

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-1910/P2dn  
ISR:wlj:jf

March 25, 1999

Representative Grothman:

Under this draft, an Indian gaming compact must require the tribe to place signs stating the average expected loss per hour of play for each denomination that may be played on the machine. The average expected loss per hour of play for each denomination will be determined by the director of Indian gaming who is appointed by the secretary of administration.

This draft raises the issue of whether a state law that requires all Indian gaming compacts to contain a specific provision violates the requirement of the Indian Gaming Regulatory Act (IGRA) that a state negotiate with a tribe in good faith. 25 USC 2710 (d) (3) (A). It is possible that a court may find that the requirement prohibits the state from negotiating with a tribe in good faith because it removes certain aspects of gaming regulation from the negotiating process. See *Lac du Flambeau Band of Lake Superior Chippewa Indians v. Wisconsin*, 770 F. Supp. 480 (W.D. Wis. 1991); *Coeur d'Alene Tribe v. Idaho*, 842 F. Supp. 1268 (D. Idaho 1994).

If a court finds that a state did not negotiate in good faith, IGRA provides that a court must order the state and the tribe to agree on a gaming compact within 60 days. 25 USC 2710 (7) (B) (iii). If after 60 days the two parties fail to reach an agreement, the state and tribe must each submit a proposed gaming compact to a mediator who will then decide which compact best complies with the terms and intent of IGRA.

Please review this draft carefully to make sure it reflects your intent. If you have any questions or comments, please feel free to contact me.

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