

105TH CONGRESS
1ST SESSION

S. 1077

To amend the Indian Gaming Regulatory Act, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 28, 1997

Mr. MCCAIN (for himself and Mr. INOUE) introduced the following bill; which
was read twice and referred to the Committee on Indian Affairs

A BILL

To amend the Indian Gaming Regulatory Act, 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.**

4 This Act may be cited as the “Indian Gaming Regu-
5 latory Act Amendments Act of 1997”.

6 **SEC. 2. AMENDMENTS TO THE INDIAN GAMING REGU-**
7 **LATORY ACT.**

8 The Indian Gaming Regulatory Act (25 U.S.C. 2701
9 et seq.) is amended—

10 (1) by striking the first section and inserting
11 the following new section:

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

2 “(a) SHORT TITLE.—This Act may be cited as the
3 ‘Indian Gaming Regulatory Act’.

4 “(b) TABLE OF CONTENTS.—The table of contents
5 for this Act is as follows:

- “Sec. 1. Short title; table of contents.
- “Sec. 2. Congressional findings.
- “Sec. 3. Purposes.
- “Sec. 4. Definitions.
- “Sec. 5. Establishment of the Federal Indian Gaming Regulatory Commission.
- “Sec. 6. Powers of the Chairperson.
- “Sec. 7. Powers and authority of the Commission.
- “Sec. 8. Regulatory framework.
- “Sec. 9. Advisory Committee on Minimum Regulatory Requirements and Li-
censing Standards.
- “Sec. 10. Licensing.
- “Sec. 11. Requirements for the conduct of class I and class II gaming on In-
dian lands.
- “Sec. 12. Class III gaming on Indian lands.
- “Sec. 13. Review of contracts.
- “Sec. 14. Review of existing contracts; interim authority.
- “Sec. 15. Civil penalties.
- “Sec. 16. Judicial review.
- “Sec. 17. Commission funding.
- “Sec. 18. Authorization of appropriations.
- “Sec. 19. Application of the Internal Revenue Code of 1986.
- “Sec. 20. Gaming on lands acquired after October 17, 1988.
- “Sec. 21. Dissemination of information.
- “Sec. 22. Severability.
- “Sec. 23. Criminal penalties.
- “Sec. 24. Conforming amendment.”;

6 (2) by striking sections 2 and 3 and inserting
7 the following new sections:

8 **“SEC. 2. CONGRESSIONAL FINDINGS.**

9 “Congress finds that—

10 “(1) Indian tribes are—

11 “(A) engaged in the operation of gaming
12 activities on Indian lands as a means of gener-
13 ating tribal governmental revenue; and

1 “(B) licensing the activities described in
2 subparagraph (A);

3 “(2) clear Federal standards and regulations
4 for the conduct of gaming on Indian lands will assist
5 tribal governments in assuring the integrity of gam-
6 ing activities conducted on Indian lands;

7 “(3) a principal goal of Federal Indian policy is
8 to promote tribal economic development, tribal self-
9 sufficiency, and strong Indian tribal governments;

10 “(4) while Indian tribes have the right to regu-
11 late the operation of gaming activities on Indian
12 lands, if those gaming activities are—

13 “(A) not specifically prohibited by Federal
14 law; and

15 “(B) conducted within a State that as a
16 matter of public policy permits those gaming
17 activities,

18 Congress has the authority to regulate the privilege
19 of doing business with Indian tribes in Indian coun-
20 try (as that term is defined in section 1151 of title
21 18, United States Code);

22 “(5) systems for the regulation of gaming ac-
23 tivities on Indian lands should meet or exceed feder-
24 ally established minimum regulatory requirements;

1 “(6) the operation of gaming activities on In-
2 dian lands has had a significant impact on com-
3 merce with foreign nations, among the several States
4 and with the Indian tribes; and

5 “(7) the Constitution vests Congress with the
6 powers to regulate Commerce with foreign nations,
7 and among the several States, and with the Indian
8 tribes, and this Act is enacted in the exercise of
9 those powers.

10 **“SEC. 3. PURPOSES.**

11 “The purposes of this Act are—

12 “(1) to ensure the right of Indian tribes to con-
13 duct gaming activities on Indian lands in a manner
14 consistent with the decision of the Supreme Court in
15 California et al. v. Cabazon Band of Mission Indians
16 et al. (480 U.S. 202, 107 S. Ct. 1083, 94 L. Ed.
17 2d 244 (1987)), involving the Cabazon and Morongo
18 bands of Mission Indians;

19 “(2) to provide a statutory basis for the con-
20 duct of gaming activities on Indian lands as a means
21 of promoting tribal economic development, tribal
22 self-sufficiency, and strong Indian tribal govern-
23 ments;

24 “(3) to provide a statutory basis for the regula-
25 tion of gaming activities on Indian lands by an In-

1 dian tribe that is adequate to shield those activities
 2 from organized crime and other corrupting influ-
 3 ences, to ensure that an Indian tribal government is
 4 the primary beneficiary of the operation of gaming
 5 activities, and to ensure that gaming is conducted
 6 fairly and honestly by both the operator and players;
 7 and

8 “(4) to declare that the establishment of inde-
 9 pendent Federal regulatory authority for the conduct
 10 of gaming activities on Indian lands and the estab-
 11 lishment of Federal minimum regulatory require-
 12 ments for the conduct of gaming activities on Indian
 13 lands are necessary to protect that gaming.”;

14 (3) in section 4—

15 (A) by redesignating paragraphs (7) and
 16 (8) as paragraphs (6) and (7), respectively;

17 (B) by striking paragraphs (1) through (6)
 18 and inserting the following new paragraphs:

19 “(1) APPLICANT.—The term ‘applicant’ means
 20 any person who applies for a license pursuant to this
 21 Act, including any person who applies for a renewal
 22 of a license.

23 “(2) ADVISORY COMMITTEE.—The term ‘Advi-
 24 sory Committee’ means the Advisory Committee on

1 Minimum Regulatory Requirements and Licensing
 2 Standards established under section 9(a).

3 “(3) ATTORNEY GENERAL.—The term ‘Attor-
 4 ney General’ means the Attorney General of the
 5 United States.

6 “(4) CHAIRPERSON.—The term ‘Chairperson’
 7 means the Chairperson of the Federal Indian Gam-
 8 ing Regulatory Commission established under sec-
 9 tion 5.

10 “(5) CLASS I GAMING.—The term ‘class I gam-
 11 ing’ means social games played solely for prizes of
 12 minimal value or traditional forms of Indian gaming
 13 engaged in by individuals as a part of, or in connec-
 14 tion with, tribal ceremonies or celebrations.”;

15 (C) by striking paragraphs (9) and (10);
 16 and

17 (D) by adding after paragraph (7) (as re-
 18 designated by subparagraph (A) of this para-
 19 graph) the following new paragraphs:

20 “(8) COMMISSION.—The term ‘Commission’
 21 means the Federal Indian Gaming Regulatory Com-
 22 mission established under section 5.

23 “(9) COMPACT.—The term ‘compact’ means an
 24 agreement relating to the operation of class III gam-

1 ing on Indian lands that is entered into pursuant to
2 this Act.

3 “(10) GAMING OPERATION.—The term ‘gaming
4 operation’ means an entity that conducts class II or
5 class III gaming on Indian lands.

6 “(11) GAMING-RELATED CONTRACT.—The term
7 ‘gaming-related contract’ means—

8 “(A) any agreement for an amount of
9 more than \$50,000 per year under which an In-
10 dian tribe or an agent of any Indian tribe pro-
11 cures gaming materials, supplies, equipment, or
12 services that are used in the conduct of a class
13 II or class III gaming activity; or

14 “(B) any agreement or contract that pro-
15 vides for financing of an amount more than
16 \$50,000 per year for the construction or reha-
17 bilitation of any facility in which a gaming ac-
18 tivity is to be conducted.

19 “(12) GAMING-RELATED CONTRACTOR.—The
20 term ‘gaming-related contractor’ means any person
21 who enters into a gaming-related contract with an
22 Indian tribe or an agent of an Indian tribe, includ-
23 ing any person with a financial interest in such con-
24 tract.

1 “(13) GAMING SERVICE INDUSTRY.—The term
 2 ‘gaming service industry’ means any form of enter-
 3 prise that provides goods or services that are used
 4 in conjunction with any class II or class III gaming
 5 activity, in any case in which—

6 “(A) the proposed agreement between the
 7 enterprise and a class II or class III gaming op-
 8 eration, or the aggregate of such agreements is
 9 for an amount of not less than \$100,000 per
 10 year; or

11 “(B) the amount of business conducted by
 12 such enterprise with any such gaming operation
 13 in the 1-year period preceding the effective date
 14 of the proposed agreement between the enter-
 15 prise and a class II or class III gaming oper-
 16 ation was not less than \$250,000.

17 “(14) INDIAN LANDS.—The term ‘Indian lands’
 18 means—

19 “(A) all lands within the limits of any In-
 20 dian reservation; and

21 “(B) any lands—

22 “(i) the title to which is held in trust
 23 by the United States for the benefit of any
 24 Indian tribe; or

25 “(ii)(I) the title to which is—

1 “(aa) held by an Indian tribe
2 subject to a restriction by the United
3 States against alienation;

4 “(bb) held in trust by the United
5 States for the benefit of an individual
6 Indian; or

7 “(cc) held by an individual sub-
8 ject to restriction by the United
9 States against alienation; and

10 “(II) over which an Indian tribe exer-
11 cises governmental power.

12 “(15) INDIAN TRIBE.—The term ‘Indian tribe’
13 means any Indian tribe, band, nation, or other orga-
14 nized group or community of Indians that—

15 “(A) is recognized as eligible by the Sec-
16 retary for the special programs and services
17 provided by the United States to Indians be-
18 cause of their status as Indians; and

19 “(B) is recognized as possessing powers of
20 self-government.

21 “(16) KEY EMPLOYEE.—The term ‘key em-
22 ployee’ means any individual employed in a gaming
23 operation licensed pursuant to this Act in a super-
24 visory capacity or empowered to make any discre-
25 tionary decision with regard to the gaming oper-

1 ation, including any pit boss, shift boss, credit execu-
2 tive, cashier supervisor, gaming facility manager or
3 assistant manager, or manager or supervisor of se-
4 curity employees.

5 “(17) MANAGEMENT CONTRACT.—The term
6 ‘management contract’ means any contract or collat-
7 eral agreement between an Indian tribe and a con-
8 tractor, if such contract or agreement provides for
9 the management of all or part of a gaming oper-
10 ation.

11 “(18) MANAGEMENT CONTRACTOR.—The term
12 ‘management contractor’ means any person entering
13 into a management contract with an Indian tribe or
14 an agent of the Indian tribe for the management of
15 a gaming operation, including any person with a fi-
16 nancial interest in that contract.

17 “(19) MATERIAL CONTROL.—The term ‘mate-
18 rial control’ means the exercise of authority or su-
19 pervision or the power to make or cause to be made
20 any discretionary decision with regard to matters
21 which have a substantial effect on the financial or
22 management aspects of a gaming operation.

23 “(20) NET REVENUES.—The term ‘net reve-
24 nues’ means the gross revenues of an Indian gaming
25 activity reduced by the sum of—

1 “(A) any amounts paid out or paid for as
2 prizes; and

3 “(B) the total operating expenses associ-
4 ated with the gaming activity, excluding man-
5 agement fees.

6 “(21) PERSON.—The term ‘person’ means an
7 individual, firm, corporation, association, organiza-
8 tion, partnership, trust, consortium, joint venture, or
9 entity.

10 “(22) SECRETARY.—The term ‘Secretary’
11 means the Secretary of the Interior.”;

12 (4) by striking sections 5 through 19 and in-
13 serting the following new sections:

14 **“SEC. 5. ESTABLISHMENT OF THE FEDERAL INDIAN GAM-**
15 **ING REGULATORY COMMISSION.**

16 “(a) ESTABLISHMENT.—There is established as an
17 independent agency of the United States, a Commission
18 to be known as the Federal Indian Gaming Regulatory
19 Commission. Such Commission shall be an independent es-
20 tablishment, as defined in section 104 of title 5, United
21 States Code.

22 “(b) COMPOSITION OF THE COMMISSION.—

23 “(1) IN GENERAL.—The Commission shall be
24 composed of 3 full-time members, who shall be ap-

1 pointed by the President, by and with the advice and
2 consent of the Senate.

3 “(2) CITIZENSHIP OF MEMBERS.—Each mem-
4 ber of the Commission shall be a citizen of the Unit-
5 ed States.

6 “(3) REQUIREMENTS FOR MEMBERS.—No
7 member of the Commission may—

8 “(A) pursue any other business or occupa-
9 tion or hold any other office;

10 “(B) be actively engaged in or, other than
11 through distribution of gaming revenues as a
12 member of an Indian tribe, have any pecuniary
13 interest in gaming activities;

14 “(C) other than through distribution of
15 gaming revenues as a member of an Indian
16 tribe, have any pecuniary interest in any busi-
17 ness or organization that holds a gaming license
18 under this Act or that does business with any
19 person or organization licensed under this Act;

20 “(D) have been convicted of a felony or
21 gaming offense; or

22 “(E) have any pecuniary interest in, or
23 management responsibility for, any gaming-re-
24 lated contract or any other contract approved
25 pursuant to this Act.

1 “(4) POLITICAL AFFILIATION.—Not more than
2 2 members of the Commission shall be members of
3 the same political party. In making appointments to
4 the Commission, the President shall appoint mem-
5 bers of different political parties, to the extent prac-
6 ticable.

7 “(5) ADDITIONAL QUALIFICATIONS.—

8 “(A) IN GENERAL.—The Commission shall
9 be composed of the most qualified individuals
10 available. In making appointments to the Com-
11 mission, the President shall give special ref-
12 erence to the training and experience of individ-
13 uals in the fields of corporate finance, account-
14 ing, auditing, and investigation or law enforce-
15 ment.

16 “(B) TRIBAL GOVERNMENT EXPERI-
17 ENCE.—Not less than 2 members of the Com-
18 mission shall be individuals with extensive expe-
19 rience or expertise in tribal government.

20 “(6) BACKGROUND INVESTIGATIONS.—The At-
21 torney General shall conduct a background inves-
22 tigation concerning any individual under consider-
23 ation for appointment to the Commission, with par-
24 ticular regard to the financial stability, integrity, re-

1 sponsibility, and reputation for good character, hon-
2 esty, and integrity of the nominee.

3 “(c) CHAIRPERSON.—The President shall select a
4 Chairperson from among the members appointed to the
5 Commission.

6 “(d) VICE CHAIRPERSON.—The Commission shall se-
7 lect, by majority vote, 1 of the members of the Commission
8 to serve as Vice Chairperson. The Vice Chairperson
9 shall—

10 “(1) serve as Chairperson of the Commission in
11 the absence of the Chairperson; and

12 “(2) exercise such other powers as may be dele-
13 gated by the Chairperson.

14 “(e) TERMS OF OFFICE.—

15 “(1) IN GENERAL.—Each member of the Com-
16 mission shall hold office for a term of 5 years.

17 “(2) INITIAL APPOINTMENTS.—Initial appoint-
18 ments to the Commission shall be made for the fol-
19 lowing terms:

20 “(A) The Chairperson shall be appointed
21 for a term of 5 years.

22 “(B) One member shall be appointed for a
23 term of 4 years.

24 “(C) One member shall be appointed for a
25 term of 3 years.

1 “(3) LIMITATION.—No member shall serve for
2 more than 2 terms of 5 years each.

3 “(f) VACANCIES.—

4 “(1) IN GENERAL.—Each individual appointed
5 by the President to serve as Chairperson and each
6 member of the Commission shall, unless removed for
7 cause under paragraph (2), serve in the capacity for
8 which such individual is appointed until the expira-
9 tion of the term of such individual or until a succes-
10 sor is duly appointed and qualified.

11 “(2) REMOVAL FROM OFFICE.—The Chair-
12 person or any member of the Commission may only
13 be removed from office before the expiration of the
14 term of office by the President for neglect of duty,
15 malfeasance in office, or for other good cause shown.

16 “(3) TERM TO FILL VACANCIES.—The term of
17 any member appointed to fill a vacancy on the Com-
18 mission shall be for the unexpired term of the mem-
19 ber.

20 “(g) QUORUM.—Two members of the Commission
21 shall constitute a quorum.

22 “(h) MEETINGS.—

23 “(1) IN GENERAL.—The Commission shall meet
24 at the call of the Chairperson or a majority of the
25 members of the Commission.

1 “(2) MAJORITY OF MEMBERS DETERMINE AC-
2 TION.—A majority of the members of the Commis-
3 sion shall determine any action of the Commission.

4 “(i) COMPENSATION.—

5 “(1) CHAIRPERSON.—The Chairperson shall be
6 paid at a rate equal to that of level IV of the Execu-
7 tive Schedule under section 5316 of title 5, United
8 States Code.

9 “(2) OTHER MEMBERS.—Each member of the
10 Commission (other than the Chairperson) shall be
11 paid at a rate equal to that of level V of the Execu-
12 tive Schedule under section 5316 of title 5, United
13 States Code.

14 “(3) TRAVEL.—All members of the Commission
15 shall be reimbursed in accordance with title 5, Unit-
16 ed States Code, for travel, subsistence, and other
17 necessary expenses incurred by them in the perform-
18 ance of their duties.

19 “(j) ADMINISTRATIVE SUPPORT SERVICES.—The Ad-
20 ministrators of General Services shall provide to the Com-
21 mission on a reimbursable basis such administrative sup-
22 port services as the Commission may request.

1 **“SEC. 6. POWERS OF THE CHAIRPERSON.**

2 “(a) CHIEF EXECUTIVE OFFICER.—The Chairperson
3 shall serve as the chief executive officer of the Commis-
4 sion.

5 “(b) ADMINISTRATION OF THE COMMISSION.—

6 “(1) IN GENERAL.—Subject to subsection (c),
7 the Chairperson—

8 “(A) shall employ and supervise such per-
9 sonnel as the Chairperson considers to be nec-
10 essary to carry out the functions of the Com-
11 mission, and assign work among such person-
12 nel;

13 “(B) shall appoint a General Counsel to
14 the Commission, who shall be paid at the an-
15 nual rate of basic pay payable for ES–6 of the
16 Senior Executive Service Schedule under section
17 5382 of title 5, United States Code;

18 “(C) shall appoint and supervise other
19 staff of the Commission without regard to the
20 provisions of title 5, United States Code, gov-
21 erning appointments in the competitive service;

22 “(D) may procure temporary and intermit-
23 tent services under section 3109(b) of title 5,
24 United States Code, but at rates for individuals
25 not to exceed the daily equivalent of the maxi-

1 mum annual rate of basic pay payable for ES–
2 6 of the Senior Executive Service Schedule;

3 “(E) may request the head of any Federal
4 agency to detail any personnel of such agency
5 to the Commission to assist the Commission in
6 carrying out the duties of the Commission
7 under this Act, unless otherwise prohibited by
8 law;

9 “(F) shall use and expend Federal funds
10 and funds collected pursuant to section 17; and

11 “(G) may contract for the services of such
12 other professional, technical, and operational
13 personnel and consultants as may be necessary
14 for the performance of the Commission’s re-
15 sponsibilities under this Act.

16 “(2) COMPENSATION OF STAFF.—The staff re-
17 ferred to in paragraph (1)(C) shall be paid without
18 regard to the provisions of chapter 51 and sub-
19 chapters III and VIII of chapter 53 of title 5, Unit-
20 ed States Code, relating to classification and Gen-
21 eral Schedule and Senior Executive Service Schedule
22 pay rates, except that no individual so appointed
23 may receive pay in excess of the annual rate of basic
24 pay payable for ES–5 of the Senior Executive Serv-

1 ice Schedule under section 5382 of title 5, United
2 States Code.

3 “(c) APPLICABLE POLICIES.—In carrying out any of
4 the functions under this section, the Chairperson shall be
5 governed by the general policies of the Commission and
6 by such regulatory decisions, findings, and determinations
7 as the Commission may by law be authorized to make.

8 **“SEC. 7. POWERS AND AUTHORITY OF THE COMMISSION.**

9 “(a) GENERAL POWERS.—

10 “(1) IN GENERAL.—The Commission shall have
11 the power to—

12 “(A) approve the annual budget of the
13 Commission;

14 “(B) promulgate regulations to carry out
15 this Act;

16 “(C) establish a rate of fees and assess-
17 ments, as provided in section 17;

18 “(D) conduct investigations, including
19 background investigations;

20 “(E) issue a temporary order closing the
21 operation of gaming activities;

22 “(F) after a hearing, make permanent a
23 temporary order closing the operation of gam-
24 ing activities, as provided in section 15;

1 “(G) grant, deny, limit, condition, restrict,
2 revoke, or suspend any license issued under any
3 licensing authority conferred upon the Commis-
4 sion pursuant to this Act or fine any person li-
5 censed pursuant to this Act for violation of any
6 of the conditions of licensure under this Act;

7 “(H) inspect and examine all premises in
8 which class II or class III gaming is conducted
9 on Indian lands;

10 “(I) demand access to and inspect, exam-
11 ine, photocopy, and audit all papers, books, and
12 records of class II and class III gaming activi-
13 ties conducted on Indian lands and any other
14 matters necessary to carry out the duties of the
15 Commission under this Act;

16 “(J) use the United States mails in the
17 same manner and under the same conditions as
18 any department or agency of the United States;

19 “(K) procure supplies, services, and prop-
20 erty by contract in accordance with applicable
21 Federal laws;

22 “(L) enter into contracts with Federal,
23 State, tribal, and private entities for activities
24 necessary to the discharge of the duties of the
25 Commission;

1 “(M) serve or cause to be served, process
2 or notices of the Commission in a manner pro-
3 vided for by the Commission or in a manner
4 provided for the service of process and notice in
5 civil actions in accordance with the applicable
6 rules of a tribal, State, or Federal court;

7 “(N) propound written interrogatories and
8 appoint hearing examiners, to whom may be
9 delegated the power and authority to administer
10 oaths, issue subpoenas, propound written inter-
11 rogatories, and require testimony under oath;

12 “(O) conduct all administrative hearings
13 pertaining to civil violations of this Act (includ-
14 ing any civil violation of a regulation promul-
15 gated under this Act);

16 “(P) collect all fees and assessments au-
17 thorized by this Act and the regulations pro-
18 mulgated pursuant to this Act;

19 “(Q) assess penalties for violations of the
20 provisions of this Act and the regulations pro-
21 mulgated pursuant to this Act;

22 “(R) provide training and technical assist-
23 ance to Indian tribes with respect to all aspects
24 of the conduct and regulation of gaming activi-
25 ties;

1 “(S) monitor and, as specifically author-
2 ized by this Act, regulate class II and class III
3 gaming;

4 “(T) establish precertification criteria that
5 apply to management contractors and other
6 persons having material control over a gaming
7 operation;

8 “(U) approve all management and gaming-
9 related contracts; and

10 “(V) in addition to the authorities other-
11 wise specified in this Act, delegate, by published
12 order or rule, any of the functions of the Com-
13 mission (including functions with respect to
14 hearing, determining, ordering, certifying, re-
15 porting, or otherwise acting on the part of the
16 Commission concerning any work, business, or
17 matter) to a division of the Commission, an in-
18 dividual member of the Commission, an admin-
19 istrative law judge, or an employee of the Com-
20 mission.

21 “(2) STATUTORY CONSTRUCTION.—Nothing in
22 this section may be construed to authorize the dele-
23 gation of the function of rulemaking, as described in
24 subchapter II of chapter 5 of title 5, United States
25 Code, with respect to general rules (as distinguished

1 from rules of particular applicability), or the promul-
2 gation of any other rule.

3 “(b) RIGHT TO REVIEW DELEGATED FUNCTIONS.—

4 “(1) IN GENERAL.—With respect to the delega-
5 tion of any of the functions of the Commission, the
6 Commission shall retain a discretionary right to re-
7 view the action of any division of the Commission,
8 individual member of the Commission, administra-
9 tive law judge, or employee of the Commission, upon
10 the initiative of the Commission.

11 “(2) VOTE NEEDED FOR REVIEW.—The vote of
12 1 member of the Commission shall be sufficient to
13 bring an action referred to in paragraph (1) before
14 the Commission for review, and the Commission
15 shall ratify, revise, or reject the action under review
16 not later than the last day of the applicable period
17 specified in regulations promulgated by the Commis-
18 sion.

19 “(3) FAILURE TO CONDUCT REVIEW.—If the
20 Commission declines to exercise the right to a review
21 described in paragraph (1) or fails to exercise that
22 right within the applicable period specified in regula-
23 tions promulgated by the Commission, the action of
24 any such division of the Commission, individual
25 member of the Commission, administrative law

1 judge, or employee, shall, for all purposes, including
 2 any appeal or review of such action, be deemed an
 3 action of the Commission.

4 “(c) MINIMUM REQUIREMENTS.—Pursuant to the
 5 procedures described in section 9(d), after receiving rec-
 6 ommendations from the Advisory Committee, the Commis-
 7 sion shall establish minimum Federal standards—

8 “(1) for background investigations, licensing of
 9 persons, and licensing of gaming operations associ-
 10 ated with the conduct or regulation of class II and
 11 class III gaming on Indian lands by tribal govern-
 12 ments; and

13 “(2) for the operation of class II and class III
 14 gaming activities on Indian lands, including—

15 “(A) surveillance and security personnel
 16 and systems capable of monitoring all gaming
 17 activities, including the conduct of games, cash-
 18 iers’ cages, change booths, count rooms, move-
 19 ments of cash and chips, entrances and exits to
 20 gaming facilities, and other critical areas of any
 21 gaming facility;

22 “(B) procedures for the protection of the
 23 integrity of the rules for the play of games and
 24 controls related to such rules;

25 “(C) credit and debit collection controls;

1 “(D) controls over gambling devices and
2 equipment; and

3 “(E) accounting and auditing.

4 “(d) COMMISSION ACCESS TO INFORMATION.—

5 “(1) IN GENERAL.—The Commission may se-
6 cure from any department or agency of the United
7 States information necessary to enable the Commis-
8 sion to carry out this Act. Unless otherwise prohib-
9 ited by law, upon request of the Chairperson, the
10 head of such department or agency shall furnish
11 such information to the Commission.

12 “(2) INFORMATION TRANSFER.—The Commis-
13 sion may secure from any law enforcement agency or
14 gaming regulatory agency of any State, Indian tribe,
15 or foreign nation information necessary to enable the
16 Commission to carry out this Act. Unless otherwise
17 prohibited by law, upon request of the Chairperson,
18 the head of any State or tribal law enforcement
19 agency shall furnish such information to the Com-
20 mission.

21 “(3) PRIVILEGED INFORMATION.—Notwith-
22 standing sections 552 and 552a of title 5, United
23 States Code, the Commission shall protect from dis-
24 closure information provided by Federal, State, trib-

1 al, or international law enforcement or gaming regu-
 2 latory agencies.

3 “(4) LAW ENFORCEMENT AGENCY.—For pur-
 4 poses of this subsection, the Commission shall be
 5 considered to be a law enforcement agency.

6 “(e) INVESTIGATIONS AND ACTIONS.—

7 “(1) IN GENERAL.—

8 “(A) POSSIBLE VIOLATIONS.—The Com-
 9 mission may, at the discretion of the Commis-
 10 sion, and as specifically authorized by this Act,
 11 conduct such investigations as the Commission
 12 considers necessary to determine whether any
 13 person has violated, is violating, or is conspiring
 14 to violate any provision of this Act (including
 15 any rule or regulation promulgated under this
 16 Act). The Commission may require or permit
 17 any person to file with the Commission a state-
 18 ment in writing, under oath, or otherwise as the
 19 Commission may determine, concerning all rel-
 20 evant facts and circumstances regarding the
 21 matter under investigation by the Commission
 22 pursuant to this subsection.

23 “(B) ADMINISTRATIVE INVESTIGATIONS.—

24 The Commission may, at the discretion of the
 25 Commission, and as specifically authorized by

1 this Act, investigate such facts, conditions,
2 practices, or matters as the Commission consid-
3 ers necessary or proper to aid in—

4 “(i) the enforcement of any provision
5 of this Act;

6 “(ii) prescribing rules and regulations
7 under this Act; or

8 “(iii) securing information to serve as
9 a basis for recommending further legisla-
10 tion concerning the matters to which this
11 Act relates.

12 “(2) ADMINISTRATIVE AUTHORITIES.—

13 “(A) IN GENERAL.—For the purpose of
14 any investigation or any other proceeding con-
15 ducted under this Act, any member of the Com-
16 mission or any officer designated by the Com-
17 mission is empowered to administer oaths and
18 affirmations, subpoena witnesses, compel their
19 attendance, take evidence, and require the pro-
20 duction of any books, papers, correspondence,
21 memoranda, or other records that the Commis-
22 sion considers relevant or material to the in-
23 quiry. The attendance of such witnesses and the
24 production of any such records may be required

1 from any place in the United States at any des-
2 ignated place of hearing.

3 “(B) REQUIRING APPEARANCES OR TESTI-
4 MONY.—In case of contumacy by, or refusal to
5 obey any subpoena issued to, any person, the
6 Commission may invoke the jurisdiction of any
7 court of the United States within the jurisdic-
8 tion of which an investigation or proceeding is
9 carried on, or where such person resides or car-
10 ries on business, in requiring the attendance
11 and testimony of witnesses and the production
12 of books, papers, correspondence, memoranda,
13 and other records.

14 “(C) COURT ORDERS.—Any court de-
15 scribed in subparagraph (B) may issue an order
16 requiring such person to appear before the
17 Commission or member of the Commission or
18 officer designated by the Commission, there to
19 produce records, if so ordered, or to give testi-
20 mony touching the matter under investigation
21 or in question, and any failure to obey such
22 order of the court may be punished by such
23 court as a contempt of such court.

24 “(3) ENFORCEMENT.—

1 “(A) IN GENERAL.—If the Commission de-
2 termines that any person is engaged, has en-
3 gaged, or is conspiring to engage, in any act or
4 practice constituting a violation of any provision
5 of this Act (including any rule or regulation
6 promulgated under this Act), the Commission
7 may—

8 “(i) bring an action in the appropriate
9 district court of the United States or the
10 United States District Court for the Dis-
11 trict of Columbia to enjoin such act or
12 practice, and upon a proper showing, the
13 court shall grant, without bond, a perma-
14 nent or temporary injunction or restraining
15 order; or

16 “(ii) transmit such evidence as may be
17 available concerning such act or practice as
18 may constitute a violation of any Federal
19 criminal law to the Attorney General, who
20 may institute the necessary criminal or
21 civil proceedings.

22 “(B) STATUTORY CONSTRUCTION.—

23 “(i) IN GENERAL.—The authority of
24 the Commission to conduct investigations
25 and take actions under subparagraph (A)

1 may not be construed to affect in any way
 2 the authority of any other agency or de-
 3 partment of the United States to carry out
 4 statutory responsibilities of such agency or
 5 department.

6 “(ii) EFFECT OF TRANSMITTAL BY
 7 THE COMMISSION.—The transmittal by the
 8 Commission of evidence pursuant to sub-
 9 paragraph (A)(ii) may not be construed to
 10 constitute a condition precedent with re-
 11 spect to any action taken by any depart-
 12 ment or agency referred to in clause (i).

13 “(4) WRITS, INJUNCTIONS, AND ORDERS.—
 14 Upon application of the Commission, each district
 15 court of the United States shall have jurisdiction to
 16 issue writs of mandamus, injunctions, and orders
 17 commanding any person to comply with the provi-
 18 sions of this Act (including any rule or regulation
 19 promulgated under this Act).

20 **“SEC. 8. REGULATORY FRAMEWORK.**

21 “(a) CLASS II GAMING.—For class II gaming, Indian
 22 tribes shall retain the exclusive right of those tribes to,
 23 if the exercise of that right is made in a manner that
 24 meets or exceeds minimum Federal standards established
 25 by the Commission pursuant to section 7(c)—

1 “(1) monitor and regulate such gaming; and

2 “(2) conduct background investigations and
3 issue licenses to persons who are required to obtain
4 a license under section 10(a).

5 “(b) CLASS III GAMING CONDUCTED UNDER A COM-
6 PACT.—For class III gaming conducted under the author-
7 ity of a compact entered into pursuant to section 12, an
8 Indian tribe or a State, or both, as provided in a compact
9 or by tribal ordinance or resolution, shall, in a manner
10 that meets or exceeds minimum Federal standards estab-
11 lished by the Commission pursuant to section 7(c)—

12 “(1) monitor and regulate gaming;

13 “(2) conduct background investigations and
14 issue licenses to persons who are required to obtain
15 a license pursuant to section 10(a); and

16 “(3) establish and regulate internal control sys-
17 tems.

18 “(c) VIOLATIONS OF MINIMUM FEDERAL STAND-
19 ARDS.—

20 “(1) CLASS II GAMING.—

21 “(A) IN GENERAL.—In any case in which
22 an Indian tribe that regulates or conducts class
23 II gaming on Indian lands substantially fails to
24 meet or enforce minimum Federal standards for
25 that gaming, after providing the Indian tribe

notice and reasonable opportunity to cure violations and to be heard, and after the exhaustion of other authorized remedies and sanctions, the Commission shall have the authority to conduct background investigations, issue licenses, and establish and regulate internal control systems relating to class II gaming conducted by the Indian tribe.

“(B) EXERCISE OF EXCLUSIVE AUTHORITY.—The Commission may exercise exclusive authority in carrying out the activities specified in subparagraph (A) until such time as the regulatory and internal control systems of the Indian tribe meet or exceed the minimum Federal standards concerning regulatory, licensing, or internal control requirements established by the Commission for that gaming.

“(2) CLASS III GAMING.—In any case in which an Indian tribe or a State (or both) that regulates class III gaming on Indian lands fails to meet or enforce minimum Federal standards for class III gaming, after providing notice and reasonable opportunity to cure violations and be heard, and after the exhaustion of other authorized remedies and sanctions, the Commission shall have the authority to

1 conduct background investigations, issue licenses,
 2 and establish and regulate internal control systems
 3 relating to class III gaming conducted by the Indian
 4 tribe. That authority of the Commission may be ex-
 5 clusive until such time as the regulatory or internal
 6 control systems of the Indian tribe or the State (or
 7 both) meet or exceed the minimum Federal regu-
 8 latory, licensing, or internal control requirements es-
 9 tablished by the Commission for that gaming.

10 **“SEC. 9. ADVISORY COMMITTEE ON MINIMUM REGULATORY**
 11 **REQUIREMENTS AND LICENSING STAND-**
 12 **ARDS.**

13 “(a) ESTABLISHMENT.—The President shall estab-
 14 lish an advisory committee to be known as the ‘Advisory
 15 Committee on Minimum Regulatory Requirements and Li-
 16 censing Standards’.

17 “(b) MEMBERS.—

18 “(1) IN GENERAL.—The Advisory Committee
 19 shall be composed of 8 members who shall be ap-
 20 pointed by the President not later than 120 days
 21 after the date of enactment of the Indian Gaming
 22 Regulatory Act Amendments Act of 1997, of
 23 which—

24 “(A) 3 members, selected from a list of
 25 recommendations submitted to the President by

the Chairperson and Vice Chairperson of the Committee on Indian Affairs of the Senate and the Chairperson and ranking minority member of the Subcommittee on Native American and Insular Affairs of the Committee on Resources of the House of Representatives, shall be members of, and represent, Indian tribal governments involved in gaming covered under this Act;

“(B) 3 members, selected from a list of recommendations submitted to the President by the Majority Leader and the Minority Leader of the Senate and the Speaker and the Minority Leader of the House of Representatives, shall represent State governments involved in gaming covered under this Act, and shall have experience as State gaming regulators; and

“(C) 2 members shall each be an employee of the Department of Justice.

“(2) VACANCIES.—Any vacancy on the Advisory Committee shall not affect its powers, but shall be filled in the same manner as the original appointment.

“(c) RECOMMENDATIONS FOR MINIMUM FEDERAL STANDARDS.—

1 “(1) IN GENERAL.—Not later than 180 days
2 after the date on which all initial members of the
3 Advisory Committee have been appointed under sub-
4 section (b), the Advisory Committee shall develop
5 and submit to the entities referred to in paragraph
6 (2) recommendations for minimum Federal stand-
7 ards relating to background investigations, internal
8 control systems, and licensing standards (as de-
9 scribed in section 7(c)).

10 “(2) RECIPIENTS OF RECOMMENDATIONS.—The
11 Advisory Committee shall submit the recommenda-
12 tions described in paragraph (1) to the Committee
13 on Indian Affairs of the Senate, the Subcommittee
14 on Native American and Insular Affairs of the Com-
15 mittee on Resources of the House of Representa-
16 tives, the Commission, and to each federally recog-
17 nized Indian tribe.

18 “(3) FACTORS FOR CONSIDERATION.—The min-
19 imum Federal standards recommended or estab-
20 lished pursuant to this section may be developed
21 taking into account for industry standards existing
22 at the time of the development of the standards. The
23 Advisory Committee, and the Commission in promul-
24 gating standards pursuant to subsection (d), shall,

1 in addition to considering any other factor that the
 2 Commission considers to be appropriate, consider—

3 “(A) the unique nature of tribal gaming as
 4 compared to non-Indian commercial, govern-
 5 mental, and charitable gaming;

6 “(B) the broad variations in the scope and
 7 size of tribal gaming activity;

8 “(C) the inherent sovereign right of Indian
 9 tribes to regulate their own affairs; and

10 “(D) the findings and purposes set forth in
 11 sections 2 and 3.

12 “(d) REGULATIONS.—Upon receipt of the rec-
 13 ommendations of the Advisory Committee, the Commis-
 14 sion shall hold public hearings on the recommendations.
 15 After the conclusion of the hearings, the Commission shall
 16 promulgate regulations establishing minimum Federal
 17 regulatory requirements and licensing standards.

18 “(e) TRAVEL.—Each member of the Advisory Com-
 19 mittee who is appointed under subparagraph (A) or (B)
 20 of subsection (b)(1) and who is not an officer or employee
 21 of the Federal Government or a government of a State
 22 shall be reimbursed for travel and per diem in lieu of sub-
 23 sistence expenses during the performance of duties of the
 24 Advisory Committee while away from the home or the reg-

1 ular place of business of that member, in accordance with
 2 subchapter I of chapter 57 of title 5, United States Code.

3 “(f) TERMINATION.—The Advisory Committee shall
 4 cease to exist on the date that is 10 days after the date
 5 on which the Advisory Committee submits the rec-
 6 ommendations under subsection (c).

7 “(g) EXEMPTION FROM FEDERAL ADVISORY COM-
 8 MITTEE ACT.—All activities of the Advisory Committee
 9 shall be exempt from the Federal Advisory Committee Act
 10 (5 U.S.C. App.).

11 **“SEC. 10. LICENSING.**

12 “(a) IN GENERAL.—A license issued under this Act
 13 shall be required of—

14 “(1) a gaming operation;

15 “(2) a key employee of a gaming operation;

16 “(3) a management contractor or gaming-relat-
 17 ed contractor;

18 “(4) a gaming service industry; or

19 “(5) a person who has material control, either
 20 directly or indirectly, over a licensed gaming oper-
 21 ation.

22 “(b) CERTAIN LICENSES FOR MANAGEMENT CON-
 23 TRACTORS AND GAMING OPERATIONS.—Notwithstanding
 24 any other provision of law relating to licenses issued by

1 an Indian tribe or a State (or both) pursuant to this Act,
 2 the Commission may require licenses of—

3 “(1) management contractors; and

4 “(2) gaming operations.

5 “(c) GAMING OPERATION LICENSE.—

6 “(1) IN GENERAL.—No gaming operation shall
 7 operate unless all required licenses and approvals for
 8 the gaming operation have been obtained in accord-
 9 ance with this Act.

10 “(2) WRITTEN AGREEMENTS.—

11 “(A) FILING.—Prior to the operation of
 12 any gaming facility or activity, each manage-
 13 ment contract for the gaming operation shall be
 14 in writing and filed with the Commission pursu-
 15 ant to section 13.

16 “(B) EXPRESS APPROVAL REQUIRED.—No
 17 management contract referred to in subpara-
 18 graph (A) shall be effective unless the Commis-
 19 sion expressly approves the management con-
 20 tract.

21 “(C) REQUIREMENT OF ADDITIONAL PRO-
 22 VISIONS.—The Commission may require that a
 23 management contract referred to in subpara-
 24 graph (A) include any provisions that are rea-

1 sonably necessary to meet the requirements of
 2 this Act.

3 “(D) INELIGIBILITY OR EXEMPTION.—The
 4 Commission may, with respect to an applicant
 5 who does not have the ability to exercise any
 6 significant control over a licensed gaming oper-
 7 ation—

8 “(i) determine that applicant to be in-
 9 eligible to hold a license; or

10 “(ii) exempt that applicant from being
 11 required to hold a license.

12 “(d) DENIAL OF LICENSE.—The Commission, in the
 13 exercise of the specific licensure power conferred upon the
 14 Commission by this Act, shall deny a license to any appli-
 15 cant who is disqualified on the basis of a failure to meet
 16 any of the minimum Federal standards promulgated by
 17 the Commission pursuant to section 7(c).

18 “(e) APPLICATION FOR LICENSE.—

19 “(1) IN GENERAL.—Upon the filing of the ma-
 20 terials specified in paragraph (2), the Commission
 21 shall conduct an investigation into the qualifications
 22 of an applicant. The Commission may conduct a
 23 nonpublic hearing on such investigation concerning
 24 the qualifications of the applicant in accordance with
 25 regulations promulgated by the Commission.

1 “(2) FILING OF MATERIALS.—The Commission
2 shall carry out paragraph (1) upon the filing of—

3 “(A) an application for a license that the
4 Commission is specifically authorized to issue
5 pursuant to this Act; and

6 “(B) such supplemental information as the
7 Commission may require.

8 “(3) TIMING OF HEARINGS AND INVESTIGA-
9 TIONS AND FINAL ACTION.—

10 “(A) DEADLINE FOR HEARINGS AND IN-
11 VESTIGATIONS.—Not later than 90 days after
12 receiving the materials described in paragraph
13 (2), the Commission shall complete the inves-
14 tigation described in paragraph (1) and any
15 hearings associated with the investigation con-
16 ducted pursuant to that paragraph.

17 “(B) DEADLINE FOR FINAL ACTION.—Not
18 later than 10 days after the date specified in
19 subparagraph (A), the Commission shall take
20 final action to grant or deny a license to the ap-
21 plicant.

22 “(4) DENIALS.—

23 “(A) IN GENERAL.—The Commission may
24 disapprove an application submitted to the

1 Commission under this section and deny a li-
 2 cense to the applicant.

3 “(B) ORDER OF DENIAL.—If the Commis-
 4 sion denies a license to an applicant under sub-
 5 paragraph (A), the Commission shall prepare
 6 an order denying such license. In addition, if an
 7 applicant requests a statement of the reasons
 8 for the denial, the Commission shall prepare
 9 such statement and provide the statement to
 10 the applicant. The statement shall include spe-
 11 cific findings of fact.

12 “(5) ISSUANCE OF LICENSES.—If the Commis-
 13 sion is satisfied that an applicant is qualified to re-
 14 ceive a license, the Commission shall issue a license
 15 to the applicant upon tender of—

16 “(A) all license fees and assessments as re-
 17 quired by this Act (including any rule or regula-
 18 tion promulgated under this Act); and

19 “(B) such bonds as the Commission may
 20 require for the faithful performance of all re-
 21 quirements imposed by this Act (including any
 22 rule or regulation promulgated under this Act).

23 “(6) BONDS.—

24 “(A) AMOUNTS.—The Commission shall,
 25 by rules of uniform application, fix the amount

1 of each bond that the Commission requires
 2 under this section in such amount as the Com-
 3 mission considers appropriate.

4 “(B) USE OF BONDS.—The bonds fur-
 5 nished to the Commission under this paragraph
 6 may be applied by the Commission to the pay-
 7 ment of any unpaid liability of the licensee
 8 under this Act.

9 “(C) TERMS.—Each bond required in ac-
 10 cordance with this section shall be furnished—

11 “(i) in cash or negotiable securities;

12 “(ii) by a surety bond guaranteed by
 13 a satisfactory guarantor; or

14 “(iii) by an irrevocable letter of credit
 15 issued by a banking institution acceptable
 16 to the Commission.

17 “(D) TREATMENT OF PRINCIPAL AND IN-
 18 COME.—If a bond is furnished under this para-
 19 graph in cash or negotiable securities, the prin-
 20 cipal shall be placed without restriction at the
 21 disposal of the Commission, but any income
 22 shall inure to the benefit of the licensee.

23 “(f) RENEWAL OF LICENSE.—

24 “(1) IN GENERAL.—

1 “(A) RENEWALS.—Subject to the power of
2 the Commission to deny, revoke, or suspend li-
3 censes, any license issued under this section
4 and in force shall be renewed by the Commis-
5 sion for the next succeeding license period upon
6 proper application for renewal and payment of
7 license fees and assessments, as required by ap-
8 plicable law (including any rule or regulation
9 promulgated under this Act).

10 “(B) RENEWAL TERM.—Subject to sub-
11 paragraph (C), the term of a renewal period for
12 a license issued under this section shall be for
13 a period of not more than—

14 “(i) 2 years, for each of the first 2 re-
15 newal periods succeeding the initial issu-
16 ance of a license pursuant to subsection
17 (e); and

18 “(ii) 3 years, for each succeeding re-
19 newal period.

20 “(C) REOPENING HEARINGS.—The Com-
21 mission may reopen licensing hearings at any
22 time after the Commission has issued or re-
23 newed a license.

24 “(2) TRANSITION.—

1 “(A) IN GENERAL.—Notwithstanding any
2 other provision of this subsection, the Commis-
3 sion shall, for the purpose of facilitating the ad-
4 ministration of this Act, renew a license for an
5 activity covered under subsection (a) that is
6 held by a person on the date of enactment of
7 the Indian Gaming Regulatory Act Amend-
8 ments Act of 1997 for a renewal period of 18
9 months.

10 “(B) ACTION BEFORE EXPIRATION.—The
11 Commission shall act upon a timely filed license
12 renewal application prior to the date of expira-
13 tion of the then current license.

14 “(3) FILING REQUIREMENT.—Each application
15 for renewal shall be filed with the Commission not
16 later than 90 days prior to the expiration of the then
17 current license, and shall be accompanied by full
18 payment of all license fees and assessments that are
19 required by law to be paid to the Commission.

20 “(4) RENEWAL CERTIFICATE.—Upon renewal
21 of a license, the Commission shall issue an appro-
22 priate renewal certificate, validating device, or stick-
23 er, which shall be attached to the license.

24 “(g) HEARINGS.—

1 “(1) IN GENERAL.—The Commission shall es-
2 tablish procedures for the conduct of hearings asso-
3 ciated with licensing, including procedures for issu-
4 ing, denying, limiting, conditioning, restricting, re-
5 voking, or suspending any such license.

6 “(2) ACTION BY COMMISSION.—Following a
7 hearing conducted for any of the purposes author-
8 ized in this section, the Commission shall—

9 “(A) render a decision of the Commission;

10 “(B) issue an order; and

11 “(C) serve the decision referred to in sub-
12 paragraph (A) and order referred to in sub-
13 paragraph (B) upon the affected parties.

14 “(3) REHEARING.—

15 “(A) IN GENERAL.—The Commission may,
16 upon a motion made not later than 10 days
17 after the service of a decision and order, order
18 a rehearing before the Commission on such
19 terms and conditions as the Commission consid-
20 ers just and proper if the Commission finds
21 cause to believe that the decision and order
22 should be reconsidered in view of the legal, pol-
23 icy, or factual matters that are—

24 “(i) advanced by the party that makes
25 the motion; or

1 “(ii) raised by the Commission on a
2 motion made by the Commission.

3 “(B) ACTION AFTER REHEARING.—Follow-
4 ing a rehearing conducted by the Commission,
5 the Commission shall—

6 “(i) render a decision of the Commis-
7 sion;

8 “(ii) issue an order; and

9 “(iii) serve such decision and order
10 upon the affected parties.

11 “(C) FINAL AGENCY ACTION.—A decision
12 and order made by the Commission under para-
13 graph (2) (if no motion for a rehearing is made
14 by the date specified in subparagraph (A)), or
15 a decision and order made by the Commission
16 upon rehearing shall constitute final agency ac-
17 tion for purposes of judicial review.

18 “(4) JURISDICTION.—The United States Court
19 of Appeals for the District of Columbia Circuit shall
20 have jurisdiction to review the licensing decisions
21 and orders of the Commission.

22 “(h) LICENSE REGISTRY.—The Commission shall—

23 “(1) maintain a registry of all licenses that are
24 granted or denied pursuant to this Act; and

1 “(2) make the information contained in the reg-
 2 istry available to Indian tribes to assist the licensure
 3 and regulatory activities of Indian tribes.

4 **“SEC. 11. REQUIREMENTS FOR THE CONDUCT OF CLASS I**
 5 **AND CLASS II GAMING ON INDIAN LANDS.**

6 “(a) CLASS I GAMING.—Class I gaming on Indian
 7 lands shall be within the exclusive jurisdiction of the In-
 8 dian tribes and shall not be subject to the provisions of
 9 this Act.

10 “(b) CLASS II GAMING.—

11 “(1) IN GENERAL.—Any class II gaming on In-
 12 dian lands shall be within the jurisdiction of the In-
 13 dian tribes, but shall be subject to the provisions of
 14 this Act.

15 “(2) LEGAL ACTIVITIES.—An Indian tribe may
 16 engage in, and license and regulate, class II gaming
 17 on Indian lands within the jurisdiction of such tribe,
 18 if—

19 “(A) that Indian gaming is located within
 20 a State that permits that gaming for any pur-
 21 pose by any person; and

22 “(B) the class II gaming operation meets
 23 or exceeds the requirements of sections 7(c) and
 24 10.

1 “(3) REQUIREMENTS FOR CLASS II GAMING OP-
2 ERATIONS.—

3 “(A) IN GENERAL.—The Commission shall
4 ensure that, with regard to any class II gaming
5 operation on Indian lands—

6 “(i) a separate license is issued by the
7 Indian tribe for each place, facility, or lo-
8 cation on Indian lands at which class II
9 gaming is conducted;

10 “(ii) the Indian tribe has or will have
11 the sole proprietary interest and respon-
12 sibility for the conduct of any class II gam-
13 ing activity, unless the conditions of clause
14 (ix) apply;

15 “(iii) the net revenues from any class
16 II gaming activity are used only—

17 “(I) to fund tribal government
18 operations or programs;

19 “(II) to provide for the general
20 welfare of the Indian tribe and the
21 members of the Indian tribe;

22 “(III) to promote tribal economic
23 development;

24 “(IV) to donate to charitable or-
25 ganizations;

1 “(V) to assist in funding oper-
2 ations of local government agencies;

3 “(VI) to comply with the provi-
4 sions of section 17; or

5 “(VIII) to make per capita pay-
6 ments to members of the Indian tribe
7 pursuant to clause (viii);

8 “(iv) the Indian tribe provides to the
9 Commission annual outside audit reports
10 of the class II gaming operation of the In-
11 dian tribe, which may be encompassed
12 within existing independent tribal audit
13 systems;

14 “(v) each contract for supplies, serv-
15 ices, or concessions for a contract amount
16 equal to more than \$50,000 per year,
17 other than a contract for professional legal
18 or accounting services, relating to such
19 gaming is subject to such independent
20 audit reports and any audit conducted by
21 the Commission;

22 “(vi) the construction and mainte-
23 nance of a class II gaming facility and the
24 operation of class II gaming are conducted

1 in a manner that adequately protects the
2 environment and public health and safety;

3 “(vii) there is instituted an adequate
4 system that—

5 “(I) ensures that—

6 “(aa) background investiga-
7 tions are conducted on primary
8 management officials, key em-
9 ployees, and persons having ma-
10 terial control, either directly or
11 indirectly, in a licensed class II
12 gaming operation, and gaming-
13 related contractors associated
14 with a licensed class II gaming
15 operation; and

16 “(bb) oversight of the offi-
17 cials referred to in item (aa) and
18 the management by those offi-
19 cials is conducted on an ongoing
20 basis; and

21 “(II) includes—

22 “(aa) tribal licenses for per-
23 sons involved in class II gaming
24 operations, issued in accordance
25 with sections 7(c) and 10;

1 “(bb) a standard whereby
2 any person whose prior activities,
3 criminal record, if any, or reputa-
4 tion, habits, and associations
5 pose a threat to the public inter-
6 est or to the effective regulation
7 of gaming, or create or enhance
8 the dangers of unsuitable, unfair,
9 or illegal practices and methods
10 and activities in the conduct of
11 gaming shall not be eligible for
12 employment or licensure; and

13 “(cc) notification by the In-
14 dian tribe to the Commission of
15 the results of a background in-
16 vestigation conducted under item
17 (bb) before the issuance of any
18 such license;

19 “(viii) net revenues from any class II
20 gaming activities conducted or licensed by
21 any Indian tribal government are used to
22 make per capita payments to members of
23 the Indian tribe only if—

1 “(I) the Indian tribe has pre-
2 pared a plan to allocate revenues to
3 uses authorized by clause (iii);

4 “(II) the Secretary determines
5 that the plan is adequate, particularly
6 with respect to uses described in sub-
7 clause (I) or (III) of clause (iii);

8 “(III) the interests of minors and
9 other legally incompetent persons who
10 are entitled to receive any of the per
11 capita payments are protected and
12 preserved;

13 “(IV) the per capita payments to
14 minors and other legally incompetent
15 persons are disbursed to the parents
16 or legal guardians of the minors or le-
17 gally incompetent persons referred to
18 in subclause (III) in such amounts as
19 may be necessary for the health, edu-
20 cation, or welfare of each such minor
21 or legally incompetent person under a
22 plan approved by the Secretary and
23 the governing body of the Indian
24 tribe; and

1 “(V) the per capita payments are
2 subject to Federal income taxation
3 and Indian tribes withhold such taxes
4 when such payments are made;

5 “(ix) a separate license is issued by
6 the Indian tribe for any class II gaming
7 operation owned by any person or entity
8 other than the Indian tribe and conducted
9 on Indian lands, that includes—

10 “(I) requirements set forth in
11 clauses (v) through (vii) (other than
12 the requirements of clause
13 (vii)(II)(cc)), and (x); and

14 “(II) requirements that are at
15 least as restrictive as those established
16 by State law governing similar gaming
17 within the jurisdiction of the State
18 within which such Indian lands are lo-
19 cated; and

20 “(x) no person or entity, other than
21 the Indian tribe, is eligible to receive a
22 tribal license for a class II gaming oper-
23 ation conducted on Indian lands within the
24 jurisdiction of the Indian tribe if that per-
25 son or entity would not be eligible to re-

ceive a State license to conduct the same
activity within the jurisdiction of the State.

“(B) TRANSITION.—

“(i) IN GENERAL.—Clauses (ii), (iii),
and (ix) of subparagraph (A) shall not bar
the continued operation of a class II gam-
ing operation described in clause (ix) of
that subparagraph that was operating on
September 1, 1986, if—

“(I) that gaming operation is li-
censed and regulated by an Indian
tribe;

“(II) income to the Indian tribe
from such gaming is used only for the
purposes described in subparagraph
(A)(iii);

“(III) not less than 60 percent of
the net revenues from such gaming
operation is income to the licensing
Indian tribe; and

“(IV) the owner of that gaming
operation pays an appropriate assess-
ment to the Commission pursuant to
section 17 for the regulation of that
gaming.

1 “(ii) LIMITATIONS ON EXEMPTION.—

2 The exemption from application provided
 3 under clause (i) may not be transferred to
 4 any person or entity and shall remain in
 5 effect only during such period as the gam-
 6 ing operation remains within the same na-
 7 ture and scope as that gaming operation
 8 was actually operated on October 17,
 9 1988.

10 “(C) LIST.—The Commission shall—

11 “(i) maintain a list of each gaming
 12 operation that is subject to subparagraph
 13 (B); and

14 “(ii) publish such list in the Federal
 15 Register.

16 “(c) PETITION FOR CERTIFICATE OF SELF-REGULA-
 17 TION.—

18 “(1) IN GENERAL.—Any Indian tribe that oper-
 19 ates, directly or with a management contract, a class
 20 II gaming activity may petition the Commission for
 21 a certificate of self-regulation if that Indian tribe—

22 “(A) has continuously conducted such ac-
 23 tivity for a period of not less than 3 years, in-
 24 cluding a period of not less than 1 year that be-
 25 gins after the date of enactment of the Indian

1 Gaming Regulatory Act Amendments Act of
2 1997; and

3 “(B) has otherwise complied with the pro-
4 visions of this Act.

5 “(2) ISSUANCE OF CERTIFICATE OF SELF-REG-
6 ULATION.—The Commission shall issue a certificate
7 of self-regulation under this subsection if the Com-
8 mission determines, on the basis of available infor-
9 mation, and after a hearing if requested by the In-
10 dian tribe, that the Indian tribe has—

11 “(A) conducted its gaming activity in a
12 manner which has—

13 “(i) resulted in an effective and hon-
14 est accounting of all revenues;

15 “(ii) resulted in a reputation for safe,
16 fair, and honest operation of the activity;
17 and

18 “(iii) been generally free of evidence
19 of criminal or dishonest activity;

20 “(B) adopted and implemented adequate
21 systems for—

22 “(i) accounting for all revenues from
23 the gaming activity;

1 “(ii) investigation, licensing, and mon-
 2 itoring of all employees of the gaming ac-
 3 tivity; and

4 “(iii) investigation, enforcement, and
 5 prosecution of violations of its gaming or-
 6 dinance and regulations;

7 “(C) conducted the operation on a fiscally
 8 and economically sound basis; and

9 “(D) paid all fees and assessments that
 10 the tribe is required to pay to the Commission
 11 under this Act.

12 “(3) EFFECT OF CERTIFICATE OF SELF-REGU-
 13 LATION.—During the period in which a certificate of
 14 self-regulation issued under this subsection is in ef-
 15 fect with respect to a gaming activity conducted by
 16 an Indian tribe—

17 “(A) the Indian tribe shall—

18 “(i) submit an annual independent
 19 audit report required under subsection
 20 (b)(3)(A)(iv); and

21 “(ii) submit to the Commission a com-
 22 plete résumé of each employee hired and li-
 23 censed by the Indian tribe subsequent to
 24 the issuance of a certificate of self-regula-
 25 tion; and

1 “(B) the Commission may not assess a fee
 2 under section 17 on gaming operated by the In-
 3 dian tribe pursuant to paragraph (1) in excess
 4 of $\frac{1}{4}$ of 1 percent of the net revenue from that
 5 activity.

6 “(4) RESCISSION.—The Commission may, for
 7 just cause and after a reasonable opportunity for a
 8 hearing, rescind a certificate of self-regulation issued
 9 under this subsection by majority vote of the mem-
 10 bers of the Commission.

11 “(d) LICENSE REVOCATION.—If, after the issuance
 12 of any license by an Indian tribe under this section, the
 13 Indian tribe receives reliable information from the Com-
 14 mission indicating that a licensee does not meet any stand-
 15 ard established under section 7(c) or 10, or any other ap-
 16 plicable regulation promulgated under this Act, the Indian
 17 tribe—

18 “(1) shall immediately suspend that license; and

19 “(2) after providing notice, holding a hearing,
 20 and making findings of fact under procedures estab-
 21 lished pursuant to applicable tribal law, may revoke
 22 that license.

23 **“SEC. 12. CLASS III GAMING ON INDIAN LANDS.**

24 “(a) REQUIREMENTS FOR THE CONDUCT OF CLASS
 25 III GAMING ON INDIAN LANDS.—

1 “(1) IN GENERAL.—Class III gaming activities
2 shall be lawful on Indian lands only if those activi-
3 ties are—

4 “(A) authorized by—

5 “(i) a compact that—

6 “(I) is approved pursuant to trib-
7 al law by the governing body of the
8 Indian tribe having jurisdiction over
9 those lands;

10 “(II) meets the requirements of
11 section 11(b)(3) for the conduct of
12 class II gaming; and

13 “(III) is approved by the Sec-
14 retary under paragraph (4); or

15 “(ii) the Secretary under procedures
16 prescribed by the Secretary under para-
17 graph (3)(B)(vii);

18 “(B) located in a State that permits that
19 gaming for any purpose by any person; and

20 “(C) conducted in conformance with—

21 “(i) a compact that—

22 “(I) is in effect; and

23 “(II) is entered into by an Indian
24 tribe and a State and approved by the
25 Secretary under paragraph (4); or

1 “(ii) procedures prescribed by the Sec-
2 retary under paragraph (3)(B)(vii).

3 “(2) COMPACT NEGOTIATIONS.—

4 “(A) IN GENERAL.—Any Indian tribe hav-
5 ing jurisdiction over the Indian lands upon
6 which a class III gaming activity is being con-
7 ducted, or is to be conducted, shall request the
8 State in which those lands are located to enter
9 into negotiations for the purpose of entering
10 into a compact governing the conduct of gaming
11 activities. Upon receiving such a request, the
12 State shall negotiate with the Indian tribe in
13 good faith to enter into such a compact.

14 “(B) APPROVAL BY THE SECRETARY.—
15 Any State and any Indian tribe may enter into
16 a compact governing class III gaming activities
17 on the Indian lands of the Indian tribe, but
18 that compact shall take effect only when notice
19 of approval by the Secretary of that compact
20 has been published by the Secretary in the Fed-
21 eral Register.

22 “(3) ACTIONS.—

23 “(A) IN GENERAL.—The United States
24 district courts shall have jurisdiction over—

1 “(i) any cause of action initiated by
2 an Indian tribe arising from the failure of
3 a State to enter into negotiations with the
4 Indian tribe for the purpose of entering
5 into a compact under paragraph (2) or to
6 conduct such negotiations in good faith;

7 “(ii) any cause of action initiated by
8 a State or Indian tribe to enjoin a class III
9 gaming activity located on Indian lands
10 and conducted in violation of any compact
11 entered into under paragraph (2) that is in
12 effect; and

13 “(iii) any cause of action initiated by
14 the Secretary to enforce the procedures
15 prescribed under subparagraph (B)(vii).

16 “(B) PROCEDURES.—

17 “(i) IN GENERAL.—An Indian tribe
18 may initiate a cause of action described in
19 subparagraph (A)(i) only after the expira-
20 tion of the 180-day period beginning on
21 the date on which the Indian tribe requests
22 the State to enter into negotiations under
23 paragraph (2)(A).

24 “(ii) BURDEN OF PROOF.—In any ac-
25 tion described in subparagraph (A)(i),

1 upon introduction of evidence by an Indian
2 tribe that—

3 “(I) a compact has not been en-
4 tered into under paragraph (2); and

5 “(II) the State did not respond
6 to the request of the Indian tribe to
7 negotiate such a compact or did not
8 respond to such request in good faith,
9 the burden of proof shall be upon the State
10 to prove that the State has negotiated with
11 the Indian tribe in good faith to conclude
12 a compact governing the conduct of gam-
13 ing activities.

14 “(iii) FAILURE TO NEGOTIATE.—If, in
15 any action described in subparagraph
16 (A)(i), the court finds that the State has
17 failed to negotiate in good faith with the
18 Indian tribe to conclude a compact govern-
19 ing the conduct of gaming activities, the
20 court shall order the State and the Indian
21 tribe to conclude such a compact within a
22 60-day period beginning on the date of
23 that order. In determining in such an ac-
24 tion whether a State has negotiated in
25 good faith, the court—

1 “(I) may take into account the
2 public interest, public safety, criminal-
3 ity, financial integrity, and adverse
4 economic impacts on existing gaming
5 activities; and

6 “(II) shall consider any demand
7 by the State for direct taxation of the
8 Indian tribe or of any Indian lands as
9 evidence that the State has not nego-
10 tiated in good faith.

11 “(iv) PROCEDURE IN THE EVENT OF
12 FAILURE TO CONCLUDE A COMPACT.—If a
13 State and an Indian tribe fail to conclude
14 a compact governing the conduct of gam-
15 ing activities on the Indian lands subject to
16 the jurisdiction of such Indian tribe within
17 the 60-day period provided in the order of
18 a court issued under clause (iii), the In-
19 dian tribe and the State shall each submit
20 to a mediator appointed by the court a
21 proposed compact that represents the last
22 best offer of the Indian tribe and the State
23 for a compact. The mediator shall select
24 from the 2 proposed compacts the pro-
25 posed compact that best comports with—

1 “(I) the terms of this Act;

2 “(II) any other applicable Fed-
3 eral law; and

4 “(III) the findings and order of
5 the court.

6 “(v) SUBMISSION OF COMPACT TO
7 STATE AND INDIAN TRIBE.—The mediator
8 appointed under clause (iv) shall submit to
9 the State and the Indian tribe the pro-
10 posed compact selected by the mediator
11 under clause (iv).

12 “(vi) CONSENT OF STATE.—If a State
13 consents to a proposed compact submitted
14 to the State under clause (v) during the
15 60-day period beginning on the date on
16 which the proposed compact is submitted
17 to the State under clause (v), the proposed
18 compact shall be treated as a compact en-
19 tered into under paragraph (2).

20 “(vii) FAILURE OF STATE TO CON-
21 SENT.—If the State does not consent dur-
22 ing the 60-day period described in clause
23 (vi) to a proposed compact submitted by a
24 mediator under clause (v), the mediator
25 shall notify the Secretary and the Sec-

retary shall prescribe, in consultation with
the Indian tribe, procedures—

“(I) that are consistent with the
proposed compact selected by the me-
diator under clause (iv), the provisions
of this Act, and the applicable provi-
sions of the laws of the State; and

“(II) under which class III gam-
ing may be conducted on the Indian
lands over which the Indian tribe has
jurisdiction.

“(4) APPROVAL BY SECRETARY.—

“(A) IN GENERAL.—The Secretary is au-
thorized to approve any compact entered into
between an Indian tribe and a State governing
gaming on Indian lands of such Indian tribe.

“(B) DISAPPROVAL BY SECRETARY.—The
Secretary may disapprove a compact described
in subparagraph (A) only if such compact vio-
lates—

“(i) any provision of this Act;

“(ii) any other provision of Federal
law that does not relate to jurisdiction over
gaming on Indian lands; or

1 “(iii) the trust obligation of the Unit-
2 ed States to Indians.

3 “(C) FAILURE OF THE SECRETARY TO
4 TAKE FINAL ACTION.—If the Secretary does not
5 approve or disapprove a compact described in
6 subparagraph (A) before the expiration of the
7 45-day period beginning on the date on which
8 the compact is submitted to the Secretary for
9 approval, the compact shall be considered to
10 have been approved by the Secretary, but only
11 to the extent the compact is consistent with the
12 provisions of this Act.

13 “(D) PUBLICATION OF NOTICE.—The Sec-
14 retary shall publish in the Federal Register no-
15 tice of any compact that is approved, or consid-
16 ered to have been approved, under this para-
17 graph.

18 “(E) EFFECT OF PUBLICATION OF COM-
19 PACT.—Except for an appeal conducted under
20 subchapter II of chapter 5 of title 5, United
21 States Code, by an Indian tribe or by a State
22 associated with the publication of the compact,
23 the publication of a compact pursuant to sub-
24 paragraph (D) or subsection (c)(4) that permits
25 a form of class III gaming shall, for purposes

1 of this Act, be conclusive evidence that such
 2 class III gaming is an activity subject to nego-
 3 tiations under the laws of the State where the
 4 gaming is to be conducted, in any matter under
 5 consideration by the Commission or a Federal
 6 court.

7 “(F) EFFECTIVE DATE OF COMPACT.—A
 8 compact shall become effective upon the publi-
 9 cation of the compact in the Federal Register
 10 by the Secretary.

11 “(G) DUTIES OF COMMISSION.—Consistent
 12 with the provisions of sections 7(c), 8, and 10,
 13 the Commission shall monitor and, if specifi-
 14 cally authorized, regulate and license class III
 15 gaming with respect to any compact that is
 16 published in the Federal Register.

17 “(5) PROVISIONS OF COMPACTS.—

18 “(A) IN GENERAL.—A compact negotiated
 19 under this subsection may include provisions re-
 20 lating to—

21 “(i) the application of the criminal
 22 and civil laws (including any rule or regu-
 23 lation) of the Indian tribe or the State that
 24 are directly related to, and necessary for,
 25 the licensing and regulation of such activ-

1 ity in a manner consistent with sections
2 7(c), 8, and 10;

3 “(ii) the allocation of criminal and
4 civil jurisdiction between the State and the
5 Indian tribe necessary for the enforcement
6 of such laws (including any rule or regula-
7 tion);

8 “(iii) the assessment by the State of
9 the costs associated with such activities in
10 such amounts as are necessary to defray
11 the costs of regulating such activity;

12 “(iv) taxation by the Indian tribe of
13 such activity in amounts comparable to
14 amounts assessed by the State for com-
15 parable activities;

16 “(v) remedies for breach of compact
17 provisions;

18 “(vi) standards for the operation of
19 such activity and maintenance of the gam-
20 ing facility, including licensing, in a man-
21 ner consistent with sections 7(c), 8, and
22 10; and

23 “(vii) any other subject that is di-
24 rectly related to the operation of gaming

1 activities and the impact of gaming on
2 tribal, State, and local governments.

3 “(B) STATUTORY CONSTRUCTION WITH
4 RESPECT TO ASSESSMENTS.—Except for any
5 assessments for services agreed to by an Indian
6 tribe in compact negotiations, nothing in this
7 section may be construed as conferring upon a
8 State or any political subdivision thereof the au-
9 thority to impose any tax, fee, charge, or other
10 assessment upon an Indian tribe, an Indian
11 gaming operation or the value generated by the
12 gaming operation, or any person or entity au-
13 thorized by an Indian tribe to engage in a class
14 III gaming activity in conformance with this
15 Act.

16 “(6) STATUTORY CONSTRUCTION WITH RE-
17 SPECT TO CERTAIN RIGHTS OF INDIAN TRIBES.—
18 Nothing in this subsection impairs the right of an
19 Indian tribe to regulate class III gaming on the In-
20 dian lands of the Indian tribe concurrently with a
21 State and the Commission, except to the extent that
22 such regulation is inconsistent with, or less stringent
23 than, this Act or any laws (including any rule or
24 regulation) made applicable by any compact entered

1 into by the Indian tribe under this subsection that
2 is in effect.

3 “(7) EXEMPTION.—The provisions of sections 2
4 and 5 of the Act of January 2, 1951 (commonly re-
5 ferred to as the ‘Gambling Devices Transportation
6 Act’) (64 Stat. 1134, chapter 1194, 15 U.S.C. 1172
7 and 1175) shall not apply to any class II gaming ac-
8 tivity or any gaming activity conducted pursuant to
9 a compact entered into after the date of enactment
10 of this Act or conducted pursuant to procedures pre-
11 scribed by the Secretary under this Act, but in no
12 event shall this paragraph be construed as invalidat-
13 ing any exemption from section 2 or 5 of the Act of
14 January 2, 1951, for any compact entered into prior
15 to the date of enactment of this Act or any proce-
16 dures for conducting a gaming activity prescribed by
17 the Secretary prior to such date of enactment.

18 “(b) JURISDICTION OF UNITED STATES DISTRICT
19 COURT FOR THE DISTRICT OF COLUMBIA.—The United
20 States District Court for the District of Columbia shall
21 have jurisdiction over any action initiated by the Sec-
22 retary, the Commission, a State, or an Indian tribe to en-
23 force any provision of a compact under subsection (a) that
24 is in effect or to enjoin a class III gaming activity located
25 on Indian lands and conducted in violation of such com-

1 pact that is in effect and that was entered into under sub-
2 section (a).

3 “(c) REVOCATION OF ORDINANCE.—

4 “(1) IN GENERAL.—The governing body of an
5 Indian tribe, in its sole discretion, may adopt an or-
6 dinance or resolution revoking any prior ordinance
7 or resolution that authorized class III gaming on the
8 Indian lands of the Indian tribe. Such revocation
9 shall render class III gaming illegal on the Indian
10 lands of such Indian tribe.

11 “(2) PUBLICATION OF REVOCATION.—An In-
12 dian tribe shall submit any revocation ordinance or
13 resolution described in paragraph (1) to the Com-
14 mission. Not later than 90 days after the date on
15 which the Commission receives such ordinance or
16 resolution, the Commission shall publish such ordi-
17 nance or resolution in the Federal Register. The rev-
18 ocation provided by such ordinance or resolution
19 shall take effect on the date of such publication.

20 “(3) CONDITIONAL OPERATION.—Notwithstand-
21 ing any other provision of this subsection—

22 “(A) any person or entity operating a class
23 III gaming activity pursuant to this subsection
24 on the date on which an ordinance or resolution
25 described in paragraph (1) that revokes author-

1 ization for such class III gaming activity is pub-
 2 lished in the Federal Register may, during the
 3 1-year period beginning on the date on which
 4 such revocation, ordinance, or resolution is pub-
 5 lished under paragraph (2), continue to operate
 6 such activity in conformance with an applicable
 7 compact approved or issued under subsection
 8 (a) that is in effect; and

9 “(B) any civil action that arises before,
 10 and any crime that is committed before, the ex-
 11 piration of such 1-year period shall not be af-
 12 fected by such revocation ordinance, or resolu-
 13 tion.

14 “(d) CERTAIN CLASS III GAMING ACTIVITIES.—

15 “(1) COMPACTS ENTERED INTO BEFORE THE
 16 DATE OF ENACTMENT OF THE INDIAN GAMING REG-
 17 ULATORY ACT AMENDMENTS ACT OF 1997.—

18 “(A) IN GENERAL.—Subject to subpara-
 19 graph (B), class III gaming activities that are
 20 authorized under a compact approved, or proce-
 21 dures prescribed, by the Secretary under the
 22 authority of this Act prior to the date of enact-
 23 ment of the Indian Gaming Regulatory Act
 24 Amendments Act of 1997 shall, during such pe-
 25 riod as the compact is in effect, remain lawful

1 for the purposes of this Act, notwithstanding
2 the Indian Gaming Regulatory Act Amend-
3 ments Act of 1997 and the amendments made
4 by such Act or any change in State law enacted
5 after the approval or issuance of the compact.

6 “(B) COMPACT OR PROCEDURES SUBJECT
7 TO MINIMUM REGULATORY STANDARDS.—Sub-
8 paragraph (A) shall apply to a compact or pro-
9 cedures described in that subparagraph on the
10 condition that any class III gaming activity con-
11 ducted under the compact or procedures shall
12 be subject to all Federal minimum regulatory
13 standards established under this Act and the
14 regulations promulgated under this Act.

15 “(2) COMPACT ENTERED INTO AFTER THE
16 DATE OF ENACTMENT OF THE INDIAN GAMING REG-
17 ULATORY ACT AMENDMENTS ACT OF 1997.—Any
18 compact entered into under subsection (a) after the
19 date specified in paragraph (1) shall remain lawful
20 for the purposes of this Act, notwithstanding any
21 change in State law enacted after the approval or is-
22 suanace of the compact.

1 **“SEC. 13. REVIEW OF CONTRACTS.**

2 “(a) CONTRACTS INCLUDED.—The Commission
3 shall, in accordance with this section, review and approve
4 or disapprove—

5 “(1) any management contract for the oper-
6 ation and management of any gaming activity that
7 an Indian tribe may engage in under this Act; and

8 “(2) unless licensed by an Indian tribe consist-
9 ent with the minimum Federal standards adopted
10 pursuant to section 7(c), any gaming-related con-
11 tract.

12 “(b) MANAGEMENT CONTRACT REQUIREMENTS.—
13 The Commission shall approve any management contract
14 between an Indian tribe and a person licensed by an In-
15 dian tribe or the Commission that is entered into pursuant
16 to this Act only if the Commission determines that the
17 contract provides for—

18 “(1) adequate accounting procedures that are
19 maintained, and verifiable financial reports that are
20 prepared, by or for the governing body of the Indian
21 tribe on a monthly basis;

22 “(2) access to the daily gaming operations by
23 appropriate officials of the Indian tribe who shall
24 have the right to verify the daily gross revenues and
25 income derived from any gaming activity;

1 “(3) a minimum guaranteed payment to the In-
2 dian tribe that has preference over the retirement of
3 any development and construction costs;

4 “(4) an agreed upon ceiling for the repayment
5 of any development and construction costs;

6 “(5) a contract term of not to exceed 5 years,
7 except that, upon the request of an Indian tribe, the
8 Commission may authorize a contract term that ex-
9 ceeds 5 years but does not exceed 7 years if the
10 Commission is satisfied that the capital investment
11 required, and the income projections for, the par-
12 ticular gaming activity require the additional time;
13 and

14 “(6) grounds and mechanisms for the termi-
15 nation of the contract, but any such termination
16 shall not require the approval of the Commission.

17 “(c) MANAGEMENT FEE BASED ON PERCENTAGE OF
18 NET REVENUES.—

19 “(1) PERCENTAGE FEE.—The Commission may
20 approve a management contract that provides for a
21 fee that is based on a percentage of the net revenues
22 of a tribal gaming activity if the Commission deter-
23 mines that such percentage fee is reasonable, taking
24 into consideration surrounding circumstances.

1 “(2) FEE AMOUNT.—Except as provided in
2 paragraph (3), a fee described in paragraph (1) shall
3 not exceed an amount equal to 30 percent of the net
4 revenues described in such paragraph.

5 “(3) EXCEPTION.—Upon the request of an In-
6 dian tribe, if the Commission is satisfied that the
7 capital investment required, and income projections
8 for, a tribal gaming activity, necessitate a fee in ex-
9 cess of the amount specified in paragraph (2), the
10 Commission may approve a management contract
11 that provides for a fee described in paragraph (1) in
12 an amount in excess of the amount specified in para-
13 graph (2), but not to exceed 40 percent of the net
14 revenues described in paragraph (1).

15 “(d) GAMING-RELATED CONTRACT REQUIRE-
16 MENTS.—The Commission shall approve a gaming-related
17 contract covered under subsection (a)(2) that is entered
18 into pursuant to this Act only if the Commission deter-
19 mines that the contract provides for—

20 “(1) grounds and mechanisms for termination
21 of the contract, but such termination shall not re-
22 quire the approval of the Commission; and

23 “(2) such other provisions as the Commission
24 may be empowered to impose by this Act.

25 “(e) TIME PERIOD FOR REVIEW.—

1 “(1) IN GENERAL.—Except as provided in para-
2 graph (2), not later than 90 days after the date on
3 which a management contract or other gaming-relat-
4 ed contract is submitted to the Commission for ap-
5 proval, the Commission shall approve or disapprove
6 such contract on the merits of the contract. The
7 Commission may extend the 90-day period for an
8 additional period of not more than 45 days if the
9 Commission notifies the Indian tribe in writing of
10 the reason for the extension of the period. The In-
11 dian tribe may bring an action in the United States
12 District Court for the District of Columbia to com-
13 pel action by the Commission if a contract has not
14 been approved or disapproved by the termination
15 date of an applicable period under this subsection.

16 “(2) EFFECT OF FAILURE OF COMMISSION TO
17 ACT ON CERTAIN GAMING-RELATED CONTRACTS.—
18 Any gaming-related contract for an amount less
19 than or equal to \$100,000 that is submitted to the
20 Commission pursuant to paragraph (1) by a person
21 who holds a valid license that is in effect under this
22 Act shall be deemed to be approved, if by the date
23 that is 90 days after the contract is submitted to the
24 Commission, the Commission fails to approve or dis-
25 approve the contract.

1 “(f) CONTRACT MODIFICATIONS AND VOID CON-
2 TRACTS.—The Commission, after providing notice and a
3 hearing on the record—

4 “(1) shall have the authority to require appro-
5 priate contract modifications to ensure compliance
6 with the provisions of this Act; and

7 “(2) may void any contract regulated by the
8 Commission under this Act if the Commission deter-
9 mines that any provision of this Act has been vio-
10 lated by the terms of the contract.

11 “(g) INTERESTS IN REAL PROPERTY.—No contract
12 regulated by this Act may transfer or, in any other man-
13 ner, convey any interest in land or other real property,
14 unless specific statutory authority exists, all necessary ap-
15 provals for such transfer or conveyance have been ob-
16 tained, and such transfer or conveyance is clearly specified
17 in the contract.

18 “(h) AUTHORITY OF THE SECRETARY.—The author-
19 ity of the Secretary under section 2103 of the Revised
20 Statutes (25 U.S.C. 81) shall not extend to any contract
21 or agreement that is regulated pursuant to this Act.

22 “(i) DISAPPROVAL OF CONTRACTS.—The Commis-
23 sion may not approve a contract if the Commission deter-
24 mines that—

1 “(1) any person having a direct financial inter-
2 est in, or management responsibility for, such con-
3 tract, and, in the case of a corporation, any individ-
4 ual who serves on the board of directors of such cor-
5 poration, and any of the stockholders who hold (di-
6 rectly or indirectly) 10 percent or more of its issued
7 and outstanding stock—

8 “(A) is an elected member of the governing
9 body of the Indian tribe which is a party to the
10 contract;

11 “(B) has been convicted of any felony or
12 gaming offense;

13 “(C) has knowingly and willfully provided
14 materially important false statements or infor-
15 mation to the Commission or the Indian tribe
16 pursuant to this Act or has refused to respond
17 to questions propounded by the Commission; or

18 “(D) has been determined to be a person
19 whose prior activities, criminal record, if any, or
20 reputation, habits, and associations pose a
21 threat to the public interest or to the effective
22 regulation and control of gaming, or create or
23 enhance the dangers of unsuitable, unfair, or il-
24 legal practices, methods, and activities in the
25 conduct of gaming or the carrying on of the

1 business and financial arrangements incidental
2 thereto;

3 “(2) the contractor—

4 “(A) has unduly interfered or influenced
5 for its gain or advantage any decision or proc-
6 ess of tribal government relating to the gaming
7 activity; or

8 “(B) has attempted to interfere or influ-
9 ence a decision pursuant to subparagraph (A);

10 “(3) the contractor has deliberately or substan-
11 tially failed to comply with the terms of the contract;
12 or

13 “(4) a trustee, exercising the skill and diligence
14 that a trustee is commonly held to, would not ap-
15 prove the contract.

16 **“SEC. 14. REVIEW OF EXISTING CONTRACTS; INTERIM AU-**
17 **THORITY.**

18 “(a) REVIEW OF EXISTING CONTRACTS.—

19 “(1) IN GENERAL.—At any time after the Com-
20 mission is sworn in and has promulgated regulations
21 for the implementation of this Act, the Commission
22 shall notify each Indian tribe and management con-
23 tractor who, prior to the enactment of the Indian
24 Gaming Regulatory Act Amendments Act of 1997,
25 entered into a management contract that was ap-

1 proved by the Secretary, that the Indian tribe is re-
2 quired to submit to the Commission such contract,
3 including all collateral agreements relating to the
4 gaming activity, for review by the Commission not
5 later than 60 days after such notification. Any such
6 contract shall be valid under this Act, unless the
7 contract is disapproved by the Commission under
8 this section.

9 “(2) REVIEW.—

10 “(A) IN GENERAL.—Not later than 180
11 days after the submission of a management
12 contract, including all collateral agreements, to
13 the Commission pursuant to this section, the
14 Commission shall review the contract to deter-
15 mine whether the contract meets the require-
16 ments of section 13 and was entered into in ac-
17 cordance with the procedures under such sec-
18 tion.

19 “(B) APPROVAL OF CONTRACT.—The
20 Commission shall approve a management con-
21 tract submitted for review under subsection (a)
22 if the Commission determines that—

23 “(i) the management contract meets
24 the requirements of section 13; and

1 “(ii) the management contractor has
 2 obtained all of the licenses that the con-
 3 tractor is required to obtain under this
 4 Act.

5 “(C) NOTIFICATION OF NECESSARY MODI-
 6 FICATIONS.—If the Commission determines that
 7 a contract submitted under this section does
 8 not meet the requirements of section 13—

9 “(i) the Commission shall provide the
 10 parties to such contract written notifica-
 11 tion of the necessary modifications; and

12 “(ii) the parties referred to in clause
 13 (i) shall have 180 days after the date on
 14 which such notification is provided to make
 15 the modifications.

16 “(b) INTERIM AUTHORITY OF THE NATIONAL INDIAN
 17 GAMING COMMISSION.—

18 “(1) IN GENERAL.—Notwithstanding any other
 19 provision of this Act, the Chairman and the associ-
 20 ate members of the National Indian Gaming Com-
 21 mission who are holding office on the day before the
 22 date of enactment of the Indian Gaming Regulatory
 23 Act Amendments Act of 1997 shall exercise the au-
 24 thorities described in paragraph (2) until such time
 25 as all of the initial members of the Federal Indian

1 Gaming Regulatory Commission are sworn into of-
2 fice.

3 “(2) AUTHORITIES.—Until the date specified in
4 paragraph (1), the Chairman and the associate
5 members of the National Indian Gaming Commis-
6 sion referred to in that paragraph shall exercise
7 those authorities vested in the Federal Indian Gam-
8 ing Regulatory Commission by this Act (other than
9 the authority specified in section 7(a)(1)(A) and any
10 other authority directly related to the administration
11 of the Federal Indian Gaming Regulatory Commis-
12 sion as an independent establishment, as defined in
13 section 104 of title 5, United States Code).

14 “(3) REGULATIONS.—Until such time as the
15 Commission promulgates revised regulations after
16 the date of enactment of the Indian Gaming Regu-
17 latory Act Amendments Act of 1997, the regulations
18 promulgated under this Act, as in effect on the day
19 before the date of enactment of the Indian Gaming
20 Regulatory Act Amendments Act of 1997, shall
21 apply.

22 **“SEC. 15. CIVIL PENALTIES.**

23 “(a) AMOUNT.—Any person who commits any act or
24 causes to be done any act that violates any provision of
25 this Act or any rule or regulation promulgated under this

1 Act, or who fails to carry out any act or causes the failure
 2 to carry out any act that is required by any such provision
 3 of law shall be subject to a civil penalty in an amount
 4 equal to not more than \$50,000 per day for each such
 5 violation.

6 “(b) ASSESSMENT AND COLLECTION.—

7 “(1) IN GENERAL.—Each civil penalty assessed
 8 under this section shall be assessed by the Commis-
 9 sion and collected in a civil action brought by the
 10 Attorney General on behalf of the United States.
 11 Before the Commission refers civil penalty claims to
 12 the Attorney General, the Commission may com-
 13 promise the civil penalty after affording the person
 14 charged with a violation referred to in subsection
 15 (a), an opportunity to present views and evidence in
 16 support of such action by the Commission to estab-
 17 lish that the alleged violation did not occur.

18 “(2) PENALTY AMOUNT.—In determining the
 19 amount of a civil penalty assessed under this section,
 20 the Commission shall take into account—

21 “(A) the nature, circumstances, extent,
 22 and gravity of the violation committed;

23 “(B) with respect to the person found to
 24 have committed such violation, the degree of
 25 culpability, any history of prior violations, abil-

1 ity to pay, the effect on ability to continue to
2 do business; and

3 “(C) such other matters as justice may re-
4 quire.

5 “(c) TEMPORARY CLOSURES.—

6 “(1) IN GENERAL.—The Commission may order
7 the temporary closure of all or part of an Indian
8 gaming operation for a substantial violation of any
9 provision of law referred to in subsection (a).

10 “(2) HEARING ON ORDER OF TEMPORARY CLO-
11 SURE.—

12 “(A) IN GENERAL.—Not later than 30
13 days after the issuance of an order of tem-
14 porary closure, the Indian tribe or the individ-
15 ual owner of a gaming operation shall have the
16 right to request a hearing on the record before
17 the Commission to determine whether such
18 order should be made permanent or dissolved.

19 “(B) DEADLINES RELATING TO HEAR-
20 ING.—Not later than 30 days after a request
21 for a hearing is made under subparagraph (A),
22 the Commission shall conduct such hearing.
23 Not later than 30 days after the termination of
24 the hearing, the Commission shall render a
25 final decision on the closure.

1 **“SEC. 16. JUDICIAL REVIEW.**

2 “A decision made by the Commission pursuant to sec-
3 tion 7, 8, 10, 13, 14, or 15 shall constitute a final agency
4 decision for purposes of appeal to the United States Dis-
5 trict Court for the District of Columbia pursuant to chap-
6 ter 7 of title 5, United States Code.

7 **“SEC. 17. COMMISSION FUNDING.**

8 “(a) ANNUAL FEES.—

9 “(1) IN GENERAL.—The Commission shall es-
10 tablish a schedule of fees to be paid to the Commis-
11 sion annually by gaming operations for each class II
12 and class III gaming activity that is regulated by
13 this Act.

14 “(2) LIMITATION ON FEE RATES.—

15 “(A) IN GENERAL.—For each gaming op-
16 eration regulated under this Act, the rate of the
17 fees imposed under the schedule established
18 under paragraph (1) shall not exceed 2 percent
19 of the net revenues of that gaming operation.

20 “(B) TOTAL AMOUNT OF FEES.—The total
21 amount of all fees imposed during any fiscal
22 year under the schedule established under para-
23 graph (1) shall be equal to not more than
24 \$25,000,000.

25 “(3) ANNUAL FEE RATE.—The Commission, by
26 a vote of a majority of the members of the Commis-

1 sion, shall annually adopt the rate of the fees au-
2 thorized by this section. Those fees shall be payable
3 to the Commission on a monthly basis.

4 “(4) ADJUSTMENT OF FEES.—The fees im-
5 posed upon a gaming operation may be reduced by
6 the Commission to take into account any regulatory
7 functions that are performed by an Indian tribe, or
8 the Indian tribe and a State, pursuant to regulations
9 promulgated by the Commission.

10 “(5) CONSEQUENCES OF FAILURE TO PAY
11 FEES.—Failure to pay the fees imposed under the
12 schedule established under paragraph (1) shall, sub-
13 ject to regulations promulgated by the Commission,
14 be grounds for revocation of the approval of the
15 Commission of any license required under this Act
16 for the operation of gaming activities.

17 “(6) SURPLUS FUNDS.—To the extent that rev-
18 enues derived from fees imposed under the schedule
19 established under paragraph (1) exceed the limita-
20 tion in paragraph (2)(B) or are not expended or
21 committed at the close of any fiscal year, those sur-
22 plus funds shall be credited to each gaming activity
23 that is the subject of the fees on a pro rata basis
24 against those fees imposed for the succeeding year.

1 “(b) REIMBURSEMENT OF COSTS.—The Commission
2 may assess any applicant, except the governing body of
3 an Indian tribe, for any license required pursuant to this
4 Act. That assessment shall be an amount equal to the ac-
5 tual costs of conducting all reviews and investigations nec-
6 essary for the Commission to determine whether a license
7 should be granted or denied to the applicant.

8 “(c) ANNUAL BUDGET.—

9 “(1) IN GENERAL.—For the first full fiscal year
10 beginning after the date of enactment of the Indian
11 Gaming Regulatory Act Amendments Act of 1997,
12 and each fiscal year thereafter, the Commission shall
13 adopt an annual budget for the expenses and oper-
14 ation of the Commission.

15 “(2) REQUEST FOR APPROPRIATIONS.—The
16 budget of the Commission may include a request for
17 appropriations authorized under section 18.

18 “(3) SUBMISSION TO CONGRESS.—Notwith-
19 standing any other provision of law, a request for
20 appropriations made pursuant to paragraph (2) shall
21 be submitted by the Commission directly to Con-
22 gress beginning with the request for the first full fis-
23 cal year beginning after the date of enactment of
24 this Act, and shall include the proposed annual

1 budget of the Commission and the estimated reve-
2 nues to be derived from fees.

3 **“SEC. 18. AUTHORIZATION OF APPROPRIATIONS.**

4 “Subject to section 17, there are authorized to be ap-
5 propriated \$5,000,000 to provide for the operation of the
6 Commission for each of fiscal years 1998, 1999, and 2000,
7 to remain available until expended.

8 **“SEC. 19. APPLICATION OF THE INTERNAL REVENUE CODE**
9 **OF 1986.**

10 “(a) IN GENERAL.—The provisions of the Internal
11 Revenue Code of 1986 (including sections 1441, 3402(q),
12 6041, and chapter 35 of such Code) concerning the report-
13 ing and withholding of taxes with respect to the winnings
14 from gaming or wagering operations shall apply to Indian
15 gaming operations conducted pursuant to this Act in the
16 same manner as such provisions apply to State gaming
17 and wagering operations. Any exemptions under those pro-
18 visions to States with respect to taxation of that gaming
19 or wagering operation shall be allowed to Indian tribes.

20 “(b) EXEMPTION.—The provisions of section 6050I
21 of the Internal Revenue Code of 1986 shall apply to an
22 Indian gaming establishment that is not designated by the
23 Secretary of the Treasury as a financial institution pursu-
24 ant to chapter 53 of title 31, United States Code.

1 “(c) STATUTORY CONSTRUCTION.—This section shall
 2 apply notwithstanding any other provision of law enacted
 3 before, on, or after, the date of enactment of this Act un-
 4 less such other provision of law specifically cites this sub-
 5 section.

6 “(d) ACCESS TO INFORMATION BY STATE AND TRIB-
 7 AL GOVERNMENTS.—Subject to section 7(d), upon the re-
 8 quest of a State or the governing body of an Indian tribe,
 9 the Commission shall make available any law enforcement
 10 information that the Commission has obtained pursuant
 11 to such section, unless otherwise prohibited by law, in
 12 order to enable the State or the Indian tribe to carry out
 13 its responsibilities under this Act or any compact approved
 14 by the Secretary.”; and

15 (5) by striking section 20(d).

16 **SEC. 3. CONFORMING AMENDMENTS.**

17 (a) TITLE 10.—Section 2323a(e)(1) of title 10, Unit-
 18 ed States Code, is amended by striking “section 4(4) of
 19 the Indian Gaming Regulatory Act (102 Stat. 2468; 25
 20 U.S.C. 2703(4))” and inserting “section 4(14) of the In-
 21 dian Gaming Regulatory Act”.

22 (b) TITLE 18.—Title 18, United States Code, is
 23 amended—

24 (1) in section 1166—

1 (A) in subsection (c), by striking “a Trib-
2 al-State compact approved by the Secretary of
3 the Interior under section 11(d)(8) of the In-
4 dian Gaming Regulatory Act that is in effect”
5 and inserting “a compact approved by the Sec-
6 retary of the Interior under section 12(a) of the
7 Indian Gaming Regulatory Act that is in effect
8 or pursuant to procedures prescribed by the
9 Secretary of the Interior under section
10 12(a)(3)(B)(iii) of such Act”; and

11 (B) in subsection (d), by striking “a Trib-
12 al-State compact approved by the Secretary of
13 the Interior under section 11(d)(8) of the In-
14 dian Gaming Regulatory Act” and inserting “a
15 compact approved by the Secretary of the Inte-
16 rior under section 12(a) of the Indian Gaming
17 Regulatory Act or pursuant to procedures pre-
18 scribed by the Secretary of the Interior under
19 section 12(a)(3)(B)(iii) of such Act,”;

20 (2) in section 1167, by striking “pursuant to an
21 ordinance or resolution approved by the National In-
22 dian Gaming Commission” each place it appears;
23 and

1 (3) in section 1168, by striking “pursuant to an
2 ordinance or resolution approved by the National In-
3 dian Gaming Commission,” each place it appears.

4 (c) INTERNAL REVENUE CODE OF 1986.—Section
5 168(j)(4)(A)(iv) of the Internal Revenue Code of 1986 is
6 amended by striking “Indian Regulatory Act” and insert-
7 ing “Indian Gaming Regulatory Act”.

8 (d) TITLE 28.—Title 28, United States Code, is
9 amended—

10 (1) in section 3701(2)—

11 (A) by striking “section 4(5) of the Indian
12 Gaming Regulatory Act (25 U.S.C. 2703(5))”
13 and inserting “section 4(15) of the Indian
14 Gaming Regulatory Act”; and

15 (B) by striking “section 4(4) of such Act
16 (25 U.S.C. 2703(4))” and inserting “section
17 4(14) of such Act”; and

18 (2) in section 3704(b), by striking “section 4(4)
19 of the Indian Gaming Regulatory Act” and inserting
20 “section 4(14) of the Indian Gaming Regulatory
21 Act”.

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