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Indian Casinos In California

By Roger Dunstan

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C A L I F O R N I A R E S E A R C H B U R E A U

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I. INTRODUCTION

Indian gambling is the subject of important legislation, multiple Governor's agreements, an extensive legal struggle, and a high-profile initiative.* This report provides context for understanding these controversies.

Nationwide, Indian Gambling is a \$4.5 Billion Business. Tribal gambling began only about 20 years ago, but nationwide 184 tribes now operate 281 gaming facilities. A 1998 General Accounting Office (GAO) report found that Indian net gaming revenues were \$4.5 billion in 1996.¹ Just eight tribes accounted for about 40 percent of these revenues. By way of comparison, Indian casinos generated the same amount of revenues as all of Atlantic City's Casinos or half of that of Nevada's Casinos.

Gambling Profits from California Tribes Topped \$600 Million.² Based on information California tribes submitted to the Legislative Analyst's Office for the analysis of Proposition 5, California tribes earned over \$600 million from gambling in 1997. The National Indian Gaming Commission lists 41 tribes in California with gaming operations.³

Federal Recognition is an Important Factor. The federal government recognizes 105 tribes in California.⁴ Unrecognized tribes do not receive all of the services or protection that recognized tribes receive from the federal government. In particular, unrecognized tribes cannot have land owned for them in trust and therefore cannot open a gambling establishment.

Not every recognized tribe has a reservation and others may have several parcels that comprise their reservation. Acreage varies from the 90,000 acre Hoopa reservation to small rancherias of an acre.[†]

Tribes Decide Tribal Membership. Typical eligibility requirements are one-quarter tribal blood or direct descent from an enrolled member.

Population of Recognized Tribes is a Small Portion of State's Indian Population. The 1990 census counted approximately 14,000 people living on reservations that identified themselves as Native Americans. Total enrolled membership is 40,000 including enrolled members who live off the reservation.⁵ Tribal membership ranges from several individuals at some smaller rancherias to several thousand at others, but most are in the range of 50 to 400 individuals.⁶ The 41 gaming tribes have about 18,000 members.

* In this report, the terms gambling and gaming are used interchangeably.

† I used the term reservation to apply to all categories of land holdings that are termed "Indian country." These are lands owned in trust by the federal government and set aside for the benefit of the tribe. The definition of Indian country includes rancherias. Most land held in trust for tribes in California are rancherias. The term "rancherias" is from the period when Indians were placed on the estates of the church or Spanish or Mexican nobility.

The largest group of Indians in California is “urban Indians.” They live in the urban areas of the state rather than on reservations. Most urban Indians do not belong to a California tribe. Many migrated to California when the federal government was encouraging Indians to leave reservations and obtain outside employment. In California, there are approximately 250,000 urban Indians. Los Angeles has the largest Indian population of any U.S. city. Many urban Indians are from unrecognized California tribes.

A good portion of the urban Indians are the estimated 75,000 members of about 80 unrecognized tribes. Despite their lack of federal recognition, these Indians regard themselves as members of a tribe. These are not necessarily obscure tribes. The Yosemite Valley Miwok, the original inhabitants of Yosemite, are not recognized.

Two factors account for the large number of unrecognized tribes in California. In the 1850s, Congress failed to approve treaties that the government negotiated with 18 of the now unrecognized tribes. The treaties failed because of strong objections to the amount of land that the treaties granted to the tribes. The number of unrecognized tribes grew as the federal government terminated recognized tribes under policy of assimilation, intended to push tribal members to assimilate into mainstream American society. The federal government terminated 47 recognized tribes, but has since restored many of them.

There Are a Number of Tribes Seeking Recognition. Forty-six unrecognized California tribes have submitted recognition petitions to the Bureau of Indian Affairs (BIA). About half were filed after the passage of the Indian Gaming Regulatory Act. The oldest request among California Indians dates back to 1916.⁷ The other 45 date back no further than the 1970s. Gaming has transformed recognition from a bureaucratic process of main interest only to tribal members into a significant issue to the states.⁸

Gaining recognition is not easy. Over the last 30 years, the Bureau of Indian Affairs (BIA) has acknowledged just a handful of tribes. The minimum period for gaining recognition is two years, but the Bureau has never acted that quickly. Recognition requires that the BIA make certain findings. These include that the tribe was functioning before the arrival of Europeans, maintained political influence over their members from historic time to present, and that it is more than just an offshoot of an already recognized tribe. In their unsuccessful request for recognition, the Yosemite Valley Miwok have spent 15 years and roughly \$500,000.⁹ Other tribes have pursued recognition by legislation.

A newly recognized tribe can acquire a reservation in their historical homeland without state approval. A tribe can strategically choose a site near urban areas for improved gambling prospects. At least two tribes have worked to acquire reservations near Sacramento. For Class III (casino) gambling, state approval would still be required in a compact, but the state would be obligated to negotiate in good faith even if it objected to the location of the tribe’s reservation.

II. LEGAL FRAMEWORK FOR INDIAN GAMING IN CALIFORNIA

A frequently discussed issue related to Indian gaming is the concept of sovereignty. Understanding the exact meaning and implication of the term is critical to understanding any policy related to American Indians.

Webster's defines sovereignty as, "above or superior to all others; chief; greatest; supreme." Neither the states nor the tribes are sovereigns using that definition. They both must submit to the laws of the federal government.

The legal definition of sovereignty is more complex than Webster's definition. The states and tribes have sovereign powers in areas where the federal government has not reserved powers or otherwise acted to limit sovereignty. Consequently, the states and tribes maintain limited sovereign powers. There is continuing conflict as both attempt to exercise those sovereign powers. Congress limited the sovereignty of both the tribes and state governments when it passed the Indian Gaming Regulatory Act.

Sovereign Status of Tribes Dates Back to 1823 Supreme Court Case. In a dispute over land title, the Court's decision acknowledged that under traditional European concepts of international law, conquered people did not lose all of their legal rights. The conquest of the tribes, however, rendered them subject to the legislative power of the United States. Within a few years, two other decisions cemented the precedent that the federal government recognized that tribes are distinct political entities both protected by and subject to the laws and policies of the national government. These decisions left the President and Congress with broad powers over Indian tribes. Legal scholars have coined the phrase, "dependent sovereignty" or "domestic dependent nations" to describe the status of Indian tribes.¹⁰

The concept of dependent sovereignty is evident in looking at Indian gaming. Indian tribes can only carry out gaming under a federal framework, the Indian Gaming Regulatory Act (IGRA). IGRA requires tribes to follow certain state laws for casino-type gambling. For other forms of gaming, such as bingo, tribes need not comply with state laws and policies.

Legal Dispute Began in California Before IGRA. These disputes occurred when tribes started offering gambling approximately 20 years ago. The Cabazon and Morongo Bands of Mission Indians offered card games and bingo at their casinos. California quickly threatened criminal action against the tribes as the games did not comply with state law. The disagreement led to a 1987 U.S. Supreme Court decision in the case *California v. Cabazon Band of Mission Indians*.¹¹ The court upheld, by a six to three vote, the right under federal law for Indians to run gambling operations without state regulation in states where such gaming was legal for at least some non-Indian purposes.

Congress Enacted the Indian Gaming Regulatory Act or IGRA Shortly After the Supreme Court’s Decision in Cabazon. IGRA divided gaming into the following three classes or categories:

Class I: Consists of social games for minimal value prizes associated with traditional tribal ceremonies or celebrations. This class is within the exclusive jurisdiction of the Indian tribe.

Class II: Includes limited card games and bingo, but not electronic forms of these games. Class II games are within the jurisdiction of the tribes primarily, but are subject to oversight by the National Indian Gaming Commission. These games are only permitted in states that permit such gaming. Although states heavily regulate and restrict these games in nontribal parts of the state, only some of the state restrictions apply to the tribes.¹² For example, Class II card games must be played on the reservation in conformity with any state laws and regulations on hours of operation and limitations on wager or pot sizes. State limits do not apply, however, to bingo at a tribal reservation facility.

Class III: Encompasses those gambling activities such as slot machines and other games that are commonly operated by Nevada or Atlantic City casinos, lotteries, or parimutuel facilities. In order for a tribe to offer new Class III gambling, these events must occur:

1. The state in which the reservation is located must permit the same specific gambling activities to at least some non-Indians that the tribes want to offer. If a state has a lottery, a tribe can offer lottery games; if a state does not allow slot machines, the tribe cannot have slot machines.
2. The tribe must pass an ordinance authorizing the gambling activities.
3. The tribe must enter into a compact with the state and the tribe must conduct gaming in conformance with that compact.
4. The compact must be approved by the Secretary of the Interior.

Congress requires that tribes enter into compacts with states before conducting Class III gaming for several reasons. Responding to state complaints that the Cabazon decision had tilted the state/tribal sovereignty struggle too much in favor of the tribes, Congress tilted it back somewhat. Nevada gaming interests encouraged Congress in this move.¹³ Congress was aware that casino gambling had much greater impacts on surrounding communities than most other reservation activities.

Both the states and Indian tribes were unhappy with parts of IGRA.¹⁴ The states wanted sole control of gambling within each state. The tribes objected to the compact provisions, viewing them as an infringement of their sovereignty.

Congress Limited the State’s Regulatory and Criminal Justice Role. IGRA limits state regulation of Indian gaming. State restrictions, such as prize limits in bingo, do not

apply. IGRA reserves for the federal government, exclusive jurisdiction over criminal prosecutions of state gambling laws at Indian facilities.¹⁵ IGRA exempts tribal gaming from state regulation intended to protect patrons and minimize the negative impacts of gambling on nearby communities. The state must enter into a compact that contains a state regulatory role to gain any oversight of Indian gaming.¹⁶

The states also objected to IGRA out of financial considerations. Gambling on Indian lands has tax consequences for the states. Neither the tribes nor tribal members pay state sales taxes for purchases used on the reservation, state income taxes on income earned on reservations, nor do they have to pay property taxes. This tax exemption predates IGRA. To the extent that tribal gaming reduces lottery ticket sales or causes consumers to spend money on gambling that would otherwise be spent on goods or activities that would generate state tax, the states are direct competitors, not mutual beneficiaries of gambling on Indian reservations.

IGRA's Compromises Did Not Mark the End of Disputes and Controversy. There have been two main areas of dispute. States and tribes have clashed over the question of whether states are negotiating in good faith and over just what games state laws allow.

IGRA requires that the state negotiate in good faith with the tribes. There is no comparable requirement for the tribes to negotiate in good faith. If the state fails to negotiate in good faith, IGRA allows the tribes to sue in federal court. The law specifies a process for coming to a resolution after a lawsuit is filed. Tribes have sued several states under these provisions. Eventually, however, the Supreme Court held that a State could assert its own sovereign immunity under the 11th Amendment to prevent the tribe from bringing the state into federal court under IGRA.¹⁷

Under IGRA, California's Gambling Laws Restrict Tribal Gaming. California, like all states, has laws that restrict gambling. Some states, like Nevada, allow a great deal of gambling. Hawaii and Utah prohibit all types of gambling. California falls in the middle, allowing gambling, but placing strict limits on the type of games and devices.

The California Constitution provides significant limitations on gambling.¹⁸

- (a) The Legislature has no power to authorize lotteries and shall prohibit the sale of lottery tickets in the State.
- (b) The Legislature may provide for the regulation of horse races and horse race meetings and wagering on the results.
- (c) Notwithstanding subdivision (a) the Legislature by statute may authorize cities and counties to provide for bingo games, but only for charitable purposes.
- (d) Notwithstanding subdivision (a), there is authorized the establishment of a California State Lottery.
- (e) *The Legislature has no power to authorize, and shall prohibit casinos of the type currently operating in Nevada and New Jersey.*

Following are the types of gambling allowed in California:

Parimutuel wagering is limited to betting on horse racing, which the California Horse Racing Board regulates. The voters legalized wagering on horse racing in 1933 through a constitutional amendment.

State Lottery games became legal when the voters enacted a constitutional amendment in 1984 authorizing the California State Lottery.

Cardclubs are legal when individuals play certain card games against each other, not against the house. Unlike Nevada casinos that make most of their money from banking games, house revenues at cardclubs are generated by charging a seat rental fee, by time period or by hand played.[‡] Games like Poker and Pai Gow are played at cardclubs.

Charitable games are allowed in California. Bingo is allowed if the proceeds go to nonprofit entities.

The Penal Code specifically prohibits slot machines of any kind, banked games, and many other card games including blackjack or 21. Under IGRA, tribes may only offer games like those allowed in California.

California and Tribes Came to Agreement in Some Areas, Disagreement in Others. The state entered into compacts for parimutuel wagering with five tribes between 1990 to 1992.

However, the state and tribe encountered disagreements in negotiations over electronic games, specifically slot machines. After protracted negotiations, both sides agreed that they needed litigation to resolve these issues. This launched a dispute that has still not been resolved. The importance of this matter to the tribes cannot be emphasized enough. Slot machines have become the heart and soul of any casino. As a noted gambling scholar stated recently:

"It is impossible to overstate the dominance of slot machines in modern casinos. They make more money. They draw more people. They drive the entire gambling industry."¹⁹

William Eadington, Director of the University of Nevada's Institute for the Study of Gambling.

The dispute over slots is so important that states and tribes have replayed this conflict across the nation. In at least three other states, Washington, Texas, and Florida, there is litigation to determine what games the tribes can lawfully offer.

[‡] Banked games are where the house has a stake in the game. The house collects from all losers and pays all winners.

The courts have issued two major gambling decisions in California cases.

Rumsey Indian Rancheria of Wintun Indians v. Wilson. The tribes contended that they could have traditional slot machines because the lottery operates similar games. In particular the tribes' argued that the devices used by the lottery were legally slot machines. The state disagreed, and both parties agreed to a lawsuit to settle the matter. The District Court decided for the tribe. The Ninth Circuit Court of Appeals held for the state and decided that the state need not offer games that are not legal within the state. Therefore, the tribe can have lottery games because California law allows lottery games. The Court of Appeals remanded the question of whether or not the devices operated by the California State Lottery are legally slot machines to the District Court. The District Court found that the Lottery could not have slot machines under state law. After the conclusion of the Western Telcon litigation in 1996, the Ninth Circuit affirmed their decision. The U.S. Supreme Court refused to hear the tribes' appeal.

Western Telcon v. California State Lottery. This case was decided by the California Supreme Court on June 24, 1996. The court held that the Lottery's electronic keno game was not a lawful lottery game, but an illegal banked game that is prohibited in California. The California State Lottery quickly ended the game. This case was not an Indian gambling case, but the ruling has significant implications for Indian gaming as the tribes can only offer those games allowed in the state. Given the decision, current state law does not allow the tribes to have any kind of banked game. Although keno was played on gaming devices, the decision did not specifically address the issue of gaming machines.

The state and tribes continued to negotiate while courts were hearing the *Rumsey* case. The Court of Appeals initially decided for the state in 1994. Shortly thereafter, the Governor broke off negotiations because the tribes had installed banked video slot machines, an apparent violation of IGRA, which requires a compact for such machines. The Governor's view was that since the tribes had what they wanted there was little incentive for them to negotiate in good faith and, unlike the state, IGRA does not require them to negotiate in good faith.

Negotiations resumed when the Governor entered into talks with the Pala Band of Mission Indians in October 1996. At the outset, the discussions were intended to lead to a model compact. The Governor was willing to negotiate with the Pala tribe, because they did not have a casino, hence could not be in violation of IGRA. Other gaming tribes were content with the selection of the Pala Band because it was a relatively large tribe and had experience with other business operations. Because it was initially intended to be a model compact, most of the gaming tribes had attorneys representing them during negotiations.

While litigation and negotiations were ongoing, the tribes offered Class III gambling without a compact, in apparent violation of IGRA. The U.S. Attorneys acknowledged that federal law prohibits Class III gambling without a compact, but opted not to take immediate action. The U.S. Attorneys were willing to give the tribes time to litigate and negotiate a compact. An understanding was reached between the U.S. Attorneys and the tribes.²⁰ The enforcement action against the uncompact Class III gambling would be

delayed provided the tribes promised the U.S. Attorney that they would cease uncompact Class III gambling once the Pala Tribe entered into a compact with the State of California.²¹

The U.S. Attorneys were undoubtedly influenced by their experiences in other states where the U.S. Attorney acted against Indian casinos only to have the states reverse their policy and agree to allow previously illegal games. To paraphrase one U.S. Attorney, who offered the following rationale for their actions.²² The tribes had made a substantial investment in their slot machines. Ongoing litigation would answer the question of whether the machines were legal. It was entirely possible that the courts would find they were legal and the state and tribe would come to an agreement over the slot machines.

This Interim Solution Did Have Harmful Impacts on Some Tribes, Particularly in San Diego County. There, the U.S. Attorney for the Southern District negotiated a standstill agreement with the tribes. He deferred action against existing Class III gambling that did not have a compact provided that tribes agree not to add more slots. He did act against the Rincon tribe when it tried to install slots in violation of the standstill agreement. The courts agreed with him and the tribe was prevented from operating any slots. Their facility eventually closed. The Pala Band could not open a casino with Class III gambling because of the standstill agreement.

Because of the litigation and deadlocked negotiations, a situation developed where there was large scale Class III Indian gaming, but there was no compact as required under federal law. The tribes now have about 13-14,000 slots at various locations throughout the state.

During this period, the U.S. Attorneys had granted the tribes two options for when the State and Pala concluded negotiations over a compact:

1. A tribe may elect immediate negotiations with the state on a compact if it ceases or is not engaged in uncompact Class III gaming. The State agrees to negotiate in good faith and also agrees that it will not invoke its sovereign immunity, hence the tribe could sue the state for negotiating in bad faith.
2. A tribe may elect within 60 days to adopt the Pala Band compact with the state and enter into the compact within 60 days. The uncompact types of Class III gaming must halt after the compact becomes effective. If the types of machines allowed under the compact are not available the tribe may be granted an additional grace period to use uncompact Class III gaming machines.

When the Governor and the Pala Band reached agreement on March 6, 1998, the U.S. Attorneys ended their enforcement delay. They had said for some time that enforcement actions would begin if tribes did not choose either of the two options set out in the preceding paragraphs. The longstanding Justice Department policy was to bring, in an orderly fashion, an end to the illegal uncompact gambling. Attorney General Janet Reno had laid out this policy in letters to the U.S. Attorneys. The U.S. Attorneys wrote

that they would act to stop uncompacted gambling even if the Department of Interior turned down the compact or the courts subsequently found that the Governor did not have authority to enter into the agreement.

The U.S. Attorneys have followed through with their promise and on May 14, 1998 initiated 27 court actions to seize the tribal slot machines. The U.S. Attorneys accused Indian tribes of breaking a long-standing promise to shut down the video slot machines once California had a gaming compact. The U.S. Attorneys have announced they are pursuing litigation to avoid direct confrontation between federal law enforcement officers and the tribes. They also have made it clear that they will not extend the deadline for enforcement. According to them, to avoid enforcement actions, the tribes must choose one of the two options.

The tribes have responded in several different ways to the compact and the U.S. Attorneys' enforcement action. Some tribes have negotiated and signed compacts with the Governor. At this writing, there are eleven tribes with signed compacts. Other tribes are resisting in court the actions of the U.S. Attorneys.

Other tribes also sued in federal court to block the Department of Interior from approving the compact. Their argument was that the Governor did not have authority to execute the compact, as compacts are a legislative action. The court dismissed the suit, although, the judge in the case acknowledged that there was a possibility that Governor Wilson may not have the authority. When the Department of Interior approved the compact, they noted that they believed the Governor had the authority.

After their defeat in federal court, the tribes and five state legislators sued in state court. On June 25, a Superior Court decision held that the Governor could negotiate, but the compact needed Legislative action.²³ The Legislature must either ratify the compact or authorize the Governor to sign on behalf of the state.²⁴ The decision is being appealed.

Any debate on the Governor's authority should be ended by the passage of SB 287 by Senator Burton. The Governor signed this legislation into law on August 28, 1998. However, there is the possibility that attempts will be made to qualify a referendum for the ballot which would put the statute into abeyance until an election was held, probably not until 2000.

The argument that the Governor does not need explicit statutory authority to enter into a compact is that negotiating is an executive branch function. Since the compacts are only an application of existing state law on gambling, the compact does not necessarily require legislative action.

Nationwide, there have been other cases on this subject. Both the New Mexico and Kansas Supreme Courts have overturned compacts that Governors had entered into without explicit statutory authority.²⁵

Before the passage of SB 8 in 1997, the California Horse Racing Board was authorized by statute to negotiate compacts and did enter into the parimutuel compacts mentioned earlier. If Legislative ratification of compacts is eventually found to be required, then these compacts may not be valid.

III. IMPLICATIONS OF SOVEREIGN STATUS OF GAMBLING TRIBES

Tribal sovereignty, even though limited, exempts Indian tribes from a broad range of laws that apply to other California residents and businesses. This chapter reviews several of these.

The most important exemption is from some of the state's laws restricting gambling, as explained in the previous chapter. A practical implication is that casinos can be a powerful source of income for historically impoverished tribes. For example, a study of three casinos in eastern San Diego County found that these casinos have a payroll of 4,050 employees.²⁶ The workers were paid more than \$77 million or about \$19,000 per employee. Tribal members make up about 2.5 percent of the workforce, driving unemployment on the reservation down to zero. The casinos also purchased \$80 million in services and supplies from local businesses. The tribes donated nearly \$5 million to local charities and special community events.

The Indian Gaming Regulatory Act (IGRA) specifies that the tribal ordinance adopted to allow Class II and III gaming must provide that gaming profits are allowed to be spent on only the following:²⁷

- Fund tribal government operations or programs.
- Provide for the general welfare of the Indian tribes and its members.
- Promote tribal economic development.
- Donate to charitable organizations.
- Fund operations of local government.
- Distribute to tribal members under a plan approved by the Bureau of Indian Affairs (BIA).

The Indian Gaming Regulatory Act does not specifically mention that profits may be used for political contributions.

The range of payments made to tribal members varies by policy, casino profitability, and size of the tribe. One northern California gaming tribe in a rural area is giving each member \$500 per year.²⁸ Another tribe, the Sycuan has provided each member with a monthly payment of \$4,000, a new car, satellite dish, and a job if they want one.²⁹ Children in the tribe get a trust fund. According to BIA figures, the tribe has 93 enrolled members.

One gaming tribe, the Agua Caliente has invested in a new full service commercial bank in Palm Springs. According to tribal officials, the funds came from hotel owned by the tribe, rather than casino profits.³⁰ The hotel adjoins the casino. Another tribe has been working on developing a factory outlet mall and entertainment complex.

The influx of money to the tribes has raised concerns. Senator Ben Nighthorse Campbell warned tribes about the impact of money on the tribe's traditional values.³¹ He was

careful to emphasize that his remarks were not anti-gaming and that he thought the gaming had positive impacts.

Most Indians do not benefit from gaming. Only a minority of tribes are involved in gaming and the majority of their operations are modest. For other tribes, philosophical objections, remote locations, and other factors have kept gambling from their reservations. Only a minority of gambling tribes are doing what a Department of Interior official terms as “Fairly well.”³² Some tribes, including some of the largest in America, are unlikely to ever benefit because of the isolation of their reservations. The California Research Bureau estimates that seven percent of Indians in California are members of gaming tribes.

There are factions within tribes, so-called “traditionalists,” that object to gaming. The philosophical differences between tribal members have led to significant disputes. Approximately 25 reservations nationwide are experiencing significant conflicts from this divergence of views.³³ Conflict is also evident in California. For example, the United Auburn Indian Rancheria was recently recognized under legislation passed by Congress. The band has been split over the approach to gambling. In another example, two factions of the Juaneno Band of Mission Indians are seeking recognition. One is pro-gaming and has signed an agreement with outside investors to build a gaming facility.³⁴ The other faction of the tribe seeking recognition is anti-gambling.

TAXES

Federally-Recognized Tribes are Tax Exempt. Tribes are exempt from some federal taxes because the federal government views tribes as governments for tax purposes. This exemption extends to tribal corporations. Members of tribes are subject to federal taxes, including federal income tax. Any payments the tribes make to individual tribal members, including gaming profits, are subject to federal income taxes.

Indian tribes generally must pay federal excise taxes, such as the federal gas tax. As an employer, a tribe must pay federal employment taxes, such as social security, on wages paid to employees.

Indians who Live and Work on Federally-Recognized Reservations are Exempt From Paying State Income, Excise, and Sales Taxes. Enrolled members of recognized Indian tribes who live on the reservation can purchase automobiles and not have to pay the state sales tax, provided they take title and delivery on the reservation. The same general principle applies to other taxed goods such as cigarettes or gasoline, provided the gasoline or cigarettes are for a tribal member’s use on the reservation. States can require tribal members to pay taxes on income earned off the reservation.

States can require Indian tribes to collect taxes when the incidence of the tax falls on the non-Indian purchaser. An example is that the state can require tribes to collect cigarette tax when cigarettes are sold to non-Indians. This requirement is simple to administer for goods such as gasoline and cigarettes. The state requires the wholesaler to collect state

taxes. The tribe purchases from the wholesaler and just passes on the tax to the consumer. If a tribe were to purchase cigarettes or gasoline without the tax already being collected, the state can still require the tribe to collect the tax when the goods are sold to non-Indians. A California case on cigarette taxes went to the U.S. Supreme Court in 1985.³⁵ The Supreme Court found that the state could legally require collection by the tribes. The court has also made similar rulings in other tax cases.

Sales tax is more complicated for the state to administer because a distributor does not collect the tax before the Indian tribe buys the goods. The state can still require the tribe to collect the tax for sales to non-Indians and remit the money to the state.

The courts have consistently held that requiring tribes to collect taxes does not infringe on tribal sovereignty. The courts reason that collecting taxes does not interfere with the tribes' ability to govern themselves and that the incidence of the tax is not falling on the tribe.

ENVIRONMENTAL LAWS

California Environmental Laws Do Not Apply to Reservations. For example, state and local air quality regulators typically assign burn days. Burning of waste is restricted to certain days that have the right weather conditions to limit air pollution impacts. Tribes do not need to adhere to this rule. Another example is that a gas station operated by an Indian tribe would not have to comply with state or local government vapor recovery equipment regulations.

The only environmental laws that apply on reservations are federal or tribal. The United States Environmental Protection Agency enforces most federal pollution laws. However, the U.S. EPA will allow a tribe to administer environmental programs, such as air and water quality, in the same way that a state administers these federal laws.

One of California's most important environmental laws is the California Environmental Quality Act (CEQA). CEQA requires disclosure of significant environmental impacts and mitigation of those impacts under some circumstances. CEQA does not apply to development on tribal lands. A related law, the National Environmental Policy Act (NEPA) applies to federal actions, including those on reservations. However, NEPA only applies when a federal permit is required, and a tribe does not always have to obtain a federal permit before building a casino.

Land use laws are a subset of environmental laws. In California, local governments control land use, but local land use regulations do not apply to the tribes. The tribes have authority to develop their own land use laws for reservations.

CIVIL JURISDICTION

The Tribes are Largely Exempt for the Civil Laws of the States. Tribes have sovereign immunity from state laws regarding personal injuries, sexual harassment, contracts, and pollution.

The U.S. Supreme Court made several rulings on the applicability of state civil law to reservations. There were two cases against a tribal casino in Minnesota. One case was a sexual harassment claim, the other involved a patron who fell and injured herself at the casino. In both cases, the tribe invoked their own sovereign immunity to claims made in state court. The Supreme Court refused to hear the cases, letting stand the lower court ruling upholding the tribe's sovereign immunity.

In an Oklahoma case, the Supreme Court ruled that the Kiowa tribe enjoyed immunity from a suit that was brought after the tribe defaulted on a loan. The Court held that the tribe enjoyed sovereign immunity from civil suits on contracts, whether those contracts involve governmental or commercial activities and whether they are made on or off the reservation. This case is consistent with a long list of earlier court decisions that have upheld Indian sovereignty. This case differed only in that there was evidence that the transaction had been entered into off of the reservation.

Because of the tribes' sovereign immunity, the plaintiff typically must turn to tribal court for relief. Injured parties can appeal to federal court, but the basis for appeal is limited usually to the question of whether or not the tribal court had jurisdiction. Tribal courts may have much different procedures than state tribunals. There is a perception of lack of separation between the tribe's governing body and the tribal court. In addition, the tribe may not have laws on subjects such as sexual harassment.

LABOR LAWS

Labor Laws Generally Do Not Apply on Reservations. There are two main areas of labor law that are especially important. One is worker safety. The other is labor union organizing. These issues generate controversy because most tribal employees are not American Indians and are unfamiliar with the legal standing of their employer. An estimated 90 percent of Indian casino workers are non-Indian.³⁶

California's worker safety laws, including workers' compensation and occupational health and safety laws do not apply to workers on the reservation. In a recent California case where an injured worker filed a workers' compensation claim, the tribe responded by bringing suit in federal court to assert immunity because of their sovereign status. The lower court agreed and the claim was dismissed.³⁷ The case is being appealed to the Ninth Circuit Court of Appeals.

The tribes can and do obtain insurance to pay claims arising from injured workers. However, if there is a dispute over an insurance carrier's refusal to pay an injured worker,

the state workers' compensation procedures designed to resolve the dispute does not apply.

Injured parties also have the option of pursuing a suit in tribal court. As noted earlier, tribal courts may function much differently than state courts.

The National Labor Relations Act (NLRA) is the most important federal legislation for collective bargaining. This law does not apply to reservations. Congress saw tribes as governments and also exempted state and local governments from the NLRA.

Labor unions have made an attempt to organize the workforce at tribal casinos. However, they complain that they are not allowed access to the reservation, which includes the casino site. Without access to the workers, labor unions claim that it is impossible to organize the workforce. Even if enough workers chose to join a union or opt for an election there may be no mechanism or requirement for calling an election or recognizing a union since the NLRA does not apply on the reservation.

CRIMINAL JURISDICTION

California Does Have a Role with Respect to Enforcement of Criminal Laws.

Generally, the federal government and tribes, not the states, enforce criminal law on the reservations. California is an exception. California is a Public Law 280 state, meaning that Congress granted the state the authority to enforce the state's criminal laws on reservations. An exception to California's criminal jurisdiction is state gambling law. As noted earlier, the Indian Gaming Regulatory Act specifically prevents states from enforcing gambling criminal laws.

The states are concerned about the possible infiltration of organized crime into Indian gaming. The history of casino gambling provides some support for the state's position. Secret and illegal financing, kickbacks, hidden ownership, employment of individuals of questionable character and background, and clear links to organized crime, plagued Nevada.³⁸ Gambling operations handle large amounts of cash and therefore present opportunities for skimming and money laundering.

Crime can occur on a small scale. Dealers don't have to continually inventory their chips and money while they are working, providing opportunities for fraud. Dealer skimming of chips by palming or collusion is probably the most frequently noted problem.³⁹ In addition, cheats are drawn to casinos.

Because of these factors, concern about organized crime is raised whenever legal gambling of any kind is discussed. Some observers dismiss this concern.⁴⁰ Researchers state that organized crime is a product of illegal or poorly-regulated gambling.⁴¹ Casino gaming has become one of the most highly regulated industries in America and the states are the prime regulators of casino gaming. The companies and individuals involved are very carefully scrutinized and held to extremely high standards.

Despite the safeguards, there are still instances of organized crime infiltration of non-Indian gaming. Organized crime has successfully infiltrated ancillary businesses such as machine maintenance.⁴² An ongoing FBI investigation in Louisiana has led to convictions against state legislators who took multimillion-dollar payoffs to approve an expansion of video poker. The individuals attempting to buy influence were connected to organized crime families. The California cardclub industry has also been subject to criticism because of criminal activity.⁴³

The Role of Organized Crime in Indian Gaming has Been Controversial. Critics have charged that organized crime has infiltrated Indian gaming. Donald Trump, a casino owner, testified before Congress that organized crime is rampant in Indian gaming. At the same hearing, the FBI, the Department of Justice, and the Internal Revenue Service testified that they had no evidence of widespread organized crime within Indian gaming.⁴⁴ Senate supporters of Indian gaming, Senators McCain and Evans, both concluded that the concern about organized crime was a smokescreen for concerns about economic competition.⁴⁵ Some researchers and industry observers are quick to point out that there is no evidence that organized crime has significantly infiltrated Indian gambling operations.⁴⁶ Others counter that inadequate regulation and oversight make it harder to find evidence.

The Los Angeles Times ran a lengthy article on Mafia attempts to take over an Indian gaming operation in California.⁴⁷ The attempts were ultimately unsuccessful. The information used in the article was from a long-running federal investigation.

There have been other incidents. In two cases, tribal leaders who had complained that Indians were not getting a fair share of gambling profits were later murdered, leading to speculation that organized crime was behind the killings.⁴⁸ At the Barona Reservation, a bingo manager was caught rigging games so that shills in the audience could win. Later, he testified about organized crime involvement in a number of Indian casinos throughout the country. Some of what he said has been substantiated. These events did occur, however, during the earlier years of Indian gaming.

The state's concerns about crime have not been limited to organized crime. In October 1995, gunfights broke out in the Elem Indian colony in Lake County over control of the tribe's casino. Gunfire wounded seven people and the casino was eventually burned to the ground. The shootout prompted the Attorney General Dan Lungren to convene a formal briefing on enforcing laws on tribal reservations and rancherias. Reportedly, there has been violence on the Round Valley Indian Reservation in Mendocino County and among the Jackson Rancheria members of the Miwok tribe.⁴⁹ According to the local sheriff, however, the latter were low-level assaults.

GAMING REGULATION

The National Indian Gaming Commission Regulates Indian Casinos. Before a tribe can open any Class III gaming facilities, they are required to obtain state, National Indian Gaming Commission (NIGC), and Department of Interior approval. State approval is

obtained through the compact process. The state has no regulatory role, save what is negotiated and agreed to by both the tribe and the state in the compact.

The basic roles in regulating Indian gaming are as follows:

Tribal Government—Day to Day Regulation

- Establishes the Tribal Gaming Commission. The commission is responsible for providing the day to day regulation of the casino.
- Manages tribal gaming operations. The management of the casino is separate from the gaming commission.
- Adopts an ordinance for gaming operations. The tribal gaming commission enforces this ordinance.
- Issues licenses for employees hired by the casino.
- Provides protection and law enforcement for casino operations.

National Indian Gaming Commission—Role of Overseeing

- Regulates gaming. Although the NIGC has a regulatory role, it is not the day to day regulator. Its duty is to oversee the tribe's role.
- Approves management contracts for outside parties that the tribe hires to manage the casino.
- Conducts background checks and reviews terms of contracts
- Enforces federal gaming laws. The NIGC may impose civil penalties and fines up to \$25,000 per day. For severe violations, it may close an establishment.

U.S. Department of Justice

- Enforces criminal violation of federal gaming laws.
- Conducts background checks of key gaming employees.

The tribes point to this structure as evidence that Indian gaming is already subject to more stringent regulation and security controls than any other type of gaming in the United States. Tribes have active gaming commissions that oversee the operation of the casinos. Other tribal advocates argue that as governments, the judgment of the tribes should not be subject to state or federal government second-guessing.⁵⁰ They point out that state-sponsored gaming, such as the lottery, is not subject to outside regulation.

The states are concerned that despite these layers, regulation is inadequate. One of their main concerns is that there are neither consistent minimum standards that gaming patrons can rely on nor adequate oversight to determine that the internal regulation is being carried out.⁵¹ The states feel that this situation contrasts with non-Indian gaming where the state is the regulator and has uniform requirements for all casinos within the state. States also believe that they have had more experience regulating gaming operations. An example of a regulatory issue of concern to patrons is the requirements for testing of slot machines. Most states with casino gaming have requirements for independent testing

of the slot machines. This may seem arcane, but there have been four or five cases within the last year of casinos not paying large jackpots because of machine malfunction.

Because of state concerns, many states have negotiated compacts that include a monitoring role for the state. In these compacts, states often assist in background checks on key casino personnel, monitor tribal financial statements, and require submission of financial information for regulatory purposes.

States view the National Indian Gaming Commission as an inadequate regulator. A recent General Accounting Office (GAO) report found that the NIGC did not determine if Class III gaming was authorized under a compact.⁵² This omission occurred even though the NIGC staff were visiting and regulating the casino. As a result, the GAO found that the controls were inadequate.

By state standards, the budget of the NIGC is inadequate. Nevada has a budget of \$30 million and has over 400 employees for its gaming commission. The NIGC will have about six field investigators among its 33 staff and spends about \$4 million.⁵³ Representatives of tribes have even argued for fee increases so that NIGC resources could be increased.⁵⁴ The budget for this federal fiscal year allows a fee increase.

The NIGC has carried out some enforcement efforts. Within the last year, NIGC has filed notices of violation and/or levied fines for such activities as:

- Failure to submit annual independent audits of the books.
- Failure to have a management contract approved.
- Failure to forward background checks of key employees.

IV. KEY DIFFERENCES BETWEEN THE INITIATIVE AND LEGISLATION

Legislation has been enacted to authorize tribal-state compacts. The Legislature passed the bill, SB 287, and the Governor signed it into law in August. Another proposal for compacts is the Tribal Gaming and Economic Self Sufficiency Act that qualified for the ballot as Proposition 5. SB 287 ratified the compact negotiated between the Governor and the Pala Band of Mission Indians. The initiative envisions a quite different compact. The initiative directs the Governor to sign the compact as a ministerial act. If the Governor does not sign the compact, it is deemed approved. The initiative qualified for the ballot after the tribes collected well over the required 477,000 signatures of registered voters. Reportedly, the tribes spent \$6.8 million to qualify the initiative.⁵⁵

Although SB 287 ratifies the Pala compact, this is not the only agreement negotiated by tribes and the Governor. At this writing, the Governor and tribes have signed ten other compacts. There are some significant differences, including:

- Different timetable for entering into an off-reservation environmental impact agreement for existing casinos.
- Open-ended transition periods for existing slots until new electronic lottery devices are available *or* competing tribes halt operating slot machines without a compact.
- Defers for one year the compact's requirement to provide a physical separation between the Class III gaming and the Class II cardrooms.
- Mechanism to allow tribes to obtain up to 975 lottery devices if non-gaming tribes do not agree to license their unused allocation to the tribe.
- Lifting of the statewide cap to allow a tribe with more than 975 gaming devices to maintain their existing number.
- Options for canceling the compact early if Proposition 5, the Indian gambling initiative, passes and is upheld by the courts.
- Waiver of the state's sovereign immunity is strengthened to allow tribal enforcement of the state's compact obligations.

The Initiative May Be Unconstitutional. Several sources have raised significant legal questions about the initiative.⁵⁶ In particular, a memo written by attorneys for some of the gambling tribes was leaked and was the feature of a Sacramento Bee story.⁵⁷ A lawsuit was brought to prevent the initiative from appearing on the ballot, but the court rejected the argument. This issue has become so important because the initiative is a statutory amendment, not a constitutional one.

Following is a summary of the arguments that raise constitutional questions about the initiative.⁵⁸

- *The initiative authorizes games that the Constitution may prohibit.* The Constitution contains specific provisions that prevent the Legislature from authorizing casino gaming of the type found in Nevada and New Jersey. That provision was adopted in 1984 when the voters approved the California State Lottery. There is no exact definition of what constitutes casino gaming of the type found in Nevada and New Jersey. However, casino gaming is a term used in the industry and generally means a variety of banked games including slot machines, black jack, baccarat, roulette, and craps. The initiative would authorize tribes to continue to use gaming terminals resembling slot machines with the qualifications that prizes would be paid for a specifies players' pool. This arrangement may or may not protect against the argument that these machines allow unconstitutional casino-style games. The initiative also authorizes certain card games that may fall in the prohibited casino-style class.
- *The model compact may not be the proper subject of legislative action.* The initiative requires the Governor to sign a compact. There is an argument that legislative powers, including initiative powers reserved by the people, do not include the power to compel the Governor to enter into a contract.

In both cases, the proponents have answers to these claims. They argue that because Indian casinos do not offer the wide variety of games of Nevada and New Jersey casinos and they are governments, the initiative does not conflict with the constitution. They also argue that unlike those casinos, the tribal casinos do not bank the games. They also argue that the Legislature has placed other compacts in statute in a similar fashion.

Following is a comparison of the Pala compact and the initiative. Chapter II contains a description of the approval process for all tribal-state gaming compacts.

GAMBLING

The Pala compact allows for 19,900 gaming devices statewide, with renegotiations scheduled after March 1, 1999.[§] That is an increase over the 13-14,000 slots in California. Each tribe in California is allocated 199 gaming devices, which they may either operate or lease the right to another tribe. If all are leased, the tribe could receive a slightly under \$1 million. After 2001, that cap will be renegotiated. Even if a tribe leases the rights to machines, no tribe may operate more than 975 terminals. The cap would currently restrict only a few tribes. Provisions were made in subsequent compacts to allow more machines than the cap for tribes that currently have more machines. The majority of the tribes that have Class III gaming have less than the cap. A number of tribes would have to lease devices from other tribes to maintain their current numbers.

SB 287 states that it would only affect the Pala tribe and that the compact does not place a unilateral cap on the number of machines that a tribe can have, allowing each tribe to negotiate this separately.

The compact complies with existing California penal code provisions that prohibit slot machines and banked games. It allows the tribe to operate what is legally a vending machine. The machine dispenses information that allows a player to play a lottery game. The gambler checks the winning number on a separate scoreboard. The separation of the vending and the scoreboard into two machines is required so that the gaming device will not be a slot machine under the California penal code. The rate of play will be fast, despite this arrangement.

The initiative would place no limit on the number of gaming devices nor on their physical appearance or sound effects. Winnings would be paid out of a players' pool. The pool is dedicated to that purpose and the house cannot acquire a stake or interest in the pool. The devices could not have a handle or dispense coins, they can only dispense paper script.

The Attorney General has opined that the initiative would allow slot machines and banked card games. The initiative allows tribes to continue offering card games, such as blackjack, offered in any tribal casinos in 1998, even if those games would have been illegal at that time.

The initiative also allows parimutuel wagering on horse races, any lottery game, and percentage games.

[§] The compact refers to these as lottery devices.

Gambling Continued

<p>The compact would require existing slot machines in tribal casinos to be replaced.</p> <p>The compact places other limits on the machines. They must issue printed paper tickets. They cannot emit the sounds of bells, whistles, or dispensing of coins. They can mimic the mechanical sounds of a slot machine’s turning reels. They can display the video images of reels that are exactly the same as those found on video slots in Las Vegas. Nelson Rose, a well-know gambling legal scholar has written that with clever computer programming, the tribes could have a machine that does not fall under the statutory definition of a slot machine, but functions much like one.⁵⁹ Others are not so sure and point out that the machine is only a prototype and has not been tested commercially. According to press reports, the new machines will take some months to develop further and manufacture.⁶⁰</p>	
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TAXES

<p>No taxes are levied on casino operations in the compact. The only fiscal provision is that the tribe would reimburse expenses of state and local governments. An example would occur when a tribe reimbursed a local government for the expenses of administering the CEQA process.</p>	<p>Under the initiative, the tribes would establish trust funds for sharing their net win from gaming devices. Smaller casinos receive a full or partial exemption from these requirements. The first 200 machines of any tribal casino are exempt from the contribution requirements. The next 200 machines would be assessed at only one-half the rate. The full rate would be applied only to those facilities with more than 400 machines. There are three trust funds:</p> <ul style="list-style-type: none">• The first fund would be for tribes without gambling. Twelve trustees from both gaming and nongaming tribes administer the fund.• The second fund would be used to pay for emergency
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Taxes Continued

	<p>medical care in each county and a portion would be used to pay for compulsive and addictive gambling programs. The fund would be administered by 12 trustees, all gaming tribe. The state must approve the allocation formula. Currently, the state has a compulsive gambling program in law, but it has never been funded.</p> <ul style="list-style-type: none"> • The third fund would be used to pay for community needs and would be allocated in consultation with cities, counties, and tribes. Currently, some tribes are providing local government type services such as police or fire. The individual tribes are responsible for administering this fund. <p>The initiative would end profit sharing if the state allows someone other than the tribes, including the California State Lottery, to have gaming devices.</p>
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ENVIRONMENTAL LAWS

<p>The compact requires a written agreement between the county and the tribe on environmental impacts, law enforcement services, and building and design standards. One objective of these agreements is to reduce the offsite impacts. Several counties have complained about traffic and public service impacts, although subsequent negotiations with the tribes have resolved some of these issues.</p> <p>The compact provides for an abbreviated CEQA process. If environmental impacts are significant, an environmental document must be prepared and circulated. There are narrow grounds for suits by individuals who suffer harm.</p> <p>The compact also requires an advisory vote of the local</p>	<p>Under the initiative, there would be no state environmental review process, including CEQA. Federal environmental laws would continue to apply to the same extent they do today. There would not be the same opportunity for the county or state to have input on environmental impacts, law enforcement services, and building and design standards.</p>
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Environmental Law Continued

<p>electorate to work out conflicts if the jurisdiction has not already voted to allow gambling. If a majority of the electors voting in the advisory election do not ratify the compact, the county is obligated to try to renegotiate its agreement with the tribe. Because the advisory vote must wait until the next general election, it is possible that a tribal casino would be already operating before the vote takes place.</p>	
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CIVIL JURISDICTION

<p>The compact would require \$5,000,000 of public liability insurance. If an injured party disagreed with the decision of the tribe on liability, the tribe waives sovereign immunity up to the limit of the insurance.</p>	<p>The initiative would require \$2,000,000 of public liability insurance. The tribe would hear the claim according to the rules developed by the tribal government and would not waive its immunity.</p>
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LABOR LAWS

<p>Under the compact, tribes would be subject to California workers’ compensation laws, occupational health and safety laws, unemployment and disability compensation, and withholding tax. The tribes also would have to allow workers the right to organize. Tribes argue that this provision is much more stringent than what is required of other businesses as they cannot contest or provide information during union organizing campaigns. In addition, they object to the lack of secret ballot.</p> <p>Tribes must maintain coverage for workers’ compensation, state disability, and unemployment insurance for the benefit of the tribal employees. About 90 to 95 percent of employees at tribal casinos are not tribal members.</p>	<p>The initiative has no specific worker protections. The tribe must provide worker protections comparable to those mandated for comparable workplaces under state law. The tribes’ sovereign status leaves them immune from civil suits.</p>
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CRIMINAL JURISDICTION

<p>The Pala compact allows state gambling laws to be enforced by the state. Although the state already has criminal jurisdiction over the reservations as a result of federal law, state gambling laws are preempted by IGRA.</p>	<p>The initiative does not contain explicit provisions on criminal jurisdiction.</p>
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GAMING REGULATION

<p>The Pala compact gives the state a larger role in gambling regulation. The state licenses key employees. In particular, the state’s civil and regulatory jurisdiction under the state’s Gambling Control Act extends over all persons and entities associated with the Tribe’s Class III gaming operation. The compact also requires establishment of a tribal gaming agency for onsite regulation of personnel at the casino. A work permit from the tribe is required for all employees.</p> <p>Under the compact, the state can request a determination of suitability for people employed at the casino. A determination of suitability is a vetting process designed to ensure that people do not have a criminal or otherwise objectionable background.</p> <p>An independent lab and the state are required to check on the gaming devices. The reason for the oversight of devices is that a gambler has no way of knowing if the play is fair. There have been several recent stories in the press about casinos not making large payouts because the casino inspected the machine and found it was not working properly. Inspections may not eliminate these problems, but they are designed to increase consumer’s faith in the honesty of the games. The compact requires that an independent testing laboratory develop standards for the machines and test the machines. In addition, the state</p>	<p>Under the initiative the tribe assumes a much larger role in the regulation of the gambling, through the tribal gaming agency. The state role is advisory. The state would have the opportunity to comment on such matters as the building standards for a gaming facility. The initiative requires that the state be provided with employee licensing application information and reports regarding facility inspections and compliance. The state may review such information and object.</p> <p>If the tribe does not agree with the state’s objections, there are dispute resolution procedures. These include required negotiations and then arbitration.</p> <p>The tribe makes employee licensing decisions. They also conduct background investigations. The state can review the information the tribe uses when it makes a licensing decision and the state can conduct its own background check. The state can object to the tribe’s decisions and the dispute resolution process can be triggered. The state has no role in certifying enrolled members of any federally recognized tribe even if they are not members of the gaming tribe, meaning that these decisions of the tribe will not be subject to state review.</p> <p>The tribe conducts onsite regulation. If requested by the tribal</p>
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Gaming Regulation Continued

<p>may have a limited program of testing machines on a random basis in place.</p> <p>The governor’s compact includes more detailed financial record requirements. There is a conflict of interest standard for the tribal gaming agency.</p> <p>Under the Governor’s compact, the age limit for gambling is 21.</p> <p>Under the compact, tribal casinos may not extend credit for gambling. Extension of credit is a regulatory issue because credit can be used as a device for skimming if loans are not repaid. Gambling credit is also a concern because it makes it easier for pathological or problem gamblers to run up large losses.</p> <p>The term of the compact is 10-years with two 5-year renewals. The compact can be terminated if a court or arbitration tribunal finds violations by the tribe of the compact or gaming laws.</p>	<p>gaming agency, the state can assist. In such cases, the state must be reimbursed. The state has some rights of access to inspect and obtain records. When the state objects, disagreements between the tribe and the state are handled under a dispute resolution process.</p> <p>In the initiative, the age limit for gambling is the same as for the state lottery. Currently that is 18 years old.</p> <p>The initiative allows gambling credit to be extended.</p> <p>There is no time limit for the term of the compact. The compact can be amended with the mutual consent of the tribe and the state. The initiative automatically permits the tribes to expand their gaming without renegotiating a subsequent compact when the Legislature expands the scope of gambling for others. Amendments of the initiative statute are allowed only by a 2/3 vote of the Legislature and in furtherance of the purposes of the act.</p> <p>If there is a dispute, most provisions of the initiative are handled by arbitration.</p>
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