

SENATE BILL REPORT

2ESB 6004

AS PASSED SENATE, MARCH 11, 1992

Brief Description: Reviewing Indian gaming compacts.

SPONSORS: Senator Hayner.

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BACKGROUND:

In 1987, the United States Supreme Court decided the case of California v. Cabazon Band of Mission Indians. The court found that federal and tribal interests pre-empt application of state and county gambling laws on Indian reservations. The court was faced with the issue of whether the state laws were prohibitory or regulatory. The court found that the laws were regulatory and therefore, Pub L 280 was not an expression of congressional consent allowing the application of these state and county gambling laws to the individual tribes of California. The practical effect of the Cabazon case was to affirm the tribes' right to conduct the same games on the reservation as are allowed by the state off the reservations, without the state and local laws that regulate the manner in which those games are conducted.

In response to the Cabazon case, Congress enacted the Indian Gaming Regulatory Act (IGRA). The IGRA provides a comprehensive scheme to govern gambling on Indian reservations. Congress declared the purposes of the IGRA to be: (1) to provide a statutory foundation for Indian gambling operations as a means of promoting economic development, self-sufficiency and strong tribal government; (2) to prevent the infiltration of organized crime and other corrupting influences; and (3) to establish federal regulatory authority, federal standards and a National Indian Gaming Commission.

Congress divided gambling on Indian lands into three categories. Class I gaming consists of "social games solely for prizes of minimal value or traditional forms of Indian gaming engaged in by individuals as a part of or in connection with tribal ceremonies or celebrations." Class II gaming includes bingo, and if played at the same location as bingo, "pull-tabs, lotto, punchboards, tip jars, instant bingo and other games similar to bingo," provided that the state permits such gaming by anyone for any purpose. The act expressly excludes from the definition of class II gaming any banking card games, including blackjack, and electronic or electromechanical facsimiles of any game of chance or slot machines of any kind. Class III gaming is defined as "all forms of gaming that are not class I gaming or class II gaming."

Class III games are lawful on Indian lands only if the games are:

- (a) authorized by an ordinance or resolution that
 - (1) is adopted by the governing body of the Indian tribe having jurisdiction over such lands;
 - (2) meets the requirements of subsection (B); and
 - (3) is approved by the Chairman of the National Indian Gaming Commission;
- (b) located in a state that permits such gaming for any purpose by any person, organization, or entity; and
- (c) conducted in conformance with a tribal-state compact entered into by the Indian tribe and the state.

Class III games may not be conducted unless a compact governing the specific form of gambling is in effect. A tribe that wants to conduct class III gaming must request the state to negotiate a compact. The state must negotiate with the tribe in good faith.

Each class of gaming is regulated separately. Tribes have exclusive jurisdiction over class I gaming. Class II gaming is regulated by the tribes but falls under the jurisdiction of the National Indian Gaming Commission. Class III gaming, to the extent it is permitted, is subject to state regulation under the terms of the compact.

After 180 days from the tribe's request to negotiate a compact, a tribe may file suit in Federal District Court alleging that the state has failed to negotiate with the tribe in good faith. In determining whether the state has negotiated in good faith, the federal court may consider "public interest, public safety, criminality, financial integrity and adverse economic impacts on existing gaming activities." If the court finds that the state has failed to negotiate in good faith, the court must order the parties to conclude a compact within 60 days. If a compact is not reached within 60 days, the state and the tribe must submit to a mediator their "last best offer for a compact." The mediator will select the offer that best comports with federal law.

Washington does allow class III gaming in a highly regulated environment. The state allows: on track and satellite betting on horse racing; charitable casino nights where the activities include banking games (e.g., blackjack, with a house dealer), roulette, and craps; and the state lottery. The only kinds of games that are not allowed in Washington are slot machines and electronic games of chance.

Washington also allows social, low stakes card games. These include nonbanking blackjack. Although nonbanking blackjack is not Class III gaming, it is possible that the presence of

these games would allow for banking card games conducted by the tribes. That result was reached in a case in Minnesota. In an unpublished opinion, a district court magistrate ruled that similar social card games in Minnesota satisfied the statutory threshold of "gambling for any person, for any purpose". Therefore, blackjack was proper subject matter for tribal-state negotiations. The district court has postponed review of the magistrate's decision while the state and the tribe try to reach agreement.

Negotiations of IGRA compacts have already begun between the state of Washington and several of this state's tribes.

A recent Attorney General's opinion indicates the Governor does not have authority to execute these compacts on behalf of the state without express authorization from the Legislature. Federal law does not specify which state official or agency should represent the state in these negotiations.

SUMMARY:

An addition is made to the list of statutory duties of the Governor giving authority to execute, on behalf of the state, compacts entered into with federally recognized Indian tribes as provided by federal law for conducting class III gambling on Indian lands.

The negotiation process for compacts with tribes is established. The Gambling Commission, through the director, is authorized to negotiate on behalf of the state. Tentative agreements are forwarded to the commission and designated standing committees of the Legislature. The designated standing committees are authorized to hold a hearing and forward comments to the commission. The commission may also hold hearings. The commission must vote within 45 days after receiving the proposed compact from the director, and may seek further negotiation or send it to the Governor for final execution. The commission is given enforcement power.

An emergency clause and a severability clause are included.

Appropriation: none

Revenue: none

Fiscal Note: none requested

Effective Date: The bill contains an emergency clause and takes effect immediately.