

# Tribal State Gaming Compacts

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# Office of Indian Gaming

- Reviewing Land into Trust for Gaming
- Indian Land Determinations
  - On or Contiguous to Reservation
  - Restored Lands
  - Initial Reservation
  - Settlement of a Land Claim
  - Two Part Determinations
- RAPS
- Secretarial Procedures
- Gaming Leases
- Tribal State Class III Gaming Compacts

# Indian Gaming Regulatory Act (IGRA)

Congress enacted IGRA “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...***” (IGRA § 2702)(emphasis added).



# Compact Basic Requirements



Is the Compact signed by recognized Tribal Chairman?

Does Tribal Resolution authorize signature to the Compact?

Is the Compact properly signed by Governor/representative?

Is there evidence that the Governor/representative is authorized to sign the Compact?

Within the Tribe's constitution is there a quorum requirement and has it been met?

If the Compact authorizes the sale/service of alcohol, does the Tribe have an approved liquor ordinance?

Does the Compact authorize sports betting? Internet Gaming?

Is the Compact site specific and if so does the Tribe have documentation that the land is Indian Land?

Is the Amendment a simple extension of the term of the compact?

# Specifically Allowed in a Compact

- (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;

25 U.S.C. § 2710(d)(3)(C)

# Specifically Allowed in a Compact

- (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.
- 25 U.S.C. § 2710(d)(3)(C)

# Compact Approval

The Secretary may only disapprove a proposed Compact when it violates IGRA, any other provision of Federal law that does not relate to jurisdiction over gaming on Indian lands, or the trust obligation of the United States to Indians. 25 U.S.C. § 2710 (d)(8)(B).

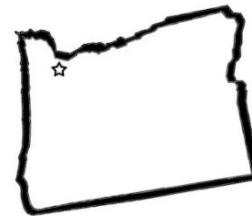
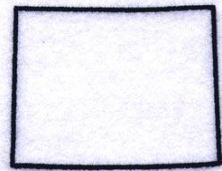
# Good Compact Provisions

- \* Low or no revenue sharing
- \* Compacts in Perpetuity
- \* Waiver of State Sovereign Immunity
- \* Tribal Exclusivity in State Constitution
- \* Minimize State Intrusions
- \* Multiple Locations for Gaming
- \* Most Favored Nation clause
- \* Severability
- \* Maximize Tribal Sovereignty



# Low or No Revenue Sharing

- \* Low or no revenue sharing with the State
- \* Minnesota
- \* Washington
- \* Wyoming
- \* Oregon (only to locals and tribe controls recipients) Louisiana (6% to locals)



# Compacts in Perpetuity

- \* Compacts in perpetuity (11 States and 79 Tribes have gaming compacts with no end date: Colorado, Connecticut, Idaho, Kansas, Minnesota, Nebraska, Nevada (3), New York (2), Oregon, Washington, and Wisconsin



# Waiver of State Sovereign Immunity

- \* *Hotel Employees & Rest. Employees Int'l Union v. Davis*, 21 Cal. 4th 585, 615 (1999) invalidated California Prop 5, which authorized tribal gaming by statute. The Court determined that Prop 5 violated the state's Constitution, which prohibited Las Vegas style gambling.

The court found one portion, the portion waiving the state's sovereign immunity, was still valid

# Tribal Exclusivity in CA Constitution

California is one of the few states where IGRA works as Congress intended.



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# Tribal Exclusivity

- \* Revenue Sharing: only if Tribes get something of Value—Concessions



# Minimize State Intrusion

Minimize State Intrusion on Tribal sovereignty

# Multiple Locations

- \* Multiple Locations for Gaming Facilities (market permitting)
- \* Most compacts do not limit but some do—



# Most Favored Nation Clause

## Sec. 18.7. Most Favored Nation.

If, after the effective date of this Compact, the State enters into a Compact with any other tribe that contains more favorable provisions with respect to any provisions of this Compact, at the Tribe's request, the State or its designee, shall meet and confer with the Tribe regarding modifying the Compact. The State's agreement to modify the Compact, as provided in this section, shall be not unreasonably withheld or delayed.





# Severability Clause

Severability by Court of Competent Jurisdiction v. Severability by reviewing agency



# Other Issues

- Exorbitant Revenue sharing
- Limited exclusivity
- Take it or leave it Compacts
- Revenue Sharing Versus Tax Rates
- Tribe as Primary Beneficiary
- Mitigation Payments-disguised tax

# Some Other Issues

- Tribes as Businesses not Governments
- Non-Indian Gaming over Indian gaming
- Smoking Cessation and Regulation
- Side agreements
- Limits on number and locations of casinos
- Process for handling Customer Complaints

# Maximize Tribal Sovereignty

Strong Tribal Regulatory Process

