

Indian Gambling in Minnesota

There are 18 tribal casinos in Minnesota operating under a combination of state law, tribal ordinance, and tribal-state compacts.

The federal Indian Gaming Regulatory Act authorizes gambling on Indian land

Nationally, Indian gambling is authorized by the federal Indian Gaming Regulatory Act (IGRA). This law generally allows Indian tribes in any state to conduct on Indian land those types of gambling that the state allows for non-Indians. IGRA divides all gambling on Indian land into one of three classes:

- **Class I gambling**, which includes traditional Indian ceremonial and social games, is controlled exclusively by the tribes.
- **Class II gambling** consists of bingo, keno, pull-tabs, punchboards, and nonbanking card games (games where players play against each other rather than against the house). Class II gambling is governed by a tribal ordinance that must meet federal guidelines and be approved by the National Indian Gaming Commission.
- **Class III gambling** consists of common casino games such as roulette, craps, chemin de fer, baccarat, and banking card games such as blackjack. The term also includes all mechanical or electronic gambling machines such as slot machines and video poker devices. Class III gambling is conducted under a compact that each tribe negotiates with the government of the state in which it is located. Compacts can specify which party has civil and criminal jurisdiction over gambling enforcement. The compacts can apply those state laws to class III gambling that each party believes necessary for regulation.

IGRA defines Indian land as land that is either:

- part of a federally recognized Indian reservation, or
- off of a reservation but held in trust for an Indian tribe by the federal government, or under the jurisdiction of an Indian governing body.

It is not necessary for land to be actually part of a reservation for gambling to be conducted on it. In theory, an Indian tribe could buy land anywhere in a state and operate a casino on it by having it declared Indian trust land by the U.S. Secretary of the Interior. Such a designation of Indian trust land for gambling purposes also requires the concurrence of the governor of the state.

A state's authority to control gambling is limited

A state cannot prohibit Indian gambling if it is a type of gambling that the state allows for non-Indians. States' rights to control Indian gambling are sharply limited under federal law.

The states have no role in regulating bingo and other class II games. If a state allows a class II game to be played on non-Indian lands, tribes have a right to conduct that game under a federally approved tribal ordinance. Unbanked card

games played under a tribal ordinance have to abide by state laws on hours of play and wagering limits.

If a state allows blackjack, slot machines, and other class III games for non-Indians, the IGRA requires the state to negotiate a compact for those games with an Indian tribe that requests it. The IGRA also provides an administrative procedure to determine contract terms if a state does not negotiate with a tribe in good faith. The first step in the procedure requires a tribe to obtain a federal court order directing negotiations and, if needed, mediation. However, a 1996 U.S. Supreme Court decision held that this provision violates state sovereign immunity under the 11th amendment. This decision effectively thwarts the IGRA's procedure for resolving deadlocked contract negotiations, unless a state has waived its sovereign immunity (as some states have done).

To give effect to the administrative procedures after the Court's 1996 holding, the Department of the Interior promulgated regulations that eliminated the federal court order requirement. The validity of these regulations has been the subject of litigation. In 2007, the 5th Circuit Court of Appeals held that the department did not have the authority to promulgate them. A case filed by New Mexico challenging the regulations is pending in the 10th Circuit. For states that have not waived their sovereign immunity under the IGRA, it is not clear how deadlocked contract negotiations will be resolved.

States negotiate compacts with tribes

Minnesota has negotiated 22 tribal-state compacts with 11 Indian tribes, resulting in the establishment of 18 casinos in the state. The class III games permitted under these compacts are blackjack and video games of chance.

The compacts provide for inspection and approval of machines by the state Department of Public Safety, licensing of casino employees, standards for employees (no prior felony convictions, etc.), machine payout percentages, and regulation of the play of blackjack. In addition, if off-track betting on horse racing is ever permitted in Minnesota (the law authorizing it was declared unconstitutional by the state supreme court), there could be one Indian off-track betting establishment for each non-Indian establishment in the state.

Both types of compacts (video games and blackjack) provide that they remain in effect until the two parties renegotiate them. Either party can request a renegotiation at any time.

States can't tax Indian gambling to raise general revenue

IGRA specifically prohibits states from imposing taxes or fees on Indian gambling, except for fees that the tribe agrees to. These fees are intended to compensate the state for its costs in performing inspections and other regulation under the tribal-state compact. In other words, states cannot raise general revenue by taxing Indian gambling.

Some states, notably Connecticut, have negotiated agreements with Indian tribes under which the tribe voluntarily pays the state a percentage of gambling revenue in exchange for state agreement to maintain tribal monopoly over certain types of gambling.

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