

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

**COMMITTEE:** Criminal Jurisprudence — committee substitute recommended

**VOTE:** 6 ayes — Peña, Vaught, Escobar, Hodge, Mallory Caraway  
1 nay — Talton  
2 absent — Riddle, Moreno, Pierson

**WITNESSES:** For — Jo Ann Battise, Tribal Chair, The Alabama-Coushatta Tribe of Texas; Cindy Ramos-Davidson, El Paso Hispanic Chamber; Arturo Senclair, Ysleta Del Sur Pueblo; Lucio G. Valdez; (*Registered, but did not testify*: Scott Crowell, Alabama Coushatta Tribe; Benny Hernandez, American Civil Liberties Union of Texas; Jaime Barceleau; Jenifer Edgett; Suzanna Hupp; Darilynn (Dee) McClure; Jerry Rose; Lorraine Wardy)  
  
Against — (*Registered, but did not testify*: MerryLynn Gerstenschlager, Texas Eagle Forum; Stephen Reeves, Christian Life Commission)  
  
On — (*Registered, but did not testify*: Dean McWilliams, Kickapoo Traditional Tribe of Texas)

**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 law, often called the Restoration Act, generally governs gaming by the two tribes and contains the following language, which pertains to each: "All gaming activities which are prohibited by the laws of the State of Texas are hereby prohibited on the reservation and on lands of the tribe." 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 and now conduct bingo-based games, including bingo machines, and card games in which players compete against each other but not against the house with no banking by the house or another player. 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 clearly legal and under the regulation by tribes and the federal government only.

Penal Code, ch. 47 prohibits gambling. Art. 47.09(a) gives a defense to gambling if a person's conduct was authorized under the state's bingo, charitable raffle, or pari-mutuel racing laws, or involved playing the state lottery.

**DIGEST:**

HB 10 would amend Penal Code, art. 47.09 to provide a defense to prosecution for gambling or other gaming activity that is or may be permitted under the Indian Gaming Regulatory Act 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 gaming. The defense would apply whether or not the gambling or gaming was conducted by a tribe governed by the IGRA.

The tribe would have to pay to the comptroller 5 percent of the revenue from the gambling or gaming, which would be deposited into an account that could be used only to fund the TEXAS grant program.

The bill would take effect September 1, 2007, and would apply only to offenses committed on or after that date.

**SUPPORTERS  
SAY:**

CSHB 10 would allow only the Tiguas, Kickapoos, and Alabama-Coushattas to have a narrow defense to prosecution for limited gaming on tribal property recognized as part of their reservations on January 1, 1998. It would not be used to legalize casino gambling throughout the state, which is barred by Art. 3, sec. 47 of the Texas Constitution, which prohibits any but specific types of lotteries.

HB 10 would extend to the tribes the same authorization as the state to operate certain games and would not authorize anything that is not currently allowed in the state, such as slot machines. The author's floor amendment would clarify beyond a doubt that gaming authorized under the bill would be limited to Class 2 gaming, which is bingo, pull-tab bingo, and non-banking card games. HB 10 would ensure the tribes were not excluded from the gambling enterprises that the state has undertaken.

Indian gaming is highly regulated by the federal government, the tribes, and the states. Under IGRA, the federal Indian Gaming Commission has broad authority to oversee all tribal gaming. The tribes themselves have adopted stringent regulatory schemes and have historically proved capable and successful in their regulations. For example, when the Tiguas operated their gaming facility, they adopted the strict regulations of the Nevada Gaming Commission.

Concerns that CSHB 10 would be used to authorize gaming by tribes not currently recognized in Texas or on lands other than the sites of the Alabama-Coushatta, Tigua, or Kickapoo tribes outside of Livingston, in El Paso, and near Eagle Pass, are unfounded. CSHB 10 clearly says that gaming would be permitted only by tribes with federal recognition on January 1, 1998, and on land they held on that date. The date-specific limitation would prohibit tribes from having any gaming operations

beyond these current sites. The date was specifically chosen to exclude any land acquired by the tribes after that date.

CSHB 10 would not require a constitutional amendment because it would not authorize anything that is prohibited by the Texas Constitution. The gaming authorized by the bill would be only that which already is legal in Texas. Slot machines and video lottery machines are illegal in Texas now and would remain so with CSHB 10.

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 a long-term, self-sustaining economic model. The bill 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. 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 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 included equipment for local police and fire departments and an emergency warning system for local schools.

The Alabama-Coushattas also benefited 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 benefited 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, and 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 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.

CSHB 10 also would benefit higher education in Texas by requiring that some of the gaming revenue be allocated to the state for the TEXAS Grants program, a needs-based financial aid program for qualified Texas high school students. The state should do everything possible to increase funding for financial aid, especially for low-income students, to enable more students to enter the higher education pipeline in Texas.

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. The Alabama -Coushatta tribe did not even serve alcohol at its facility.

A majority of Texans support the rights of the tribes to conduct gambling on their lands. In a 2007 poll, 71 percent of Texans surveyed said they favored Indian gaming because it would keep hundreds of millions of gaming dollars in Texas, and 69 percent said they supported Indian gaming to help tribes in Texas.

CSHB 10 would promote uniformity and equal treatment among Texas' tribes by making the same standards applicable to all three of the state's federally recognized tribes.

**OPPONENTS  
SAY:**

Gambling in Texas should not be expanded by enacting CSHB 10. The bill could allow full-blown casinos, which are illegal in Texas and should remain illegal on the tribes' lands.

The broad language in the bill would allow any type of Indian gaming authorized under the federal IGRA law. Because IGRA authorizes the whole gambit of gaming — including casinos — the bill would make Indian casinos legal in Texas. If CSHB 10 is meant to allow only bingo and other Class 2 gaming, it should clearly state this.

CSHB 10 would reward the tribes' earlier illegal behavior, which was stopped by federal court rulings that shut down two casinos operated by Texas' tribes, and they should remain closed. 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 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.

CSHB 10 contains no mechanism for regulating the gaming that would be authorized by the bill, and it has no requirement for a state-tribal compact that could do so. These compacts include numerous regulatory details such as the payment of a tax to the state, licensing regulations, the number of machines, payouts from the machines, and the applicability of state laws such as workers compensation. However, courts have ruled that gambling by the Alabama-Coushatta and Tigua tribes is not governed by IGRA, but by the Restoration Act. In the absence of a state-tribal compact, it is unclear what — if any — authority the state would have to oversee tribal gaming and how the bill's provisions requiring tribes to remit to the comptroller 5 percent of the gaming revenue would be enforced.

CSHB 10 would give a very strong incentive for other tribes to press for recognition in Texas and for the three currently recognized tribes to seek to expand their land holdings to expand their gaming. In other states, tribes have sued for large tracts of land and then offered to settle for a casino. The Alabama-Coushatta tribe has a judgment from a federal court concerning a land claim that could be used to expand their holdings. Experience in other states shows that once Indian casinos are authorized in a state, it is very difficult to predict the outcome of such legal maneuverings, which have led to an increase in the number of tribes authorized to host gambling.

The broad type of gaming that would be authorized under CSHB 10 could not and should not be authorized without amending the Texas

Constitution. The attorney general determined in Opinion DM-302 (August 1994) that the Legislature cannot authorize slot machines in the absence of a constitutional amendment. CSHB 10 would provide a defense to a type of gambling that is unconstitutional. The bill would add Indian gaming to Penal Code provisions that list other types of legal gaming, which is not where the gaming itself is authorized. Texans should have the right to express their opinions on legalizing Indian gaming by voting on this issue.

CSHB 10 would have a far-reaching statewide impact, and 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. There also are the costs of regulation and potential corruption. The Legislature must consider the concerns not only of the Native Americans who would benefit from this bill but also of the 22 million Texans whom it could affect.

If CSHB 10 were enacted, future legislatures likely would allow further expansion of gambling. 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.

**NOTES:**

Rep. Chavez plans to offer a floor amendment that would limit the bill to Class 2 gaming.

CSHB 10 originally was set on the General State Calendar on April 25, and was recommitted on a point of order. It was reported favorably from the Criminal Jurisprudence Committee, then recommitted back to the committee. On April 26, it again was reported favorably by the committee.

The committee substitute added to the original bill the provision requiring the tribes to pay 5 percent of the revenue from the gambling or gaming into an account for the TEXAS grant program.

The companion bill, SB 882 by Shapleigh, has been referred to the Senate State Affairs Committee.

The fiscal note for CSHB 10 estimates a two-year positive impact to general revenue of \$28.4 million, assuming that there would be a negative effect on current lottery and bingo revenues.

Article 11 of the House engrossed version of HB 1 by Chisum, the general appropriations bill for fiscal 2008-09 contains a rider contingent on enactment of HB 10 stating that the Higher Education Coordinating Board's strategy for financial aid would include \$53.9 million for TEXAS grants, the amount that the fiscal note estimates would be gained for the program by the bill.

HJR 10 by Chavez, which would amend Art. 3, sec. 47 of the Texas Constitution to authorize a federally recognized Indian tribe to conduct gambling and gaming which would otherwise be prohibited by the Constitution if the gaming were done on land recognized as tribal land by the federal government on January 1, 2006, and located in a county with a population of at least 650,000 that was on an international border, was heard and left pending by the Licensing and Administrative Procedures Committee on April 17.