

**SUBJECT:** Providing a defense to gambling for Native American tribes

**COMMITTEE:** Criminal Jurisprudence — favorable, without amendment

**VOTE:** 6 ayes — Keel, Ellis, Dunnam, Hodge, Moreno, Pena

2 nays — Riddle, Talton

1 absent — Denny

**WITNESSES:** For — Kevin Battise, Alabama-Coushatta tribe of Texas; Carlos Hisa and Arturo Senclair, Ysleta Del Sur Pueblo; Timoteo Garza

Against — None

**BACKGROUND:** Federal and state laws and negotiated tribal compacts govern gambling conducted by Indian tribes. The federal Indian Gaming Regulatory Act (IGRA) of 1988 establishes three categories of Indian gambling, each subject to different degrees of tribal, federal, and state jurisdiction.

IGRA defines Class I gaming, subject exclusively to tribal jurisdiction, as social games either for nominal prizes or as part of tribal ceremonies or celebrations. Class II gaming includes bingo and related games, such as pull tabs, and some other games in which players play against each other, as opposed to against the house. Class II gaming is subject to tribal and some federal regulation but not to state regulation. All other gambling, including casino gambling, is classified as Class III and falls under state-tribal jurisdiction. Class III gaming is lawful on Indian lands only if conducted in accordance with a state-tribal compact that is in effect, if such activity is located in a state that allows such gambling for any purpose by any person or organization, and if other provisions of federal law are met.

Texas has three federally recognized Native American tribes: the Alabama-Coushatta, who have a reservation in Polk County outside of Livingston; the Tiguas (known formally as Ysleta del Sur Pueblo), who have a reservation in El Paso; and the Texas Band of Kickapoos, who have a reservation near Eagle Pass. Before IGRA was enacted, the Alabama-Coushatta and Tigua tribes

were prohibited from operating state-banned gambling activities by a 1987 federal law that restored the tribes to a federal trust relationship. The Kickapoos never were subject to the prohibition.

The Tiguas operated a casino for about eight years and the Alabama-Coushattas for about nine months before they were closed in late 2002 by federal court rulings in lawsuits brought by the state against the tribes. The casinos included slot machines, poker and other card games, dice games, bingo, keno, and off-track betting.

The Kickapoos opened the Lucky Eagle Casino on their land near Eagle Pass in August 1996 with high-stakes bingo, pull-tab bingo, and card games in which players compete against each other but not against the house. In general, the tribe's gaming activities are governed by IGRA, not by a restoration act, and the tribe maintains that all of its games are under the regulation by tribes and the federal government only.

Penal Code, ch. 47 prohibits gambling. Art. 47.09(a) lists the Texas statutes under which there is a defense to prosecution for gambling.

**DIGEST:**

HB 809 would provide a defense to prosecution for gambling or other gaming activity that is or may be permitted under IGRA, if the gambling or gaming was conducted by a tribe recognized by the federal government on January 1, 1998, and on tribal land recognized by the federal government on January 1, 1998, and on premises designated by the tribe for gambling.

The defense would apply whether or not the gambling or gaming was conducted by a tribe governed by the IGRA.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2003.

**SUPPORTERS  
SAY:**

HB 809 would not allow expansion of gambling in Texas but specifically would allow only the Tiguas, Kickapoos, and Alabama-Coushattas to have a narrowly tailored defense to prosecution for casinos they operate on tribal property recognized as part of their reservations on January 1, 1998. The

date-specific limitation would prohibit tribes from expanding gaming operations to new sites around Texas.

It is only fair that the state recognize tribes' sovereignty to operate gambling on their lands. The government has promised sovereignty to the tribes, and HB 809 would ensure the tribes are not excluded from the gambling enterprises that the state has undertaken.

No constitutional amendment is needed. Texas voters already have approved other types of gambling, such as the lottery, parimutuel racing, and charity bingo. Authorization of the state lottery opened the door for the tribes to offer casino games with random number generators, such as slot machines, which have the same basis as the lottery.

HB 809 would not legalize casino gambling throughout the state, which is barred by the Texas Constitution, Art. 3, sec. 47 prohibition against any but specific types of lotteries, but merely would provide a defense to prosecution, eliminating the need for a constitutional amendment.

The bill would legitimize an income source that has helped Native Americans in Texas and has allowed Texas tribes to become self-sufficient. It represents the best solution to meeting the tribe's needs and providing the seeds for long-term self-sustaining economic model. It would help prevent gambling dollars, jobs, and other economic benefits from going to other states.

Before opening Speaking Rock Casino in 1993, the Tigua tribe had more than 50 percent unemployment and little assistance with educating their children, providing homes for their people, and caring for their elders. The tribe's casino generated revenues of about \$50 million to \$60 million a year, had about 800 employees, including about 50 tribe members, and a \$14 million annual payroll.

The Tiguas say they used profits from the casino for education, housing, and an elder program for tribe members; a chain of convenience stores and two oil and lube shops; acquisition of a 70,000-acre ranch in Jeff Davis County; an annual stipend for tribe members that was \$15,000 in 2000; and charitable contributions worth \$1.25 million since the casino opened. The charitable

contributions include equipment for local police and fire departments and an emergency warning system for local schools.

The Alabama-Coushattas also benefitted from the entertainment center that they operated for less than one year. Unemployment on the tribe's reservation dropped from almost 50 percent to about 14 percent, and they began to fund scholarships, a health center, roads, and other important projects.

The casinos also benefit their local areas. El Paso was reeling from the loss of jobs in the wake of the North American Free Trade Agreement, but when Speaking Rock Casino opened, unemployment in El Paso dropped. The casino provided jobs in El Paso with above-average salaries and benefits. Property values went up, giving the community more property taxes to fund programs. The tribe estimates that the casino generated hundreds of millions of dollars for the regional economy. The Tiguas also provided funding for the renovation of the Mission Trail and equipment for emergency services in El Paso County, and tourism to El Paso has increased.

In East Texas, the Alabama-Coushatta center paid about \$4.3 million in wages, and Polk and Tyler counties enjoyed an increase in tax revenue. Local retailers saw increased sales.

Before the Kickapoos opened their casino, many lived under the International Bridge in El Paso because they had no lands. Now the tribe owns 125 acres in Eagle Pass. Before, most Kickapoo children were not educated. Now, the tribe can pay for schools. Kickapoos have been able to invest new money for social services for their tribe, including programs to combat alcoholism and drug abuse.

Gambling opponents predicted increased crime and problem gambling in the areas around the tribes' gaming centers, but those problems have not arisen. In fact, crime dropped significantly in the area around the Tiguas' casino. Gambling addictions are like other unfortunate compulsions such as alcohol addiction and compulsive shopping that the state does not try to stop by prohibiting the activities.

A majority of Texans support the rights of the tribes to conduct gambling on their lands. In a January 2003 poll, 71 percent of those surveyed said they

supported Indians being able to open gaming centers, since the rest of the state already has legalized gambling in the form of the state lottery and dog racing. Sixty percent favored the casinos when asked the straightforward question, “In general, do you favor or oppose allowing casino-style gaming on Indian lands in Texas?”

HB 809 would make the same IGRA standard applicable to all three of Texas’ federally recognized tribes, promoting uniformity and equal treatment for them all. Also, the bill clearly would establish Texas’ public policy regarding Indian gaming.

**OPPONENTS  
SAY:**

Gambling in Texas should not be expanded by enacting HB 809. Federal court rulings last year shut down two casinos operated by Texas’ tribes, and they should remain closed.

HB 809 would remove a penalty for clearly illegal behavior and would reward the tribes’ earlier illegal behavior. When the Tiguas and Alabama-Coushattas were restored to federal jurisdiction, they specifically agreed to an identical passage in the federal law that says: “All gaming activities which are prohibited by the laws of the State of Texas are hereby prohibited on the reservation and on the lands of the tribe.” The games that the tribes operated in their now-illegal casinos were either illegal in Texas or were not conducted with proper authorization. Casinos are illegal in Texas, and they should remain illegal on the tribes’ lands.

Any economic benefit to tribe members and others should not outweigh concerns about expanded gambling in Texas. Gambling carries with it social and other costs, such as increases in crime, unemployment, and bankruptcy, that offset any economic or other gains.

HB 809 would change Texas law unconstitutionally to allow slot machines and other casino-style gambling. Attorney General Dan Morales determined in Opinion DM-302 (August 1994) that the Legislature cannot authorize slot machines in the absence of a constitutional amendment. To be valid, the change proposed by HB 809 would have to be made by a joint resolution proposing a constitutional amendment that, if finally adopted by both houses, could be presented to Texas voters for approval.

Texans should have the right to express their opinions on legalizing Indian gaming by voting on this issue. Opinion DM-302 notes that when voters approved the constitutional amendment to allow a state lottery, they “did not intend to legalize the operation of slot machines, whether by a private individual or company, by the state, or by a private individual or company on behalf of the state.” The Legislature must consider the concerns not only of the 2,000 Native Americans who would benefit from this bill but also of the 20 million Texans whom it would affect.

HB 809 would legitimize current casinos, and future legislatures likely would allow further expansion. Those who support the availability of gambling all across Texas would want parity, whether by legalizing casinos outside of tribal lands, legitimizing “eight-liners,” or allowing slot machines at race tracks. Historically, once any form of gambling is legalized in Texas, the Legislature has expanded on it in future sessions.

**OTHER  
OPPONENTS  
SAY:**

Enacting HB 809 would serve no useful purpose. The bill would provide a defense to prosecution under state law for Indian gaming, but such activity can be prosecuted only under federal law. If the Legislature wishes to legalize Native American casinos, it should propose a constitutional amendment and allow voters to approve it. Then, the state would have to enter into a compact with the tribes allowing the gaming to take place.

**NOTES:**

The companion bill, SB 1446 by Shapleigh, was filed March 13 but has not been referred to a Senate committee.

In 2001, the House approved a similar bill, HB 514 by Hinojosa, et al., which died in the Senate Business and Commerce Committee.