

105TH CONGRESS  
1ST SESSION

# H. R. 334

To amend the Indian Gaming Regulatory Act to bring more balance into the negotiation of Tribal-State compacts, to require an individual participating in class II or class III Indian gaming to be physically present at the authorized gaming activity, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JANUARY 7, 1997

Mr. SOLOMON (for himself, Mr. ROEMER, Mr. BARR of Georgia, Mrs. CHENOWETH, Mr. GOODLATTE, and Mr. HERGER) introduced the following bill; which was referred to the Committee on Resources, and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To amend the Indian Gaming Regulatory Act to bring more balance into the negotiation of Tribal-State compacts, to require an individual participating in class II or class III Indian gaming to be physically present at the authorized gaming activity, and for other purposes.

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

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the  
5 “Fair Indian Gaming Act”.

1 (b) TABLE OF CONTENTS.—The table of contents for  
2 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Compact negotiation and approval.
- Sec. 3. Gaming on after-acquired lands.
- Sec. 4. Physical presence required to participate in class II and class III gaming on Indian lands.
- Sec. 5. Indian gaming restricted.
- Sec. 6. Definitions of class III gaming and commercial.
- Sec. 7. Moratorium on new class III gaming.
- Sec. 8. Regulation of Indian gaming pursuant to a State Constitution.
- Sec. 9. National Indian Gaming Commission.
- Sec. 10. Reporting and bookkeeping.
- Sec. 11. Background investigations.
- Sec. 12. Criminal laws.
- Sec. 13. Appropriations and fees.
- Sec. 14. Reports.

3 **SEC. 2. COMPACT NEGOTIATION AND APPROVAL.**

4 (a) BURDEN OF PROOF.—Section 11(d)(7)(B)(ii) of  
5 the Indian Gaming Regulatory Act (25 U.S.C.  
6 2710(d)(7)(B)(ii)) is amended by striking “burden of  
7 proof shall be upon the State to prove that the State has  
8 negotiated” and inserting “burden of proof shall be upon  
9 the Indian tribe to prove that the State has failed to nego-  
10 tiate”.

11 (b) EVIDENCE OF GOOD FAITH.—Section  
12 11(d)(7)(B)(iii) of the Indian Gaming Regulatory Act (25  
13 U.S.C. 2710(d)(7)(B)(iii)) is amended—

14 (1) in subclause (I), by striking “, and” at the  
15 end and inserting a semicolon;

16 (2) in subclause (II), by striking the period and  
17 inserting “; and”; and

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

1           “(III) except as provided in clause (ii), shall not  
2           consider as evidence that the State has not nego-  
3           tiated in good faith a demand by the State that the  
4           gaming activities contemplated by the compact be  
5           conducted on the same basis as gaming activities  
6           which may be conducted by any other person or en-  
7           tity under the terms of relevant State law.”.

8           (c) APPROVAL BY STATE LEGISLATURE AND GOV-  
9           ERNOR.—Section 11(d)(3)(B) of the Indian Gaming Reg-  
10          ulatory Act (25 U.S.C. 2710(d)(3)(B)) is amended by  
11          striking “only when” and inserting “only after such com-  
12          pact is approved by the legislature and the Governor of  
13          the State and”.

14          **SEC. 3. GAMING ON AFTER-ACQUIRED LANDS.**

15          (a) CONSULTATION; APPROVAL BY STATE LEGISLA-  
16          TURE.—Subparagraph (A) of section 20(b)(1) of the In-  
17          dian Gaming Regulatory Act (25 U.S.C. 2719(b)(1)) is  
18          amended to read as follows:

19                 “(A) the Governor and the legislature of the  
20                 State in which the gaming is to be conducted (after  
21                 consultation with appropriate State and local offi-  
22                 cials and officials of the Indian tribe, other nearby  
23                 Indian tribes, and communities across State borders  
24                 that would be directly affected by gaming conducted

1 on such lands) determines that a gaming establish-  
2 ment on newly acquired lands would be in the best  
3 interest of the Indian tribe and its members and  
4 would not be detrimental to the surrounding commu-  
5 nities (including communities across State borders  
6 that would be directly affected by gaming conducted  
7 on such lands), but only if the Secretary concurs  
8 with the determination of the Governor and the leg-  
9 islature;”.

10 (b) NEWLY ACKNOWLEDGED OR RESTORED  
11 TRIBES.—Section 20(b)(1) of the Indian Gaming Regu-  
12 latory Act (25 U.S.C. 2719(b)(1)) is amended—

13 (1) in subparagraph (B)—

14 (A) by inserting “after the date of the en-  
15 actment of the Fair Indian Gaming Act” after  
16 “trust” in the matter preceding clause (i); and

17 (B) by striking out the period at the end  
18 thereof and inserting “; or”; and

19 (2) by adding at the end the following:

20 “(C) an Act of Congress enacted after the date  
21 of the enactment of this subparagraph, concurred in  
22 by the Governor and the legislature of the State in  
23 which the gaming activity is to be conducted, au-  
24 thORIZES such gaming to be conducted on lands—

1           “(i) taken into trust as part of the initial  
2           reservation of an Indian tribe acknowledged by  
3           the Secretary under the Federal acknowledg-  
4           ment process, or

5           “(ii) restored for an Indian tribe that is re-  
6           stored to Federal recognition.”.

7 **SEC. 4. PHYSICAL PRESENCE REQUIRED TO PARTICIPATE**  
8           **IN CLASS II AND CLASS III GAMING ON IN-**  
9           **DIAN LANDS.**

10          Section 11 of the Indian Gaming Regulatory Act (25  
11 U.S.C. 2710) is amended by adding at the end the follow-  
12 ing new subsection:

13          “(f) An individual may only participate in class II  
14 gaming on Indian lands authorized pursuant to subsection  
15 (b) and class III gaming on Indian lands authorized pur-  
16 suant to subsection (d) by being physically present at the  
17 gaming activity on the lands with respect to which the  
18 gaming is authorized.”.

19 **SEC. 5. INDIAN GAMING RESTRICTED.**

20          (a) **REGULATION OF CLASS II GAMING.**—Section  
21 11(b) of the Indian Gaming Regulatory Act (25 U.S.C.  
22 2710(b)) is amended—

23                 (1) in paragraph (1)—

24                         (A) in subparagraph (A)—

25                                 (i) by inserting “(i)” after “(A)”;

1 (ii) in clause (i), as designated by  
2 clause (i) of this subparagraph, by striking  
3 “any purpose” and all that follows through  
4 “law), and” and inserting “a commercial  
5 purpose by any person, organization or en-  
6 tity, or”;

7 (iii) by inserting after clause (i), as  
8 designated by clause (i) of this subpara-  
9 graph, the following:

10 “(ii) such Indian gaming is for charitable pur-  
11 poses and is located within a State that permits  
12 such gaming for charitable purposes by a person,  
13 organization or entity,”;

14 (B) by redesignating subparagraph (B) as  
15 subparagraph (D) and inserting after subpara-  
16 graph (A) the following new subparagraphs:

17 “(B) such gaming is not otherwise specifically  
18 prohibited on Indian lands by Federal law,

19 “(C) permissible gaming is limited to the spe-  
20 cific forms of, and methods of play for, gaming ac-  
21 tivities expressly authorized by the law of the State,  
22 and”;

23 (2) in paragraph (2)—

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

1 (B) in subparagraph (F), by striking the  
2 period and inserting “; and”; and

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

4 “(G) all gaming activities shall be conducted in  
5 conformity with those laws and regulations (if any)  
6 of the State regarding specific games allowed and  
7 methods of play, including, but not limited to, peri-  
8 ods of operation, limitation on wagers, pot sizes, and  
9 losses.”.

10 (b) REGULATION OF CLASS III GAMING.—Section  
11 11(d)(1) of the Indian Gaming Regulatory Act (25 U.S.C.  
12 2710(d)(1)) is amended—

13 (1) by amending subparagraph (B) to read as  
14 follows:

15 “(B) located in a State that permits such gam-  
16 ing by any person, organization, or entity which con-  
17 ducts the authorized gaming activity as part of a  
18 commercial enterprise; except that a Tribal-State  
19 compact may permit any other class III gaming ex-  
20 pressly authorized by a State;”; and

21 (2) by redesignating subparagraph (C) as sub-  
22 subparagraph (D) and inserting after subparagraph (B)  
23 the following new subparagraph:

1           “(C) limited to the specific forms of, and meth-  
2           ods of play for, gaming activities expressly author-  
3           ized by the law of the State; and”.

4 **SEC. 6. DEFINITIONS OF CLASS III GAMING AND COMMER-**  
5 **CIAL.**

6           (a) **CLASS III GAMING.**—Section 4 of the Indian  
7 Gaming Regulatory Act (25 U.S.C. 2703) is amended—

8           (1) in paragraph (7)(A)(i), by inserting after  
9           “therewith)” the following: “except video bingo”;  
10          and

11          (2) in paragraph (8), by inserting before the pe-  
12          riod at the end the following: “, including, but not  
13          limited to, gambling devices (as such term is defined  
14          in subsection (a) of the first section of the Act of  
15          January 2, 1951 (Chapter 1194; 64 Stat. 1134)),  
16          electronic or electromechanical facsimiles of any  
17          game of chance, and any and all forms of electronic  
18          video gaming or devices, such as video bingo, video  
19          pull-tabs, video keno, and video blackjack”.

20          (b) **COMMERCIAL.**—Section 4 of the Indian Gaming  
21 Regulatory Act (25 U.S.C. 2703) is amended by adding  
22 at the end the following:

23           “(11) The term ‘commercial’ means a private,  
24           for-profit business and, in the case of class III gam-  
25           ing, includes a State-run lottery.”.

1 **SEC. 7. MORATORIUM ON NEW CLASS III GAMING.**

2 (a) IN GENERAL.—All class III gaming enterprises  
3 on Indian lands that are not specifically authorized pursu-  
4 ant to a Tribal-State compact, or procedures in lieu of  
5 a compact, under the Indian Gaming Regulatory Act (25  
6 U.S.C. 2701 et seq.) as of the date of enactment of this  
7 Act are prohibited for the two-year period beginning on  
8 the date of enactment of this Act unless specifically ap-  
9 proved by a State during the period.

10 (b) DEFINITIONS.—For the purposes of this sec-  
11 tion—

12 (1) the term “class III gaming” has the mean-  
13 ing given such term by the Indian Gaming Regu-  
14 latory Act (25 U.S.C. 2701 et seq.), as amended by  
15 this Act; and

16 (2) the term “United States” includes the Dis-  
17 trict of Columbia and the territories and possessions  
18 of the United States.

19 **SEC. 8. REGULATION OF INDIAN GAMING PURSUANT TO A**  
20 **STATE CONSTITUTION.**

21 (a) IN GENERAL.—Section 11 of the Act (25 U.S.C.  
22 2710), as amended by section 4 of this Act, is further  
23 amended by adding at the end the following:

24 “(g) Notwithstanding any other provision of this Act,  
25 in the case of class II gaming or class III gaming on In-  
26 dian lands located within a State in which the Constitution

1 of that State specifically authorizes gambling, such class  
2 II or III gaming, as the case may be, on such Indian lands  
3 may only be conducted in the manner, to the extent, and  
4 subject to the same terms and conditions, as authorized  
5 by the Constitution and laws of that State, and the Indian  
6 tribe desiring to conduct such class II or III gaming shall  
7 be subject to all laws of the State relating to such gam-  
8 ing.”.

9 (b) EFFECTIVE DATE.—The amendment made by  
10 subsection (a) shall apply with respect to any class II or  
11 III gaming (as defined in section 4 of the Indian Gaming  
12 Regulatory Act (25 U.S.C. 2703)) on Indian lands con-  
13 ducted after the date of the enactment of this Act.

14 **SEC. 9. NATIONAL INDIAN GAMING COMMISSION.**

15 (a) ADDITIONAL MEMBERS.—Paragraph (1) of sec-  
16 tion 5(b) of the Indian Gaming Regulatory Act (25 U.S.C.  
17 2704(b)) is amended to read as follows:

18 “(1) The Commission shall be composed of five full-  
19 time members who shall be appointed by the President,  
20 with the advice and consent of the Senate, as follows:

21 “(A) a Chairman;

22 “(B) two associate members from among indi-  
23 viduals nominated by Indian tribes; and

24 “(C) two associate members from among indi-  
25 viduals nominated by the Governors of the States.”.

1 (b) COMPOSITION.—Section 5(b)(3) of the Indian  
2 Gaming Regulatory Act (25 U.S.C. 2704(b)(3)) is amend-  
3 ed in the first sentence by striking “two” and inserting  
4 “three”.

5 (c) QUORUM.—Section 5(d) of the Indian Gaming  
6 Regulatory Act (25 U.S.C. 2704(d)) is amended by strik-  
7 ing “Two” and inserting “Three”.

8 (d) POWERS.—Section 7(a) of the Indian Gaming  
9 Regulatory Act (25 U.S.C. 2706(a)) is amended by strik-  
10 ing “2 members” each place it appears and inserting “3  
11 members”.

12 (e) CIVIL PENALTIES.—Section 14(b)(2) of the In-  
13 dian Gaming Regulatory Act (25 U.S.C. 2713(b)(2)) is  
14 amended by striking out “two of its members” and insert-  
15 ing in lieu thereof “three of its members”.

16 (f) SUBPOENA.—Section 16(a) of the Indian Gaming  
17 Regulatory Act (25 U.S.C. 2715(a)) is amended by strik-  
18 ing “two members”.

19 (g) COMMISSION FUNDING.—Section 18(a)(3) of the  
20 Indian Gaming Regulatory Act (25 U.S.C. 2717(a)(3)) is  
21 amended by striking “two of its members” and inserting  
22 “three of its members”.

23 (h) EFFECTIVE DATE; TRANSITION RULES.—(1) Ex-  
24 cept as required by paragraph (2), the amendments made  
25 by this section shall take effect at the end of the 90-day

1 period beginning on the date of enactment of this Act and  
2 shall apply with respect to any action taken by the Na-  
3 tional Indian Gaming Commission after the end of such  
4 period.

5 (2) Not later than 90 days after the date of enact-  
6 ment of this Act, the President shall make the initial ap-  
7 pointments of the associate members of the National In-  
8 dian Gaming Commission, as required by the amendments  
9 made by subsection (a) of this section, in accordance with  
10 the Indian Gaming Regulatory Act, as amended by this  
11 Act.

12 **SEC. 10. REPORTING AND BOOKKEEPING.**

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

16 “REPORTING AND BOOKKEEPING

17 “SEC. 21A. (a) Within 90 days after the date of the  
18 enactment of this section, the Secretary of the Treasury  
19 shall issue such regulations as may be necessary to require  
20 gaming establishments authorized pursuant to this Act to  
21 be subject to such reporting and recordkeeping require-  
22 ments as those which are applicable to a casino or gam-  
23 bling casino referred to in section 103.11(i)(7)(i) of part  
24 103 of title 31 of the Code of Federal Regulations in order  
25 to ensure a high degree of usefulness in criminal, tax, and  
26 regulatory matters.

1       “(b) In the administration of this Act, an authoriza-  
2 tion provided by a State for one form of class III gaming  
3 shall not be construed as an authorization for any other  
4 form of class III gaming for purposes of negotiations be-  
5 tween a State and a tribe.

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

10 **SEC. 11. BACKGROUND INVESTIGATIONS.**

11       (a) **ROLE OF ATTORNEY GENERAL.**—The Indian  
12 Gaming Regulatory Act (25 U.S.C. 2701 et seq.), as  
13 amended by section 9 of this Act, is amended by inserting  
14 after section 21A the following new section:

15                       “BACKGROUND INVESTIGATIONS

16       “SEC. 21B. (a) The Attorney General shall conduct  
17 such background investigations as may be necessary—

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

24                       “(2) to determine the suitability of any finan-  
25 cial backer, investor, mortgagee, lender, security

1 holder, or other such person or entity to be involved  
2 in class III gaming activities under this Act;

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

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

11 “(5) with respect to implementing class III  
12 gaming activities pursuant to this Act.

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

15 “(1) criminal history, especially criminal history  
16 with respect to organized crime;

17 “(2) taxpayer return and return information;

18 “(3) immigration information;

19 “(4) records, held by any entity of the Federal  
20 Government, which are not described in paragraph  
21 (1), (2), or (3); and

22 “(5) records held by State entities.

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

24 “(1) the Attorney General is authorized to uti-  
25 lize the system devised under section 242(a)(3)(A)(i)

1 of the Immigration and Nationality Act to determine  
2 if an individual is an alien; and

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

11 “(d) Upon application by any State to the Attorney  
12 General that such State is willing and able to conduct any  
13 or all background investigations required by this section  
14 regarding class III gaming, the Attorney General is au-  
15 thorized, if the Attorney General determines that such  
16 State is willing and able to conduct such investigations,  
17 to permit that State to conduct such investigations as are  
18 authorized by the Attorney General.

19 “(e) This section applies to all gaming under this Act,  
20 whether approved before or after the date of enactment  
21 of this section.”.

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

1           “(3) in consultation with the Attorney General,  
2           shall conduct or cause to be conducted such back-  
3           ground investigations as may be necessary to carry  
4           out the duties of the Commission under this Act  
5           with respect to class II gaming;”.

6           (2) Section 12 of such Act (25 U.S.C. 2711) is  
7           amended—

8           (A) in subsection (a)(1), by striking “the Chair-  
9           man shall” and inserting “the Chairman, in con-  
10          sultation with the Attorney General pursuant to sec-  
11          tion 21B, shall”; and

12          (B) in subsection (e), by striking “the Chair-  
13          man determines” and inserting “the Chairman, in  
14          consultation with the Attorney General pursuant to  
15          section 21B, determines”.

16 **SEC. 12. CRIMINAL LAWS.**

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

19 **“§ 1166. Gambling in Indian country**

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

1       “(b) Whoever in Indian country is guilty of any act  
2 or omission involving gambling, whether or not conducted  
3 or sanctioned by an Indian tribe, which, although not  
4 made punishable by any enactment of Congress, would be  
5 punishable if committed or omitted within the jurisdiction  
6 of the State in which the act or omission occurred under  
7 the laws governing the licensing, regulation, or prohibition  
8 of gambling in force at the time of such act or omission  
9 shall be guilty of a like offense and subject to a like  
10 punishment.

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

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

15               “(2) class III gaming conducted under a Tribal-  
16 State compact approved or considered to be ap-  
17 proved by the Secretary of the Interior under section  
18 11(d)(8) of the Indian Gaming Regulatory Act that  
19 is in effect.

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

24               “(1) an Indian tribe pursuant to a Tribal-State  
25 compact approved or considered to be approved by

1 the Secretary of the Interior under section 11(d)(8)  
2 of the Indian Gaming Regulatory Act, or under any  
3 other provision of Federal law, has consented to the  
4 transfer to the State of criminal jurisdiction with re-  
5 spect to gambling on the lands of the Indian tribe,  
6 or

7 “(2) authority has been granted to a State to  
8 enforce the criminal laws of the State on Indian  
9 lands within the State pursuant to section 1162 of  
10 this title, or any other provision of Federal law  
11 which authorizes exercise of such criminal jurisdic-  
12 tion by a State, which authority shall be concurrent  
13 with the United States with respect to violations also  
14 made violations of Federal law under subsection (a)  
15 of this section.”.

16 **SEC. 13. APPROPRIATIONS AND FEES.**

17 (a) REPEAL OF AUTHORIZATION OF APPROPRIA-  
18 TIONS.—Section 19 of the Indian Gaming Regulatory Act  
19 (25 U.S.C. 2718) is amended to read as follows:

20 “PROHIBITION ON USE OF APPROPRIATED FUNDS

21 “SEC. 19. Beginning with the first fiscal year begin-  
22 ning after the date of the enactment of this section, appro-  
23 priated funds may not be used for the operation of the  
24 Commission to carry out its functions under this Act.”.

25 (b) INCREASE IN ALLOWABLE FEES.—Section  
26 18(a)(2)(B) of such Act (25 U.S.C. 2717(a)(2)(B)) is

1 amended by striking “\$1,500,000” and inserting  
2 “\$3,750,000”.

3 **SEC. 14. REPORTS.**

4 (a) **CRIMINAL ACTIVITY RELATING TO INDIAN-SPON-**  
5 **SORED GAMING ESTABLISHMENTS.**—Not later than six  
6 months after the date of the enactment of this Act, the  
7 Attorney General of the United States, the Secretary of  
8 the Treasury, and the Secretary of the Interior, jointly,  
9 shall conduct a study and submit a report to the Congress  
10 on criminal activity, including the pressure of organized  
11 crime, on Indian-sponsored gaming establishments.

12 (b) **MOST EFFECTIVE GAMING REGULATIONS.**—Not  
13 later than one year after the date of enactment of this  
14 Act, the Attorney General shall conduct a study of the  
15 most effective gaming regulations both on and off Indian  
16 reservations and prepare and disseminate to the public a  
17 report to serve as a guide for States and Indian tribes  
18 seeking to regulate Indian gaming. The report shall in-  
19 clude model regulations to serve as a guide for regulations  
20 under a Tribal-State compact under the Indian Gaming  
21 Regulatory Act (25 U.S.C. 2701 et seq.).

○