
11 its, at least as restrictive as those imposed under
12 State law, and

13 “(ii) the tribal licensing requirements include
14 the requirements described in the subclauses of sub-
15 paragraph (B)(i) and are at least as restrictive as
16 those established by State law governing similar
17 gaming within the jurisdiction of the State within
18 which such Indian lands are located. No person or
19 entity, other than the Indian tribe, shall be eligible
20 to receive a tribal license to own a class II gaming
21 activity conducted on Indian lands within the juris-
22 diction of the Indian tribe if such person or entity
23 would not be eligible to receive a State license to
24 conduct the same activity within the jurisdiction of
25 the State.”.

1 **SEC. 4. REGULATION OF CLASS III GAMING.**

2 (a) STATE-PERMITTED ACTIVITIES.—Section
3 11(d)(1) of the Indian Gaming Regulatory Act (25 U.S.C.
4 2710(d)(1)) is amended—

5 (1) by amending subparagraph (B) to read as
6 follows:

7 “(B) located in a State that permits the specific
8 games and methods of play of the gaming activities
9 expressly authorized by the laws of the State by any
10 person, organization, or entity which conducts the
11 authorized gaming activity as part of a commercial,
12 for-profit business enterprise,”; and

13 (2) by redesignating subparagraph (C) as sub-
14 paragraph (D) and inserting after subparagraph (B)
15 the following new subparagraph:

16 “(C) limited to the specific games and methods
17 of play of gaming activities expressly authorized by
18 the laws of the State, and”.

19 (b) STATE’S RIGHT OF FIRST REFUSAL OPTION.—
20 Section 11(d)(3)(A) of such Act (25 U.S.C.
21 2710(d)(3)(A)) is amended to read as follows:

22 “(3)(A) Any Indian tribe having jurisdiction over the
23 Indian lands upon which a class III gaming activity is to
24 be conducted shall request in writing that the State in
25 which such lands are located enter into negotiations for
26 the purpose of entering into a Tribal-State compact gov-

1 urning the conduct of gaming activities. Upon receiving
2 such a request, the State may negotiate with the Indian
3 tribe to enter into such a compact, or, subject to para-
4 graph (7) of this subsection, decline to enter into negotia-
5 tions with the Indian tribe by informing the tribe in writ-
6 ing of such decision before the expiration of the 180-day
7 period following such request.”.

8 (c) TRIBAL-STATE COMPACT STANDARDS.—Section
9 11(d)(3)(C)(vi) of such Act (25 U.S.C. 2710(d)(3)(C)(vi))
10 is amended by inserting “(but not limited to)” after “in-
11 cluding”.

12 (d) JURISDICTION.—Section 11(d)(7) of such Act (25
13 U.S.C. 2710(d)(7)) is amended to read as follows:

14 “(7)(A) The United States district courts shall have
15 jurisdiction over—

16 “(i) any cause of action initiated by the United
17 States on behalf of an Indian tribe arising from the
18 failure of a State to conduct negotiations under
19 paragraph (3),

20 “(ii) any cause of action initiated by a State,
21 the United States or an Indian tribe to enjoin a
22 class III gaming activity located on Indian lands and
23 conducted in violation of this Act or Tribal-State
24 compact entered into under paragraph (3) that is in
25 effect, and

1 “(iii) any cause of action initiated by the Sec-
2 retary to enforce the procedures prescribed under
3 subparagraph (I).

4 “(B) The United States may initiate a cause of action
5 described in subparagraph (A)(i) only if—

6 “(i) a 180-day period has passed since the In-
7 dian tribe requested the State to enter into negotia-
8 tions under paragraph (3)(A),

9 “(ii) a Tribal-State compact has not been en-
10 tered into under paragraph (3) within one year after
11 the date that negotiations between the Indian tribe
12 and the State commenced in good faith, and

13 “(iii) the specific games and methods of play of
14 class III gaming activity are expressly authorized by
15 the laws of the State.

16 “(C) In any action described in subparagraph (A)(i),
17 the burden of proof shall be upon the United States to
18 prove that the State has failed to negotiate with the Indian
19 tribe in good faith to conclude a Tribal-State compact gov-
20 erning the conduct of gaming activities. In determining
21 whether a State has negotiated in good faith, the court—

22 “(i) may take into account the public interest,
23 public safety, criminality, financial integrity, and ad-
24 verse economic impacts on existing gaming activities

1 on either Indian lands or within the State or States
2 concerned, or both,

3 “(ii) shall consider any demand by the State for
4 direct taxation of the Indian tribe or of any Indian
5 lands as evidence that the State has not negotiated
6 in good faith,

7 “(iii) shall not consider a State’s refusal to ne-
8 gotiate on terms which differ from State laws and
9 regulations regarding gaming activities as evidence
10 of failure to negotiate in good faith, and

11 “(iv) shall not consider reliance upon a legal in-
12 terpretation, sufficient under Federal Rules of Civil
13 Procedure, rule 11, of the requirements of the In-
14 dian Gaming Regulatory Act as evidence of failure
15 to negotiate in good faith.

16 “(D) It shall be a defense to an action brought under
17 paragraph (3) that—

18 “(i) the tribe has not conducted negotiations
19 with the State on a good-faith basis,

20 “(ii) the tribe has conducted gaming activities
21 on its lands, or allowed gaming activities to be con-
22 ducted on its lands, in violation of the provisions of
23 this Act during a 180-day period preceding initiation
24 of such action, or

1 “(iii) the specific games and methods of play of
2 the class III gaming activity are not expressly au-
3 thorized by the laws of the State.

4 “(E) If, in any action described in subparagraph
5 (A)(i), the court finds that the State has failed to nego-
6 tiate in good faith with the Indian tribe to conclude a
7 Tribal-State compact governing the conduct of gaming ac-
8 tivities, the court shall order the State and the Indian
9 tribe to conclude such a compact within a 60-day period.

10 “(F) If a State and an Indian tribe fail to conclude
11 a Tribal-State compact governing the conduct of gaming
12 activities on the Indian lands subject to the jurisdiction
13 of such Indian tribe within the 60-day period provided in
14 the order of a court issued under subparagraph (E), the
15 Indian tribe and the State shall each submit to a mediator
16 appointed by the court a proposed compact that represents
17 their last best offer for a compact. The mediator shall se-
18 lect from the two proposed compacts the one which best
19 comports with the terms of this Act and any other applica-
20 ble Federal law and with the findings and order of the
21 court.

22 “(G) The mediator appointed by the court under sub-
23 paragraph (F) shall submit to the State and the Indian
24 tribe the compact selected by the mediator under subpara-
25 graph (F).

1 “(H) If a State consents to a proposed compact dur-
2 ing the 60-day period beginning on the date on which the
3 proposed compact is submitted by the mediator to the
4 State under subparagraph (G), the proposed compact shall
5 be treated as a Tribal-State compact entered into under
6 paragraph (3).

7 “(I) If the State does not consent during the 60-day
8 period described in subparagraph (H) to a proposed com-
9 pact submitted by a mediator under subparagraph (G),
10 the mediator shall notify the Secretary and the Secretary
11 shall prescribe, in consultation with the Indian tribe, pro-
12 cedures—

13 “(i) which are consistent with the proposed
14 compact selected by the mediator under subpara-
15 graph (F), the provisions of this Act, and the rel-
16 evant provisions of the laws of the State, and

17 “(ii) under which class III gaming may be con-
18 ducted on the Indian lands over which the Indian
19 tribe has jurisdiction.

20 “(J) If the State expressly declines to negotiate for
21 a Tribal-State compact pursuant to paragraph (3)(A), or
22 if the State does not consent during the 60-day period de-
23 scribed in subparagraph (H) to a proposed compact sub-
24 mitted by a mediator under subparagraph (G), the tribe,
25 in the former case, may notify the Secretary, or the medi-

1 ator, in the latter case, shall notify the Secretary and the
2 Secretary shall prescribe upon such notification, in con-
3 sultation with the Indian tribe, procedures—

4 “(i) which are consistent with, where applicable,
5 the proposed compact selected by the mediator
6 under subparagraph (F), the provisions of this Act,
7 and the relevant provisions of the laws of the State,
8 and

9 “(ii) under which class III gaming may be con-
10 ducted on the Indian lands over which the tribe has
11 jurisdiction.

12 “(K) For the purposes of this section, failure of the
13 State to expressly decline a tribal request to enter into
14 negotiations for a Tribal-State compact within the 180-
15 day period under paragraph (3)(A) shall be deemed a dec-
16 lination, whereupon the tribe may notify the Secretary
17 under subparagraph (J) for the prescription of procedures
18 allowing for class III gaming.

19 “(L) A mediator appointed by the court may not se-
20 lect a proposed compact within a State that violates an
21 existing law of that State regulating class III gaming, or
22 construe an authorization by a State of one form of class
23 III gaming as an authorization for all forms of class III
24 gaming.”.

1 (e) CHANGES IN STATE OR TRIBAL LAW.—Section
2 11(d) of such Act (25 U.S.C. 2710(d)) is amended by add-
3 ing at the end the following:

4 “(10) Except as provided by paragraph (2)(D), a
5 State or tribe may request in writing to enter into negotia-
6 tions based on the enactment or adoption of a State law
7 or tribal ordinance or resolution that amends, repeals, or
8 otherwise affects a Tribal-State compact in effect pursu-
9 ant to this subsection. A request under this paragraph
10 shall be treated as a request made under paragraph (3),
11 except that the Tribal-State compact shall remain in effect
12 and gaming may be conducted pursuant to such compact
13 during the negotiation process.”.

14 **SEC. 5. NONRESERVATION LANDS; GAMING ON AFTER AC-**
15 **QUIRED LANDS.**

16 (a) PROHIBITION.—Subsection (a) of section 20 of
17 the Indian Gaming Regulatory Act (25 U.S.C. 2719(a))
18 is amended to read as follows:

19 “(a) Gaming regulated by this Act shall not be con-
20 ducted on Indian lands which, on or after October 17,
21 1988, are acquired by any Indian tribe, are taken into
22 trust by the United States, or are first subject to a restric-
23 tion against alienation by the United States unless—

1 “(1) such lands are located in Oklahoma and
2 are within the boundaries of the Indian tribe’s
3 former reservation, as defined by the Secretary, or

4 “(2) such lands are located in a State other
5 than Oklahoma and are within the Indian tribe’s
6 last recognized reservation within the State or
7 States within which such Indian tribe is presently lo-
8 cated.”.

9 (b) REPEAL.—Subsection (b) of section 20 of the In-
10 dian Gaming Regulatory Act (25 U.S.C. 2719(a)) is re-
11 pealed and subsections (c) and (d) are redesignated as
12 subsections (b) and (c), respectively.

13 **SEC. 6. REPORTING AND BOOKKEEPING.**

14 The Indian Gaming Regulatory Act (25 U.S.C. 2701
15 et seq.) is amended by inserting after section 21 the fol-
16 lowing new section:

17 “REPORTING AND BOOKKEEPING

18 “SEC. 21A. (a) Within 90 days after the date of the
19 enactment of this section, the Secretary of the Treasury
20 shall issue such regulations as may be necessary to require
21 gaming establishments authorized pursuant to this Act to
22 be subject to the same reporting and recordkeeping re-
23 quirements as those which are applicable to a casino or
24 gambling casino referred to in section 103.11(i)(7)(i) of
25 part 103 of title 31 of the Code of Federal Regulations

1 in order to ensure a high degree of usefulness in criminal,
2 tax, and regulatory matters.

3 “(b) In the administration of this Act, an authoriza-
4 tion provided by a State for one form of class III gaming
5 shall not be construed as an authorization of all forms of
6 class III gaming for purposes of negotiations between a
7 State and a tribe.

8 “(c) In the administration of this Act, the United
9 States district courts shall have sole jurisdiction over con-
10 tract disputes between tribes and contract operators of In-
11 dian gaming establishments.”.

12 **SEC. 7. BACKGROUND INVESTIGATIONS.**

13 (a) **ROLE OF ATTORNEY GENERAL.**—The Indian
14 Gaming Regulatory Act (25 U.S.C. 2701 et seq.), as
15 amended by section 5 of this Act, is amended by inserting
16 after section 21A the following new section:

17 “BACKGROUND INVESTIGATIONS

18 “SEC. 21B. (a) The Attorney General shall conduct
19 background investigations—

20 “(1) to determine the suitability of each individ-
21 ual, person or entity (including individuals compris-
22 ing such entity, serving on the board of directors of
23 a corporation, and stockholders of a corporation)
24 listed in section 12(a)(1)(A) to be involved in class
25 III gaming activities under this Act;

1 “(2) to determine the suitability of any finan-
2 cial backer, investor, mortgagee, lender, security
3 holder, or other such person or entity to be involved
4 in class III gaming activities under this Act;

5 “(3) to determine the suitability of any primary
6 management official, or key employee of a class III
7 gaming activity under this Act, or any other person
8 or entity engaged in class III gaming activities, or
9 the accounting of class III gaming assets, under this
10 Act, to continue to engage in such activities;

11 “(4) to assist the Commission in carrying out
12 sections 7(b) and 12; and

13 “(5) otherwise necessary with respect to imple-
14 menting class III gaming activities pursuant to this
15 Act.

16 “(b) For the purposes of this Act, a background in-
17 vestigation shall include (but not be limited to)—

18 “(1) criminal history, especially criminal history
19 with respect to organized crime;

20 “(2) taxpayer return and return information;

21 “(3) immigration information;

22 “(4) records, held by any entity of the Federal
23 Government, which are not described in paragraphs
24 (1), (2), or (3); and

25 “(5) records held by State entities.

1 “(c) For the purposes of subsection (b)—

2 “(1) the Attorney General is authorized to uti-
3 lize the system devised under section 242(a)(3)(A)(i)
4 of the Immigration and Nationality Act to determine
5 if an individual is an alien; and

6 “(2) returns and return information (as such
7 terms are defined in section 6103(b) of the Internal
8 Revenue Code of 1986) shall be open to inspection
9 by, or disclosure to, the Attorney General and other
10 officers and employees of the Department of Justice
11 and the Commission, subject to the procedures and
12 recordkeeping required under subsection (p) of such
13 section 6103(b).”.

14 (b) CONFORMING AMENDMENTS.—(1) Paragraph (3)
15 of section 7(b) of such Act (25 U.S.C. 2706(b)) is amend-
16 ed to read as follows:

17 “(3) in consultation with the Attorney General
18 pursuant to section 21B, shall conduct or cause to
19 be conducted such background investigations as may
20 be necessary to carry out the duties of the Commis-
21 sion under this Act with respect to class II gam-
22 ing;”.

23 (2) Section 12 of such Act (25 U.S.C. 2711), as
24 amended by section 3 of this Act, is amended—

1 (A) in subsection (a)(1), by striking “the Com-
2 mission shall” and inserting “the Commission, in
3 consultation with the Attorney General pursuant to
4 section 21B, shall”; and

5 (B) in subsection (e), by striking “the Commis-
6 sion determines” and inserting “the Commission, in
7 consultation with the Attorney General pursuant to
8 section 21B, determines”.

9 **SEC. 8. CRIMINAL LAWS.**

10 Section 1166 of title 18, United States Code, is
11 amended to read as follows:

12 **“§ 1166. Gambling Indian country**

13 “(a) Subject to subsection (c), for purposes of Fed-
14 eral law, all State laws pertaining to the licensing, regula-
15 tion, or prohibition of gambling, including (but not limited
16 to) criminal sanctions applicable thereto, shall apply in In-
17 dian country in the State in the same manner and to the
18 same extent as such laws apply elsewhere in the State.

19 “(b) Whoever in Indian country is guilty of any act
20 or omission involving gambling, whether or not conducted
21 or sanctioned by an Indian tribe, which, although not
22 made punishable by any enactment of Congress, would be
23 punishable if committed or omitted within the jurisdiction
24 of the State in which the act or omission occurred, under
25 the laws governing the licensing, regulation, or prohibition

1 of gambling in force at the time of such act or omission,
2 shall be guilty of a like offense and subject to a like pun-
3 ishment.

4 “(c) For the purpose of this section, the term ‘gam-
5 bling’ does not include—

6 “(1) class I gaming or class II gaming regu-
7 lated by the Indian Gaming Regulatory Act, or

8 “(2) class III gaming conducted under a Tribal-
9 State compact approved by the Secretary of the In-
10 terior under section 11(d)(8) of the Indian Gaming
11 Regulatory Act that is in effect.

12 “(d) The United States shall have exclusive jurisdic-
13 tion over criminal prosecutions of violations of State gam-
14 bling laws that are made applicable under this section to
15 Indian country, unless—

16 “(1) an Indian tribe pursuant to a Tribal-State
17 compact approved by the Secretary of the Interior
18 under section 11(d)(8) of the Indian Gaming Regu-
19 latory Act, or under any other provision of Federal
20 law, has consented to the transfer to the State of
21 criminal jurisdiction with respect to gambling on the
22 lands of the Indian tribe, or

23 “(2) authority has been granted to a State to
24 enforce the criminal laws of the State on Indian
25 lands within the State pursuant to section 1162 of

1 this title, or any other provision of Federal law
2 which authorizes exercise of such criminal jurisdic-
3 tion by a State, which authority shall be concurrent
4 with the United States with respect to violations also
5 made violations of Federal law under subsection (a)
6 of this section.”.

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