

ALASKA LEGISLATURE

1367

HOUSE and SENATE FINANCE COMMITTEE FILES, 1995-1996

1 from the board.

2 (c) A majority of the members of the board constitutes a quorum for the
3 transaction of business and the exercise of the powers and duties of the board.

4 (d) A member of the board may not vote on a transaction of the bank under
5 this chapter if the member is a party to the transaction.

6 (e) The members of the board shall annually elect from among themselves a
7 chair and vice-chair and other board officers as may be provided in the bank's bylaws.

8 (f) Members of the board shall receive compensation not to exceed \$250 for
9 each day of a board meeting if they attend the meeting. Directors may also receive
10 compensation for personal time and efforts expended to further the bank's interests or
11 business other than on meeting days as may be determined by the chair under the
12 bank's bylaws.

13 * Sec. 11. AS 44.81 is amended by adding a new section to read:

14 Sec. 44.81.031. OFFICERS AND EMPLOYEES. (a) The board shall employ
15 a president. The president may not be a member of the board and serves at the
16 pleasure of the board. The president is the chief executive officer of the bank.

17 (b) The board shall appoint those officers of the bank that are provided for in
18 the bank's bylaws and as the board determines to be necessary for the effective
19 operations of the bank. An executive, operating, administrative, or other salaried
20 officer of the bank may not be a member of the board.

21 (c) The president may hire employees of the bank as may be determined
22 necessary for the efficient performance of the functions of the bank. The board shall
23 approve the compensation of the employees. Employees of the bank are not
24 employees of the state and are not considered to be employees of a public organization
25 for the purposes of AS 39.35.

26 * Sec. 12. AS 44.81 is amended by adding a new section to read:

27 Sec. 44.81.041. STRUCTURE AND MEMBERSHIP OF THE BANK. (a)
28 The bank shall be structured and operated as a cooperative corporation.

29 (b) The board shall issue shares of membership stock in the bank in the
30 amounts and with the value determined by the board and stated in the articles of
31 incorporation. The membership stock may be issued under this chapter and under the

1 bylaws of the bank to persons determined to be eligible to transact business with the
2 bank.

3 (c) The board may establish one or more mechanisms by which persons or
4 entities, or classes of persons or entities, who transact business with the bank are
5 required to provide or establish capital ownership in the bank. The mechanisms may
6 include the issuance of capital stock or other equity instruments or the allocation or
7 retention of net proceeds from the operations of the bank. The mechanisms shall be
8 established and imposed in a manner that the board determines equitably reflects the
9 nature and amount of business transacted with the bank.

10 * Sec. 13. AS 44.81 is amended by adding a new section to read:

11 Sec. 44.81.051. BYLAWS. The board may adopt bylaws for the bank for the
12 regulation and management of the affairs of the bank, and may alter, amend, or repeal
13 them. The bylaws shall be consistent with this chapter and other laws that apply to the
14 bank.

15 * Sec. 14. AS 44.81 is amended by adding a new section to read:

16 Sec. 44.81.061. INDEMNIFICATION OF DIRECTORS, OFFICERS, AND
17 EMPLOYEES. The bank may indemnify directors, officers, and employees, or may
18 purchase and maintain insurance on behalf of directors, officers, and employees. The
19 indemnification and the insurance purchase and maintenance shall comply with
20 AS 10.06.490.

21 * Sec. 15. AS 44.81 is amended by adding a new section to read:

22 Sec. 44.81.101. PLEDGE OF THE STATE. (a) The state pledges to and
23 agrees with any lender to the bank that the state will not limit or alter the rights and
24 powers given to the bank by this chapter to fulfill the terms of a contract made by the
25 bank with the lender to the bank, or in any way impair the rights and remedies of the
26 lender to the bank. The bank is authorized to include this pledge and agreement of the
27 state in a contract with any lender to the bank.

28 (b) The pledge of the state is limited to the express provisions of (a) of this
29 section and is not a guarantee, surety, promise, undertaking, or assurance of repayment
30 or performance of any obligation of the bank.

31 * Sec. 16. AS 44.81.200 is amended to read:

1 Sec. 44.81.200. REPORTS AND PUBLICATIONS. The board [OF
2 DIRECTORS] shall publish an annual report to the bank's members. The report shall
3 be made available to the governor, the legislature, and the public. The report
4 [AND] must include financial statements audited by independent outside auditors, a
5 discussion [STATEMENT] of the bank's circumstances and operations
6 [INVESTMENTS, A DESCRIPTION OF THE BANK'S LOAN ACTIVITY] during
7 the period covered by the report [, AN ANALYSIS OF ECONOMIC AND OTHER
8 EFFECTS OF LOAN DECISIONS ON THE STATE'S COMMERCIAL FISHING
9 AND AGRICULTURE INDUSTRIES], and any other information that the board
10 believes would be of interest to the governor, the legislature, and the public, or that
11 the legislature requests the board to include. The board may [ALSO] publish other
12 reports considered appropriate [IT CONSIDERS DESIRABLE] to [CARRY OUT]
13 its purposes.

14 * Sec. 17. AS 44.81.210 is repealed and reenacted to read:

15 Sec. 44.81.210. GENERAL POWERS OF THE BANK. The bank may

- 16 (1) adopt, alter, and use a corporate seal;
- 17 (2) sue and be sued in the name of the bank;
- 18 (3) appoint officers, employees, trustees for certificate holders, and
19 agents, and establish their powers and duties;
- 20 (4) provide technical services to members of the bank; in this
21 paragraph, "technical services" includes services that will enhance the ability of a
22 member to obtain financial assistance from the bank;
- 23 (5) participate with state departments and agencies in formulating
24 policy and in planning for the development of commercial fishing and agriculture in
25 the state;
- 26 (6) engage in programs to support the efforts of resident fishers or
27 farmers in order to enhance the further development, efficiency, stability, or
28 profitability of commercial fishing or agriculture in the state;
- 29 (7) make contracts and execute instruments necessary to or convenient
30 for the exercise of its corporate powers;
- 31 (8) issue bonds to carry out its corporate purposes and powers;

1 (9) borrow money and issue secured and unsecured evidence of
2 indebtedness for a corporate purpose or to fund, refund, pay, or discharge outstanding
3 obligations, and enter into agreements and contracts relating to these obligations;

4 (10) secure the payment of its obligations by pledge, mortgage, or other
5 lien on its contracts, revenue, income, or property;

6 (11) incur secondary liability by guaranty or endorsement of the
7 obligations of a person, except for natural persons, when, in the judgment of the board,
8 the action furthers the bank's corporate purposes;

9 (12) acquire real or personal property by purchase, lease, bequest,
10 devise, gift, the satisfaction of debts, or the foreclosure of mortgages, and hold,
11 maintain, use, operate, and convey real or personal property;

12 (13) sell, lease as lessor or lessee, exchange, donate, convey, or
13 encumber in any manner by mortgage or by creation of another security interest, real
14 or personal property owned by it or in which it has an interest, when, in the judgment
15 of the board, the action furthers its corporate purposes;

16 (14) establish wholly-owned or majority-owned subsidiary corporations
17 or limited liability companies to acquire, hold, operate, maintain, or liquidate property
18 received by the bank in a foreclosure action or other loan collection process or to
19 provide services to resident fishers or farmers, or other persons, if the services are
20 consistent with the corporate purposes and powers expressed in this chapter;

21 (15) acquire equity or other ownership interest in a domestic
22 corporation or limited liability company if the purpose of the acquisition is to enhance
23 the further development, efficiency, stability, or profitability of commercial fishing or
24 agriculture in the state;

25 (16) enter into agreements with public or private lenders or other
26 entities, or with state agencies or agencies of the federal government, to carry out the
27 purposes of this chapter;

28 (17) do what is necessary or desirable to carry out the corporate
29 purposes and powers expressed or implied in this chapter.

30 * Sec. 18. AS 44.81 is amended by adding a new section to read:

31 Sec. 44.81.215. LENDING POWERS OF THE BANK. The bank may

1 (1) make loans to individuals, including married couples, who are
2 residents of the state and who are engaged in commercial agriculture or fishing,
3 including harvesters, processors, suppliers, and marketers, if at least one of the primary
4 obligors on the loan is a member of the bank;

5 (2) make loans to corporations, partnerships, or limited liability
6 companies engaged in commercial agriculture or fishing if the majority interest of the
7 corporation, partnership, or limited liability company is beneficially owned by residents
8 of the state and a majority of the owners are residents of the state, and if at least one
9 of the primary obligors on a loan is a member of the bank; however, the bank may not
10 make a loan under this paragraph to a corporation, partnership, or limited liability
11 company for the purchase of a new or existing fishing boat or for the repair or
12 renovation of an existing fishing boat if the primary purpose of the fishing boat is to
13 commercially harvest fishery resources, unless the corporation, partnership, or limited
14 liability company is wholly owned and controlled by residents of the state, and unless
15 at least one of the primary obligors on the loan is a member of the bank;

16 (3) make loans for limited entry permits to individuals who fish
17 commercially if the individual is a state resident; loans made under this paragraph are
18 subject to AS 44.81.231;

19 (4) make a loan for capital investment or operating capital to a
20 shore-based fish processor, a timber processor, or an agricultural processor or harvester
21 who does not meet the resident ownership requirements of (1) or (2) of this section if
22 a facility of the processor or harvester is located in the state and the majority interest
23 in the processor or harvester is beneficially owned by residents of the United States;

24 (5) make a loan to a person, regardless of residency, if the board
25 determines that the loan is necessary to preserve the value of property held by the bank
26 as security for a loan that was made under AS 44.81.210 or this section and that is in
27 default;

28 (6) make loans, as provided in (1), (2), or (4) of this section, that are
29 secured by liens subordinate to valid first liens and security agreements granted to
30 another creditor;

31 (7) accept the pledge of a limited entry permit as security for a loan

1 made under this chapter subject to the conditions set out in AS 44.81.236 on pledges
2 of limited entry permits;

3 (8) make loans in participation with other lenders as provided in (1),
4 (2), or (4) of this section, whether or not an obligor is a member of the bank;

5 (9) purchase or acquire participations in loans from other lenders if the
6 participations conform to the provisions of (1), (2); or (4) of this section, whether or
7 not an obligor is a member of the bank;

8 (10) issue certificates of loan participation to members and to other
9 individuals, corporations, partnerships, and limited liability companies, but the bank
10 may not issue a certificate of loan participation if the certificate would allow
11 participation by the member, individual, corporation, partnership, or limited liability
12 company in loans that individually or cumulatively involve more than 20 percent of
13 the commercial fishery entry permits issued for one type of gear in a specific fishery
14 resource administrative area.

15 * Sec. 19. AS 44.81 is amended by adding a new section to read:

16 Sec. 44.81.231. PLEDGE OF PERMITS. (a) A limited entry permit issued
17 under AS 16.43 may be pledged by the holder as security for a loan authorized under
18 AS 44.81.236 if the certificate for the pledged permit lists the bank as the legal owner
19 of the permit and the pledger as the equitable owner of the permit.

20 (b) Annual permit cards issued under the pledged permit must be in the name
21 of the equitable owner who shall be responsible for compliance with the laws that
22 govern the permit as if the equitable owner were the holder of the permit.

23 (c) Co-borrowers or guarantors on a loan secured by one or more pledged
24 permits do not have a right in the pledged permit of the equitable owner, whether by
25 subrogation or other manner.

26 (d) Upon payment of the loan, the bank shall certify to the Commercial
27 Fisheries Entry Commission that the loan has been repaid, and the commission shall
28 amend the permit certificate to list the equitable owner as the holder, and the legal
29 interest of the bank shall terminate.

30 (e) In anticipation of a possible foreclosure under AS 44.81.241 - 44.81.250,
31 the equitable owner of a permit that is pledged as security for the loan may nominate

1 a person to whom the permit may be transferred if the pledge is foreclosed under
2 AS 44.81.245.

3 * Sec. 20. AS 44.81 is amended by adding a new section to read:

4 Sec. 44.81.236. LIMITATIONS ON THE PLEDGE OF PERMITS. A loan
5 may not be secured by the pledge of a limited entry permit unless the proceeds of the
6 loan are used for

7 (1) the purchase of a permit;

8 (2) the purchase or lease of quota shares, individual fishing quotas, or
9 another license, permit, or other grant of commercial fisheries harvesting entitlements
10 that is issued and regulated under state or federal law;

11 (3) the purchase, construction, maintenance, repair, or improvement of
12 commercial fishing boats, sites, gear, or equipment;

13 (4) working capital, including insurance premiums, supplies, food, fuel,
14 bait, boat storage, and boat launching;

15 (5) the payment of obligations whose status places the permit of a
16 borrower in jeopardy of sale on execution of judgment;

17 (6) the purchase of the bank's stock or other equity instruments and
18 loan costs; or

19 (7) refinancing of debts incurred for a purpose listed in (1) - (4) or (6)
20 of this section.

21 * Sec. 21. AS 44.81 is amended by adding new sections to read:

22 Sec. 44.81.241. INITIAL NOTICE OF DEFAULT. If there is a default on a
23 loan secured by a permit pledged under AS 44.81.231, the bank shall notify the
24 borrowers and guarantors on the loan of the default and of the right to cure the default
25 by sending a notice by certified mail to their last known address or addresses on file
26 with the bank. The notice must include

27 (1) the date of the notice;

28 (2) a description of the security given for the loan, including the
29 number assigned by the commission and the name of the equitable owner of each
30 permit pledged to secure the loan;

31 (3) the date and nature of the default;

Amend # 6

- 1 (4) the amount of arrearages as of the date of the notice;
2 (5) the total indebtedness, including interest, penalties, and costs of
3 collection, remaining owing on the loan as of the date of the notice;
4 (6) the amount of daily interest to accrue from the date of the notice;
5 (7) a statement that the costs of collection of the loan incurred by the
6 bank after the date of the notice will be added to the total amount of the indebtedness
7 owing on the loan;
8 (8) a statement that the default may be cured within 60 days from the
9 date of the notice or within an extended time period that is specified in an extension
10 notice provided by the bank within the 60-day period under AS 44.81.249;
11 (9) the place where payment of arrearages or other cure may be made;
12 and

13 (10) a statement in at least 10 point bold type stating:
14 "IMPORTANT: UNLESS YOU CURE THE LOAN DEFAULT
15 WITHIN THE TIME SPECIFIED BY THIS NOTICE, THE TOTAL
16 INDEBTEDNESS OWING ON THE LOAN SHALL BE
17 IMMEDIATELY DUE AND PAYABLE TO THE BANK WITHOUT
18 FURTHER NOTICE TO YOU. ALSO, THE BANK SHALL THEN
19 BE ENTITLED TO TAKE ANY LEGAL ACTION AGAINST YOU
20 TO COLLECT THE LOAN, INCLUDING THE INSTITUTION OF
21 LAWSUITS AND THE FORECLOSURE OF THE PLEDGE OF ANY
22 PERMIT PLEDGED TO SECURE THIS LOAN."

23 Sec. 44.81.243. BANK REMEDIES AFTER FAILURE TO CURE. If the
24 borrowers and guarantors on a loan secured by a permit pledged under AS 44.81.231
25 fail to cure a default within the time stated in the notice given under AS 44.81.241,
26 the total indebtedness owing on the loan immediately becomes due and payable to the
27 bank, and the bank shall be entitled to take any legal action to collect the loan,
28 including the foreclosure under AS 44.81.245 of the permit pledge that secures the
29 loan and the institution of legal action. If the bank forecloses the permit pledge, the
30 bank may proceed in the order the bank selects, whether before, after, or concurrent
31 with other action taken to collect the loan.

1 Sec. 44.81.245. FORECLOSURE NOTICE. The bank may foreclose on a
2 permit pledge that secures a loan by sending to the equitable owner of the permit
3 pledged and any other borrowers and guarantors on the loan a notice of foreclosure.
4 The notice shall be sent by certified mail to their last known address or addresses on
5 file with the bank and must include

6 (1) the date of the notice;

7 (2) a statement that the total indebtedness owing on the loan became
8 due and payable to the bank because the loan default was not cured within the time
9 specified in the notice of default and right to cure provided under AS 44.81.241, and
10 that as a result the bank is entitled to take legal action to collect the loan, including
11 the forfeiture of a permit pledge that secures the loan and the institution of legal
12 action;

13 (3) a description of the permit pledge that is being foreclosed by the
14 notice, including an identification of the permit by the number assigned by the
15 commission and the name of the equitable owner;

16 (4) the amount of the total indebtedness owing as of the date of the
17 notice;

18 (5) the amount of daily interest that accrues from the date of the notice;

19 (6) a statement that the costs of collection of the loan incurred by the
20 bank after the date of the notice will be added to the total amount of the indebtedness
21 due on the loan;

22 (7) a statement that to avoid forfeiture of all rights of the equitable
23 owner of the permit identified in the notice, the loan must be paid in full within 60
24 days from the date of the notice or within an extended time period that is specified in
25 an extension notice provided by the bank within the 60-day period under
26 AS 44.81.249;

27 (8) a statement that once a forfeiture of all rights of the equitable owner
28 of a permit described in the notice occurs, the permit may not be redeemed;

29 (9) a statement of the right of the equitable owner to nominate a person
30 to assume the loan under AS 44.81.245;

31 (10) the place where payment in full may be made; and

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(11) a notice in at least 10 point bold type stating:
"IMPORTANT: IF THE LOAN IS NOT PAID IN FULL BY THE DATE SPECIFIED, ALL RIGHTS OF THE EQUITABLE OWNER TO THE PERMIT IDENTIFIED IN THIS NOTICE WILL BE FORFEITED WITHOUT FURTHER NOTICE TO YOU. IN THAT EVENT, THERE WILL NOT BE A RIGHT OF REDEMPTION OF THE PERMIT. IN ADDITION, THE BANK MAY NOW TAKE OTHER ACTION TO COLLECT THE LOAN, INCLUDING THE INSTITUTION OF LEGAL ACTION AGAINST YOU AND THE FORECLOSURE OF OTHER PERMIT PLEDGES THAT SECURE THE LOAN."

Sec. 44.81.247. TERMINATION OF PERMIT INTEREST. If a loan is not paid in full within the time specified by the notice provided for the loan under AS 44.81.245, the equitable interest in the permit identified in the notice terminates by operation of law without further notice. The commission shall cancel an entry permit card issued to the equitable owner of the permit immediately upon receipt by the commission of a certificate of termination containing a copy of the notices required by AS 44.81.241 and 44.81.245.

Sec. 44.81.249. CANCELLATION, EXTENSION, AND DELIVERY OF NOTICES. (a) The bank may cancel a notice provided under AS 44.81.241 or 44.81.245 by delivering a written notice of cancellation to the persons who were given the cancelled notice. The notice shall be given in the same manner as is required for the cancelled notice.

(b) The bank may extend the 60-day period for curing a default under AS 44.81.243 and the period before a forfeiture occurs under AS 44.81.247 by giving a written notice of extension to the persons who were given the notice. The notice shall be given in the same manner as is required for the giving of the notice being extended.

(c) The bank may give a notice required to be provided in AS 44.81.241, 44.81.245, or 44.81.247 by personal delivery instead of by certified mail.

* Sec. 22. AS 44.81.250 is repealed and reenacted to read:

1 Sec. 44.81.250. TRANSFER OF ENTRY PERMITS AFTER FORECLOSURE.

2 (a) Upon foreclosure of a pledge of an entry permit under AS 44.81.241 - 44.81.249,
3 the bank shall determine if the permit is subject to a buy-back program under
4 AS 16.43.290 - 16.43.330 and, if it is subject to a buy-back program, shall offer the
5 permit to the commission at a price equal to the outstanding indebtedness on the loan.

6 (b) .If the permit is not subject to a buy-back program, or if the commission
7 fails to buy back the permit within 30 days after the commission receives the offer, the
8 bank shall sell the permit to a person who qualifies as a transferee of an entry permit
9 under AS 16.43 and the regulations adopted by the commission. The bank shall give
10 preference to an offer to purchase a permit made by a state resident if the price offered
11 is equal to or greater than the price offered by a nonresident. If the proceeds of the
12 sale of a permit exceed the amount necessary to pay the indebtedness in full, the bank
13 shall remit the excess to the borrower.

14 (c) At any time before foreclosure of a pledge of a permit, or within 30 days
15 following foreclosure of a pledge of a permit, the equitable owner or former equitable
16 owner may nominate a person to assume the loan. A person nominated must qualify
17 as a transferee of the permit under AS 16.43 and must qualify to assume the loan
18 under the requirements of the bank. If the person qualifies, the permit shall be
19 transferred to the nominee upon the nominee's assumption of the loan.

20 (d) This section does not affect the right of the bank to institute legal actions
21 against the borrowers, guarantors, or other sureties for performance to collect the
22 indebtedness owing on the loan and to take other legal action on the collateral securing
23 the loan.

24 * Sec. 23. AS 44.81.270 is repealed and reenacted to read:

25 Sec. 44.81.270. AUDITS AND EXAMINATIONS OF BANK. (a) The
26 legislative auditor may cause the bank to be audited in the manner and under the
27 conditions established by AS 24.20.271 for audits performed by the legislative audit
28 division. The legislative audit division has free access to all books and papers of the
29 bank that relate to the business of the bank and books and papers kept by a director,
30 officer, or employee relating to or upon which a record of the business of the bank is
31 kept. The legislative audit division may summon witnesses and administer oaths or

1 affirmations in the examination of directors, officers, or employees of the bank or
2 another person in relation to the affairs, transactions, and conditions of the bank, and
3 may require and compel the production of records, books, papers, contracts, or other
4 documents by court order if not voluntarily produced. At the direction of the legislative
5 budget and audit committee under AS 24.20.271, the legislative auditor may conduct
6 an audit of the bank.

7 (b) The legislative auditor and the auditor's employees may not disclose
8 information acquired by them in the course of an audit of the bank concerning the
9 particulars of the business or affairs of a borrower of the bank or another person,
10 unless the information is required to be disclosed by law or under a court order.

11 (c) The bank shall be audited annually by independent outside auditors. The
12 legislative auditor may confer with the outside auditors and review the work papers of
13 the audit. The board shall engage the outside auditors, who shall be responsible to the
14 board. The bank shall submit copies of each report of the outside auditors to the
15 legislative auditor within 30 days of the report by the bank.

16 (d) The state bank examiners shall perform an annual qualitative examination
17 and evaluation of the bank. The commissioner of commerce and economic
18 development shall assess the bank a fee established under AS 06.01.010(b) for the
19 actual expenses incurred by the Department of Commerce and Economic Development
20 in connection with the examination. The examiners shall report to the board on the
21 examination. The examiners shall prepare a summary report evaluating the bank's loan
22 portfolio quality on a statistical basis and addressing the appropriateness and
23 effectiveness of the bank's policies, practices, and management within the context of
24 the bank's statutory purposes. The examiners shall distribute copies of the summary
25 report to the bank, the legislature, and the governor, and the other records related to
26 the examination of the bank are subject to AS 06.01.025.

27 * Sec. 24. AS 44.81 is amended by adding a new section to read:

28 Sec. 44.81.300. UNCLAIMED DISTRIBUTIONS, REDEMPTIONS, OR
29 PAYMENTS. The bank may revoke a distribution of net proceeds by the bank or a
30 redemption of or payment based upon an allocation of proceeds or upon capital stock
31 issued by the bank if the distribution, redemption, or payment remains unclaimed six

1 years after the date authorized for payment, redemption, or retirement. The amount
2 revoked may revert to an unallocated capital account of the bank if, at least six months
3 before the declared date of revocation, the bank has mailed to the last known address
4 of the person shown by the bank's records to be entitled to the amount a notice that
5 the payment is available to the person; if the address is unknown, the bank shall
6 publish the notice as provided by law for the publication of a summons. A
7 distribution, redemption, or payment subject to this section is not subject to
8 AS 34.45.110 - 34.45.780.

9 * Sec. 25. AS 44.81.350(3) is amended to read:

10 (3) "member of the bank" includes

11 (A) a holder of a share of membership stock of the bank; or

12 (B) a patron of the bank with retained patronage earnings, or
13 other form of capital ownership in the bank, of \$2,500 or more to the
14 patron's credit;

15 * Sec. 26. AS 44.81.350 is amended by adding new paragraphs to read:

16 (5) "commercial agriculture" includes commercially-related activity in
17 connection with producing, harvesting, processing, or marketing an agricultural,
18 maricultural, or horticultural commodity, including the breeding, raising, shearing,
19 feeding, caring for, training, and management of livestock, bees, poultry, shellfish, and
20 fur-bearing animals and wildlife, and the planting, cultivating, caring for, harvesting,
21 or processing of forest products on a sustained yield basis;

22 (6) "permit" means a limited entry permit issued under AS 16.43;

23 (7) "resident farmer" means a person who is a resident of the state and
24 who is engaged in commercial agriculture in the state;

25 (8) "resident fisher" means a person who is a resident of the state and
26 who is engaged in commercial fishing in the state.

27 * Sec. 27. AS 44.81.010(c), 44.81.040, 44.81.050, 44.81.060, 44.81.070, 44.81.090,
28 44.81.100, 44.81.110, 44.81.160, 44.81.190, 44.81.220, 44.81.230, 44.81.235, 44.81.240, and
29 44.81.280 are repealed.

30 * Sec. 28. TRANSITION PROVISIONS. This Act does not affect a contract, cause of
31 action, liability, penalty, or proceeding existing, incurred, or accrued on the effective date of

- 1 this Act. This Act does not affect an action of the Alaska Commercial Fishing and
- 2 Agriculture Bank taken before the effective date of this Act.

^
deleted "on or"
Amend #2

SENATE FINANCE COMMITTEE

HB 284 AK COMMERCIAL FISHING & AGRICULTURE BANK

PLEASE SIGN IN BELOW

NAME: ED CRAND

Co./DEPT./TITLE: CFAB CEO PHONE: 276-2007

ADDRESS: 2550 DENALI #1201, ANCHORAGE ZIP: 99503

DO YOU WISH TO TESTIFY? YES NO RESPOND TO QUESTIONS

NAME: _____

Co./DEPT./TITLE: _____ PHONE: _____

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DO YOU WISH TO TESTIFY? YES NO RESPOND TO QUESTIONS

your names please

AMY M. DAUGHERTY

LEGISLATIVE AIDE

TO REP. AUSTERMAN

& THE HOUSE FISHERIES

COMMITTEE

ED CRANE

PRESIDENT OF CFAB

either....." He added that Section #26 (d) references the "dilution" of a mark. He thought that they were both adequately protected.

In response to Co-Chair Foster's concern, Mr. Kirkpatrick indicated that small business' are protected. Given common-law rights, and having clarification without registration, a business in existence for twenty years would assume common-law rights. Representative Therriault agreed that there was protection for the common-law business person, although he would encouraged them to get a registered mark. He stated that it could be more expensive to protect themselves through the common-law route.

Representative Mulder MOVED to report CS HB 450 (FIN) out of Committee with individual recommendations and with the accompanying fiscal note. There being NO OBJECTIONS, it was adopted. Representative Brown asked why the fee schedule should be set in statute. Representative Therriault responded that the Legislature should be active in raising fee amounts.

CS HB 450 (FIN) was reported out of Committee with "no recommendations" and with a fiscal note by the Department of Commerce and Economic Development dated 2/21/96.

HOUSE BILL 284

"An Act relating to the Alaska Commercial Fishing and Agriculture Bank."

Co-Chair Hanley provided the Committee, the Audit Report for the Alaska Commercial Fishing and Agricultural Bank (CFAB), dated January 12, 1996. [Attachment #1].

REPRESENTATIVE ALAN AUSTERMAN testified in support of the legislation and offered to answer questions regarding the bill. He noted that HB 284 would enact changes to AS 44.81 and AS 16.43. The statutes contain the enabling language of CFAB and set forth the operating procedures, structure and authorities of the bank. Most of the changes contained in HB 284 are for purposes of clarification.

ED CRANE, PRESIDENT, ALASKA COMMERCIAL FISH & AGRICULTURAL BAN (CFAB), ANCHORAGE, offered to answer questions regarding Attachment #1.

Representative Martin MOVED to adopt Amendment #1. [Attachment #2]. Representative Brown questioned the legal effect of leaving in the \$1 million dollars. Mr. Crane remarked that the \$1 million dollars did not have financial significance. That money instead would provide an effort by CFAB to establish service for public purposes. That money would act as an the State's agent for lien concerns. The intention was to lay the foundation to adequately

address future legal arguments. Following discussions with their legal attorney, Mr. Crane pointed out that CFAB supported the language suggested in Amendment #1, which would clearly establish the intent. The amendment would add a new (third) sentence to Section #8 of HB 284. That sentence would provide a more precise and limited expression of CFAB's relationship to the State in the financing of limited entry permits.

There being NO OBJECTION to Amendment #1, it was adopted.

Representative Brown noted that the legislation would limit benefits to a narrow class of Alaskans. She indicated that she would support adding language which could broaden the legislation to include that "others" could be considered for loans to participate in the program.

(Tape Change, HFC 96-71, Side 2).

Mr. Crane advised that the State has provided a special environment for those persons involved in commercial fisheries. He pointed out the significant financial implementations and that CFAB was created in response to those needs. Mr. Crane stated that he was interested in exploring the concerns of Representative Brown, although reminded Committee members that there are other financial institutions in Alaska which address a variety of needs.

Mr. Crane agreed with the need for more fiscal accountability from his agency to the Legislature. He remarked that CFAB is privately owned, and that the State of Alaska is the largest single stock holder with \$7.5 million dollars invested. Other member borrowers have \$18 million dollars equity in the corporation.

Representative Mulder noted that the LBA Committee suggested that CFAB and the Revolving Loan Fund be combined. Mr. Crane corrected Representative Mulder stating that the recommendation was that CFAB and the Division of Investments participate in an analysis. CFAB had no objection to that concept, although, felt the idea needed further investigation. Each of those agencies serve different constituencies and concerns.

Representative Mulder asked what the outcome would be with the deletion of Sections #5 - #7. Mr. Crane replied that action would severely restrict the substantive usefulness of CFAB.

Discussion followed between Representative Mulder and Mr. Crane regarding paying of taxes and the amount used for capital investment in past due obligations. Representative Mulder asked why productivity enhancement or education would be included. Mr. Crane pointed out that CFAB has been approached by commercial fishermen who want to expand beyond the harvesting and delivery of fish. Often times, these fishermen will want to get into processing and/or marketing which could require special training

or equipment. In order to diversify, that portion of the legislation would be essential. He added that the money which CFAB lends, belongs to those fishermen who have equity in the company. Representative Mulder countered that the money was initially outlayed through public funds, and stressed that public interest is involved.

Representative Brown voiced concern with Section #6. She thought that language could provide the capabilities for someone to diversify into an unrelated field. Mr. Crane commented that was not the intent. The by-laws contain a definition of borrowing possibilities. Mr. Crane pointed out that the language reads:

"....diversification 'of' not 'out of' the commercial activities of a borrower."

He summarized that there are more and more fishermen wanting to diversify into other sea harvesting activities.

Representative Brown provided the Committee with Amendment #2. [Attachment #3]. The concept would allow CFAB to expand to small business'. She suggested that the bill would be of better use if it were open to other types of economic activity.

Representative Therriault concluded that a healthy CFAB could eventually be the State's "salvation" to recapitalizing the Agriculture Revolving Loan Fund and the Fisheries Revolving Loan Fund.

HB 284 was HELD in Committee for further consideration.

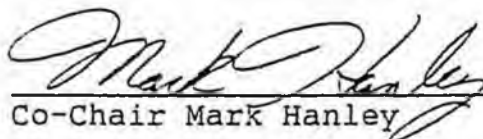
ADJOURNMENT

The meeting adjourned at 4:10 P.M.

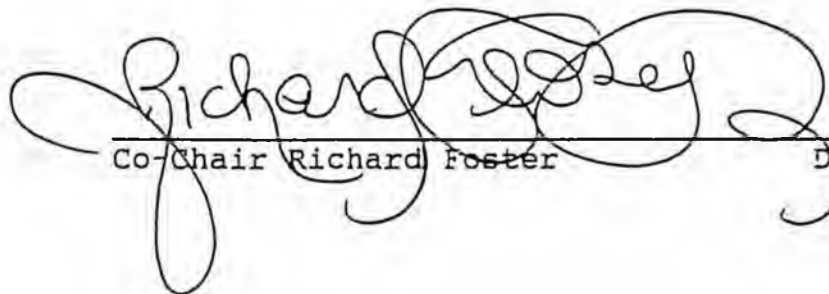
CS HB 284 (FIN)

LETTER OF INTENT

The legislature requests that the board of directors of the Alaska Commercial Fishing and Agriculture Bank investigate the feasibility of providing services authorized under AS 44.81.210 to Alaskans other than those authorized for services under AS 44.81.210, and report the results of that investigation to the legislature by the 15th day of the first session of the twentieth Alaska Legislature.


Co-Chair Mark Hanley

3/15/96
Date


Co-Chair Richard Foster

15MAR96
Date

ADOPTED BY THE HOUSE 3/19/96

SENATE COMMITTEE REPORT

First Committee of Referral

DATE: 3/20/96

FURTHER: Finance

DATE TURNED INTO OFFICE: 3/19/96

The Labor and Commerce Committee considered CS FOR HOUSE BILL NO. 284(FIN)
 Relating to the Alaska Commercial Fishing and Agriculture Bank.

and recommends:

- be replaced with _____ CS _____
- adopt previous _____ CS _____
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to the _____ Committee

- Senate Bill:**
- same title
 - new title
- House Bill:**
- same title
 - technical title
 - new: SCR# _____

SIGNING DEPARTMENT	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>John Loggins</i>	✓	<i>Mike Miller</i>	✓		
		<i>Duncan</i>	✓		
		<i>W. S. Saw</i>	✓		
CHAIR: <i>Tim Kelly</i>	✓	CHAIR:			

NEW FISCAL NOTE(S):

Department	Date	Zero	Fiscal

PREVIOUS FISCAL NOTE(S):*

Department	Date	Zero	Fiscal
<i>Dept. of Rev.</i>	<i>3/18/96</i>	X	
<i>Dept. of Rev.</i>	<i>3/18/96</i>	X	
<i>Comm Fisheries Comm</i>	<i>3/6/96</i>	X	

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

BILL: HB 284 SHORT TITLE: AK COMMERCIAL FISHING & AGRICULTURE BANK
BILL VERSION: CSHB 284(FIN)
SPONSOR(S): SPECIAL COMMITTEE ON FISHERIES

CURRENT STATUS: (S) FIN

STATUS DATE: 04/19/96

TITLE: "AN ACT RELATING TO THE ALASKA COMMERCIAL FISHING AND AGRICULTURE BANK."

03/27/95	933	(H)	READ THE FIRST TIME - REFERRAL(S)
03/27/95	933	(H)	FSH, LABOR & COMMERCE, FINANCE
04/20/95	1398	(H)	FSH RPT 2DP 2NR
04/20/95	1398	(H)	DP: MOSES, ELTON
04/20/95	1398	(H)	NR: OGAN, AUSTERMAN
04/20/95	1399	(H)	2 ZERO FISCAL NOTES (REV, F&G)
05/02/95	1733	(H)	L&C RPT 3DP 3NR
05/02/95	1733	(H)	DP: ELTON, ROKEBERG, PORTER
05/02/95	1733	(H)	NR: MASEK, KOTT, KUBINA
05/02/95	1733	(H)	2 ZERO FNS (REV, F&G) 4/20/95
03/18/96	3174	(H)	FIN RPT CS(FIN) 9DP 1NR
03/18/96	3174	(H)	DP: FOSTER, HANLEY, MULDER, MARTIN
03/18/96	3174	(H)	DP: PARNELL, GRUSSENDORF, KELLY
03/18/96	3174	(H)	DP: THERRIAULT, NAVARRE
03/18/96	3174	(H)	NR: BROWN
03/18/96	3175	(H)	FISCAL NOTE (REV)
03/18/96	3175	(H)	ZERO FISCAL NOTE (F&G)
03/18/96	3175	(H)	LETTER OF INTENT WITH FIN REPORT
03/19/96	3200	(H)	RULES TO CALENDAR 3/19/96
03/19/96	3200	(H)	ZERO FISCAL NOTE (REV)
03/19/96	3200	(H)	READ THE SECOND TIME
03/19/96	3200	(H)	FIN CS ADOPTED UNAN CONSENT
03/19/96	3201	(H)	ADVANCED TO THIRD READING UNAN CONSENT
03/19/96	3201	(H)	READ THE THIRD TIME CSHB 284(FIN)
03/19/96	3201	(H)	PASSED Y34 A6
03/19/96	3201	(H)	(H) ADOPTED FIN LETTER OF INTENT
03/19/96	3206	(H)	TRANSMITTED TO (S)
03/20/96	2799	(S)	READ THE FIRST TIME - REFERRAL(S)
03/20/96	2799	(S)	L&C, FIN
04/19/96		(S)	L&C RPT 2DP 3NR
04/19/96		(S)	PREVIOUS H FN (REV)
04/19/96		(S)	PREVIOUS H ZERO FNS (F&G, REV)
04/19/96		(S)	REFERRED TO FINANCE

5/4/96

AMENDMENT #4

TO: CS HB 284 (Fin)

BY: Sen. Zharoff

Page 11, line 15:

Add new subsections to read:

"(5) the payment of obligations incurred in the support of a borrower and the persons who are dependent upon that borrower if the majority of the borrower's earned income is derived through commercial fishing under the borrower's permit;

(6) the enhancement of the productivity or diversification of the commercial fishing activities of a borrower;

2 - moved - RH

(7) the payment of obligations whose status places the permit of a borrower in jeopardy of attachment, ~~distrain, or sale~~ on execution of ~~or~~ judgment, ~~or under a process or order of a court;~~"

Renumber subsections accordingly.

*6
#2
2 moved
Affected*

*#2
5
for (7)
withdraw*

HB

286

HFIN

FILE

HOUSE COMMITTEE REPORT

(11)

Date Referred: April 6, 1995

FURTHER REFERRALS:

Date of Committee Action: 4/26/95

The FINANCE Committee considered:

HB 286

HOUSE BILL NO. 286

CRUISE SHIP GAMBLING & PROMOTIONS

"An Act providing an exemption from gambling and certain alcoholic beverage laws for gambling conducted by cruise ships for their ticketed passengers in the offshore water of the state; relating to promotions on board cruise ships; defining 'cruise ship'; providing for exemption procedures for certain cruise ships before they can conduct gambling in the offshore water of the state; providing an exemption from the coin-operated device tax for cruise ships exempted from the gambling laws; and providing for an effective date."

recommends it be replaced with the following committee substitute CS HB 286 (FIN) the same title a new title

additional referral to _____ Committee
 attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): _____ (Dept)

APPROVES PREVIOUS: _____ (Dept/Date)

fiscal note(s) _____

fiscal note(s) Revenue 4/1/95

zero fiscal note(s) _____

zero fiscal note(s) _____

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
<i>Mark Hanley</i> Hanley	X			
<i>Terry Martin</i> Martin		+		
<i>Vil Kohring</i> Kohring			X	
<i>Ben Grissendorf</i> GRISSENDORF			X	
<i>Paul Brown</i> BROWN	✓			
<i>Walter Kelly</i> Kelly			✓	
<i>Eric Theriault</i> Theriault			+	
<i>Richard Foster</i> FOSTER	X			

CO CHAIR'S SIGNATURE

Mark Hanley
HANLEY

Richard Foster
FOSTER

FISCAL NOTE

No. 1
 Bill (H) sion: HB 286
 (H) Publish Date: 4/6/95

STATE OF ALASKA
 1995 LEGISLATIVE SESSION

Revision Date: _____ Dept. Affected: Revenue
 Title: Cruise Ship Gambling & Promotions BRU: Revenue Operations
 Component: Charitable Gaming Division
 Sponsor: Representative Williams
 Requester: Judiciary COMPONENT SERIAL NO. 1883

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()	500.0	600.0	600.0	600.0	600.0	600.0
------------------------	-------	-------	-------	-------	-------	-------

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY95) cost: \$ 0.0

POSITIONS

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Under current law, only certain non-profit organizations and municipalities can conduct gaming in Alaska. The type of gaming that is authorized is generally limited to pull-tabs, bingo, raffles, Monte Carlos and contests of skill. This bill would exempt cruise ships from the States gambling laws and allow for-profit organizations (cruise ships) to conduct casino gambling in the offshore water of the state.

One of the statues administered by the Department of Revenue, Charitable Gaming Division is Title 43, Chapter 35 "Coin-Operated Devices and Punchboards" [AS43.35]. Article one of the statute imposes a tax on all class I, class II, and class III amusement and gaming devices in operation within Alaska. Seventy-five percent of the taxes collected are shared with the local government where the devices are held out for play. This bill would provide an immediate exemption from the coin-operated device tax for cruise ships exempted from the gambling laws.

Prepared by: Dennis R. Poshard, Director Phone: 465-2279
 Division: Charitable Gaming Division Date: 04/05/95
 Approved by: _____ Date: 4/5/95
 Commissioner: Wilson L. Condon
 Agency: Department of Revenue

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Alaska State Legislature



Representative William K. Williams

Committees

House Resources
Co-Chairman

World Trade &
Federal Relations

Transportation

Rules

Oil & Gas

During Session,
State Capitol
Juneau, AK 99801-1182
(907) 465-3424
Fax (907) 465-1791

In Ketchikan:
352 Front Street
Ketchikan, AK 99901
(907) 247-4672
Fax (907) 225-8546

Sponsor Statement

House Bill 286

House Bill 286 gives the state authorization to offer an exemption from gambling statutes to cruise ships. This exemption would allow cruise ships to operate their casinos in Alaska waters.

Casino gambling aboard cruise ships is an amenity needed to keep Alaska on a par with other cruise destinations. While gambling is not the main attraction of cruises to other parts of the world, it is an accepted and expected part of the experience.

The communities of Alaska will not be negatively affected by this legislation. Casino operations will be prohibited within three miles of a vessel's port of call. While in port the casino will remain closed, therefore removing the opportunity for non-ticketed people to participate in the activities.

In these times of strict budget discipline it is important to find new sources of income. Ships that take advantage of this exemption will pay the State of Alaska fees ranging from \$10,000 to \$40,000 per year. Initial projections suggest this could add an additional \$500,000 per year to state coffers.

This bill supports the tourism industry and raises state revenues. I ask you to support House Bill 286.

A BRIEF SECTIONAL ANALYSIS

HOUSE BILL 286

- Section 1: Allows agents or employees to serve alcohol to patrons.
- Section 2: A) Lists guidelines cruise ships must comply with in order to offer gambling on board.
B) Specifies exemption fees
C) Describes reasons an exemption can be revoked
D) Defines "cruise ship"
E) Defines "cruise waters of the state"
- Section 3: Includes exemption into statute covering unsworn falsification
- Section 4: Exempts cruise ships from state gambling laws
- Section 5: Exempts cruise ships from state tax on coin operated devices
- Section 6: Allows cruise ships to sell excursions on the ship and not disclose they are receiving compensation
- Section 7: Enactment date

Alaska Department of Revenue
Charitable Gaming Division
Position Paper
SB60 and HB286

The Department of Revenue would like to make clear the relationship between the Cruise Ship Gaming bills presently before the legislature (SB 60 and HB 286) and Indian gaming in Alaska. Currently, a compact to govern the conduct of Class III gaming on Indian trust lands at Klawock is under negotiation between the Klawock Cooperative Association (KCA) and the State of Alaska.

Slot machines and video games are typically the most lucrative casino games for the house. Assuming that the intent of the sponsors of the bills was to permit cruise ship operators to use slots and video games, as presently drafted the bills do *not* have this effect.

The bills would exempt cruise ships from criminal law prohibitions (AS 11.66.200 - 280).¹ The bills would also exempt cruise ships from AS 05.15, which, through an interplay of sections AS 05.15.100(b) and AS 05.15.690(28), makes slot machines and video games of chance prohibited devices.² However, this is not the only place within Alaska law that these devices are made illegal.

AS 43.35.090(3), a part of the taxing statutes, defines a class 3 "coin-operated device" as a:

slot machine or other apparatus that operates by means of insertion of a coin, token, or similar object and that, by strict dependence upon the element of chance, may deliver or may entitle the person playing or operating the machine to receive cash, premiums, merchandise, or tokens; . . .

15 AAC 35.040(c) specifically makes class 3 coin-operated devices illegal.

The relationship of the Cruise Ship Gaming bills to Indian gaming comes under federal law, specifically the Indian Gaming Regulatory Act (IGRA). 25 U.S.C. §§ 2701 *et seq.* Under IGRA, "Indian tribes have the exclusive right to regulate gaming activity

1. The criminal statutes make no specific mention of slot machines but define as "unlawful" anything not specifically authorized by law. Because the permission to allow certain items to be used in Monte Carlo Night operations only goes to cards, dice, and numbers wheels -- which excludes slot machines and other coin-operated devices such as video games or chance -- these are not specifically authorized and are, therefore, illegal under criminal law.

2. The bills refer to AS 05.15.210. However, what was obviously intended was a reference to the statute's renumbered reference, AS 05.15.690.

on Indian lands if the gaming activity is not specifically prohibited by Federal law and is conducted within a State which does not, as a matter of criminal law and public policy, prohibit such gaming activity." IGRA further states that class III gaming activities shall be lawful on Indian lands only if such activities are ... (B) located in a State that permits such gaming for any purpose by any person, organization, or entity."

Thus, if the Cruise Ship Gaming bills are amended³ to clear up the conflict in applicable laws, and slot machines and video games of chance are made legal for cruise ships to operate, federal law requires that Indian gaming operations also be permitted to make use of slots and video games.

The Charitable Gaming Division has a neutral position on the bill.

3. The Department of Law has alerted Rep. Williams' office of the need to amend the legislation if the intent is to permit slot machines.

FISCAL NOTE

No. 1
 Bill 1 sion: HB 286
 (H) Publish Date: 4/6/95

STATE OF ALASKA
 1995 LEGISLATIVE SESSION

Revision Date: _____ Dept. Affected: Revenue
 Title: Cruise Ship Gambling & Promotions BRU: Revenue Operations
 Component: Charitable Gaming Division
 Sponsor: Representative Williams
 Requester: Judiciary COMPONENT SERIAL NO. 1883

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()	500.0	600.0	600.0	600.0	600.0	600.0
------------------------	-------	-------	-------	-------	-------	-------

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY95) cost: \$ 0.0

POSITIONS

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Under current law, only certain non-profit organizations and municipalities can conduct gaming in Alaska. The type of gaming that is authorized is generally limited to pull-tabs, bingo, raffles, Monte Carlos and contests of skill. This bill would exempt cruise ships from the States gambling laws and allow for-profit organizations (cruise ships) to conduct casino gambling in the offshore water of the state.

One of the statutes administered by the Department of Revenue, Charitable Gaming Division is Title 43, Chapter 35 "Coin-Operated Devices and Punchboards" [AS43.35]. Article one of the statute imposes a tax on all class I, class II, and class III amusement and gaming devices in operation within Alaska. Seventy-five percent of the taxes collected are shared with the local government where the devices are held out for play. This bill would provide an immediate exemption from the coin-operated device tax for cruise ships exempted from the gambling laws.

Prepared by: Dennis R. Poshard, Director Phone: 465-2279
 Division: Charitable Gaming Division Date: 04/05/95
 Approved by: _____ Date: 4/5/95
 Commissioner: Wilson L. Condon
 Agency: Department of Revenue

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4/20/95

9-LS0991A.1 ✓

Luckhaupt

4/17/95

A M E N D M E N T

adopted 7-1

OFFERED IN THE HOUSE

BY REPRESENTATIVE WILLIAMS

TO: HB 286

1 Page 1, following line 11:

2 Insert a new bill section to read:

3 "* Sec. 2. AS 05.15.180(a) is amended to read:

4 (a) Except as provided in AS 05.15.100(b) and 05.15.250, this chapter does
5 not authorize the use of playing cards, dice, roulette wheels, coin-operated instruments
6 or machines, or other objects or instruments used, designed, or intended primarily for
7 gaming or gambling or any other method or implement not expressly authorized by
8 the department."

9 Renumber the following bill sections accordingly.

10 Page 2, line 1:

11 Delete "A"

12 Insert "Notwithstanding AS 05.15.180(a), a"

facsimile

TRANSMITTAL

to: Rep. Mark Hanley
fax #: 465-2278
re: HB 286 Sec 6 AS45.50.474 As Amended
date: April 7, 1995
pages: ONE, including cover sheet.

We are writing specifically about Sec 6 AS45.50.474 of HB 286

We wish to protest the recent amendment to that bill which states: "This prohibition does not apply to on-shore excursions that are sold on board a cruise ship."

Adding that sentence to this bill EFFECTIVELY NEGATES the entire section. I have seen articles in travel agent magazines that are sent to all travel agents (an employee of Holland America actually wrote the article I read) telling them that when they schedule their clients for "shore excursions" which aren't sold on the ship, they may be getting vendors who are not reliable and not insured.

We are paying \$150,000 per year liability insurance and each seat is insured for up to \$1 Million, and yet the intimation is that anyone who doesn't hire the ships to sell for them is unreliable.

We are requesting that you DELETE THIS SENTENCE from the bill before voting on it. It HURTS the small vendors. When the cruise ships are conducting promotions on board their ship, they should have to disclose that they are contracted with the vendors they are selling for. These ships charge a premium to the vendors they sell for. There is nothing wrong with that, but the passengers on the ship should be aware they are selling on ship because they have a business deal - not out of the goodness of their heart.

I will be happy to answer any questions you may have. Thanks.

From the desk of...
Bob & Jim Wilson
COASTAL HELICOPTERS, INC.
2755 KA-SEE-AN DRIVE
JUNEAU AK 99801
907-789-5600
Fax: 907-789-7076

PRINCESS TOURS 

519
West Fourth
Avenue
Anchorage,
Alaska
99501

Telephone:
907-276-7711
Telefax:
907-265-9222

April 5, 1995

The Honorable Brian Porter
Chair, House
Judiciary Committee
Capitol Building
Juneau, Alaska 99801

Dear Representative Porter

This letter is offered in support of House Bill 286. This legislation would allow gambling aboard cruise ships within Alaskan waters for ticketed cruise passengers. Cruise ships would be required to pay a fee to the State for an exemption prior to conducting gambling under this legislation.

The definition of cruise ships insures against "gambling cruises to nowhere". The legislation prohibits gambling aboard cruise ships within three miles of ports of call. We estimate that revenues to the State could exceed \$500,000 in 1995 and reach \$575,000 in 1996. Ships offering Alaskan cruises in the next two years would pay either \$20,000 or \$30,000 each per year for the exemptions. Larger ships are scheduled to sail in Alaska in 1996, and several would pay \$40,000 each year.

A provision was added last session to require disclosure of on-board promotion of gift shops in Alaskan ports of call during "port lectures" conducted by cruise directors. Princess does not approve of such promotions in Alaska, and we believe that other long-term cruise line operators agree with us. We have added language to clarify that on-board sale of shore excursion activities would not require the same disclosure as gift shop promotions.

Cruise ships have offered gambling as an ancillary entertainment activity for their passengers in Alaska for over twenty years. Alaska competes in the international marketplace. On-board gambling has become generally accepted as one of the variety of activities offered by cruise lines in all the major cruising destinations.

Over the past twenty years Alaska has become one of the premier cruising destinations in the world, currently ranking number two. During this period of growth and development, there is no evidence that these onboard activities have ever had any impact whatsoever on Alaskan communities or Alaskan residents.

The Honorable Brian Porter

- 2 -

April 5, 1995

This absence of impact is a direct result of the way in which cruise ships operate onboard casinos. For over twenty years cruise ships coming to Alaska have operated casinos only while underway. Casinos are closed while ships are in port.

The public policy concerns related to gambling are not compromised by the passage of HB 286. There is no impact to Alaskan families or communities or to the "peace and tranquillity" of any area of Alaska as a result of these activities aboard cruise ships.

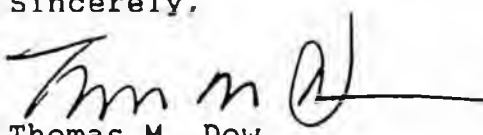
Research clearly shows that Alaskans appreciate the importance of tourism to the economy of the state. It also shows that Alaskans don't favor prohibiting the traditional operation of casinos aboard cruise ships because these operations are not causing any problems and never have.

Although gambling has never been a primary reason to choose an Alaskan cruise, both passengers and travel agents have come to expect gambling as a part of the package of activities which they would find in a world class cruise vacation. Eliminating gambling within Alaskan waters would mean that an Alaskan cruise vacation would offer something less than available to passengers on the same ships when they are sailing in other locations.

We believe that there is no public policy reason to prohibit this activity. There is public support to allow it to continue. And with the provision of an exemption fee, there is a simple method for the State to secure revenues from cruise lines who wish to continue to offer this entertainment option to their passengers. There is very little administrative expense or burden placed on the State for the collection of these revenues.

Thank you for your consideration.

Sincerely,


Thomas M. Dow
Vice President

**SOUTHEAST STEVEDORING CORPORATION****CONTRACTING STEVEDORES**

P. O. BOX 8080

KETCHIKAN, ALASKA 99901

Cable Address
"Soustave"Telephone
907-225-8157Fax
907-225-8254Telecc
413618

April 04, 1995

Representative W. K. Williams
House of Representatives
State of Alaska

Dear Representative ^{Bill} Williams:

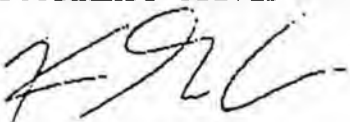
We would like to express our support for SB 60 and its companion bill HB 286. Thanks for stepping forward to take the lead as a sponsor of the House Bill.

As you know, the Cruise Ship industry is becoming more and more important to the local economies in the State of Alaska. We need to work with the Cruise Industry in partnerships wherever possible. This particular partnerships is positive for the State in that new revenues will be added to the General Fund. It is positive for the cruise ships since they will be able to reinstate gambling as one of the many activities offered while cruising between ports in Alaska.

Prior to 1993, gambling was a part of the entertainment available for tourists transiting between ports onboard cruise ships. After it was discovered that the State of Alaska had jurisdiction, many of the cruise lines asked if they could purchase an exemption to keep offering gambling as one of the many activities available to passengers.

This bill will not hurt any Alaskan community. In fact since it has potential of generating hundreds of thousands of dollars annually, it will help all of the State in this time of revenue shortfalls.

Sincerely,
SOUTHEAST STEVEDORING CORPORATION



Kris Geldaker
Cruise Operations Manager

**RESOLUTION OF THE BOARD OF DIRECTORS
OF THE
KETCHIKAN VISITORS BUREAU**

WHEREAS, the development of the tourism industry has contributed substantially to the economic diversification of the Ketchikan area; and

WHEREAS, the continuing struggles faced by resource based industry in Southern Southeast Alaska further emphasizes the need to develop tourism and other local industry; and

WHEREAS, the State's efforts to trim its spending can best be accomplished in partnership with industry; and

WHEREAS, the provisions in Senate Bill No. 60 and its companion bill HB No. 286 provide for a fee to be levied in exchange for an exemption for certain gambling activities within Alaskan Waters, generating additional State revenue; and

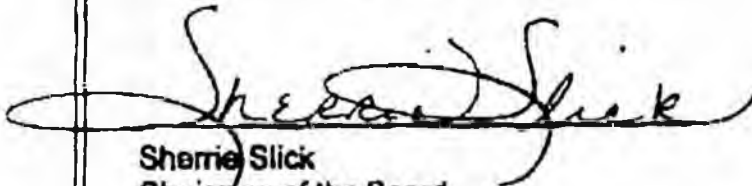
WHEREAS, the bill's provisions requiring full disclosure when paid promotions are conducted for cruise lines protects local businesses' right to fair competition in the marketplace.

BE IT THEREFORE RESOLVED, that the Ketchikan Visitors Board of Directors and Advisors support SB No. 60:

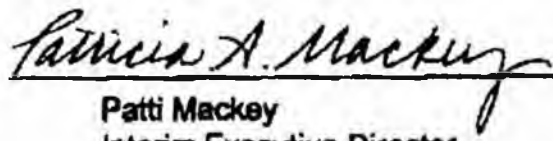
"An Act providing an exemption from gambling and certain alcoholic beverage laws for gambling conducted by cruise ships for their ticketed passengers in the offshore water of the state; relating to promotions on board cruise ships; defining cruise ship; providing for exemption procedures for certain cruise ships before they can conduct gambling in the offshore water of the state; providing an exemption from the coin-operated device tax for cruise ships exempted from the gambling laws; and provide for an effective date."

RESOLVED, on February 28, 1995, at the Ketchikan Visitors Bureau Board of Directors meeting.

DATED this 28 day of February, 1995.



Sherrie Slick
Chairman of the Board
Ketchikan Visitors Bureau



Patti Mackey
Interim Executive Director

TO: Rep. Mark Hanley

Fax #: 465-2418

re: HB 286 Sec 6 AS45.50.474

From: Michelle W. Creelman
Juneau's Best Tours

Date: April 11, 1995

I wish to protest the recent amendment to above bill which states: "The prohibition does not apply to on-shore excursions that are sold on board a cruise ship."

Adding that sentence to this bill negates the entire section. I have seen articles in travel agent trade magazines telling them that when they schedule their clients for "shore excursions" which aren't sold on the ships they may be getting vendors who are not reliable and not insured.

I hold one of the CSC issued broker permits and represent several reputable, insured LOCAL vendors, most of whom are not sold on the cruise ships. I also carry liability insurance and am bonded. I resent the implication that anyone who doesn't hire the ships to sell for them is unreliable. One of the conditions for having your tour sold on most cruise ships is volume. Since many local vendors don't push hundreds of people a day through their business the cruise ships will not represent them. Going through a broker on the docks is their ONLY avenue to reach these people. They pay me for this service, tours that are sold on the ships pay for the same service I provide on shore. I have no problem admitting vendors pay me -- why do the OUT OF STATE cruise lines?

I am requesting that you DELETE THIS SENTENCE from the bill before voting on it. It HURTS the small LOCAL vendors. When the cruise ships are conducting promotions on board their ship, they should have to disclose that they have contracted with the vendors they are selling for. The passengers should be aware they are buying tours through a business deal, not out of the goodness of the hearts of the cruise line on which they are travelling.

HB

286

SFIN

FILE

SENATE FINANCE COMMITTEE REPORT

DATE: 5/5/95

FURTHER:

DATE TURNED INTO OFFICE: 5/16/95

Finance Committee considered CS FOR HOUSE BILL NO. 286(FIN) am

Exemption from gambling and certain alcoholic beverage laws for gambling conducted by cruise ships for their ticketed passengers in the offshore water of the state; ef^d

SCS
Forthcoming

and recommends:

- be replaced with _____ CS _____ ()
- adopt previous _____ CS _____ ()
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to the _____ Committee

- new House Bill:
- same title
- technical change
- new: SCR# _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>Alvin Bign...</i>	✓	<i>Roller Cell...</i>		✓	
<i>Bob A...</i>	✓	<i>...</i>	✓		
		<i>...</i>	✓		
Co-Chair:		Co-Chair: <i>Rick Halford</i>	✓		
Co-Chair:		Co-Chair:			

NEW FISCAL NOTE(S):

Department Date Zero Fiscal

PREVIOUS FISCAL NOTE(S):*

Department Date Zero Fiscal

#1	DOR	4/5/95	0		<i>Revenue (5000)</i>

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

FISCAL NOTE

STATE OF ALASKA
 1995 LEGISLATIVE SESSION

Revision Date: _____ Dept. Affected: Revenue
 Title: Cruise Ship Gambling & Promotions BRU: Revenue Operations
 Component: Charitable Gaming Division
 Sponsor: Representative Williams
 Requester: Judiciary COMPONENT SERIAL NO. 1883

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()	500.0	600.0	600.0	600.0	600.0	600.0
------------------------	-------	-------	-------	-------	-------	-------

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY95) cost: \$ 0.0

POSITIONS

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Under current law, only certain non-profit organizations and municipalities can conduct gaming in Alaska. The type of gaming that is authorized is generally limited to pull-tabs, bingo, raffles, Monte Carlos and contests of skill. This bill would exempt cruise ships from the States gambling laws and allow for-profit organizations (cruise ships) to conduct casino gambling in the offshore water of the state.

One of the statues administered by the Department of Revenue, Charitable Gaming Division is Title 43, Chapter 35 "Coin-Operated Devices and Punchboards" [AS43.35]. Article one of the statute imposes a tax on all class I, class II, and class III amusement and gaming devices in operation within Alaska. Seventy-five percent of the taxes collected are shared with the local government where the devices are held out for play. This bill would provide an immediate exemption from the coin-operated device tax for cruise ships exempted from the gambling laws.

Prepared by: Dennis R. Pashard, Director Phone: 465-2279
 Division: Charitable Gaming Division Date: 04/05/95
 Approved by: _____
 Commissioner: Wilson L. Condon Date: 4/5/95
 Agency: Department of Revenue

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COMMITTEE COPY For other distribution information, call the Governor's Legislative Office

SENATE FINANCE
COMMITTEE

Adopted 5/13/95

Amendment Number: 2
Bill Number: CSHB 286(FIN)am
Sponsor: Sharp Date: 5/13/95
Logged In By: JM

9-LS0991\F.5 ✓
Luckhaupt
5/13/95

A M E N D M E N T

OFFERED IN THE SENATE

BY SENATOR SHARP

TO: CSHB 286(FIN) am

- 1 Page 3, line 13, after "repealed":
- 2 Insert "on the earlier of (1) the effective date of SB 172(efd fld S) passed by the
- 3 Nineteenth Alaska State Legislature, or (2)"

Post-It™ brand fax transmittal memo 7671 # of pages ▶ 2

To <i>Sharp</i>	From <i>W. Orma A.</i>
Co.	Co. <i>Senate Finance</i>
Dept.	Phone # <i>x 4935</i>
Fax #	Fax #

SENATE FINANCE
COMMITTEE

Amendment Number: 1
Bill Number: CS HB 286(FIN) am
Sponsor: Sharp Date: 5/12/95
Logged In By: JR

Adopted 5/12/95

9-LS0991VF.4 ✓
Luckhaupt
5/12/95

AMENDMENT

OFFERED IN THE SENATE

BY SENATOR SHARP

TO: CSHB 286(FIN) am

- 1 Page 1, lines 9 - 10:
2 Delete "Notwithstanding AS 05.15.180(a), a"
3 Insert "A"
- 4 Page 2, line 10, following "state;":
5 Delete "and"
- 6 Page 2, line 12, following "state":
7 Insert "; and
8 (5) the gambling only consists of either or both of the following:
9 (A) activities municipalities or qualified organizations are permitted
10 to conduct under AS 05.15.100(a); or
11 (B) activities involving the use of playing cards, dice, or numbers
12 wheels; in this subparagraph, "numbers wheel" has the meaning given in
13 AS 05.15.690"

SENATE FINANCE
COMMITTEE

Amendment Number: 2
Bill Number: CSHB 286(FIN) am
Sponsor: Sharp Date: 5/13/95
Logged In By: JM

9-LS0991\F.5 ✓
Luckhaupt
5/13/95

A M E N D M E N T

OFFERED IN THE SENATE

BY SENATOR SHARP

TO: CSHB 286(FIN) am

- 1 Page 3, line 13, after "repealed":
- 2 Insert "on the earlier of (1) the effective date of SB 172(efd fld S) passed by the
- 3 Nineteenth Alaska State Legislature, or (2)"

Alaska State Legislature

SENATOR
BERT SHARP
DISTRICT P
CHAIRMAN
SENATE STATE AFFAIRS COMMITTEE
MEMBER
FINANCE COMMITTEE
RULES COMMITTEE



Senate

FAIRBANKS
DENALI BANK BUILDING
119 N. CUSHMAN, SUITE 201
FAIRBANKS, ALASKA 99701
(907) 452-7985/7886
SESSION ADDRESS
STATE CAPITOL, ROOM 514
JUNEAU, ALASKA 99801-1182
(907) 465-3004/4921

TO: Jerry Luckhaupt, Attorney
Legislative Legal Services

FROM: Senator Bert Sharp *BMS*

RE: CSSB-286 - Amendment

DATE: May 10, 1995

Please draft the following amendment to CSSB-286(Fin)am:

Page 1, lines 9 and 10

Delete [Notwithstanding AS 05.15.180(a),]

Page 3, new line 2

(i) The exemption provided in this section authorizes a cruise ship to conduct only those forms of gambling that are authorized for a municipality or qualified organization under AS.05.15.

Re-number remaining subsection. Thank you.

Post-It™ brand fax transmittal memo 7671 # of pages ▶ 1

To <i>Jerry Luckhaupt</i>	From <i>Sen. Bert Sharp</i>
Co. <i>Leg. Legal</i>	Co.
Dept. <i>1</i>	Phone # <i>5004</i>
Fax # <i>2029</i>	Fax # <i>2070</i>



RE
GC
OF ALASKA

Alaska State Legislature

Committees:
House Resources
Co-Chairman
World Trade &
State Federal Relations
Transportation
Rules
Oil & Gas



Representative William K. Williams

During Session:
State Capitol
Juneau, AK 99801-1182
(907) 465-3424
Fax (907) 465-3793

In Ketchikan:
352 Front Street
Ketchikan, AK 99901
(907) 247-4672
Fax (907) 225-8546

MEMORANDUM

To: Senator Halford, Co-Chairman
Senator Frank, Co-Chairman
Senate Finance Committee

From: Representative Bill Williams

Date: May 6, 1995

Re: HB 286, Cruise ship gambling and promotions

The Alaska cruise industry competes in a global market. In order to compete on equal ground with other destinations Alaska needs to allow comparable amenities. HB 286 was introduced to allow casino operation in Alaska waters. This bill would increase both the marketability of Alaska cruises, and revenue to the state.

HB 286 passed the House on May 4. Please schedule HB 286 for a Senate Finance Committee hearing at the earliest possible date.

If you have any questions, or if you need additional information, please feel free to call me or my legislative aide, Kyle Johansen, at extension 3424. Thank you.

RECEIVED

MAY 10 1995

REPRESENTATIVE
TERRY MARTIN
CHAIRMAN
BUDGET & AUDIT COMMITTEE
MEMBER
HOUSE FINANCE COMMITTEE

Alaska State Legislature



MAY 15 - JAN 15 358-8169
716 W. 4TH, SUITE 650
ANCHORAGE, AK 99504
JAN 15 - MAY 15 465-3783
STATE CAPITOL
JUNEAU, AK 99801-1182
HOME 333-6990
355 DONNA DRIVE, #11
ANCHORAGE, AK 99504

MEMORANDUM

May 6, 1995

TO: Senator Steve Frank, Co-chairman
Senator Rick Halford, Co-chairman
Senate Finance Committee Members

FROM: Representative Terry Martin

SUBJECT: HB 286, an Act establishing cruise ship gambling

Scheduled for consideration by the Senate Finance Committee is HB 286, an Act providing an exemption from gambling and certain alcoholic beverage laws for gambling conducted by cruise ships. I would like to take this opportunity to share some of my concerns on this topic.

Attached is some information taken from the federal Indian Gaming Regulation Act. My concern is that by allowing a state agency to permit gambling activities to occur within the state, we are opening the possibility of Indian tribes in Alaska qualifying to conduct class III gambling activities under the Indian Gaming Regulation law.

Also attached are some amendments to this bill that I offered on the floor of the House. While the House did not approve these amendments, I would like to request your consideration for addressing the concerns I have by bringing these issues to the table in your discussions.

Thank you for your consideration and assistance. I would be more than happy to discuss any of these issues with you at your convenience.



Statement on HB 286
by Representative Terry Martin

The 1988 Indian Gaming Regulatory Act establishes three classes of gambling activities.

Class I is defined as traditional games as part of tribal ceremonies or celebrations.

Class II are games such as bingo, pull-tabs, punch boards, lotto, and other such games.

Class III "means all forms of gaming that are not class I gaming or class II gaming."

Indian gambling in Alaska would qualify for class II games since the State currently permits pull-tabs, bingo, and other such games. However, current state statute prohibits any gambling under class III.

HB 286 brings class III gambling into Alaska by providing an exemption to current statutes prohibiting card games, dice, roulette wheels, etc.

Once the state establishes a system of permitting gambling for cruise ships, Indian tribes can request the state to enter into a Tribal-State compact. The federal Act mandates that the state "shall" negotiate with the tribe to enter into an agreement to allow the tribe to hold class III gambling. Additionally, the federal law requires a Tribal-State compact to provide for regulating gambling, enforcement of criminal and civil law, taxation of gambling operations, etc. State agencies who regulate gaming and now gambling - in addition to public safety agencies - would be substantially impacted.

HB 286, by involving state agencies in permitting gambling, is opening the door to allowing Indian gambling under federal law. While the gambling would be allowed under federal law, the state is mandated to enter in an agreement (that must be approved by federal government) calling upon the state to regulate, monitor, and provide services to enforce criminal and civil laws.

The fiscal notes on HB 286 make no mention of these impacts.

CHAPTER 29. INDIAN GAMING REGULATION

§ 2703. Definitions

For purposes of this Act -

(6) The term "class I gaming" means 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.

(7)(A) The term "class II gaming" means -

(i) the game of chance commonly known as bingo

(I) which is played for prizes, including monetary prizes, with cards bearing numbers or other designations,

(II) in which the holder of the card covers such numbers or designations when objects, similarly numbered or designated, are drawn or electronically determined, and

(III) in which the game is won by the first person covering a previously designated arrangement of numbers or designations on such cards, including pull-tabs, lotto, punch boards, tip jars, instant bingo, and other such games similar to bingo, and

(ii) card games that -

(I) are explicitly authorized by the laws of the State, or

(II) are not explicitly prohibited by the laws of the State and are played at any location in the State, but only if such card games are played in conformity with those laws and regulations (if any) of the State regarding hours or periods of operation of such card games or limitations on wagers or pot sizes in such card games.

(B) The term "class II gaming" does not include -

(i) any banking card games, including baccarat, chemin de fer, or blackjack (21), or

(ii) electronic or electromechanical facsimiles of any game of chance or slot machines of any kind.

(8) The term "class III gaming" means all forms of gaming that are not class I gaming or class II gaming.

§ 2710. Tribal gaming ordinances

(b)(1) An Indian tribe may engage in, or license and regulate, class II gaming on Indian lands within such tribe's jurisdiction, if -

(A) such Indian gaming is located within a State that permits such gaming for any purpose by any person, organization or entity

(d)(1) Class III gaming activities shall be lawful on Indian lands only if such activities are -

(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 under paragraph (3) that is in effect.

(3) (A) Any Indian tribe having jurisdiction over the Indian lands upon which a class III gaming activity is being conducted, or is to be conducted, shall request the State in which such lands are located to enter into negotiations for the purpose of entering into a Tribal-State compact governing the conduct of gaming activities. Upon receiving such a request, the State shall negotiate with the Indian tribe in good faith to enter into such a compact.

(B) Any State and any Indian tribe may enter into a Tribal-State compact governing gaming activities on the Indian lands of the Indian tribe, but such compact shall take effect only when notice of approval by the Secretary of such compact has been published by the Secretary in the Federal Register.

(C) Any Tribal-State compact negotiated under subparagraph (A) may include provisions relating to -

(i) the application of the criminal and civil laws and regulations of the Indian tribe or the State that are directly related to, and necessary for, the licensing and regulation of such activities;

(ii) the allocation of criminal and civil jurisdiction between the State and the Indian tribe necessary for the enforcement of such laws and regulations;

(iii) the assessment by the State of such activities in such amounts as are necessary to defray the costs of regulating such activity;

(iv) taxation by the Indian tribe of such activity in amounts comparable to amounts assessed by the State for comparable activities;

(v) remedies for breach of contract;

(vi) standards for the operation of such activity and maintenance of the gaming facility, including licensing; and

(vii) any other subjects that are directly related to the operation of gaming activities.

Effective date of section:

Act Apr. 23, 1988, P. L. 100-297, Title VI, Part D, § 6303, 102 Stat. 431, which appears as 20 USCS § 2701 note, provides that this section is effective July 1, 1988.

Amendments:

1988, Act Sept. 9, 1988, in para. (4), substituted subpara. (A) for one which read:

"a member of an Indian tribe, band, or other organized group of Indians (as defined by the Indian tribe, band, or other organized group), including those Indian tribes, bands, or groups terminated since 1940 and those recognized by the State in which they reside", in para. (5), in subpara. (A), substituted "Except as provided in subparagraph (B), the" for "The", and substituted "1471(12)" for "198(a)(10)" and "2391(12)" for "2354(a)(10)", in subpara. (B), in the introductory matter, substituted

"For purposes of the formula grant of subpart 1 (except for sections 5314(b)(2)(B)(ii) and 5315(c)), the term 'local educational agency' includes—" for

"The term 'local educational agency', for purposes of subpart 1 (except for sections 5314(b)(2)(B)(ii) and 5315(c)(2)) includes—"

and, in cl. (ii), substituted "educational" for "education".

Other provisions:

Application of section. For the application of this section, see Act Apr. 23, 1988, P. L. 100-297, Title VI, Part D, § 6303, 102 Stat. 431, which appears as 20 USCS § 2701 note.

CODE OF FEDERAL REGULATIONS

Add:

24 CFR Parts 252, 253, 263.

CHAPTER 29. INDIAN GAMING REGULATION

Section

- 2701. Findings
- 2702. Declaration of policy
- 2703. Definitions
- 2704. National Indian Gaming Commission
- 2705. Powers of the Chairman
- 2706. Powers of the Commission
- 2707. Commission staffing
- 2708. Commission: access to information
- 2709. Interim authority to regulate gaming
- 2710. Tribal gaming ordinances
- 2711. Management contracts
- 2712. Review of existing ordinances and contracts
- 2713. Civil penalties
- 2714. Judicial review
- 2715. Subpoena and deposition authority
- 2716. Investigative powers
- 2717. Commission funding
- 2717a. Availability of fees for Commission expenditures
- 2718. Authorization of appropriations
- 2719. Gaming on lands acquired after October 17, 1988
- 2720. Dissemination of information
- 2721. Severability

§ 2701. Findings

The Congress finds that—

- (1) numerous Indian tribes have become engaged in or have licensed gaming activities on Indian lands as a means of generating tribal governmental revenue;
 - (2) Federal courts have held that section 2103 of the Revised Statutes (25 U.S.C. 31) requires Secretarial review of management contracts dealing with Indian gaming, but does not provide standards for approval of such contracts;
 - (3) existing Federal law does not provide clear standards or regulations for the conduct of gaming on Indian lands;
 - (4) a principal goal of Federal Indian policy is to promote tribal economic development, tribal self-sufficiency, and strong tribal government; and
 - (5) Indian tribes have the exclusive right to regulate gaming activity on Indian lands if the gaming activity is not specifically prohibited by Federal law and is conducted within a State which does not, as a matter of criminal law and public policy, prohibit such gaming activity.
- (Oct. 17, 1988, P. L. 100-297, § 2, 102 Stat. 2467.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Short title:

Act Oct. 17, 1988, P. L. 100-297, § 1, 102 Stat. 2467, provides: "This Act may be cited as the 'Indian Gaming Regulatory Act'."

INDIAN GAMING

Law Review Ar

Sautoni, The In

Rev 387, Febru

1988, 21, 21-22

25 USCS §§ 2701 et

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§ 2702. Declaration of

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References in text:

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§ 2703. Definitions

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(3) The term "Comm

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(5) The term "Indian

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(B) is recognized as

(6) The term "class I

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or celebrations.

RESEARCH GUIDE

Law Review Articles

Santoni, The Indian Gaming Regulatory Act: how did we get here? Where are we going? 26 Creighton L Rev 387, February, 1993.

INTERPRETIVE NOTES AND DECISIONS

25 USCS §§ 2701 et seq. do not act together with 18 USCS § 1166 to pre-empt or repeal 18 USCS § 1955. United States v Cook (1991, CA2, NY) 922 F2d 1026.

Indian Gaming Regulatory Act (25 USCS §§ 2701-2721) bars federal courts from enjoining Indian Bingo by application of state law through Assimilative Crimes Act (18 USCS § 13). United Keetoowah Band of Cherokee Indians v Oklahoma (1991, CA10 Okla) 927 F2d 1170.

Indian Gaming Regulatory Act (25 USCS § 2701 et seq.) does not force states to compact with Indian tribes regarding Indian gaming and does not violate tenth amendment. Cheyenne River Sioux Tribe v South Dakota (1993, CA8 SD) 3 F3d 773.

Indian Gaming Regulatory Act (25 USCS §§ 2701 et seq.) survives constitutional challenge from tribes where Act regulates gaming on tribal land, because Congress holds virtually unlimited power over Indian tribes and exercised its plenary power reasonably in this instance in establishing tribal-state compact process to balance need for regulation against tribal interest in self-government. Red Lake Band of Chippewa Indians v Swimmer (1990, DC Dist Col) 740 F Supp 9.

Contract dispute between non-Indians operating gaming establishment on reservation pursuant to gaming license and ordinances established by tribe will be stayed pending

tribal court action, even though federal jurisdiction exists under 25 USCS §§ 31, 2701 et seq. and 28 USCS § 1331, because abstention is appropriate in furtherance of long-standing federal policy of encouraging tribal self-government. Tom's Amusement Co. v Cuthbertson (1993, WD NC) 816 F Supp 403.

For purposes of rule of statutory construction that more-specific statute prevails over more general statute when they cannot be reconciled, Rhode Island Indian Claims Settlement Act (25 USCS §§ 1701 et seq.) is general statute, and Indian Gaming Regulatory Act (25 USCS §§ 2701 et seq.) is specific statute. Rhode Island v Narragansett Tribe of Indians (1993, DC RI) 316 F Supp 796.

Wisconsin licensee violated 18 USCS § 1304 by using commercials which advertised "Vegas style games" on Saksagon Indian reservation in Wisconsin, because "Vegas style games" refers to both Class II and III games (whereas "Vegas style entertainment" refers only to Class II gaming), and Indian Gaming Regulatory Act (25 USCS §§ 2701 et seq.), which permits advertisement of Class II games, only permits advertisement of Class III games if there is tribal-state compact in effect (no such compact was in effect in Wisconsin). Re Liability of WTMJ, Inc., FCC DA93-746 (adopted 6/21/93).

§ 2702. Declaration of policy

The purpose of this Act is—

- (1) to provide a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments;
- (2) to provide a statutory basis for the regulation of gaming by an Indian tribe adequate to shield it from organized crime and other corrupting influences, to ensure that the Indian tribe is the primary beneficiary of the gaming operation, and to assure that gaming is conducted fairly and honestly by both the operator and players; and
- (3) to declare that the establishment of independent Federal regulatory authority for gaming on Indian lands, the establishment of Federal standards for gaming on Indian lands, and the establishment of a National Indian Gaming Commission are necessary to meet congressional concerns regarding gaming and to protect such gaming as a means of generating tribal revenue.

(Oct. 17, 1988, P. L. 100-497, § 3, 102 Stat. 2467.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text

"This Act", referred to in this section, is Act Oct. 17, 1988, P. L. 100-497, 102 Stat. 2467, popularly known as the Indian Gaming Regulatory Act, which appears generally as 25 USCS §§ 2701 et seq. For full classification of such Act, consult USCS Tables volumes.

§ 2703. Definitions

For purposes of this Act—

- (1) The term "Attorney General" means the Attorney General of the United States.
- (2) The term "Chairman" means the Chairman of the National Indian Gaming Commission.
- (3) The term "Commission" means the National Indian Gaming Commission established pursuant to section 5 of this Act (25 USCS § 2704).
- (4) The term "Indian lands" means—
 - (A) all lands within the limits of any Indian reservation; and
 - (B) any lands title to which is either held in trust by the United States for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to restriction by the United States against alienation and over which an Indian tribe exercises governmental power.
- (5) The term "Indian tribe" means any Indian tribe, band, nation, or other organized group or community of Indians which—
 - (A) is recognized as eligible by the Secretary for the special programs and services provided by the United States to Indians because of their status as Indians, and
 - (B) is recognized as possessing powers of self-government.
- (6) The term "class I gaming" means 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.

(7)(A) The term "class II gaming" means—

(i) the game of chance commonly known as bingo (whether or not electronic, computer, or other technologic aids are used in connection therewith)—

(I) which is played for prizes, including monetary prizes, with cards bearing numbers or other designations,

(II) in which the holder of the card covers such numbers or designations when objects, similarly numbered or designated, are drawn or electronically determined, and

(III) in which the game is won by the first person covering a previously designated arrangement of numbers or designations on such cards, including (if played in the same location) pull-tabs, lotto, punch boards, tip jars, instant bingo, and other games similar to bingo, and

(ii) card games that—

(I) are explicitly authorized by the laws of the State, or

(II) are not explicitly prohibited by the laws of the State and are played at any location in the State, but only if such card games are played in conformity with those laws and regulations (if any) of the State regarding hours or periods of operation of such card games or limitations on wagers or pot sizes in such card games.

(B) The term "class II gaming" does not include—

(i) any banking card games, including baccarat, chemin de fer, or blackjack (21), or

(ii) electronic or electromechanical facsimiles of any game of chance or slot machines of any kind.

(C) Notwithstanding any other provision of this paragraph, the term "class II gaming" includes those card games played in the State of Michigan, the State of North Dakota, the State of South Dakota, or the State of Washington, that were actually operated in such State by an Indian tribe on or before May 1, 1988, but only to the extent of the nature and scope of the card games that were actually operated by an Indian tribe in such State on or before such date, as determined by the Chairman.

(D) Notwithstanding any other provision of this paragraph, the term "class II gaming" includes, during the 1-year period beginning on the date of enactment of this Act (enacted Oct. 17, 1988), any gaming described in subparagraph (B)(ii) that was legally operated on Indian lands on or before May 1, 1988, if the Indian tribe having jurisdiction over the lands on which such gaming was operated requests the State, by no later than the date that is 30 days after the date of enactment of this Act (enacted Oct. 17, 1988), to negotiate a Tribal-State compact under section 11(d)(3).

(E) Notwithstanding any other provision of this paragraph, the term "class II gaming" includes, during the 1-year period beginning on the date of enactment of this subparagraph, any gaming described in subparagraph (B)(ii) that was legally operated on Indian lands in the State of Wisconsin on or before May 1, 1988, if the Indian tribe having jurisdiction over the lands on which such gaming was operated requested the State, by no later than November 16, 1988, to negotiate a Tribal-State compact under section 11(d)(3) of the Indian Gaming Regulatory Act (25 U.S.C. 2710(d)(3)).

(F) If, during the 1-year period described in subparagraph (E), there is a final judicial determination that the gaming described in subparagraph (E) is not legal as a matter of State law, then such gaming on such Indian land shall cease to operate on the date next following the date of such judicial decision.

(8) The term "class III gaming" means all forms of gaming that are not class I gaming or class II gaming.

(9) The term "net revenues" means gross revenues of an Indian gaming activity less amounts paid out as, or paid for, prizes and total operating expenses, excluding management fees.

(10) The term "Secretary" means the Secretary of the Interior.

(Oct. 17, 1988, P. L. 100-497, § 4, 102 Stat. 2467; Dec. 17, 1991, P. L. 102-233, § 2(a), 105 Stat. 1908; Oct. 24, 1992, P. L. 102-497, § 16, 106 Stat. 3261.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text.

"This Act", referred to in this section, is Act Oct. 17, 1988; P. L. 100-497, 102 Stat. 2467, popularly known as the Indian Gaming Regulatory Act, which appears generally as 25 USCS §§ 2701 et seq. For full classification of such Act, consult USCS Tables volumes.

Amendments

1991. Act Dec. 17, 1991, in para. (7), added subparas. (E) and (F).

1992. Act Oct. 24, 1992, in para. (7)(E), deleted "or Montana" after "Wisconsin".

Other provisions

Definition of "Class II gaming" as including certain types of gaming legally operated in Minnesota on Indian lands. Act Oct. 23, 1989, P. L. 101-121, Title I, § 118, 103 Stat. 722, provides: "Notwithstanding any other provision of law, the term 'Class II gaming' in Public Law 100-497 [25 USCS §§ 2701 et seq., generally; for full classification consult USCS Tables volumes], for any Indian tribe located in the State of Minnesota, includes, during the period commencing on the date of enactment of this Act and continuing for 365 days from that date, any gaming described in section 47(B)(ii) of Public Law 100-497 [para. (7)(B)(ii) of this section] that was legally operated on Indian lands on or before May 1, 1988, if the Indian tribe having jurisdiction [jurisdiction] over the lands on which such gaming was operated, requested the State of Minnesota, no later than 30 days after the date of enactment of Public Law 100-497 [enacted Oct. 17, 1988], to negotiate a tribal-state compact pursuant to section 11(d)(3) of Public Law 100-497 [25 USCS § 2710(d)(3)]."

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Class II gaming, defined: Act May 24, 1990, P. L. 101-501, § 6, 104 Stat. 209, provides: "Notwithstanding any other provision of law, the term 'class II gaming' includes, for purposes of applying Public Law 100-497 (amending this section, among other things, for full classification, consult USCS Tables volumes) with respect to any Indian tribe located in the State of Wisconsin or the State of Montana, during the 1-year period beginning on the date of enactment of this Act, any gaming described in section 4(7)(B)(ii) of Public Law 100-497 (para. (7)(B)(ii) of this section) that was legally operated on Indian lands on or before May 1, 1988, if the Indian tribe having jurisdiction over the lands on which such gaming was operated made a request, by no later than November 16, 1988, to the State in which such gaming is operated to negotiate a Tribal-State compact under section 11(d)(3) of Public Law 100-497 (25 USCS § 2710(d)(3))."

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INTERPRETIVE NOTES AND DECISIONS

Where blackjack operation run by tribe existed prior to May 1, 1988, but was subsequently altered to increase number of tables and to expand hours of operation, tribe did not alter nature and scope of its cardgame, and therefore "grandfather" provision accords class II treatment to tribe's blackjack gaming, and as such, game need not comply with South Dakota law on wager and pot limits. United States v. Sisseton-Wapeton Sioux Tribe (1990, CA8 SD) 397 F.2d 358

One year grace period provided by 25 USCS § 2703(7)(D) does not extend to operation of slot machines where such was illegal under both state and federal law. United States v. Cook (1991, CA2 NY) 922 F.2d 1025.

"Pick Six" electronic gambling device is not Class II gaming device and is therefore not exempt from requirement of compact between tribe and state. Spokane Indian Tribe v. United States (1992, CA9 Wash) 972 F.2d 1090, 92 C.O.S. 6985, 32 Daily Journal D.A.R. 11211.

To qualify as "Indian lands," land must either be within Indian reservation or be trust or restricted land over which Indian tribe exercises governmental power. Cheyenne River Sioux Tribe v. South Dakota (1993, CA8 SD) 1 F.3d 273.

Lottery games offered by Indian tribe are "class III" games lawful only when run in conformance with tribal-state compact, where "Big Green" and "Casin-3" are large-stake games of chance entered from multiple locations throughout reservation, because language, structure, and legislative history of 25 USCS § 2703(7)(A)(i) indicate that such games are not encompassed by word "lotto" in "class II" definition intended to include only traditional bingo and bingo-type games. Oneida Tribe of Indians v. Wisconsin (1990, WD Wis) 742 F. Supp. 1033.

Challenge to National Indian Gaming Commission's determination that keno is Class III gaming that tribes may only offer pursuant to tribal-state compact must fail, despite similarities in basic nature and play of keno and Class II bingo, as well as historical linkage between games, because Commission's determination that Congress saw keno as "casino" game and intended to place casino games in Class III is permissible construction of 25 USCS §§ 2703(7) and (8). Shakopee Mdewakanton Sioux Community v. Hope (1992, DC Minn) 798 F. Supp. 1399.

For purposes of 25 USCS §§ 2703(4) and 2710(d)(3)(A), Narragansett Tribe "exercises governmental power" and possesses "jurisdiction" over settlement lands in Charlestown, Rhode Island; therefore, Indian Gaming Regulatory Act (25 USCS §§ 2701 et seq.) is applicable to settlement lands. Rhode Island v. Narragansett Tribe of Indians (1993, DC RI) 316 F. Supp. 796.

Indian bands' arguments for inclusion of video pull-tab games as class II gaming under Indian Gaming Regulatory Act (25 USCS §§ 2701 et seq.) must fail, where games use computerized opportunities in finite group or "deal" comprised of pre-determined mix of winning and losing opportunities which, when purchased by player, are displayed and its symbols revealed on video screen, because such games are precisely sort of "electronic facemiles" Congress specifically excluded from class II gaming under § 2703(7)(B)(ii). Cabazon Band of Mission Indians v. National Indian Gaming Comm'n (1993, DC Dist Col) 327 F. Supp. 26, motion den (DC Dist Col) 1993 US Dist LEXIS 934.

§ 2704. National Indian Gaming Commission

(a) There is established within the Department of the Interior a Commission to be known as the National Indian Gaming Commission.

(b)(1) The Commission shall be composed of three full-time members who shall be appointed as follows:

(A) a Chairman, who shall be appointed by the President with the advice and consent of the Senate; and

(B) two associate members who shall be appointed by the Secretary of the Interior.

(2)(A) The Attorney General shall conduct a background investigation on any person considered for appointment to the Commission.

(B) The Secretary shall publish in the Federal Register the name and other information the Secretary deems pertinent regarding a nominee for membership on the Commission and shall allow a period of not less than thirty days for receipt of public comment.

(3) Not more than two members of the Commission shall be of the same political party. At least two members of the Commission shall be enrolled members of any Indian tribe.

(4)(A) Except as provided in subparagraph (B), the term of office of the members of the Commission shall be three years.

(B) Of the initial members of the Commission—

(i) two members, including the Chairman, shall have a term of office of three years; and

(ii) one member shall have a term of office of one year.

(5) No individual shall be eligible for any appointment to, or to continue service on, the Commission, who—

(A) has been convicted of a felony or gaming offense;

(B) has any financial interest in, or management responsibility for, any gaming activity; or

(C) has a financial interest in, or management responsibility for, any management contract approved pursuant to section 12 of this Act (25 USCS § 2711).

(6) A Commissioner may only be removed from office before the expiration of the term of office of the member by the President (or, in the case of associate member, by the Secretary) for neglect of duty, or malfeasance in office, or for other good cause shown.

(c) Vacancies occurring on the Commission shall be filled in the same manner as the original appointment. A member may serve after the expiration of his term of office until his successor has been appointed, unless the member has been removed for cause under subsection (b)(6).

(d) Two members of the Commission, at least one of which is the Chairman or Vice Chairman, shall constitute a quorum.

(e) The Commission shall select, by majority vote, one of the members of the Commission to serve as Vice Chairman. The Vice Chairman shall serve as Chairman during meetings of the Commission in the absence of the Chairman.

(f) The Commission shall meet at the call of the Chairman or a majority of its members, but shall meet at least once every 4 months.

(g)(1) The Chairman of the Commission shall be paid at a rate equal to that of level IV of the Executive Schedule under section 5315 of title 5, United States Code.

(2) The associate members of the Commission shall each be paid at a rate equal to that of level V of the Executive Schedule under section 5316 of title 5, United States Code.

(3) All members of the Commission shall be reimbursed in accordance with title 5, United States Code, for travel, subsistence, and other necessary expenses incurred by them in the performance of their duties.

(Oct. 17, 1988, P. L. 100-497, § 5, 102 Stat. 2469.)

§ 2705. Powers of the Chairman

(a) The Chairman, on behalf of the Commission, shall have power, subject to an appeal to the Commission, to—

(1) issue orders of temporary closure of gaming activities as provided in section 14(b) [25 USCS § 2713(b)];

(2) levy and collect civil fines as provided in section 14(a) [25 USCS § 2713(a)];

(3) approve tribal ordinances or resolutions regulating class II gaming and class III gaming as provided in section 11 [25 USCS § 2710]; and

(4) approve management contracts for class II gaming and class III gaming as provided in sections 11(d)(9) and 12 [25 USCS §§ 2710(d)(9), 2711].

(b) The Chairman shall have such other powers as may be delegated by the Commission.

(Oct. 17, 1988, P. L. 100-497, § 6, 102 Stat. 2470.)

§ 2706. Powers of the Commission

(a) The Commission shall have the power, not subject to delegation—

(1) upon the recommendation of the Chairman, to approve the annual budget of the Commission as provided in section 18 [25 USCS § 2717];

(2) to adopt regulations for the assessment and collection of civil fines as provided in section 14(a) [25 USCS § 2713(a)];

(3) by an affirmative vote of not less than 2 members, to establish the rate of fees as provided in section 18 [25 USCS § 2717];

(4) by an affirmative vote of not less than 2 members, to authorize the Chairman to issue subpoenas as provided in section 16 [25 USCS § 2715]; and

(5) by an affirmative vote of not less than 2 members and after a full hearing, to make permanent a temporary order of the Chairman closing a gaming activity as provided in section 14(b)(2) [25 USCS § 2713(b)(2)].

(b) The Commission—

(1) shall monitor class II gaming conducted on Indian lands on a continuing basis;

(2) shall inspect and examine all premises located on Indian lands on which class II gaming is conducted;

(3) shall conduct or cause to be conducted such background investigations as may be necessary;

(4) may demand access to and inspect, examine, photocopy, and audit all papers, books, and records respecting gross revenues of class II gaming conducted on Indian lands and any other matters necessary to carry out the duties of the Commission under this Act;

(5) may use the United States mail in the same manner and under the same conditions as any department or agency of the United States;

(6) may procure supplies, services, and property by contract in accordance with applicable Federal laws and regulations;

(7) may enter into contracts with Federal, State, tribal and private entities for activities necessary to the discharge of the duties of the Commission and, to the extent feasible, contract the enforcement of the Commission's regulations with the Indian tribes;

(8) may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Commission deems appropriate;

(9) may administer oaths or affirmations to witnesses appearing before the Commission; and

(10) shall promulgate such regulations and guidelines as it deems appropriate to implement the provisions of this Act.

(c) The Commission shall submit a report with minority views, if any, to the Congress on December 31, 1989, and every two years thereafter. The report shall include information on—

(1) whether the associate commissioners should continue as full or part-time officials;

(2) funding, including income and expenses, of the Commission;

(3) recommendations for amendments to the Act; and

(4) any other matter considered appropriate by the Commission.

(Oct. 17, 1988, P. L. 100-497, § 7, 102 Stat. 2470.)

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INDIAN GAMING REGULATION

25 USCS § 2710

Members of the Commission to serve as Vice
Presidents of the Commission in the absence
of any of its members, but shall meet at
least once a month at that of level IV of the Executive
Schedule at a rate equal to that of level V of
the Executive Schedule.
Members shall be appointed in accordance with title 5, United States Code,
relating to the performance of their
duties.
The Commission shall have the authority to
refer to an appeal to the Commission,
as provided in section 14(b) (25 USCS
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Lands on which class II gaming is
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Such as appropriate to implement the
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to the Congress on December 31,
of each year—
part-time officials;

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text

"This Act", referred to in this section, is Act Oct. 17, 1988, P. L. 100-497, 102 Stat. 2467, popularly known as the Indian Gaming Regulatory Act, which appears generally as 25 USCS §§ 2701 et seq. For full classification of such Act, consult USCS Tables volumes.

§ 2707. Commission staffing

- (a) The Chairman shall appoint a General Counsel to the Commission who shall be paid at the annual rate of basic pay payable for GS-18 of the General Schedule under section 5332 of title 5, United States Code.
- (b) The Chairman shall appoint and supervise other staff of the Commission without regard to the provisions of title 5, United States Code, governing appointments in the competitive service. Such staff shall be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title (5 USCS §§ 5101 et seq., 5351 et seq.) relating to classification and General Schedule pay rates, except that no individual so appointed may receive pay in excess of the annual rate of basic pay payable for GS-17 of the General Schedule under section 5332 of that title.
- (c) The Chairman may procure temporary and intermittent services under section 5109(b) of title 5, United States Code, but at rates for individuals not to exceed the daily equivalent of the maximum annual rate of basic pay payable for GS-18 of the General Schedule.
- (d) Upon the request of the Chairman, the head of any Federal agency is authorized to detail any of the personnel of such agency to the Commission to assist the Commission in carrying out its duties under this Act, unless otherwise prohibited by law.
- (e) The Secretary or Administrator of General Services shall provide to the Commission on a reimbursable basis such administrative support services as the Commission may request.
(Oct. 17, 1988, P. L. 100-497, § 3, 102 Stat. 2471.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text

"This Act", referred to in this section, is Act Oct. 17, 1988, P. L. 100-497, 102 Stat. 2467, popularly known as the Indian Gaming Regulatory Act, which appears generally as 25 USCS §§ 2701 et seq. For full classification of such Act, consult USCS Tables volumes.

§ 2708. Commission; access to information

The Commission may secure from any department or agency of the United States information necessary to enable it to carry out this Act. Upon the request of the Chairman, the head of such department or agency shall furnish such information to the Commission, unless otherwise prohibited by law.
(Oct. 17, 1988, P. L. 100-497, § 9, 102 Stat. 2472.)

§ 2709. Interim authority to regulate gaming

Notwithstanding any other provision of this Act, the Secretary shall continue to exercise those authorities vested in the Secretary on the day before the date of enactment of this Act (enacted Oct. 17, 1988) relating to supervision of Indian gaming until such time as the Commission is organized and prescribes regulations. The Secretary shall provide staff and support assistance to facilitate an orderly transition to regulation of Indian gaming by the Commission.
(Oct. 17, 1988, P. L. 100-497, § 10, 102 Stat. 2472.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text

"This Act", referred to in this section, is Act Oct. 17, 1988, P. L. 100-497, 102 Stat. 2467, popularly known as the Indian Gaming Regulatory Act, which appears generally as 25 USCS §§ 2701 et seq. For full classification of such Act, consult USCS Tables volumes.

§ 2710. Tribal gaming ordinances

- (a)(1) Class I gaming on Indian lands is within the exclusive jurisdiction of the Indian tribes and shall not be subject to the provisions of this Act.
- (2) Any class II gaming on Indian lands shall continue to be within the jurisdiction of the Indian tribes, but shall be subject to the provisions of this Act.
- (b)(1) An Indian tribe may engage in, or license and regulate, class II gaming on Indian lands within such tribe's jurisdiction, if—
- (A) such Indian gaming is located within a State that permits such gaming for any purpose by any person, organization or entity (and such gaming is not otherwise specifically prohibited on Indian lands by Federal law), and
- (B) the governing body of the Indian tribe adopts an ordinance or resolution which is approved by the Chairman.
- A separate license issued by the Indian tribe shall be required for each place, facility, or location on Indian lands at which class II gaming is conducted.
- (2) The Chairman shall approve any tribal ordinance or resolution concerning the conduct, or regulation of class II gaming on the Indian lands within the tribe's jurisdiction if such ordinance or resolution provides that—
- (A) except as provided in paragraph (4), the Indian tribe will have the sole proprietary interest and responsibility for the conduct of any gaming activity;
- (B) net revenues from any tribal gaming are not to be used for purposes other than—
- (i) to fund tribal government operations or programs;

- (ii) to provide for the general welfare of the Indian tribe and its members;
 - (iii) to promote tribal economic development;
 - (iv) to donate to charitable organizations; or
 - (v) to help fund operations of local government agencies;
- (C) annual outside audits of the gaming, which may be encompassed within existing independent tribal audit systems, will be provided by the Indian tribe to the Commission;
- (D) all contracts for supplies, services, or concessions for a contract amount in excess of \$25,000 annually (except contracts for professional legal or accounting services) relating to such gaming, shall be subject to such independent audits;
- (E) the construction and maintenance of the gaming facility, and the operation of that gaming, is conducted in a manner which adequately protects the environment and the public health and safety; and
- (F) there is an adequate system which—
- (i) ensures that background investigations are conducted on the primary management officials and key employees of the gaming enterprise and that oversight of such officials and their management is conducted on an ongoing basis; and
 - (ii) includes—
 - (I) tribal licenses for primary management officials and key employees of the gaming enterprise with prompt notification to the Commission of the issuance of such licenses;
 - (II) a standard whereby any person whose prior activities, criminal record, if any, or reputation, habits and associations pose a threat to the public interest or to the effective regulation of gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices and methods and activities in the conduct of gaming shall not be eligible for employment; and
 - (III) notification by the Indian tribe to the Commission of the results of such background check before the issuance of any of such licenses.
- (3) Net revenues from any class II gaming activities conducted or licensed by any Indian tribe may be used to make per capita payments to members of the Indian tribe only if—
- (A) the Indian tribe has prepared a plan to allocate revenues to uses authorized by paragraph (2)(B);
 - (B) the plan is approved by the Secretary as adequate, particularly with respect to uses described in clause (i) or (iii) of paragraph (2)(B);
 - (C) the interests of minors and other legally incompetent persons who are entitled to receive any of the per capita payments are protected and preserved and the per capita payments are disbursed to the parents or legal guardian of such minors or legal incompetents in such amounts as may be necessary for the health, education, or welfare, of the minor or other legally incompetent person under a plan approved by the Secretary and the governing body of the Indian tribe; and
 - (D) the per capita payments are subject to Federal taxation and tribes notify members of such tax liability when payments are made.
- (4)(A) A tribal ordinance or resolution may provide for the licensing or regulation of class II gaming activities owned by any person or entity other than the Indian tribe and conducted on Indian lands, only if the tribal licensing requirements include the requirements described in the subclauses of subparagraph (B)(i) and are at least as restrictive as those established by State law governing similar gaming within the jurisdiction of the State within which such Indian lands are located. No person or entity, other than the Indian tribe, shall be eligible to receive a tribal license to own a class II gaming activity conducted on Indian lands within the jurisdiction of the Indian tribe if such person or entity would not be eligible to receive a State license to conduct the same activity within the jurisdiction of the State.
- (B)(i) The provisions of subparagraph (A) of this paragraph and the provisions of subparagraphs (A) and (B) of paragraph (2) shall not bar the continued operation of an individually owned class II gaming operation that was operating on September 1, 1986, if—
- (I) such gaming operation is licensed and regulated by an Indian tribe pursuant to an ordinance reviewed and approved by the Commission in accordance with section 13 of the Act (25 USCS § 2712);
 - (II) income to the Indian tribe from such gaming is used only for the purposes described in paragraph (2)(B) of this subsection;
 - (III) not less than 60 percent of the net revenues is income to the Indian tribe; and
 - (IV) the owner of such gaming operation pays an appropriate assessment to the National Indian Gaming Commission under section 13(a)(1) (25 USCS § 2717(a)(1)) for regulation of such gaming.
- (ii) The exemption from the application of this subsection provided under this subparagraph may not be transferred to any person or entity and shall remain in effect only so long as the gaming activity remains within the same nature and scope as operated on the date of enactment of this Act [enacted Oct. 17, 1988].
- (iii) Within sixty days of the date of enactment of this Act [enacted Oct. 17, 1988], the Secretary shall prepare a list of each individually owned gaming operation to which clause (i) applies and shall publish such list in the Federal Register.
- (c)(1) The Commission may consult with appropriate law enforcement officials concerning gaming licenses issued by an Indian tribe and shall have thirty days to notify the Indian tribe of any objections to issuance of such license.

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(2) If, after the issuance of a gaming license by an Indian tribe, reliable information is received from the Commission indicating that a primary management official or key employee does not meet the standard established under subsection (b)(2)(F)(ii)(II), the Indian tribe shall suspend such license and, after notice and hearing, may revoke such license.

(3) Any Indian tribe which operates a class II gaming activity and which—
 (A) has continuously conducted such activity for a period of not less than three years, including at least one year after the date of the enactment of this Act [enacted Oct. 17, 1988]; and

(B) has otherwise complied with the provisions of this section may petition the Commission for a certificate of self-regulation.

(4) The Commission shall issue a certificate of self-regulation if it determines from available information, and after a hearing if requested by the tribe; that the tribe has—

(A) conducted its gaming activity in a manner which—

- (i) has resulted in an effective and honest accounting of all revenues;
- (ii) has resulted in a reputation for safe, fair, and honest operation of the activity; and
- (iii) has been generally free of evidence of criminal or dishonest activity;

(B) adopted and is implementing adequate systems for—

- (i) accounting for all revenues from the activity;
- (ii) investigation, licensing, and monitoring of all employees of the gaming activity; and
- (iii) investigation, enforcement and prosecution of violations of its gaming ordinance and regulations; and

(C) conducted the operation on a fiscally and economically sound basis.

(5) During any year in which a tribe has a certificate for self-regulation—

(A) the tribe shall not be subject to the provisions of paragraphs (1), (2), (3), and (4) of section 7(b) [25 USCS § 2706(b)(1)-(4)];

(B) the tribe shall continue to submit an annual independent audit as required by section 11(b)(2)(C) [25 USCS § 2710(b)(2)(C)] and shall submit to the Commission a complete resume on all employees hired and licensed by the tribe subsequent to the issuance of a certificate of self-regulation; and

(C) the Commission may not assess a fee on such activity pursuant to section 13 [25 USCS § 2717] in excess of one quarter of 1 per centum of the gross revenue.

(6) The Commission may, for just cause and after an opportunity for a hearing, remove a certificate of self-regulation by majority vote of its members.

(d)(1) Class III gaming activities shall be lawful on Indian lands only if such activities are—

(A) authorized by an ordinance or resolution that—

- (i) is adopted by the governing body of the Indian tribe having jurisdiction over such lands,
- (ii) meets the requirements of subsection (b), and
- (iii) is approved by the Chairman.

(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 under paragraph (3) that is in effect.

(2)(A) If any Indian tribe proposes to engage in, or to authorize any person or entity to engage in, a class III gaming activity on Indian lands of the Indian tribe, the governing body of the Indian tribe shall adopt and submit to the Chairman an ordinance or resolution that meets the requirements of subsection (b).

(B) The Chairman shall approve any ordinance or resolution described in subparagraph (A), unless the Chairman specifically determines that—

- (i) the ordinance or resolution was not adopted in compliance with the governing documents of the Indian tribe, or,
- (ii) the tribal governing body was significantly and unduly influenced in the adoption of such ordinance or resolution by any person identified in section 12(e)(1)(D) [25 USCS § 2711(e)(1)(D)].

Upon the approval of such an ordinance or resolution, the Chairman shall publish in the Federal Register such ordinance or resolution and the order of approval.

(C) Effective with the publication under subparagraph (B) of an ordinance or resolution adopted by the governing body of an Indian tribe that has been approved by the Chairman under subparagraph (B), class III gaming activity on the Indian lands of the Indian tribe shall be fully subject to the terms and conditions of the Tribal-State compact entered into under paragraph (3) by the Indian tribe that is in effect.

(D)(i) The governing body of an Indian tribe, in its sole discretion and without the approval of the Chairman, may adopt an ordinance or resolution revoking any prior ordinance or resolution that authorized class III gaming on the Indian lands of the Indian tribe. Such revocation shall render class III gaming illegal on the Indian lands of such Indian tribe.

(ii) The Indian tribe shall submit any revocation ordinance or resolution described in clause (i) to the Chairman. The Chairman shall publish such ordinance or resolution in the Federal Register and the revocation provided by such ordinance or resolution shall take effect on the date of such publication.

(iii) Notwithstanding any other provision of this subsection—

- (I) any person or entity operating a class III gaming activity pursuant to this paragraph on

the date on which an ordinance or resolution described in clause (i) that revokes authorization for such class III gaming activity is published in the Federal Register may, during the 1-year period beginning on the date on which such revocation ordinance or resolution is published under clause (ii), continue to operate such activity in conformance with the Tribal-State compact entered into under paragraph (3) that is in effect, and

(II) any civil action that arises before, and any crime that is committed before, the close of such 1-year period shall not be affected by such revocation ordinance or resolution.

(3)(A) Any Indian tribe having jurisdiction over the Indian lands upon which a class III gaming activity is being conducted, or is to be conducted, shall request the State in which such lands are located to enter into negotiations for the purpose of entering into a Tribal-State compact governing the conduct of gaming activities. Upon receiving such a request, the State shall negotiate with the Indian tribe in good faith to enter into such a compact.

(B) Any State and any Indian tribe may enter into a Tribal-State compact governing gaming activities on the Indian lands of the Indian tribe, but such compact shall take effect only when notice of approval by the Secretary of such compact has been published by the Secretary in the Federal Register.

(C) Any Tribal-State compact negotiated under subparagraph (A) may include provisions relating to—

- (i) the application of the criminal and civil laws and regulations of the Indian tribe or the State that are directly related to, and necessary for, the licensing and regulation of such activity;
- (ii) the allocation of criminal and civil jurisdiction between the State and the Indian tribe necessary for the enforcement of such laws and regulations;
- (iii) the assessment by the State of such activities in such amounts as are necessary to defray the costs of regulating such activity;
- (iv) taxation by the Indian tribe of such activity in amounts comparable to amounts assessed by the State for comparable activities;
- (v) remedies for breach of contract;
- (vi) standards for the operation of such activity and maintenance of the gaming facility, including licensing; and
- (vii) any other subjects that are directly related to the operation of gaming activities.

(4) Except for any assessments that may be agreed to under paragraph (3)(C)(iii) of this subsection, nothing in this section shall be interpreted as conferring upon a State or any of its political subdivisions authority to impose any tax, fee, charge, or other assessment upon an Indian tribe or upon any other person or entity authorized by an Indian tribe to engage in a class III activity. No State may refuse to enter into the negotiations described in paragraph (3)(A) based upon the lack of authority in such State, or its political subdivisions, to impose such a tax, fee, charge, or other assessment.

(5) Nothing in this subsection shall impair the right of an Indian tribe to regulate class III gaming on its Indian lands concurrently with the State, except to the extent that such regulation is inconsistent with, or less stringent than, the State laws and regulations made applicable by any Tribal-State compact entered into by the Indian tribe under paragraph (3) that is in effect.

(6) The provisions of section 5 of the Act of January 2, 1951 (64 Stat. 1135) (15 USCS § 1175) shall not apply to any gaming conducted under a Tribal-State compact that—

- (A) is entered into under paragraph (3) by a State in which gambling devices are legal, and
- (B) is in effect.

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

- (i) any cause of action initiated by an Indian tribe arising from the failure of a State to enter into negotiations with the Indian tribe for the purpose of entering into a Tribal-State compact under paragraph (3) or to conduct such negotiations in good faith,
- (ii) any cause of action initiated by a State or Indian tribe to enjoin a class III gaming activity located on Indian lands and conducted in violation of any Tribal-State compact entered into under paragraph (3) that is in effect, and
- (iii) any cause of action initiated by the Secretary to enforce the procedures prescribed under subparagraph (B)(vii).

(B)(i) An Indian tribe may initiate a cause of action described in subparagraph (A)(i) only after the close of the 130-day period beginning on the date on which the Indian tribe requested the State to enter into negotiations under paragraph (3)(A).

(ii) In any action described in subparagraph (A)(i), upon the introduction of evidence by an Indian tribe that—

- (I) a Tribal-State compact has not been entered into under paragraph (3), and
- (II) the State did not respond to the request of the Indian tribe to negotiate such a compact or did not respond to such request in good faith,

the burden of proof shall be upon the State to prove that the State has negotiated with the Indian tribe in good faith to conclude a Tribal-State compact governing the conduct of gaming activities.

(iii) If, in any action described in subparagraph (A)(i), the court finds that the State has failed to negotiate in good faith with the Indian tribe to conclude a Tribal-State compact governing the conduct of gaming activities, the court shall order the State and the Indian Tribe to conclude such a compact within a 60-day period. In determining in such an action whether a State has negotiated in good faith, the court—

- (I) may take into account the public interest, public safety, criminality, financial integrity, and adverse economic impacts on existing gaming activities, and

use (i) that revokes authorization of a class III gaming activity on Indian lands if the State fails to negotiate such a compact governing gaming on Indian lands as provided in this section.

Such a compact governing gaming on Indian lands shall take effect only when approved by the Secretary in the Federal Register.

The compact shall include provisions relating to the Indian tribe or the State regulation of such activity.

Such provisions shall be necessary to defray the costs of the gaming facility, including the cost of the gaming activities.

Such provisions shall not be inconsistent with the provisions of this Act.

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(II) shall consider any demand by the State for direct taxation of the Indian tribe or of any Indian lands as evidence that the State has not negotiated in good faith.

(iv) If a State and an Indian tribe fail to conclude a Tribal-State compact governing the conduct of gaming activities on the Indian lands subject to the jurisdiction of such Indian tribe within the 60-day period provided in the order of a court issued under clause (iii), the Indian tribe and the State shall each submit to a mediator appointed by the court a proposed compact that represents their last best offer for a compact. The mediator shall select from the two proposed compacts the one which best comports with the terms of this Act and any other applicable Federal law and with the findings and order of the court.

(v) The mediator appointed by the court under clause (iv) shall submit to the State and the Indian tribe the compact selected by the mediator under clause (iv).

(vi) If a State consents to a proposed compact during the 60-day period beginning on the date on which the proposed compact is submitted by the mediator to the State under clause (v), the proposed compact shall be treated as a Tribal-State compact entered into under paragraph (3).

(vii) If the State does not consent during the 60-day period described in clause (vi) to a proposed compact submitted by a mediator under clause (v), the mediator shall notify the Secretary and the Secretary shall prescribe, in consultation with the Indian tribe, procedures—

(M) which are consistent with the proposed compact selected by the mediator under clause (iv), the provisions of this Act, and the relevant provisions of the laws of the State, and

(N) under which class III gaming may be conducted on the Indian lands over which the Indian tribe has jurisdiction.

(3)(A) The Secretary is authorized to approve any Tribal-State compact entered into between an Indian tribe and a State governing gaming on Indian lands of such Indian tribe.

(B) The Secretary may disapprove a compact described in subparagraph (A) only if such compact violates—

(i) any provision of this Act,

(ii) any other provision of Federal law that does not relate to jurisdiction over gaming on Indian lands, or

(iii) the trust obligations of the United States to Indians.

(C) If the Secretary does not approve or disapprove a compact described in subparagraph (A) before the date that is 45 days after the date on which the compact is submitted to the Secretary for approval, the compact shall be considered to have been approved by the Secretary, but only to the extent the compact is consistent with the provisions of this Act.

(D) The Secretary shall publish in the Federal Register notice of any Tribal-State compact that is approved, or considered to have been approved, under this paragraph.

(9) An Indian tribe may enter into a management contract for the operation of a class III gaming activity if such contract has been submitted to, and approved by, the Chairman. The Chairman's review and approval of such contract shall be governed by the provisions of subsections (b), (c), (d), (f), (g), and (h) of section 12 (25 USCS § 2711(b)-(d), (f)-(h)).

(c) For purposes of this section, by not later than the date that is 90 days after the date on which any tribal gaming ordinance or resolution is submitted to the Chairman, the Chairman shall approve such ordinance or resolution if it meets the requirements of this section. Any such ordinance or resolution not acted upon at the end of that 90-day period shall be considered to have been approved by the Chairman, but only to the extent such ordinance or resolution is consistent with the provisions of this Act.

(Oct. 17, 1988, P. L. 100-497, § 11, 102 Stat. 2472.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text

This Act, referred to in this section, is Act Oct. 17, 1988, P. L. 100-497, 102 Stat. 2467, popularly known as the Indian Gaming Regulatory Act, which appears generally as 25 USCS §§ 2701 et seq. For full classification of such Act, consult USCS Tables volumes.

INTERPRETIVE NOTES AND DECISIONS

Adoption by tribe of tribal ordinance authorizing conduct of class III gaming on reservation is not precondition to state's obligation to negotiate tribal-state compact regarding class III gaming, and therefore state is required to negotiate with tribe upon request. *Mashanockett Paquot Tribe v Connecticut* (1990, CA2 Conn) 913 F.2d 1024.

Since 25 USCS § 2710(d)(6) expressly provides for continuing application of 15 USCS § 1175, with certain exceptions, it cannot be said that 25 USCS §§ 2701 et seq. preempts or repeals 15 USCS § 1175. *United States v Cook* (1991, CA2 NY) 922 F.2d 1024.

Term "keno" as used within Indian Gaming Regulatory Act (25 USCS §§ 2701-2721) means bingo-like game and does not include lottery games which are Class III gaming activities which state may regulate or prohibit. *Onida Tribe of Indians v Wisconsin* (1991, CA7 Wis) 951 F.2d 757.

"Such gaming" language of 25 USCS § 2710(d)(1)(B) does not require state to negotiate with respect to forms of gaming it does not presently permit, and because video keno and traditional keno are not same, state where video

keno was permissible but where traditional keno was illegal did not refuse to negotiate in good faith where it would not allow traditional keno as part of tribal-state gaming compact; additionally, other language in statute expressly providing for federal jurisdiction over claims under Act is sufficient to abrogate states' eleventh amendment immunity. *Cheyenne River Sioux Tribe v South Dakota* (1993, CA8 SD) 3 F.3d 273.

Indian Gaming Regulatory Act (25 USCS §§ 2701-2721) does not operate to waive provision of Johnson Act (15 USCS § 1175) prohibiting possession or use of video lottery terminals on tribal land in Oklahoma since Oklahoma is not state in which such gambling devices are legal. *Citizen Band Potawatomi Indian Tribe v Green* (1993, CA10 Okla) 995 F.2d 179.

Indian tribe's blackjack gaming operation is improper under 25 USCS § 2710(b)(1)(A), where bet limits were as high as \$100 and state bet limit is \$5, because same operation could not be conducted by any other person in state. *Sisseton-Washpeton Sioux Tribe v United States Dept. of Justice* (1989, DC SD) 718 F. Supp. 753.

CORRECTION

THE FOLLOWING DOCUMENT(S)
HAVE BEEN REFILMED TO
ASSURE LEGIBILITY OR PAGINATION



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(c) For purposes of this section, by not later than the date that is 90 days after the date on which any tribal gaming ordinance or resolution is submitted to the Chairman, the Chairman shall approve such ordinance or resolution if it meets the requirements of this section. Any such ordinance or resolution not acted upon at the end of that 90-day period shall be considered to have been approved by the Chairman, but only to the extent such ordinance or resolution is consistent with the provisions of this Act.

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State must negotiate with tribe for purpose of formulating tribal-state compact concerning terms of operation of games of chance. Despite state's argument that tribe must pass tribal ordinance first, because 25 USCS § 2710(d)(1) sets forth 3 preconditions for class III gaming to be lawful on Indian lands but does not articulate any time sequence; making state obligated to enter compact negotiations upon mere request by tribe. *Mashanuckeet Pequot Tribe v Connecticut DC Conn* (1990, DC Conn) 737 F Supp 169.

State is required to negotiate with Indians over inclusion in tribal-state compact of any activity that includes elements of prize, chance, and consideration and that is not prohibited expressly by state constitution or law; where state is adamantly refusing Indians any right to operate slot machines, video, and casino games even though it permits state-operated lottery and parimutuel on-track betting, because state's position is inconsistent with requirement that it negotiate "in good faith" under 25 USCS § 2710(d). *Lac Du Flambeau Band of Lake Superior Chippewa Indians v Wisconsin* (1991, WD Wis) 770 F Supp 480.

Indian bank's action to compel negotiations and completion of Tribal-State compact to govern gaming activities on its land is dismissed, even though 25 USCS § 2710(d)(7)(A)(i) clearly authorizes tribal claim against state in federal court, because Congress does not have power to abrogate state's Eleventh Amendment immunity when enacting legislation pursuant to Indian Commerce Clause. *Poarch Band of Creek Indians v Alabama* (1991, SD Ala) 776 F Supp 550; later proceeding (SD Ala) 1992 US Dist LEXIS 1781.

State, but not individual officials of state gambling commission, is dismissed from suit on grounds of sovereign immunity, where Indian tribe seeks mandate ordering officials to negotiate in good faith to achieve tribal/state compact governing conduct of certain gaming activities on Indian lands in state under 25 USCS § 2710, because tribe is seeking to require state officials to comply with federal statute by method that would not require unwarranted judicial interference into executive discretion. *Spokane Tribe of Indians v Washington* (1991, ED Wash) 790 F Supp 1057.

Federal district court is without jurisdiction to order governor to negotiate compact with Indian tribe with respect to gaming activities on tribal land, where to order governor and tribe to conclude tribal-state compact, as provided by 25 USCS § 2710(d)(7)(B)(ii), would clearly be to order governor to exercise discretion, because federal court may not control discretion of state officer but may only order her to perform ministerial duties. *Poarch Band of Creek Indians v Alabama* (1992, SD Ala) 784 F Supp 1549.

State may collect license fees for simulcast horse racing from betting facilities located on Indian reservations, where state imposes uniform tax on all racing associations and fees generated are much greater than state's actual costs in monitoring wagering facilities, because although 25 USCS § 2710(d)(3)(C)(iii) prohibits direct state taxes on Indian gaming activities beyond extent necessary to cover cost of regulating gaming, act does not prohibit indirect state taxation caused by taxing non-Indian entities who contract with Indian tribes. *Cabazon Band of Mission Indians v California* (1992, ED Cal) 738 F Supp 1513.

Class III gaming will be conducted on tribal lands but court will not decide whether casino and video gaming must be included, where tribe and state have reached impasse in negotiations, because straightforward procedure supplied by 25 USCS § 2710(d) calls for mediation, followed by conduct of gaming under tribal and federal regulation if state cannot accept mediator-selected compact. *Yavapai-Prescott Indian Tribe v Arizona* (1992, DC Ariz) 796 F Supp 1292.

Indian tribes' claims against state are dismissed under Eleventh Amendment, but jurisdiction will be retained to consider amendment to name state officials as defendants, where tribes allege state has not negotiated in good faith toward reaching tribal-state gaming compact under Indian Gaming Regulatory Act (IGRA) (25 USCS §§ 2701 et seq.), because there is no implicit waiver of sovereign immunity in plan of IGRA, and IGRA jurisdictional provision at § 2710(d)(7)(B)(ii) is not clear Congressional usurpation of immunity given uncertainty of Congress's power to do so under Indian commerce clause. *Sault Ste. Marie Tribe of Chippewa Indians v Michigan* (1992, WD Mich) 800 F Supp 1484.

Indian tribe's court challenge to state's failure to con-

duct good-faith negotiations regarding certain gaming activities to be conducted on tribe's land will not be dismissed, because 25 USCS § 2710(d)(7)(A)(i), on its face, abrogates states' Eleventh Amendment immunity in this type of action; and Congress's power to abrogate is clear based on its paramount and plenary authority over Indian affairs. *Seminole Tribe of Florida v State* (1992, SD Fla) 301 F Supp 655.

Partnership is denied injunction preventing tribe from taking action to seize or assume control of bingo hall on reservation, even though tribal agency's mass denial under 25 USCS § 2710 of partnership employees' applications for licenses to work in bingo hall is found to be arbitrary and capricious, because tribal court has ordered arbitration of this dispute between tribe and partnership it agreed to let manage bingo hall, and nothing in Indian Gaming Regulatory Act (25 USCS §§ 2701 et seq.) gives court power to protect non-Indian parties who choose to invest in Indian gaming. *Tamiami Partners, Ltd. v Miccosukee Tribe of Indians* (1992, SD Fla) 303 F Supp 401.

City officials are enjoined preliminarily from interfering with casino gambling operation as permitted under tribal-state compact and 25 USCS § 2710, where compact clearly permits such gambling but purges dispute effect of tribal-city agreements purporting to make operation comply with local law and regulations that do not allow such gambling, because tribe has better than negligible likelihood of success on merits, and public interest favors continuation of casino video gaming, which supports basic community services and access to education for poverty-stricken tribal members. *Forest County Potawatomi Community v Doyle* (1992, WD Wis) 303 F Supp 1526.

Indian tribe shall make no further per capita payments of casino profits until there is approved plan in existence for such distributions, and in meantime profits should be deposited with clerk of court, where tribe has been making payments only to persons living in country—in violation of Indian Gaming Regulatory Act (25 USCS §§ 2701 et seq.), because tribal members living outside country are being harmed by operation of tribe's current distribution of profits which violates 25 USCS § 2710(b)(3). *Ross v Fleur-de-Battre Santee Sioux Tribe* (1992, DC SD) 309 F Supp 738.

State is required to enter into good-faith negotiations with Indian tribe for purposes of forming Class III Tribal-State compact pursuant to 25 USCS § 2710(d)(3), where Gaming Act (25 USCS §§ 2701-2721) and 18 USCS §§ 1166-1168 preempt earlier federal laws giving states jurisdiction over Indian lands, and where tribe exercises governmental power and has jurisdiction over its land, because Gaming Act therefore applies to tribe's settlement land and permits states to assert jurisdiction over Class III gaming only through Tribal-State compact process. *Rhode Island v Narragansett Tribe of Indians* (1993, DC RI) 316 F Supp 796.

For purposes of 25 USCS §§ 2703(4) and 2710(d)(3)(A), Narragansett Tribe "exercises governmental power" and possesses "jurisdiction" over settlement lands in Charlestown, Rhode Island; therefore, Indian Gaming Regulatory Act (25 USCS §§ 2701 et seq.) is applicable to settlement lands. *Rhode Island v Narragansett Tribe of Indians* (1993, DC RI) 316 F Supp 796.

State is denied dismissal of Indian tribe's action to force state to enter into good-faith negotiations regarding tribal-state compact to cover certain gaming activities, because Indian Gaming Regulatory Act (25 USCS §§ 2701 et seq.) abrogates states' Eleventh Amendment immunity, and Congress's power to regulate Indian commerce includes power to abrogate states' immunity. *Kickapoo Tribe of Indians v Kansas* (1993, DC Kan) 318 F Supp 1423, motion den (DC Kan) 1993 US Dist LEXIS 3148.

State's failure to reopen negotiations for establishment of gaming on Indian lands did not give tribe claim under 25 USCS § 2710, where state and tribe concluded compact giving tribe right to conduct gaming at 3 sites but not at fourth site desired by tribe, and when state failed to reopen negotiations, tribe brought action seeking to compel state to conclude compact on fourth site, because original compact appeared to be final, and tribe could have brought action before concluding compact if state was not negotiating in good faith. *Wisconsin Winnebago Nation v Thompson* (1993, WD Wis) 324 F Supp 167.

Tribal-State compact covering class III gaming on Indian lands cannot be put into effect, even though properly submitted compact was not acted upon by Interior Secretary within 45 days and should be deemed approved under

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ions regarding certain gaming act on their land will not be dis- § 2710(d)(7)(A)(i), on its face, with Amendment immunity to this Congress's power to derogate is clear and plenary authority over Indian of Florida v State (1992, SD Fla)

d injunction preventing tribe from or assume control of bingo hall on tribal agency's mass denial under membership employees' applications for go hall is found to be arbitrary and al court has ordered termination of the and partnership it agreed to let nothing in Indian Gaming Regula- 1701 et seq.) gives court power to was who choose to invest in Indian Mex. Llan v Micosukee Tribe of 303 F Supp 401.

ined preliminarily from interfering person is permitted under tribal- § 2710, where compact clearly but parties dispute effect of inbu- to make operation comply with to that do not allow such gambling, than negligible likelihood of success interest favors continuation of casino supports and community services for poverty-stricken tribal mem- Potawatomi Community v Doyle Supp 1523.

ke so further per capita payments here is approved plan in existence and in maximum profits should be court, where tribe has been making as living in county—in violation of try Act (25 USCS §§ 2701 et seq.), living outside county are being of tribe's current distribution of § 2710(b)(3). Ross v Flan- (1992, DC SD) 809 F Supp 738. enter into good-faith negotiations process of forming Class III Tribu- to 25 USCS § 2710(d)(3), where 25 §§ 2701-2721 and 13 USCS earlier federal laws giving states land, and where tribe exercises to has jurisdiction over its land, before applied to tribe's settlement to assert jurisdiction over Class III deal-State compact process. Rhode Tribe of Indians (1993, DC RI) 316

CS §§ 2703(4) and 2710(d)(3)(A), assess governmental power" and over settlement lands in Charter- before, Indian Gaming Regulatory et seq.) is applicable to settlement arrangement: Tribe of Indians (1993,

al of Indian tribe's action to force with negotiations regarding tribal- certain gaming activities, because try Act (25 USCS §§ 2701 et seq.) with Amendment immunity, and quate Indian commerce includes of immunity. Kickapoo Tribe of 3, DC Kan) 318 F Supp 1423. 993 US Dist LEXIS 3148.

ren negotiations for establishment did not give tribe claim under state and tribe concluded compact -ct gaming at 3 sites but not at be, and when state failed to reopen at union seeking to compel state fourth site, because original com- al, and tribe could have brought -compact if state was not negotiat- winnago Nation v Thomo- F Supp 167.

governing class III gaming on In- into effect, even though properly not acted upon by Interior Secre- should be deemed approved under

INDIAN GAMING REGULATION

25 USCS § 2711

25 USCS § 2710(d)(3)(C), because compact is void since state supreme court ruled that governor did not have power to sign compact. Kickapoo Tribe of Indians v Saobin (1993, DC Dist Col) 327 F Supp 37.

Indian tribe is enjoined from continuing per capita distribution plan for gambling revenues which excludes some enrolled members of tribe, where excluded members claim that exclusion violates Indian Civil Rights Act, 25 USCS § 1302(8), and tribal consortium plan was not

approved by Bureau of Indian Affairs, as required by 25 USCS § 2710(b), and gambling revenues are substantial, but tribe maintains no funds to pay judgments, and contin- ued revenues are not guaranteed, because excluded mem- bers have shown likelihood of success on merits, and may suffer substantial harm if distribution is continued. Maxam v Lower Sioux Indian Community (1993, DC Minn) 829 F Supp 277.

§ 2711. Management contracts

(a)(1) Subject to the approval of the Chairman, an Indian tribe may enter into a management contract for the operation and management of a class II gaming activity that the Indian tribe may engage in under section 11(b)(1) (25 USCS § 2710(b)(1)), but, before approving such contract, the Chairman shall require and obtain the following information:

(A) the name, address, and other additional pertinent background information on each person or entity (including individuals comprising such entity) having a direct financial interest in, or management responsibility for, such contract, and, in the case of a corporation, those individuals who serve on the board of directors of such corporation and each of its stockholders who hold (directly or indirectly) 10 percent or more of its issued and outstanding stock;

(B) a description of any previous experience that each person listed pursuant to subparagraph (A) has had with other gaming contracts with Indian tribes or with the gaming industry generally, including specifically the name and address of any licensing or regulatory agency with which such person has had a contract relating to gaming; and

(C) a complete financial statement of each person listed pursuant to subparagraph (A).

(2) Any person listed pursuant to paragraph (1)(A) shall be required to respond to such written or oral questions that the Chairman may propound in accordance with his responsibilities under this section.

(3) For purposes of this Act, any reference to the management contract described in paragraph (1) shall be considered to include all collateral agreements to such contract that relate to the gaming activity.

(b) The Chairman may approve any management contract entered into pursuant to this section only if he determines that it provides at least—

(1) for adequate accounting procedures that are maintained, and for verifiable financial reports that are prepared, by or for the tribal governing body on a monthly basis;

(2) for access to the daily operations of the gaming to appropriate tribal officials who shall also have a right to verify the daily gross revenues and income made from any such tribal gaming activity;

(3) for a minimum guaranteed payment to the Indian tribe that has preference over the retirement of development and construction costs;

(4) for an agreed ceiling for the repayment of development and construction costs;

(5) for a contract term not to exceed five years, except that, upon the request of an Indian tribe, the Chairman may authorize a contract term that exceeds five years but does not exceed seven years if the Chairman is satisfied that the capital investment required, and the income projections, for the particular gaming activity require the additional time; and

(6) for grounds and mechanisms for terminating such contract, but actual contract termination shall not require the approval of the Commission.

(c)(1) The Chairman may approve a management contract providing for a fee based upon a percentage of the net revenues of a tribal gaming activity if the Chairman determines that such percentage fee is reasonable in light of surrounding circumstances. Except as otherwise provided in this subsection, such fee shall not exceed 30 percent of the net revenues.

(2) Upon the request of an Indian tribe, the Chairman may approve a management contract providing for a fee based upon a percentage of the net revenues of a tribal gaming activity that exceeds 30 percent but not 40 percent of the net revenues if the Chairman is satisfied that the capital investment required, and income projections, for such tribal gaming activity require the additional fee requested by the Indian tribe.

(3) By no later than the date that is 180 days after the date on which a management contract is submitted to the Chairman for approval, the Chairman shall approve or disapprove such contract on its merits. The Chairman may extend the 180-day period by not more than 90 days if the Chairman notifies the Indian tribe in writing of the reason for the extension. The Indian tribe may bring an action in a United States district court to compel action by the Chairman if a contract has not been approved or disapproved within the period required by this subsection.

(e) The Chairman shall not approve any contract if the Chairman determines that—

(1) any person listed pursuant to subsection (a)(1)(A) of this section—

(A) is an elected member of the governing body of the Indian tribe which is the party to the management contract;

(B) has been or subsequently is convicted of any felony or gaming offense;

(C) has knowingly and willfully provided materially important false statements or information to the Commission or the Indian tribe pursuant to this Act or has refused to respond to questions propounded pursuant to subsection (a)(2); or

(D) has been determined to be a person whose prior activities, criminal record if any, or reputation, habits, and associations pose a threat to the public interest or to the effective regulation and control of gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in the conduct of gaming or the carrying on of the business and financial arrangements incidental thereto;

- (2) the management contractor has, or has attempted to, unduly interfere or influence for its gain or advantage any decision or process of tribal government relating to the gaming activity;
- (3) the management contractor has deliberately or substantially failed to comply with the terms of the management contract or the tribal gaming ordinance or resolution adopted and approved pursuant to this Act; or
- (4) a trustee, exercising the skill and diligence that a trustee is commonly held to, would not approve the contract.
- (f) The Chairman, after notice and hearing, shall have the authority to require appropriate contract modifications or may void any contract if he subsequently determines that any of the provisions of this section have been violated.
- (g) No management contract for the operation and management of a gaming activity regulated by this Act shall transfer or, in any other manner, convey any interest in land or other real property, unless specific statutory authority exists and unless clearly specified in writing in said contract.
- (h) The authority of the Secretary under section 2103 of the Revised Statutes (25 U.S.C. 31), relating to management contracts regulated pursuant to this Act, is hereby transferred to the Commission.
- (i) The Commission shall require a potential contractor to pay a fee to cover the cost of the investigation necessary to reach a determination required in subsection (e) of this section.
- (Oct. 17, 1988, P. L. 100-497, § 12, 102 Stat. 2479.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text

"This Act", referred to in this section, is Act Oct. 17, 1988, P. L. 100-497, 102 Stat. 2467, popularly known as the Indian Gaming Regulatory Act, which appears generally as 25 USCS §§ 2701 et seq. For full classification of such Act, consult USCS Tables volumes.

§ 2712. Review of existing ordinances and contracts

- (a) As soon as practicable after the organization of the Commission, the Chairman shall notify each Indian tribe or management contractor who, prior to the enactment of this Act [enacted Oct. 17, 1988], adopted an ordinance or resolution authorizing class II gaming or class III gaming or entered into a management contract, that such ordinance, resolution, or contract, including all collateral agreements relating to the gaming activity, must be submitted for his review within 60 days of such notification. Any activity conducted under such ordinance, resolution, contract, or agreement shall be valid under this Act, or any amendment made by this Act, unless disapproved under this section.
- (b)(1) By no later than the date that is 90 days after the date on which an ordinance or resolution authorizing class II gaming or class III gaming is submitted to the Chairman pursuant to subsection (a), the Chairman shall review such ordinance or resolution to determine if it conforms to the requirements of section 11(b) of this Act [25 USCS § 2710(b)].
- (2) If the Chairman determines that an ordinance or resolution submitted under subsection (a) conforms to the requirements of section 11(b) [25 USCS § 2710(b)], the Chairman shall approve it.
- (3) If the Chairman determines that an ordinance or resolution submitted under subsection (a) does not conform to the requirements of section 11(b) [25 USCS § 2710(b)], the Chairman shall provide written notification of necessary modifications to the Indian tribe which shall have not more than 120 days to bring such ordinance or resolution into compliance.
- (c)(1) Within 180 days after the submission of a management contract, including all collateral agreements, pursuant to subsection (a), the Chairman shall subject such contract to the requirements and process of section 12 [25 USCS § 2711].
- (2) If the Chairman determines that a management contract submitted under subsection (a), and the management contractor under such contract, meet the requirements of section 12 [25 USCS § 2711], the Chairman shall approve the management contract.
- (3) If the Chairman determines that a contract submitted under subsection (a), or the management contractor under a contract submitted under subsection (a), does not meet the requirements of section 12 [25 USCS § 2711], the Chairman shall provide written notification to the parties to such contract of necessary modifications and the parties shall have not more than 120 days to come into compliance. If a management contract has been approved by the Secretary prior to the date of enactment of this Act [enacted Oct. 17, 1988], the parties shall have not more than 180 days after notification of necessary modifications to come into compliance.
- (Oct. 17, 1988, P. L. 100-497, § 13, 102 Stat. 2481.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text

"This Act", referred to in this section, is Act Oct. 17, 1988, P. L. 100-497, 102 Stat. 2467, popularly known as the Indian Gaming Regulatory Act, which appears generally as 25 USCS §§ 2701 et seq. For full classification of such Act, consult USCS Tables volumes.

§ 2713. Civil penalties

- (a)(1) Subject to such regulations as may be prescribed Subject to such regulations as may be prescribed by the Commission, the Chairman shall have authority to levy and collect appropriate civil fines, not to exceed \$25,000 per violation, against the tribal operator of an Indian game or a management contractor engaged in gaming for any violation of any provision of this Act, any regulation prescribed by the Commission pursuant to this Act, or tribal regulations, ordinances, or resolutions approved under section 11 or 13 [25 USCS § 2710 or 2712].

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INDIAN GAMING REGULATION

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(2) The Commission shall, by regulation, provide an opportunity for an appeal and hearing before the Commission on fines levied and collected by the Chairman.

(3) Whenever the Commission has reason to believe that the tribal operator of an Indian game or a management contractor is engaged in activities regulated by this Act, by regulations prescribed under this Act, or by tribal regulations, ordinances, or resolutions, approved under section 11 or 13 (25 USCS § 2710 or 2712), that may result in the imposition of a fine under subsection (a)(1), the permanent closure of such game, or the modification or termination of any management contract, the Commission shall provide such tribal operator or management contractor with a written complaint stating the acts or omissions which form the basis for such belief and the action or choice of action being considered by the Commission. The allegation shall be set forth in a plain and concise language and must specify the statutory or regulatory provisions alleged to have been violated, but may not consist merely of allegations stated in statutory or regulatory language.

(b)(1) The Chairman shall have power to order temporary closure of an Indian game for substantial violation of the provisions of this Act, of regulations prescribed by the Commission pursuant to this Act, or of tribal regulations, ordinances, or resolutions approved under section 11 or 13 of this Act (25 USCS § 2710 or 2712).

(2) Not later than thirty days after the issuance by the Chairman of an order of temporary closure, the Indian tribe or management contractor involved shall have a right to a hearing before the Commission to determine whether such order should be made permanent or dissolved. Not later than sixty days following such hearing, the Commission shall, by a vote of not less than two of its members, decide whether to order a permanent closure of the gaming operation.

(c) A decision of the Commission to give final approval of a fine levied by the Chairman or to order a permanent closure pursuant to this section shall be appealable to the appropriate Federal district court pursuant to chapter 7 of title 5, United States Code (5 USCS §§ 701 et seq.).

(d) Nothing in this Act precludes an Indian tribe from exercising regulatory authority provided under tribal law over a gaming establishment within the Indian tribe's jurisdiction if such regulation is not inconsistent with this Act or with any rules or regulations adopted by the Commission. (Oct. 17, 1988, P. L. 100-497, § 14, 102 Stat. 2482.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text

"This Act", referred to in this section, is Act Oct. 17, 1988, P. L. 100-497, 102 Stat. 2467, popularly known as the Indian Gaming Regulatory Act, which appears generally as 25 USCS §§ 2701 et seq. For full classification of such Act, consult USCS Tables volumes.

§ 2714. Judicial review

Decisions made by the Commission pursuant to sections 11, 12, 13, and 14 (25 USCS §§ 2710-2713) shall be final agency decisions for purposes of appeal to the appropriate Federal district court pursuant to chapter 7 of title 5, United States Code (5 USCS §§ 701 et seq.).

(Oct. 17, 1988, P. L. 100-497, § 15, 102 Stat. 2483.)

§ 2715. Subpoena and deposition authority

(a) By a vote of not less than two members, the Commission shall have the power to require by subpoena the attendance and testimony of witnesses and the production of all books, papers, and documents relating to any matter under consideration or investigation. Witnesses so summoned shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

(b) The attendance of witnesses and the production of books, papers, and documents, may be required from any place in the United States at any designated place of hearing. The Commission may request the Secretary to request the Attorney General to bring an action to enforce any subpoena under this section.

(c) Any court of the United States within the jurisdiction of which an inquiry is carried on may, in case of contumacy or refusal to obey a subpoena for any fees, issue an order requiring such person to appear before the Commission (and produce books, papers, or documents as so ordered) and give evidence concerning the matter in question and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(d) A Commissioner may order testimony to be taken by deposition in any proceeding or investigation pending before the Commission at any stage of such proceeding or investigation. Such depositions may be taken before any person designated by the Commission and having power to administer oaths. Reasonable notice must first be given to the Commission in writing by the party or his attorney proposing to take such deposition, and, in cases in which a Commissioner proposes to take a deposition, reasonable notice must be given. The notice shall state the name of the witness and the time and place of the taking of his deposition. Any person may be compelled to appear and depose, and to produce books, papers, or documents, in the same manner as witnesses may be compelled to appear and testify and produce like documentary evidence before the Commission, as hereinbefore provided.

(e) Every person deposing as herein provided shall be cautioned and shall be required to swear (or affirm, if he so requests) to testify to the whole truth, and shall be carefully examined. His testimony shall be reduced to writing by the person taking the deposition, or under his direction, and shall, after it has been reduced to writing, be subscribed by the deponent. All depositions shall be promptly filed with the Commission.

(f) Witnesses whose depositions are taken as authorized in this section, and the persons taking the same, shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

(Oct. 17, 1988, P. L. 100-497, § 16, 102 Stat. 2483.)

25 USCS § 2716

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§ 2716. Investigative powers
 (a) Except as provided in subsection (b), the Commission shall preserve any and all information received pursuant to this Act as confidential pursuant to the provisions of paragraphs (4) and (7) of section 552(b) of title 5, United States Code.
 (b) The Commission shall, when such information indicates a violation of Federal, State, or tribal statutes, ordinances, or resolutions, provide such information to the appropriate law enforcement officials.
 (c) The Attorney General shall investigate activities associated with gaming authorized by this Act which may be a violation of Federal law.
 (Oct. 17, 1988, P. L. 100-497, § 17, 102 Stat. 2484.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text

"This Act", referred to in this section, is Act Oct. 17, 1988, P. L. 100-497, 102 Stat. 2467, popularly known as the Indian Gaming Regulatory Act, which appears generally as 25 USCS §§ 2701 et seq. For full classification of such Act, consult USCS Tables volumes.

§ 2717. Commission funding
 (a)(1) The Commission shall establish a schedule of fees to be paid to the Commission annually by each class II gaming activity that is regulated by this Act.
 (2)(A) The rate of the fees imposed under the schedule established under paragraph (1) shall be—
 (i) no less than 0.5 percent nor more than 2.5 percent of the first \$1,500,000, and
 (ii) no more than 5 percent of amounts in excess of the first \$1,500,000, of the gross revenues from each activity regulated by this Act.
 (B) The total amount of all fees imposed during any fiscal year under the schedule established under paragraph (1) shall not exceed \$1,500,000.
 (3) The Commission, by a vote of not less than two of its members, shall annually adopt the rate of the fees authorized by this section which shall be payable to the Commission on a quarterly basis.
 (4) Failure to pay the fees imposed under the schedule established under paragraph (1) shall, subject to the regulations of the Commission, be grounds for revocation of the approval of the Chairman of any license, ordinance, or resolution required under this Act for the operation of gaming.
 (5) To the extent that revenue derived from fees imposed under the schedule established under paragraph (1) are not expended or committed at the close of any fiscal year, such surplus funds shall be credited to each gaming activity on a pro rata basis against such fees imposed for the succeeding year.
 (6) For purposes of this section, gross revenues shall constitute the annual total amount of money wagered, less any amounts paid out as prizes or paid for prizes awarded and less allowance for amortization of capital expenditures for structures.
 (b)(1) The Commission, in coordination with the Secretary and in conjunction with the fiscal year of the United States, shall adopt an annual budget for the expenses and operation of the Commission.
 (2) The budget of the Commission may include a request for appropriations, as authorized by section 19 [25 USCS § 2718], in an amount equal the amount of funds derived from assessments authorized by subsection (a) for the fiscal year preceding the fiscal year for which the appropriation request is made.
 (3) The request for appropriations pursuant to paragraph (2) shall be subject to the approval of the Secretary and shall be included as a part of the budget request of the Department of the Interior.
 (Oct. 17, 1988, P. L. 100-497, § 18, 102 Stat. 2484.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text

"This Act", referred to in this section, is Act Oct. 17, 1988, P. L. 100-497, 102 Stat. 2467, popularly known as the Indian Gaming Regulatory Act, which appears generally as 25 USCS §§ 2701 et seq. For full classification of such Act, consult USCS Tables volumes.

§ 2717a. Availability of fees for Commission expenditures
 In fiscal year 1990 and thereafter, fees collected pursuant to and as limited by section 13 of the Act [25 USCS § 2717] shall be available to carry out the duties of the Commission, to remain available until expended.
 (Oct. 23, 1989, P. L. 101-121, Title I, 103 Stat. 718.)

§ 2718. Authorization of appropriations
 (a) Subject to the provisions of section 18 [25 USCS § 2717], there are hereby authorized to be appropriated such sums as may be necessary for the operation of the Commission.
 (b) Notwithstanding the provisions of section 18 [25 USCS § 2717], there are hereby authorized to be appropriated not to exceed \$2,000,000 to fund the operation of the Commission for each of the fiscal years beginning October 1, 1988, and October 1, 1989. Notwithstanding the provisions of section 18 [25 USCS § 2717], there are authorized to be appropriated such sums as may be necessary to fund the operation of the Commission for each of the fiscal years beginning October 1, 1991, and October 1, 1992.
 (Oct. 17, 1988, P. L. 100-497, § 19, 102 Stat. 2485; Dec. 17, 1991, P. L. 102-233, § 2(b), 105 Stat. 1908.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Amendments:

1991, Act Dec. 17, 1991, in subsec. (b), added the sentence beginning "Notwithstanding the provisions of section 18, there are authorized to be appropriated

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(a) Except as provided in subsection (b), the Commission shall preserve any and all information received pursuant to this Act as confidential pursuant to the provisions of paragraphs (4) and (7) of section 552(b) of title 5, United States Code.
 (1) such information shall be preserved as confidential
 (2) the Commission shall, when such information indicates a violation of Federal, State, or tribal statutes, ordinances, or resolutions, provide such information to the appropriate law enforcement officials.
 (A) The Attorney General shall investigate activities associated with gaming authorized by this Act which may be a violation of Federal law.
 (i) such information shall be preserved as confidential
 (ii) the Commission shall, when such information indicates a violation of Federal, State, or tribal statutes, ordinances, or resolutions, provide such information to the appropriate law enforcement officials.
 (B) The Attorney General shall investigate activities associated with gaming authorized by this Act which may be a violation of Federal law.
 (b)(1) Subsection (a) shall not apply to information received by the Commission from a tribal gaming activity.
 (A) Such information shall be preserved as confidential.
 (B) The Commission shall, when such information indicates a violation of Federal, State, or tribal statutes, ordinances, or resolutions, provide such information to the appropriate law enforcement officials.
 (2) Subsection (a) shall not apply to information received by the Commission from a tribal gaming activity.
 (A) Such information shall be preserved as confidential.
 (B) The Commission shall, when such information indicates a violation of Federal, State, or tribal statutes, ordinances, or resolutions, provide such information to the appropriate law enforcement officials.
 (3) Upon the request of the Secretary, the Commission shall, not later than 60 days after the date of the request, provide to the Secretary a report on the activities of the Commission during the fiscal year for which the report is requested.
 (c) Nothing in this section shall be construed to require the Commission to land into trust any land.
 (d)(1) The provisions of section 60501, as amended, shall apply to the report required by subsection (3) as such provisions apply to the report required by section 60501.
 (2) The report required by subsection (3) shall be submitted to the Secretary before the end of the fiscal year for which the report is requested.
 (Oct. 17, 1988, P. L. 100-497, § 20, 102 Stat. 2484.)

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§ 2719. Gaming on lands acquired after October 17, 1988

(a) Except as provided in subsection (b), gaming regulated by this Act shall not be conducted on lands acquired by the Secretary in trust for the benefit of an Indian tribe after the date of enactment of this Act [enacted Oct. 17, 1988] unless—

(1) such lands are located within or contiguous to the boundaries of the reservation of the Indian tribe on the date of enactment of this Act [enacted Oct. 17, 1988]; or

(2) the Indian tribe has no reservation on the date of enactment of this Act [enacted Oct. 17, 1988] and—

(A) such lands are located in Oklahoma and—

(i) are within the boundaries of the Indian tribe's former reservation, as defined by the Secretary, or

(ii) are contiguous to other land held in trust or restricted status by the United States for the Indian tribe in Oklahoma; or

(B) such lands are located in a State other than Oklahoma and are within the Indian tribe's last recognized reservation within the State or States within which such Indian tribe is presently located.

(b)(1) Subsection (a) will not apply when—

(A) the Secretary, after consultation with the Indian tribe and appropriate State and local officials including officials of other nearby Indian tribes, determines that a gaming establishment on newly acquired lands would be in the best interest of the Indian tribe and its members, and would not be detrimental to the surrounding community, but only if the Governor of the State in which the gaming activity is to be conducted concurs in the Secretary's determination; or

(B) lands are taken into trust as part of—

(i) a settlement of a land claim,

(ii) the initial reservation of an Indian tribe acknowledged by the Secretary under the Federal acknowledgment process, or

(iii) the restoration of lands for an Indian tribe that is restored to Federal recognition.

(2) Subsection (a) shall not apply to—

(A) any lands involved in the trust petition of the St. Croix Chippewa Indians of Wisconsin that is the subject of the action filed in the United States District Court for the District of Columbia entitled *St. Croix Chippewa Indians of Wisconsin v. United States*, Civ. No. 36-2278, or

(B) the interests of the Miccosukee Tribe of Indians of Florida in approximately 25 contiguous acres of land, more or less, in Dade County, Florida, located within one mile of the intersection of State Road Numbered 27 (also known as Krome Avenue) and the Tamiami Trail.

(3) Upon request of the governing body of the Miccosukee Tribe of Indians of Florida, the Secretary shall, notwithstanding any other provision of law, accept the transfer by such Tribe to the Secretary of the interests of such Tribe in the lands described in paragraph (2)(B) and the Secretary shall declare that such interests are held in trust by the Secretary for the benefit of such Tribe and that such interests are part of the reservation of such Tribe under sections 5 and 7 of the Act of June 13, 1954 (48 Stat. 395; 25 U.S.C. 465, 467), subject to any encumbrances and rights that are held at the time of such transfer by any person or entity other than such Tribe. The Secretary shall publish in the Federal Register the legal description of any lands that are declared held in trust by the Secretary under this paragraph.

(c) Nothing in this section shall affect or diminish the authority and responsibility of the Secretary to take land into trust.

(d)(1) The provisions of the Internal Revenue Code of 1986 (including sections 1441, 3402(a), 6041, and 6050I, and chapter 35 of such Code [26 USCS §§ 1441, 3402(a), 6041, 6050I, 4401 et seq.]) concerning the reporting and withholding of taxes with respect to the winnings from gaming or wagering operations shall apply to Indian gaming operations conducted pursuant to this Act, or under a Tribal-State compact entered into under section 11(d)(3) [25 USCS § 2710(d)(3)] that is in effect, in the same manner as such provisions apply to State gaming and wagering operations.

(2) The provisions of this subsection shall apply notwithstanding any other provision of law enacted before, on, or after the date of enactment of this Act [enacted Oct. 17, 1988] unless such other provision of law specifically cites this subsection.

(Oct. 17, 1988, P. L. 100-497, § 20, 102 Stat. 2485.)

HISTORY: ANCILLARY LAWS AND DIRECTIVES

References in text

"This Act", referred to in this section, is Act Oct. 17, 1988, P. L. 100-497, 102 Stat. 2467, popularly known as the Indian Gaming Regulatory Act, which appears generally as 25 USCS §§ 2701 et seq. For full classification of such Act, consult USCS Tables volumes.

§ 2720. Dissemination of information

Consistent with the requirements of this Act, sections 1301, 1302, 1303 and 1304 of title 18, United States Code, shall not apply to any gaming conducted by an Indian tribe pursuant to this Act (Oct. 17, 1988, P. L. 100-497, § 21, 102 Stat. 2486.)

HISTORY: ANCILLARY LAWS AND DIRECTIVES

References in text

"This Act", referred to in this section, is Act Oct. 17, 1988, P. L. 100-497, 102 Stat. 2467, popularly known as the Indian Gaming Regulatory Act, which appears generally as 25 USCS §§ 2701 et seq. For full classification of such Act, consult USCS Tables volumes.

... and all information received ... paragraphs (4) and (7) of section 552(b)

... of Federal, State, or tribal statutes, ... law enforcement officials.

... gaming authorized by this Act which

DIRECTIVES

100-497, 102 Stat. 2467, popularly known as 25 USCS § 2701 et seq. For

... the Commission annually by each

... under paragraph (1) shall be—

... the first \$1,000,000, and

... the next \$1,000,000, of the gross revenues

... under the schedule established under

... shall annually adopt the rate of ... commission on a quarterly basis.

... under paragraph (1) shall, subject to ... approval of the Chairman of any ... operation of gaming.

... under the schedule established under ... fiscal year, such surplus funds shall ... fees imposed for the succeeding

... the annual total amount of money ... awarded and less allowance for

... in conjunction with the fiscal year of the ... operation of the Commission.

... appropriations, as authorized by section ... from assessments authorized by ... the appropriation request is made.

... shall be subject to the approval of the ... Department of the Interior.

DIRECTIVES

100-497, 102 Stat. 2467, popularly known as 25 USCS § 2701 et seq. For

... provided by section 13 of the Act (25 ... Commission, to remain available until

... hereby authorized to be appropriated

... are hereby authorized to be ... Commission for each of the fiscal years ... provisions of section 18 (25 USCS ... necessary to fund the operation of ... and October 1, 1992.

... (102-238, § 2(b), 105 Stat. 1908.)

DIRECTIVES

... notwithstanding the provisions of

25 USCS § 2721

INDIAN LAW ENFORCEMENT REFORM

§ 2721. Severability

In the event that any section or provision of this Act, or amendment made by this Act, is held invalid, it is the intent of Congress that the remaining sections or provisions of this Act, and amendments made by this Act, shall continue in full force and effect.

(Oct. 17, 1988, P. L. 100-497, § 22, 102 Stat. 2486.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text

This Act, referred to in this section, is Act Oct. 17, 1988, P. L. 100-497, 102 Stat. 2467, popularly known as the Indian Gaming Regulatory Act, which appears generally as 25 USCS §§ 2701 et seq. For full classification of such Act, consult USCS Tables volumes.

CHAPTER 30. INDIAN LAW ENFORCEMENT REFORM

Section

- 2301. Definitions
- 2302. Indian law enforcement responsibilities
- 2303. Law enforcement authority
- 2304. Assistance by other agencies
- 2305. Regulations
- 2306. Jurisdiction
- 2307. Uniform allowances
- 2308. Source of funds
- 2309. Reports to tribes

§ 2301. Definitions

For purposes of this Act—

- (1) The term "Bureau" means the Bureau of Indian Affairs of the Department of the Interior.
- (2) The term "employee of the Bureau" includes an officer of the Bureau.
- (3) The term "enforcement of a law" includes the prevention, detection, and investigation of an offense and the detention or confinement of an offender.
- (4) The term "Indian country" has the meaning given that term in section 1151 of title 18, United States Code.
- (5) The term "Indian tribe" has the meaning given that term in section 301 of the Act of April 11, 1968 (82 Stat. 77; 25 U.S.C. 1301).
- (6) The term "offense" means an offense against the United States and includes a violation of a Federal regulation relating to part or all of Indian country.
- (7) The term "Secretary" means the Secretary of the Interior.
- (8) The term "Division of Law Enforcement Services" means the entity established within the Bureau under section 3(b) [25 USCS § 2302(b)].
- (9) The term "Branch of Criminal Investigations" means the entity the Secretary is required to establish within the Division of Law Enforcement Services under section 3(d)(1) [25 USCS § 2302(d)(1)].

(Aug. 13, 1990, P. L. 101-379, § 2, 104 Stat. 473.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text

This Act, referred to in this section, is Act Aug. 13, 1990, P. L. 101-379, 104 Stat. 473, which appears generally as 25 USCS §§ 2301 et seq. and as 42 USCS § 2991a note. For full classification of this Act, consult USCS Tables volumes.

Short title

Act Aug. 13, 1990, P. L. 101-379, § 1, 104 Stat. 473, provides: "This Act may be cited as the 'Indian Law Enforcement Reform Act'."

For full classification of this Act, consult USCS Tables volumes.

§ 2302. Indian law enforcement responsibilities

- (a) The Secretary, acting through the Bureau, shall be responsible for providing, or for assisting in the provision of, law enforcement services in Indian country as provided in this Act.
- (b) There is hereby established within the Bureau a Division of Law Enforcement Services which, under the supervision of the Secretary, or an individual designated by the Secretary, shall be responsible for—
 - (1) carrying out the law enforcement functions of the Secretary in Indian country, and
 - (2) implementing the provisions of this section.
- (c) Subject to the provisions of this Act and other applicable Federal or tribal laws, the responsibilities of the Division of Law Enforcement Services in Indian country shall include—
 - (1) the enforcement of Federal law and, with the consent of the Indian tribe, tribal law;

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AMENDMENT #1

Right now, all gaming activities in Alaska are regulated by the Division of Charitable Gaming under the Department of Revenue. However, with HB 286 we are setting up true "gambling" activities in the state - in addition to the potential we are opening the door to class III Indian gaming.

My intent in offering Amendment #1 was to clearly give the Department of Revenue the oversight authority for any gambling activities within the state.

AMENDMENT #2

My feelings regarding gaming and gambling money being contributed to political parties and candidates are well known. This amendment takes the approach of prohibiting a candidate from accepting a contribution derived from the proceeds of gambling.

AMENDMENT #3

In 1990, the voters of Alaska dejected a proposal to bring gambling into our state. (The election results are also attached.)

Since the voters have spoken on this issue already, I am hesitant to pass legislation that runs counter to the results of a statewide election. This amendment would place the question of whether to allow gambling on cruise ships before the voters again.

A M E N D M E N T

OFFERED IN THE HOUSE
TO: CSHB 286(FIN)

BY REPRESENTATIVE MARTIN

1 Page 1, line 1, following "Act":

2 Insert "relating to gaming;"

3 Page 1, following line 11:

4 Insert a new bill section to read:

5 "* Sec. 2. AS 05.15.010 is amended to read:

6 Sec. 05.15.010. DEPARTMENT OF REVENUE TO ADMINISTER
7 CHAPTER. The Department of Revenue shall administer charitable gaming,
8 gambling, and other matters as required under this chapter."

9 Renumber the following bill sections accordingly.

10 Page 3, following line 13:

11 Insert a new bill section to read:

12 "* Sec. 6. AS 05.15.695 is amended to read:

13 Sec. 05.15.695. SHORT TITLE. This chapter may be cited as the Alaska
14 Gambling [GAMING REFORM] Act."

15 Renumber the following bill sections accordingly.

FAILED 19-21

9-2309911C.2
Luckhaupt
4/25/95

AMENDMENT # 2 ✓

OFFERED IN THE HOUSE

BY REPRESENTATIVE MARTIN

TO: CSHB 236(FIN)

- 1 Page 1, line 1, following "Act":
2 Insert "prohibiting candidates from accepting contributions derived from the use
3 of certain objects or devices designed or intended primarily for gaming or gambling;"
- 4 Page 4, following line 2:
5 Insert a new bill section to read:
6 "* Sec. 6. AS 15.13.070 is amended by adding a new subsection to read:
7 (I) A candidate may not accept a contribution that is, or is derived, from the
8 use of playing cards, dice, roulette wheels, coin-operated instruments or machines, or
9 other objects or instruments used, designed, or intended primarily for gaming or
10 gambling."

Alaska State House of Representatives
Nineteenth Legislature
First Session

RCS# 588
Item 3

05-04-95
11:41:09

CSHB 236(FIN)
Second Reading
Amendment No. 2

Yeas: 19 Barnes, Bunde, B. Davis, G. Davis, Elton,
 Green, Hanley, James, Kelly, Kohring,
 Martin, Masek, Navarre, Ogan, Parnell,
 Sanders, Therriault, Vezey, Willis

Nays: 21 Austerman, Brice, Brown, Davies,
 Finkelstein, Foster, Grussendorf, Ivan,
 Kott, Kubina, Mackie, MacLean, Moses,
 Mulder, Nicholia, Phillips, Porter,
 Robinson, Rokeberg, Toohey, Williams

FAILED 14-26

AMENDMENT #3



OFFERED IN THE HOUSE

BY REPRESENTATIVE MARTIN

TO: CSHB 286(FIN)

Page 1, line 7, following "laws;":

Insert "providing for a vote on whether cruise ships or any other group should be provided an exemption to the gambling laws of the state;"

Page 4, line 22:

Delete all material.

Insert new bill sections to read:

"* Sec. 8. The lieutenant governor shall place before the qualified voters of the state at the November 1996 general election a question of whether cruise ships or any other group should receive an exemption from gambling laws of the state and be permitted to use gambling instruments or devices. The question shall appear on the ballot in the following form:

QUESTION

Should cruise ships or any other group receive an exemption from the gambling laws of the state so as to allow them to utilize playing cards, dice, roulette wheels, coin-operated instruments or machines, or other objects or instruments used, designed, or intended primarily for gaming or gambling?

Yes

No

* Sec. 9. Section 8 of this Act takes effect immediately under AS 01.10.070(c).

* Sec. 10. Except for sec. 8 of this Act, this Act takes effect upon certification by the lieutenant governor that a majority of the qualified voters participating in the November 1996 general election have voted to approve an exemption from the gambling laws of the state for cruise ships or any other group in order for them to be permitted to use gambling instruments or devices.

Primary Election, Ballot Measures

August 28, 1990

Measure No. 1, Amendments Related to Alaska Railroad Operations

This measure would amend laws governing the Alaska Railroad. The railroad would no longer be allowed to transport freight between Alaska and other states. It could only forward freight for customers. It could only operate within Alaska. It could not give more than 60 days credit to other carriers. Its rates and agreements could not prey on other types of transport. Rate agreements and other shipper information could become public. Persons or groups could demand audits of the railroad. The legislature could demand removal of railroad board members.

Measure No. 2, Alaska Gambling Board and Gambling Regulation

If passed, this initiative would create the Alaska Gambling Board. Local elections would be required before gambling would be allowed in an area. (Gambling run by charities is governed by other laws.) The board would issue one-year, nontransferable licenses to the state, municipalities, or other groups, if they complied with the board's rules. Gambling workers would have to get permits from the board. The board would receive a percentage of the money made from gambling as fees. Violations of some parts of the bill would be crimes.



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District	Measure No. 1		Measure No. 2	
	Yes	No	Yes	No
1	969	3,779	1,474	3,479
2	1,046	2,365	1,270	2,286
3	714	1,694	903	1,523
4	2,526	5,536	2,703	6,777
5	1,373	5,975	2,540	5,278
6	940	2,050	1,170	1,856
7	791	3,250	1,537	3,173
8	1,472	7,735	3,010	6,327
9	1,438	6,364	2,824	5,544
10	1,436	6,101	2,542	5,096
11	836	3,501	1,586	2,701
12	971	4,489	1,714	3,799
13	1,110	3,849	1,990	3,020
14	1,204	6,013	2,378	4,904
15	1,623	7,101	3,186	5,618
16	2,554	7,966	4,281	6,354
17	895	2,357	1,357	1,975
18	1,148	3,735	2,292	2,644
19	865	3,725	1,781	2,844
20	125	384	252	265
21	672	3,185	1,364	2,533
22	1,063	1,476	1,042	1,513
23	988	1,594	961	1,636
24	1,050	1,610	1,105	1,577
25	990	1,701	817	1,892
26	803	1,737	982	1,604
27	539	1,420	612	1,403
Total	31,612	107,269	50,446	90,827
Per Cent	22.7	77.2	35.7	64.2

Cross-Ref. to AB 286

BILL: SB 60 SHORT TITLE: CRUISE SHIP GAMBLING & PROMOTIONS
BILL VERSION:
SPONSOR(S): STATE AFFAIRS

CURRENT STATUS: (S) FIN
 THEN RLS

STATUS DATE: 02/09/95

TITLE: "An Act providing an exemption from gambling and certain alcoholic beverage laws for gambling conducted by cruise ships for their ticketed passengers in the offshore water of the state; relating to promotions on board cruise ships; defining 'cruise ship'; providing for exemption procedures for certain cruise ships before they can conduct gambling in the offshore water of the state; providing an exemption from the coin-operated device tax for cruise ships exempted from the gambling laws; and providing for an effective date."

02/02/95	146	(S)	READ THE FIRST TIME - REFERRAL(S)
02/02/95	146	(S)	JUD, FIN
02/09/95	219	(S)	JUD RPT 2DP 1DNP 2NR
02/09/95	219	(S)	FISCAL NOTE (REV)
02/09/95	219	(S)	REFERRED TO FINANCE

SENATE BILL NO. 60

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE STATE AFFAIRS COMMITTEE

Introduced: 2/2/95

Referred: JUD, FIN

A BILL

FOR AN ACT ENTITLED

1 "An Act providing an exemption from gambling and certain alcoholic beverage
2 law; for gambling conducted by cruise ships for their ticketed passengers in the
3 offshore water of the state; relating to promotions on board cruise ships; defining
4 'cruise ship'; providing for exemption procedures for certain cruise ships before
5 they can conduct gambling in the offshore water of the state; providing an
6 exemption from the coin-operated device tax for cruise ships exempted from the
7 gambling laws; and providing for an effective date."

8 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

9 * Section 1. AS 04.16.175 is amended by adding a new subsection to read:

10 (c) This section does not apply to an agent or employee of a cruise ship
11 authorized to conduct gambling activities under AS 05.15.250 and AS 11.66.275.

12 * Sec. 2. AS 05.15 is amended by adding a new section to read:

13 **ARTICLE 2A. CRUISE SHIP EXEMPTION.**

1 Sec. 05.15.250. EXEMPTION OF CRUISE SHIPS. (a) A cruise ship may
2 conduct gambling as permitted under AS 11.66.275 in the offshore water of the state
3 if

4 (1) the operator of the cruise ship annually applies on a date set by the
5 department on a form provided by the department;

6 (2) the operator of the cruise ship agrees to comply with AS 45.50.474;
7 and

8 (3) the operator pays the annual exemption fee required under (b) of
9 this section.

10 (b) The exemption fee for a cruise ship to conduct gambling under (a) of this
11 section is for cruise ships with a capacity of

- 12 (1) 500 or fewer passengers \$10,000;
- 13 (2) 501 - 999 passengers \$20,000;
- 14 (3) 1000 - 1999 passengers \$30,000;
- 15 (4) 2,000 passengers or more \$40,000.

16 (c) The department shall revoke the exemption of a cruise ship that becomes
17 ineligible to hold an exemption under this section, provides false information in an
18 application for an exemption, violates an order issued under AS 05.15.200, or conducts
19 gambling in violation of the provisions of AS 11.66.275. When revoking an
20 exemption under this subsection, the department may bar a cruise ship from obtaining
21 an exemption under this section in the future or for a specified number of years in the
22 future.

23 (d) Except for AS 05.15.195, 05.15.200, and 05.15.210, other provisions of this
24 chapter do not apply to gambling on a cruise ship.

25 (e) In this section,

26 (1) "cruise ship" means a ship that operates at least 120 days a year
27 anywhere in the world, provides cruises of at least 72 hours in length for ticketed
28 passengers, provides on board the ship overnight accommodations for at least 300
29 passengers, is operated by an authorized cruise ship operator, and is certified under
30 the International Convention for the Safety of Life at Sea or otherwise certified by the
31 United States Coast Guard;

1 (2) "offshore water of the state" has the meaning given in
2 AS 11.66.275.

3 * Sec. 3. AS 05.15.680(b) is amended to read:

4 (b) A person who, with the intent to mislead a public servant in the
5 performance of the public servant's duty, submits a false statement in an application
6 for a permit, license, exemption, or vendor registration under this chapter is guilty of
7 unsworn falsification.

8 * Sec. 4. AS 11.66 is amended by adding a new section to read:

9 Sec. 11.66.275. CRUISE SHIP EXEMPTION. (a) The provisions of
10 AS 11.66.200 - 11.66.280 do not apply to gambling conducted by a cruise ship for its
11 ticketed passengers in the offshore water of the state if

12 (1) the cruise ship is exempt under AS 05.15.250;

13 (2) the cruise ship does not conduct gambling in, or within three miles
14 of, a state port visited by the cruise ship;

15 (3) the gambling is ancillary to the cruise and the cruise has as its main
16 purpose scenic cruising and port visits at maritime communities in the state; and

17 (4) the cruise ship operates under an itinerary that either originates or
18 terminates in a port outside the state.

19 (b) In this section,

20 (1) "cruise ship" means a ship that operates at least 120 days a year
21 anywhere in the world, provides cruises of at least 72 hours in length for ticketed
22 passengers, provides on board the ship overnight accommodations for at least 300
23 passengers, is operated by an authorized cruise ship operator, and is certified under
24 the International Convention for the Safety of Life at Sea or otherwise certified by the
25 United States Coast Guard;

26 (2) "offshore water of the state" means the marine water over which
27 the state has jurisdiction.

28 * Sec. 5. AS 43.35.010 is amended by adding a new subsection to read:

29 (d) The tax imposed by this section does not apply to a coin-operated device
30 on board a cruise ship for a tax period during which the cruise ship is authorized to
31 conduct gambling activities under AS 05.15.250 and AS 11.66.275.

1 * Sec. 6. AS 45.50.474 is amended to read:

2 Sec. 45.50.474. REQUIRED DISCLOSURES IN PROMOTIONS ON BOARD
3 CRUISE SHIPS. A person may not conduct a promotion on board a cruise ship that
4 mentions or features a business in a state port that has paid something of value for the
5 purpose of having the business mentioned or featured, unless the person conducting
6 the promotion clearly and fully discloses orally and in all written materials used in the
7 promotion that the featured businesses have paid to be included in the promotion.
8 This prohibition does not apply to on-shore excursions that are sold on board a
9 cruise ship. A violation of this section constitutes an unfair trade practice under
10 AS 45.50.471. In this section, "cruise ship" means a ship that operates at least 120
11 days a year anywhere in the world, provides cruises of at least 72 hours in length for
12 ticketed passengers, provides overnight accommodations and meals for those
13 passengers, is operated by an authorized cruise ship operator, and is certified under the
14 International Convention for the Safety of Life at Sea or otherwise certified by the
15 United States Coast Guard.

16 * Sec. 7. This Act takes effect immediately under AS 01.10.070(c).