

103^D CONGRESS
1ST SESSION

H. R. 1624

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

IN THE HOUSE OF REPRESENTATIVES

APRIL 1, 1993

Mr. HOAGLAND (for himself, Mr. MACHTLEY, and Mr. STUMP) introduced the following bill; which was referred jointly to the Committees on Natural Resources and Ways and Means

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. INDIAN GAMING RESTRICTED.**

4 (a) REGULATION OF CLASS II GAMING.—Section
5 11(b) of the Act (25 U.S.C. 2710(b)) is amended—

6 (1) in paragraph (1)—

7 (A) in subparagraph (A)—

8 (i) by inserting “(i)” after “(A)”;

9 (ii) in clause (i), as designated by
10 clause (i) of this subparagraph, by striking

1 “any purpose” and all that follows through
2 “law), and” and inserting “a commercial
3 purpose by any person, organization or en-
4 tity, or”; and

5 (iii) by inserting after clause (i), as
6 designated by clause (i) of this subpara-
7 graph, the following:

8 “(ii) such Indian gaming is for charitable pur-
9 poses and is located within a State that permits
10 such gaming for charitable purposes by a person, or-
11 ganization or entity,”;

12 (B) by redesignating subparagraph (B) as
13 subparagraph (D) and inserting the following:

14 “(B) such gaming is not otherwise specifically
15 prohibited on Indian lands by Federal law,

16 “(C) permissible gaming is limited to the spe-
17 cific forms of, and methods of play for, gaming ac-
18 tivities expressly authorized by the law of the State,
19 and”; and

20 (2) in paragraph (2)—

21 (A) in subparagraph (E), by striking
22 “and” at the end;

23 (B) in subparagraph (F), by striking the
24 period and inserting “; and”; and

25 (C) by adding at the end the following:

1 “(G) all gaming activities shall be conducted in
2 conformity with those laws and regulations (if any)
3 of the State regarding specific games allowed and
4 methods of play, including, but not limited to, peri-
5 ods of operation, limitation on wagers, pot sizes, and
6 losses.”.

7 (b) REGULATION OF CLASS III GAMING.—Section
8 11(d)(1) of the Act (25 U.S.C. 2710(d)(1)) is amended—

9 (1) by amending subparagraph (B) to read as
10 follows:

11 “(B) located in a State that permits such gam-
12 ing for any purpose by any person, organization, or
13 entity which conducts the authorized gaming activity
14 as part of a commercial, for-profit business enter-
15 prise; except that a Tribal-State compact may per-
16 mit any other class III gaming authorized by a State
17 if conducted in accordance with State law;”;

18 (2) by redesignating subparagraph (C) as sub-
19 paragraph (D) and inserting after subparagraph (B)
20 the following new subparagraph:

21 “(C) limited to the specific forms of, and meth-
22 ods of play for, gaming activities expressly author-
23 ized by the law of the State; and”.

24 **SEC. 2. DEFINITION OF CLASS III GAMING.**

25 Section 4 of the Act (25 U.S.C. 2703) is amended—

1 (1) in paragraph (7)(A)(i), by inserting after
2 “therewith)” the following: “except video bingo”;
3 and

4 (2) in paragraph (8), by inserting before the pe-
5 riod at the end the following: “including, but not
6 limited to, slot machines (as such term is defined in
7 subsection (a)(1) of the first section of the Act of
8 January 2, 1951 (Chapter 1194; 64 Stat. 1134)),
9 electronic or electromechanical facsimiles of any
10 game of chance, and any and all forms of electronic
11 video games or devices, such as video bingo, video
12 pull-tabs, video keno, and video blackjack”.

13 **SEC. 3. COMPACT NEGOTIATION.**

14 (a) BURDEN OF PROOF.—Section 11(d)(7)(B)(ii) of
15 the Act (25 U.S.C. 2710(d)(7)(B)(ii)) is amended by
16 striking “burden of proof shall be upon the State to prove
17 that the State” and inserting “burden of proof shall be
18 upon the Indian tribe to prove that the State”.

19 (b) CERTAIN EVIDENCE.—Section 11(d)(7)(B)(iii) of
20 the Act (25 U.S.C. 2710(d)(7)(B)(iii)) is amended—

21 (1) in subclause (I), by striking “, and” and in-
22 serting a semicolon;

23 (2) in subclause (II), by striking the period and
24 inserting “; and”; and

25 (3) by adding at the end the following:

1 “(III) except as provided in clause
2 (ii), shall not consider as evidence that the
3 State has not negotiated in good faith a
4 demand by the State that the gaming ac-
5 tivities contemplated by the compact be
6 conducted on the same basis as gaming ac-
7 tivities which may be conducted by any
8 other person or entity under the terms of
9 relevant State law.”.

10 **SEC. 4. NATIONAL INDIAN GAMING COMMISSION.**

11 (a) **ADDITIONAL MEMBERS.**—Section 5(b)(1) of the
12 Act (25 U.S.C. 2704(b)(1)) is amended—

13 (1) in the material preceding subparagraph (A),
14 by striking “three” and inserting “five”;

15 (2) in subparagraph (A), by striking “and”;

16 (3) in subparagraph (B), by striking the period
17 at the end and inserting “; and”; and

18 (4) by adding at the end the following:

19 “(C) two associate members who shall be
20 appointed by the President, with the advice and
21 consent of the Senate, from among State offi-
22 cials.”.

23 (b) **COMPOSITION.**—Section 5(b)(3) of the Act (25
24 U.S.C. 2704(b)(3)) is amended in the first sentence by
25 striking “two” and inserting “three”.

1 (c) QUORUM.—Section 5(d) of the Act (25 U.S.C.
2 2704(d)) is amended by striking “two” and inserting
3 “three”.

4 (d) EFFECTIVE DATE; TRANSITION RULES.—(1) Ex-
5 cept as required for paragraph (2), the amendments made
6 by this section shall take effect at the end of the 90-day
7 period beginning on the date of enactment of this Act and
8 shall apply with respect to any action taken by the Na-
9 tional Indian Gaming Commission after the end of such
10 period.

11 (2) Not later than 90 days after the date of enact-
12 ment of this Act, the President shall make the initial ap-
13 pointments of the associate members of the National In-
14 dian Gaming Commission, as required by the amendments
15 made by subsection (a) of this section, in accordance with
16 the Indian Gaming Regulatory Act, as amended by this
17 Act.

18 **SEC. 5. GAMING ON AFTER ACQUIRED LANDS.**

19 Section 20(b)(1)(A) of the Act (25 U.S.C.
20 2719(b)(1)(A)) is amended—

21 (1) by striking “and appropriate State and local
22 officials, including officials of other nearby Indian
23 tribes,” and inserting the following: “, appropriate
24 State and local officials (including officials of other
25 nearby Indian tribes), and officials of other nearby

1 communities (including communities across State
2 borders that would be directly affected by gaming
3 conducted on such lands),”; and

4 (2) by striking “community” and inserting
5 “communities (including communities across State
6 borders that would be directly affected by gaming
7 conducted on such lands)”.

8 **SEC. 6. INDIAN EMPLOYMENT CREDIT.**

9 (a) ALLOWANCE OF INDIAN EMPLOYMENT CRED-
10 IT.—Section 38(b) of the Internal Revenue Code of 1986
11 (relating to general business credits) is amended by strik-
12 ing “plus” at the end of paragraph (7), by striking the
13 period at the end of paragraph (8) and inserting “, plus”,
14 and by adding after paragraph (8) the following new para-
15 graph:

16 “(9) the Indian employment credit as deter-
17 mined under section 45A(a).”.

18 (b) AMOUNT OF INDIAN EMPLOYMENT CREDIT.—
19 Subpart D of Part IV of subchapter A of chapter 1 of
20 such Code (relating to business related credits) is amended
21 by adding at the end thereof the following new section:

22 **“SEC. 45A. INDIAN EMPLOYMENT CREDIT.**

23 “(a) AMOUNT OF CREDIT.—

24 “(1) IN GENERAL.—For purposes of section 38,
25 the amount of the Indian employment credit deter-

1 mined under this section with respect to any em-
2 ployer for any taxable year is 10 percent (30 percent
3 in the case of an employer with at least 85 percent
4 Indian employees throughout the taxable year) of
5 the sum of—

6 “(A) the qualified wages paid or incurred
7 during such taxable year, plus

8 “(B) qualified employee health insurance
9 costs paid or incurred during such taxable year.

10 In no event shall the amount of the Indian employ-
11 ment credit for any taxable year exceed the credit
12 limitation amount determined under subsection (e)
13 for such taxable year.

14 “(2) INDIAN EMPLOYEE.—For purposes of
15 paragraph (1), the term ‘Indian employee’ means an
16 employee who is an enrolled member of an Indian
17 tribe or the spouse of such a member.

18 “(b) QUALIFIED WAGES; QUALIFIED EMPLOYEE
19 HEALTH INSURANCE COSTS.—For purposes of this sec-
20 tion—

21 “(1) QUALIFIED WAGES.—

22 “(A) IN GENERAL.—The term ‘qualified
23 wages’ means any wages paid or incurred by an
24 employer for services performed by an employee
25 while such employee is a qualified employee.

1 “(B) COORDINATION WITH TARGETED
2 JOBS CREDIT.—The term ‘qualified wages’ shall
3 not include wages attributable to service ren-
4 dered during the 1-year period beginning with
5 the day the individual begins work for the em-
6 ployer if any portion of such wages is taken
7 into account in determining the credit under
8 section 51.

9 “(2) QUALIFIED EMPLOYEE HEALTH INSUR-
10 ANCE COSTS.—

11 “(A) IN GENERAL.—The term ‘qualified
12 employee health insurance costs’ means any
13 amount paid or incurred by an employer for
14 health insurance to the extent such amount is
15 attributable to coverage provided to any em-
16 ployee while such employee is a qualified em-
17 ployee.

18 “(B) EXCEPTION FOR AMOUNTS PAID
19 UNDER SALARY REDUCTION ARRANGEMENTS.—
20 No amount paid or incurred for health insur-
21 ance pursuant to a salary reduction arrange-
22 ment shall be taken into account under sub-
23 paragraph (A).

24 “(c) QUALIFIED EMPLOYEE.—For purposes of this
25 section—

1 “(1) IN GENERAL.—Except as otherwise pro-
2 vided in this subsection, the term ‘qualified em-
3 ployee’ means, with respect to any period, any em-
4 ployee of an employer if—

5 “(A) substantially all of the services per-
6 formed during such period by such employee for
7 such employer are performed within an Indian
8 reservation,

9 “(B) the principal place of abode of such
10 employee while performing such services is on
11 or near the reservation in which the services are
12 performed, and

13 “(C) the employee began work for such
14 employer on or after January 1, 1994.

15 “(2) CREDIT ALLOWED ONLY FOR FIRST 7
16 YEARS.—An employee shall not be treated as a
17 qualified employee for any period after the date 7
18 years after the day on which such employee first
19 began work for the employer.

20 “(3) INDIVIDUALS RECEIVING WAGES IN EX-
21 CESS OF \$30,000 NOT ELIGIBLE.—An employee shall
22 not be treated as a qualified employee for any tax-
23 able year of the employer if the total amount of the
24 wages paid or incurred by such employer to such
25 employee during such taxable year (whether or not

1 for services within an Indian reservation) exceeds
2 the amount determined at an annual rate of
3 \$30,000. The Secretary shall adjust the \$30,000
4 amount contained in the preceding sentence for
5 years beginning after 1993 at the same time and in
6 the same manner as under section 415(d).

7 “(4) EMPLOYMENT MUST BE TRADE OR BUSI-
8 NESS EMPLOYMENT.—An employee shall be treated
9 as a qualified employee for any taxable year of the
10 employer only if more than 50 percent of the wages
11 paid or incurred by the employer to such employee
12 during such taxable year are for services performed
13 in a trade or business of the employer. Any deter-
14 mination as to whether the preceding sentence ap-
15 plies with respect to any employee for any taxable
16 year shall be made without regard to subsection
17 (f)(2).

18 “(5) CERTAIN EMPLOYEES NOT ELIGIBLE.—
19 The term ‘qualified employee’ shall not include—

20 “(A) any individual described in subpara-
21 graph (A), (B), or (C) of section 51(i)(1),

22 “(B) any 5-percent owner (as defined in
23 section 416(i)(1)(B)),

1 “(C) any individual who is neither an en-
2 rolled member of an Indian tribe nor the spouse
3 of an enrolled member of an Indian tribe, and

4 “(D) any individual if the services per-
5 formed by such individual for the employer in-
6 volve the conduct of class I, II, or III gaming
7 as defined in section 4 of the Indian Gaming
8 Regulatory Act (25 U.S.C. 2703), or are per-
9 formed in a building housing such gaming
10 activity.

11 “(6) INDIAN TRIBE DEFINED.—The term ‘In-
12 dian tribe’ means any Indian tribe, band, nation,
13 pueblo, or other organized group or community, in-
14 cluding any Alaska Native village, or regional or vil-
15 lage corporation, as defined in, or established pursu-
16 ant to, the Alaska Native Claims Settlement Act (43
17 U.S.C. 1601 et seq.) which is recognized as eligible
18 for the special programs and services provided by
19 the United States to Indians because of their status
20 as Indians.

21 “(7) INDIAN RESERVATION DEFINED.—The
22 term ‘Indian reservation’ means a reservation, as de-
23 fined in—

24 “(A) section 3(d) of the Indian Financing
25 Act of 1974 (25 U.S.C. 1452(d)), or

1 “(B) section 4(10) of the Indian Child
2 Welfare Act of 1978 (25 U.S.C. 1903 (10)).

3 “(d) EARLY TERMINATION OF EMPLOYMENT BY EM-
4 PLOYER.—

5 “(1) IN GENERAL.—If the employment of any
6 employee is terminated by the taxpayer before the
7 day 1 year after the day on which such employee
8 began work for the employer—

9 “(A) no wages (or qualified employee
10 health insurance costs) with respect to such em-
11 ployee shall be taken into account under sub-
12 section (a) for the taxable year in which such
13 employment is terminated, and

14 “(B) the tax under this chapter for the
15 taxable year in which such employment is ter-
16 minated shall be increased by the aggregate
17 credits (if any) allowed under section 38(a) for
18 prior taxable years by reason of wages (or
19 qualified employee health insurance costs) taken
20 into account with respect to such employee.

21 “(2) CARRYBACKS AND CARRYOVERS AD-
22 JUSTED.—In the case of any termination of employ-
23 ment to which paragraph (1) applies, the carrybacks
24 and carryovers under section 39 shall be properly
25 adjusted.

1 “(3) SUBSECTION NOT TO APPLY IN CERTAIN
2 CASES.—

3 “(A) IN GENERAL.—Paragraph (1) shall
4 not apply to—

5 “(i) a termination of employment of
6 an employee who voluntarily leaves the em-
7 ployment of the taxpayer,

8 “(ii) a termination of employment of
9 an individual who before the close of the
10 period referred to in paragraph (1) be-
11 comes disabled to perform the services of
12 such employment unless such disability is
13 removed before the close of such period
14 and the taxpayer fails to offer reemploy-
15 ment to such individual, or

16 “(iii) a termination of employment of
17 an individual if it is determined under the
18 applicable State unemployment compensa-
19 tion law that the termination was due to
20 the misconduct of such individual.

21 “(B) CHANGES IN FORM OF BUSINESS.—
22 For purposes of paragraph (1), the employment
23 relationship between the taxpayer and an em-
24 ployee shall not be treated as terminated—

1 “(i) by a transaction to which section
2 381(a) applies if the employee continues to
3 be employed by the acquiring corporation,
4 or

5 “(ii) by reason of a mere change in
6 the form of conducting the trade or busi-
7 ness of the taxpayer if the employee con-
8 tinues to be employed in such trade or
9 business and the taxpayer retains a sub-
10 stantial interest in such trade or business.

11 “(4) SPECIAL RULE.—Any increase in tax
12 under paragraph (1) shall not be treated as a tax
13 imposed by this chapter for purposes of—

14 “(A) determining the amount of any credit
15 allowable under this chapter, and

16 “(B) determining the amount of the tax
17 imposed by section 55.

18 “(e) CREDIT LIMITATION AMOUNT.—For purposes of
19 this section—

20 “(1) CREDIT LIMITATION AMOUNT.—The credit
21 limitation amount for a taxable year shall be an
22 amount equal to the credit rate (10 or 30 percent
23 as determined under subsection (a)) multiplied by
24 the increased credit base.

1 “(2) INCREASED CREDIT BASE.—The increased
2 credit base for a taxable year shall be the excess
3 of—

4 “(A) the sum of any qualified wages and
5 qualified employee health insurance costs paid
6 or incurred by the employer during the taxable
7 year with respect to employees whose wages
8 (paid or incurred by the employer) during the
9 taxable year do not exceed the amount deter-
10 mined under paragraph (3) of subsection (c),
11 over

12 “(B) the sum of any qualified wages and
13 qualified employee health insurance costs paid
14 or incurred by the employer (or any prede-
15 cessor) during calendar year 1993 with respect
16 to employees whose wages (paid or incurred by
17 the employer or any predecessor) during 1993
18 did not exceed \$30,000.

19 “(3) SPECIAL RULE FOR SHORT TAXABLE
20 YEARS.—For any taxable year having less than 12
21 months—

22 “(A) the amounts paid or incurred by the
23 employer shall be annualized for purposes of de-
24 termining the increased credit base, and

1 “(B) the credit limitation amount shall be
2 multiplied by a fraction, the numerator of which
3 is the number of days in the taxable year and
4 the denominator of which is 365.

5 “(f) OTHER DEFINITIONS AND SPECIAL RULES.—
6 For purposes of this section—

7 “(1) WAGES.—The term ‘wages’ has the same
8 meaning given to such term in section 51.

9 “(2) CONTROLLED GROUPS.—

10 “(A) All employers treated as a single em-
11 ployer under section (a) or (b) of section 52
12 shall be treated as a single employer for pur-
13 poses of this section.

14 “(B) The credit (if any) determined under
15 this section with respect to each such employer
16 shall be its proportionate share of the wages
17 and qualified employee health insurance costs
18 giving rise to such credit.

19 “(3) CERTAIN OTHER RULES MADE APPLICA-
20 BLE.—Rules similar to the rules of section 51(k)
21 and subsections (c), (d), and (e) of section 52 shall
22 apply.

23 “(4) COORDINATION WITH NONREVENUE
24 LAWS.—Any reference in this section to a provision
25 not contained in this title shall be treated for pur-

1 poses of this section as a reference to such provision
2 as in effect on the date of the enactment of this
3 paragraph.”.

4 (c) DENIAL OF DEDUCTION FOR PORTION OF WAGES
5 EQUAL TO INDIAN EMPLOYMENT CREDIT.—

6 (1) Subsection (a) of section 280C of such Code
7 (relating to rule for targeted jobs credit) is amended
8 by striking “51(a)” and inserting “45A(a), 51(a),
9 and”.

10 (2) Subsection (c) of section 196 of such Code
11 (relating to deduction for certain unused business
12 credits) is amended by striking “and” at the end of
13 paragraph (4), by striking the period at the end of
14 paragraph (5) and inserting “, and”, and by adding
15 at the end the following new paragraph:

16 “(6) the Indian employment credit determined
17 under section 45A(a).”.

18 (d) DENIAL OF CARRYBACKS TO PREENACTMENT
19 YEARS.—Subsection (d) of section 39 of such Code is
20 amended by adding at the end thereof the following new
21 paragraph:

22 “(4) NO CARRYBACK OF SECTION 45A CREDIT
23 BEFORE ENACTMENT.—No portion of the unused
24 business credit for any taxable year which is attrib-
25 utable to the Indian employment credit determined

1 under section 45A may be carried to a taxable year
2 ending before the date of the enactment of section
3 45A.”.

4 (e) CLERICAL AMENDMENT.—The table of sections
5 for subpart D of part IV of subchapter A of chapter 1
6 of such Code is amended by adding at the end thereof
7 the following:

“Sec. 45A. Indian employment credit.”.

8 (f) EFFECTIVE DATE.—The amendments made by
9 this section shall apply to wages paid or incurred after
10 December 31, 1993.

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