

1999 DRAFTING REQUEST

Bill

Received: **01/21/1999**

Received By: **isagerro**

Wanted: **As time permits**

Identical to LRB:

For: **Glenn Grothman (608) 264-8486**

By/Representing: **Maggie**

This file may be shown to any legislator: NO

Drafter: **isagerro**

May Contact:

Alt. Drafters:

Subject: **Gambling - miscellaneous**

Extra Copies:

Pre Topic:

No specific pre topic given

Topic:

Require video gambling machines and slot machines in gaming compacts to have sign stating expected loss per hour

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Reauired</u>
/P1	isagerro 01/25/1999	jgeller 01/3 1/1999	martykr 02/01/1999	_____	lrb-docadmin 02/01/1999		
/P2	isagerro 03/26/1999	wjackson 03/26/1999	jfrantze 03/30/1999	_____	lrb-docadmin 03/30/1999		State
/1	isagerro 03/29/2000	wjackson 03/29/2000	martykr 03/29/2000	_____	lrb-docadmin 03/29/2000	lrb_docadminState 03/30/2000	

FE Sent For:

<END>

11
3/30/00

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Am 3/29 *Sab 3/29*

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/P1	isagerro 01/25/99	j geller 01/31/99	martykr 02/1/99	_____	lrb_docadmin 02/1/99		
FE Sent For:		1/p2 3/26 WLJ	3/30	3/30 <END>			

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I?	isagerro	1/p1 wlj 1/27 1/p1 jlg 1/31	km ³	lt km	2 1		yes

FE Sent For:

<END>

Require video gaming: slots in gaming compacts, to have sign in 360° font stating:

"Average expected loss per hour for each denomination that can be played"

- percentage loss / hour

*Can't touch Tribes outright

*Require gov. to include this in negotiated compacts.

→ what are video gaming devices?

- slot machines

- poker

Keno

or ~~other~~ other
* electronic device ^{generally} played in casinos

Note 2

compact selected by court-appointed mediator. Poarch Band of Creek Indians v. State of Ala. S.D.Ala.1991, 776 F.Supp. 550, affirmed 11 F.3d 1016, certiorari granted 115 S.Ct. 933, 613 U.S. 1135, 130 L.Ed.2d 373, affirmed 116 S.Ct. 1114, 517 U.S. 609, 134 L.Ed.2d 252, certiorari denied 116 S.Ct. 1415, 134 L.Ed.2d 541, certiorari denied 116 S.Ct. 1416, 134 L.Ed.2d 541.

State's obligation under Indian Gaming Regulatory Act to negotiate with tribe concerning class III gaming does not apply only to types of games which are identical to those currently being offered by State. Lac du Flambeau Band of Lake Superior, Chippewa Wi8ns v. State of Wis., W.D.Wis.1991, 770 F.Supp. 480, appeal dismissed 957 F.2d 515, certiorari denied 113 S.Ct. 91, 506 U.S. 829, 121 L.Ed.2d 53.

Under the Indian Gaming Regulatory Act, adoption of a tribal ordinance permitting casino type gambling upon reservation was not a condition precedent to opening of negotiations between the State and tribe for purpose of concluding a tribal-state compact governing gaming activities on the reservation. Mashantucket Pequot Tribe v. State of Conn., D.Conn.1990, 737 F.Supp. 169, affirmed, 913 F.2d 1024, certiorari denied 111 S.Ct. 1620, 499 U.S. 975, 113 L.Ed.2d 717.

State-tribal compact allowing casino gambling by tribe on tribal land was valid under IGRA where approved by Secretary of the Interior, regardless of claim that governor acted ultra vires in negotiating compact on behalf of state. Langley v. Edwards, W.D.La.1995, 872 F.Supp. 1631, affirmed 77 F.3d 479.

2a. — Good faith

Indian Gaming Regulatory Act (IGRA) imposes upon states a duty to negotiate in good faith with Indian tribes toward the formation of a compact and purports to authorize tribes to bring suits in federal court against states in order to compel performance of that duty. Seminole Tribe of Florida v. Florida, U.S.Fla. 1996, 116 S.Ct. 1114, 517 U.S. 609, 134 L.Ed.2d 252.

Indian Gaming Regulatory Act (IGRA) does not require state to regulate Class III gaming by entering in tribal-state compacts; instead, only obligation on state is to negotiate in good faith. Ponca Tribe of Oklahoma v. State of Okl., C.A.10 (Okla.) 1994, 37 F.3d 1422, certiorari dismissed 116 S.Ct. 435, 133 L.Ed.2d 350, vacated 116 S.Ct. 1410, 134 L.Ed.2d 537, on remand 89 F.3d 690.

State was not required to enter into negotiations regarding conduct of Class III gaming at site excluded from prior tribal-state gaming compact under Indian Gaming Regulatory Act (IGRA) and did not fail to act in good faith by refusing to enter into such negotiations, where prior compact, entered into less than six months prior to tribe's present action to force such negotiations, governed conduct of Class III gaming on tribe's lands, and did not allow such gaming at excluded site. Wisconsin Winnebago Nation v. Thompson, C.A.7 (Wis.) 1994, 22 F.3d 719.

Determination of whether state was negotiating tribal-state gaming compact in good faith as required under Indian Gaming Regulatory Act

had to be made on basis of transcripts of negotiating sessions, and not with reference to positions taken outside negotiating process. Cheyenne River Sioux Tribe v. State of S.D., D.S.D. 1993, 830 F.Supp. 523, affirmed 3 F.3d 273, rehearing and suggestion for rehearing en banc denied.

After conclusion of tribal-state gaming compact with tribe, state's failure to negotiate over gaming at site excluded from compact did not give tribe claim under Indian Gaming Regulatory Act or compact to compel negotiation, where facts did not indicate that compact was anything less than final agreement between tribe and state, and tribe showed no compelling reason why it did not sue prior to conclusion of compact negotiations if it believed state was not negotiating in good faith as to that site. Wisconsin Winnebago Nation v. Thompson, W.D.Wis.1993, 824 F.Supp. 167, affirmed 22 F.3d 719.

3a. — Scope of Indian Gaming Regulatory Act

California did not permit bank or percentage card gaming, and thus state was not required by IGRA to negotiate with Indian tribes with respect to those gaming activities, even though state allowed games that shared some characteristics with banked and percentage card games, in form of banked and percentage games other than card games, and nonbanked nonpercentage card games. Rumsey Indian Rancheria of Wintun Indians v. Wilson, C.A.9 (Cal.) 1994, 64 F.3d 1250, opinion amended on denial of rehearing 99 F.3d 321, certiorari denied 115 S.Ct. 2508, 138 L.Ed.2d 1012.

Under Indian Gaming Regulatory Act (IGRA), State of Idaho was permitted to negotiate with tribes engaged in gaming operation with respect to such issues as wage and benefits, limits, days and hours of operation, and capacity of proposed gaming facilities. Coeur d'Alene Tribe v. State, D.Idaho 1994, 842 F.Supp. 1255, affirmed 51 F.3d 876, certiorari denied 116 S.Ct. 905, 133 L.Ed.2d 209, rehearing denied 116 S.Ct. 585, 133 L.Ed.2d 507.

Alleged fact that state offered "video lottery" statewide video lottery system did not mean that state had to negotiate traditional (or stand-alone keno in negotiating compact under Indian Gaming Regulatory Act. Cheyenne River Sioux Tribe v. State of S.D., D.S.D. 1993, F.Supp. 623, affirmed 3 F.3d 273, rehearing suggestion for rehearing en banc denied.

Under the Indian Gaming Regulatory Act, state of Connecticut was required to enter into good faith negotiations with Indian tribe for purpose of formulating a tribal-state compact governing conduct of games of chance on reservation, as such games were defined by Connecticut statute permitting nonprofit organization to operate certain games of chance on reservation "for charitable purposes." State could impose all restrictions imposed by state on tribal games of chance, without any restriction. Mashantucket Pequot Tribe v. State of Conn. D.Conn.1990, 737 F.Supp. 169, affirmed 111 S.Ct. 1024, certiorari denied 111 S.Ct. 1620, 499 U.S. 975, 113 L.Ed.2d 717.

3a. — Slot machines
Ambiguous language in compact between State of Montana as including use of slot machines, but did not provide security provisions of language, which Tribe reciprocalized by, state Indians v. Raci 1039.

With possible machines fitting and thus state negotiate with those prohibited Indian Rancheria C.A.9 (Cal.) 1994, denial of rehearing denied 117 S.Ct. 1173, 139 L.Ed.2d 1173.

Convenience of tribe's action under Act from the So the Northern D issues of fact exist, hear testimony, case had work were located principal office of fact that one negotiating compact was Tribe v. State Supp. 185.

Injunction
Joining gov compacts under (IGRA) was barr and Ex parte Yot state to negotiate is d Oklahoma v. Sta 1422, cer 133 L.Ed.2d 350 133 L.Ed.2d 537, on r Indian Gaming Act's discretion and; thus, he used to av immunity negotiate under l State of F. certiorari g 130 L.Ed.2d U.S. 609, 134 S.Ct. 1415, 1 1416 S.Ct. 141



Dnote

PRELIMINARY **DRAFT - NOT READY FOR INTRODUCTION**

Gen Cat

1 AN ACT [/]; **relating to:** requiring Indian gaming compacts [✓] to contain provisions

2 requiring that a sign stating the expected loss per hour of play be displayed on

3 gambling machines.

Analysis by the Legislative Reference Bureau

Under current law, the governor may negotiate and enter into Indian gaming compacts. These compacts are regulated by the federal Indian Gaming Regulatory Act. [✓]

This bill requires that before the governor may enter into a gaming compact, the compact must contain a provision requiring that signs stating the expected loss per hour for the machine be displayed on all gambling devices authorized by the compact.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

4 SECTION 1. 14.035 (1) [✓] of the statutes is created to read:

5

14.035 (1) ~~DEFINITIONS~~ ^{work} In this section ^{IP}

1 ^{No} ~~PP~~ (a) "Gambling machine" means a slot machine or any mechanical,
 2 electromechanical or electronic device that is generally available to be played at a
 3 gambling casino.

4 SECTION 2. 14.035[✓] of the statutes is renumbered 14.035 (2)[✓] and amended to
 5 read: ~~(1)~~²

6 14.035 (1) ~~The~~ Subject to sub. (3)[✓], the governor may, on behalf of this state,
 7 enter into any compact that has been negotiated under 25 USC 2710 (d).

8 SECTION 3. 14.035 (3)[✓] of the statutes is created to read:

9 14.035 (3) The governor may only enter into a compact under sub. (2)[✓] if the
 10 compact requires that a sign be prominently displayed on each gambling machine
 11 ~~which~~^{that} states the average expected loss per hour of play on the machine. The lettering
 12 on the sign shall be printed in a 36[✓] point font.

13 (END)[✓]

D-NOTE
 ↓

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

LRB-1910/P1dn

ISR: /:....

WLJ
+
JG

January 25, 1999

Maggie:

This draft uses the definition of a gambling machine from the lottery chapter. This definition is very broad, but I don't think it covers any gambling devices you don't want to cover. Are there any devices besides slot machines that you want specifically included in the definition? Are there any devices you want to exclude from the definition?

Please read this draft carefully to make sure it is what you intended. If you have any questions or comments, please feel free to contact me.

Ivy G. Sager-Rosenthal
Legislative Attorney
261-4455

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1910/P1dn
ISR:wlj&jlg:km

February 1, 1999

Maggie:

This draft uses the definition of a gambling machine from the lottery chapter. This definition is very broad, but I don't think it covers any gambling devices you don't want to cover. Are there any devices besides slot machines that you want specifically included in the definition? Are there any devices you want to exclude from the definition?

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Ivy G. Sager-Rosenthal
Legislative Attorney
261-4455

- Glenn Grothman called 3/10/99 10:30

- clarify that ^{loss for each.} amt. you bet on a machine (25¢, 50¢, 75¢) shall be on the sign

- ~~DOR~~ shall determine the avg. loss/hr.

~~DOA~~



State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-1910/P1
ISR:wlj&jlg:km

DN

Redraft
make
now

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 AN ACT ^{Regen} ~~to renumber and amend~~ 14.035; and to **create** 14.035 (1) and 14.035
2 (3) of the statutes; **relating to:** requiring Indian gaming compacts to contain
3 provisions requiring that a sign stating the expected loss per hour of play be
4 displayed on gambling machines.

Analysis by the Legislative Reference Bureau

Under current law, the governor may negotiate and enter into Indian gaming compacts. These compacts are regulated by the federal Indian Gaming Regulatory Act.

This bill requires that before the governor may enter into a gaming compact, the compact must contain a provision requiring that signs stating the expected loss per hour for the machine be displayed on all gambling devices authorized by the compact.

of play for each denomination that may be played on

was determined by the director of Indian gaming

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

5 SECTION 1. 14.035 of the statutes is renumbered 14.035 (2) and amended to
6 read:

FES

1 14.035 (2) ~~The Subject to sub. (3), the~~ governor may, on behalf of this state,
2 enter into any compact that has been negotiated under 25 USC 2710 (d).

3 SECTION 2. 14.035 (1) of the statutes is created to read:

4 14.035 (1) In this section, "gambling machine" means a slot machine or any
5 mechanical, electromechanical or electronic device that is generally available to be
6 played at a gambling casino.

7 SECTION 3. 14.035 (3) of the statutes is created to read:

8 14.035 (3) The governor may only enter into a compact under sub. (2) if the
9 compact requires that a sign be prominently displayed on each gambling machine ^{as required}
10 that states the average expected loss per hour of play ^{by the compact} on the machine. The lettering
11 on the sign shall be printed in a 36 point font.

(END)

for each denomination that may be played

as determined by the director of Indian gaming

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1910/P2dn
ISR: /:....
WJ

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 U.S.C. 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, 942 F. Supp. 1268 (D. Idaho).

No scoring but (I) → { 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, 942 F. Supp. 1268 (D. Idaho) } ← but (I) No underscore

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 U.S.C. 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.

Ivy G. Sager-Rosenthal
Legislative Attorney
Phone: (608) 261-4455
E-mail: Ivy.Sager-Rosenthal@legis.state.wi.us

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1910/P2dn
1SR:wlj:jf

March 25, 1999

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State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-1910/11
ISR:wlj&jlg:jf

RMR

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

No changes except p. 2, line 4.
Today thanks.
[Signature]

Regen

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2 (3) of the statutes; **relating to:** requiring Indian gaming compacts to contain
3 provisions requiring that a sign stating the expected loss per hour of play be
4 displayed on gambling machines.

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Under current law, the governor may negotiate and enter into Indian gaming compacts. These compacts are regulated by the federal Indian Gaming Regulatory Act.

This bill requires that before the governor may enter into a gaming compact, the compact must contain a provision requiring that signs stating the expected loss per hour of play for each denomination that may be played on the machine, as determined by the director of Indian gaming, be displayed on all gambling devices authorized by the compact.

For further information see the **state** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 14.035 of the statutes is renumbered 14.035 (2) and amended to
2 read:

3 14.035 (2) ~~The Subject to sub. (3).~~ the governor may, on behalf of this state,
4 enter into any compact that has been negotiated under 25 USC 2710 (d).

5 **SECTION 2.** 14.035 (1) of the statutes is created to read:

6 14.035 (1) In this section, “gambling machine” means a slot machine or any
7 mechanical, electromechanical or electronic device that is generally available to be
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9 **SECTION 3.** 14.035 (3) of the statutes is created to read:

10 14.035 (3) The governor may only enter into a compact under sub. (2) if the
11 compact requires that a sign be prominently displayed on each gambling machine
12 authorized by the compact that states the average expected loss per hour of play for
13 each denomination that may be played on the machine as determined by the director
14 of Indian gaming. The lettering on the sign shall be printed in a 36¹⁰/₁₂ point font.

15

(END)

**SUBMITTAL
FORM**

**LEGISLATIVE REFERENCE BUREAU
Legal Section Telephone: 266-3561
5th Floor, 100 N. Hamilton Street**

The attached draft is submitted for your inspection. Please check each part carefully, proofread each word, and **sign** on the appropriate line(s) below.

Date: 03/29/2000

To: Representative Grothman


Relating to LRB drafting number: LRB- 1910

Topic

Require video gambling machines and slot machines in gaming compacts to have sign stating expected loss per hour

Subject(s)

Gambling - miscellaneous

1. **JACKET** the draft for introduction _____

in the **Senate** or the **Assembly** (check only one). Only the requester under whose name the drafting request is entered in the **LRB's** drafting records may authorize the draft to be submitted. Please allow one day for the preparation of the required copies.

2. **REDRAFT.** See the changes indicated or attached _____
A revised draft will be submitted for your approval with changes incorporated.

3. Obtain **FISCAL ESTIMATE NOW**, prior to introduction _____
If the analysis indicates that a fiscal estimate is required because the proposal makes an appropriation or increases or decreases existing appropriations or state or general local government fiscal liability or revenues, you have the option to request the fiscal estimate prior to introduction. If you choose to introduce the proposal without the fiscal estimate, the fiscal estimate will be requested automatically upon introduction. It takes about 10 days to obtain a fiscal estimate. Requesting the fiscal estimate prior to introduction retains your flexibility for possible redrafting of the proposal.

If you have any questions regarding the above procedures, please call 266-356 1. If you have any questions relating to the attached draft, please feel free to call me.

Ivy G. Sager-Rosenthal, Legislative Attorney
Telephone: (608) 261-4455