

Current statute with proposed amendment in bold text

§ 1171. Definitions

As used in this chapter--

(a) The term "gambling device" means--

(1) any so-called "slot machine" or any other machine or mechanical device an essential part of which is a drum or reel with insignia thereon, and (A) which when operated may deliver, as the result of the application of an element of chance, any money or property, or (B) by the operation of which a person may become entitled to receive, as the result of the application of an element of chance, any money or property; or

(2) any other machine or mechanical device (including, but not limited to, roulette wheels and similar devices) designed and manufactured primarily for use in connection with gambling, and (A) which when operated may deliver, as the result of the application of an element of chance, any money or property, or (B) by the operation of which a person may become entitled to receive, as the result of the application of an element of chance, any money or property; or

(3) any subassembly or essential part intended to be used in connection with any such machine or mechanical device, but which is not attached to any such machine or mechanical device as a constituent part.

**(b) The "application of an element of chance" may occur through (i) the operation of the machine, mechanical device, subassembly or essential part alone; or (ii) by the insertion into the machine, mechanical device, subassembly or essential part of physical materials or items containing, providing, or supplying the element of chance; or (iii) by the connection, linking, or attachment via any means of the machine, mechanical device, subassembly or essential part to another machine or mechanical, electromechanical or electronic device, including computers and computer software or programs, that generate, determine, supply, or provide the element of chance.**

(c) The term "State" includes the District of Columbia, Puerto Rico, the Virgin Islands, and Guam.

(d) The term "possession of the United States" means any possession of the United States which is not named in subsection (c) of this section.

(e) The term "interstate or foreign commerce" means commerce (1) between any State or possession of the United States and any place outside of such State or possession, or (2) between points in the same State or possession of the United States but through any place outside thereof.

(f) The term "intrastate commerce" means commerce wholly within one State or possession of the United States.

(g) The term "boundaries" has the same meaning given that term in section 1301 of Title 43.

**(h) The term "Indian Gaming Regulatory Act" means the statute set forth at 25 U.S.C. § 2701, et. seq.**

**(i) The term "National Indian Gaming Commission" means the entity established by 25 U.S.C. § 2704.**

**(j) The term "Class II gaming" means the term as defined in 25 U.S.C. § 2703(7).**

**(k) The term "Class III gaming" means the term defined in 25 U.S.C. § 2703(8) and conducted pursuant to a tribal-state compact under 25 U.S.C. § 2710(d) of the Indian Gaming Regulatory Act or pursuant to Secretarial procedures under 25 U.S.C. § 2710.**

**(l) The term "technologic aids" or "technologic aid" means electronic, computer or technologic aids used in Class II gaming defined under 25 U.S.C. § 2703(A)(i).**

**(m) The term "Indian country" means the term as defined in 18 U.S.C. § 1151.**

§ 1172. Transportation of gambling devices as unlawful; exceptions; authority of Federal Trade Commission

(a) General rule

It shall be unlawful knowingly to transport any gambling device to any place in a State or a possession of the United States from any place outside of such State or possession: *Provided*, That this section shall not apply to transportation of any gambling device to a place in any State which has enacted a law providing for the exemption of such State from the provisions of this section, or to a place in any subdivision of a State if the State in which such subdivision is located has enacted a law providing for the exemption of such subdivision from the provisions of this section, nor shall this section apply to any gambling device used or designed for use at and transported to licensed gambling establishments where betting is legal under applicable State laws: *Provided, further*, That it shall not be unlawful to transport in interstate or foreign commerce any gambling device into any State in which the transported gambling device is specifically enumerated as lawful in a statute of that State.

(b) Authority of Federal Trade Commission

Nothing in this chapter shall be construed to interfere with or reduce the authority, or the existing interpretation of the authority, of the Federal Trade Commission under the Federal Trade Commission Act (15 U.S.C. 41 et seq.)

(c) Exceptions

(1) This section does not prohibit the transport of a gambling device to a place in a State or a possession of the United States on a vessel on a voyage, if—

(A) use of the gambling device on a portion of that voyage is, by reason of subsection (b) of section 1175 of this title, not a violation of that section; and

(B) the gambling device remains on board that vessel while in that State.

**(2) This section does not prohibit the transport of a gambling device to or in a place in Indian Country for use in Class III gaming or for use in Class II gaming where (i) the gambling device has been certified as, or is transported for the purpose of certifying it as, a Class II technologic aid pursuant to regulations adopted by the National Indian Gaming Commission; and (ii) the use of the gambling device in Class II gaming is conducted pursuant to the requirements of the Indian Gaming Regulatory Act and regulations adopted by the National Indian Gaming Commission.**

§ 1175. Specific jurisdictions within which manufacturing repairing, selling, possessing, etc., prohibited; exceptions

(a) General rule

It shall be unlawful (i) to manufacture, recondition, repair, sell, transport, possess, or use any gambling device in the District of Columbia, in any possession of the United States, within Indian country as defined in section 1151 of Title 18 or within the special maritime and territorial jurisdiction of the United States as defined in section 7 of Title 18, including on a vessel documented under chapter 121 of Title 46 or documented under the laws of a foreign country; **or (ii) to knowingly violate any regulation of the National Indian Gaming Commission promulgated in accordance with subsection 1175(f) of this Act.**

(b) Exception

(1) In general

Except as provided in paragraph (2), this section does not prohibit --

(A) the repair, transport, possession, or use of a gambling device on a vessel that is not within the boundaries of any State or possession of the United States;

(B) the transport or possession, on a voyage, of a gambling device on a vessel that is within the boundaries of any State or possession of the United States, if-

(i) use of the gambling device on a portion of that voyage is, by reason of subparagraph (A), not a violation of this section; and

(ii) the gambling device remains on board that vessel while the vessel is within the boundaries of that State or possession; or

(C) the repair, transport, possession, or use of a gambling device on a vessel on a voyage that begins in the State of Indiana and that does not leave the territorial jurisdiction of that State, including such a voyage on Lake Michigan.

(2) Application to certain voyages

(A) General rule

Paragraph (1)(A) does not apply to the repair or use of a gambling device on a vessel that is on a voyage or segment of a voyage described in subparagraph (B) of this paragraph if the State or possession of the United States in which the voyage or segment begins and ends has enacted a statute the terms of which prohibit that repair or use on that voyage or segment.

(B) Voyage and segment described

A voyage or segment of a voyage referred to in subparagraph (A) is a voyage or

segment, respectively --

- (i) that begins and ends in the same State possession of the United States, and
- (ii) during which the vessel does not make an intervening stop within the boundaries of another State or possession of the United States or a foreign country.

(C) Exclusion of certain voyages and segments

Except for a voyage or segment of a voyage that occurs within the boundaries of the State of Hawaii, a voyage or segment of a voyage is not described in subparagraph (B) if such voyage or segment includes or consists of a segment --

- (i) that begins and ends in the same State;
- (ii) that is part of a voyage to another State or to a foreign country; and
- (iii) in which the vessel reaches the other State or foreign country within 3 days after leaving the State in which such segments begins.

(c) Exception

(1) With respect to a vessel operating in Alaska, this section does not prohibit, nor may the State of Alaska make it a violation of law for there to occur, the repair, transport, possession, or use of any gambling device on board a vessel which provides sleeping accommodations for all of its passengers and that is on a voyage or segment of a voyage described in paragraph (2), except that such State may, within its boundaries --

(A) prohibit the use of a gambling device on a vessel while it is docked or anchored or while it is operating within 3 nautical miles of a port at which it is scheduled to call; and

(B) require the gambling devices to remain on board the vessel.

(2) A voyage referred to in paragraph (1) is a voyage that --

(A) includes a stop in Canada or in a State other than the State of Alaska;

(B) includes stops in at least 2 different ports situated in the State of Alaska; and

(C) is of at least 60 hours duration.

(d) Exception

**(1) This section does not prohibit the repair, sale, transport, possession, or use of any gambling device within Indian country if --**

**(A) the gambling device is used in Class III gaming; or**

**(B) the gambling device has been certified as, or is transported for the purpose of certifying it as, a Class II technologic aid pursuant to regulations adopted by the National Indian Gaming Commission that require that the gambling device –**

- (i) is limited to games that require the players to compete against other individuals in order to win one or more common prizes;**
- (ii) requires the players to actively participate in the game;**
- (iii) does not allow players to win prizes for games based, in whole or in part, on games that do not constitute Class II gaming; and**
- (iv) is readily distinguishable from Class III games based on the manner in which the players participate in the game and the appearance of the game to the players, including but not limited to the speed of play and depictions or graphics used in the game.**

**(2) For purposes of subsection, the terms “game commonly known as bingo” or “game similar to bingo” mean a game which is played for prizes, including monetary prizes with cards bearing numbers or other designations, in which the holder of the cards covers (daubs) such numbers or designations when objects, similarly numbered or designated, are drawn or electronically determined and the game is won by the first person covering previously designated arrangement of numbers or designations on such cards; and for this subsection, the term “lotto” means a game of chance played in the same manner as the game of chance commonly known as bingo. In order for this exception to apply to gambling devices that are technologic aids for the game commonly known as bingo, games similar to bingo, or lotto, the games played using the gambling device must meet the following requirements –**

- (A) during the game, the bingo card or cards must be displayed throughout the bingo game even if the bingo cards are electronically generated;**
- (B) the bingo numbers or characters for that game must be randomly drawn or determined after the start of play for the game;**
- (C) the permissible minimum number of ball drops per bingo game shall be determined by regulations issued by the National Indian Gaming Commission;**
- (D) after each ball drop, the numbers or characters on the bingo balls are to be revealed to the players one at a time with sufficient time for the players to take an overt action to cover or daub the bingo card**

after each ball drop; and

(E) a minimum number of two individual players are required for play of a bingo game to commence.

(3) In order for this exception to apply to gambling devices that are technologic aids for the game of pull-tabs and instant bingo (hereinafter referred to as pull-tabs), the gambling device shall—

(A) store and dispense pull-tabs from a deal or portion thereof that are printed on paper, plastic, or other tangible medium and may in addition, electronically display the actual contents of pull-tabs that are printed on paper, plastic, or other tangible medium; and

(B) the machine cannot directly payout winnings to the player nor dispense vouchers or receipts representing such winnings.

(4) The provisions of this Section shall not bar the continued use until no later than one year after the date of the enactment of this Act for gambling devices used as technologic aids that were in actual operation on [May 1, 2005], if the gambling device remains in operation at the same location where the gambling device was located and in actual operation on [May 1, 2005], and either (i) the Chairman or General Counsel of the National Indian Gaming Commission had issued a written advisory opinion prior to [May 1, 2005], concluding that the gambling device was Class II unless a federal court has adjudicated otherwise, or (ii) a United States Circuit Court of Appeals ruled prior to [May 1, 2005], that the gambling device was Class II.

**(e) Altering technologic aids after certification**

It shall be unlawful for any person to alter any gambling device, including alterations of computer programs, software or electrical components therein, after certification as a Class II technologic aid pursuant to regulations adopted by the National Indian Gaming Commission pursuant to this Act.

**(f) Regulations**

Not later than 180 days after the date of enactment of this Act, the National Indian Gaming Commission shall adopt or amend regulations governing gambling devices as covered by subsection 1175(d). The adoption or amendment of regulations consistent with this Act shall be with the concurrence of the Department of Justice.

§1176. Penalties

Whoever violates any provision of any of the provisions of sections 1172, 1173, 1174, or 1175 of this title, **including any regulations promulgated by the National Indian Gaming Commission in accordance with subsection 1175(f) of this Act,** shall be **fined under title 18, United States Code,** or imprisoned not more than two years, or both.

**§ 1177. Confiscation of gambling devices and means of transportation; laws governing**

Any gambling device transported, delivered, shipped, manufactured, reconditioned, repaired, sold, disposed of, received, possessed, or used in violation of the provisions of this chapter, **including any regulations promulgated by the National Indian Gaming Commission in accordance with subsection 1175(f) of this Act**, shall be seized and forfeited to the United States. All provisions of law relating to the seizure, summary and judicial forfeiture, and condemnation of vessels, vehicles, merchandise, and baggage for violation of the customs laws; the disposition of such vessels, vehicles, merchandise, and baggage or the proceeds from the sale thereof; the remission or mitigation of such forfeitures; and the compromise of claims and the award of compensation to informers in respect of such forfeitures shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this chapter, insofar as applicable and not inconsistent with the provisions hereof: *Provided* That such duties as are imposed upon the collector of customs or any other person with respect to the seizure and forfeiture of vessels, vehicles, merchandise, and baggage under the customs laws shall be performed with respect to seizures and forfeitures of gambling devices under this chapter by such officers, agents, or other persons as may be authorized or designated for that purpose by the Attorney General.

CONFORMING AMENDMENTS TO IGRA IN BOLD

§ 2703. Definitions

For purposes of this Act–

- (1) The term “Attorney General” means the Attorney General of the United States.
- (2) The term “Chairman” means the Chairman of the National Indian Gaming Commission.
- (3) The term “Commission” means the National Indian Gaming Commission established pursuant to section 2704 of this title.
- (4) The term “Indian lands” means–
  - (A) all lands within the limits of any Indian reservation; and
  - (B) any lands title to which is either held in trust by the United States for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to restriction by the United States against alienation and over which an Indian tribe exercises governmental power.
- (5) The term “Indian tribe” means any Indian tribe, band, nation, or other organized group or community of Indians which–
  - (A) is recognized as eligible by the Secretary for the special programs and services provided by the United States to Indians because of their status as Indians, and
  - (B) is recognized as possessing powers of self-government.
- (6) The term “class I gaming” means social games solely for prizes of minimal value or traditional forms of Indian gaming engaged in by individuals as a part of, or in connection with, tribal ceremonies or celebrations.
- (7) (A) The term “class II gaming” means--
  - (i) the game of chance commonly known as bingo (whether or not electronic, computer, or other technologic aids are used in connection therewith)--
    - (I) which is played for prizes, including monetary prizes, with cards bearing numbers or other designations,
    - (II) in which the holder of the card covers such numbers or designations

when objects, similarly numbered or designated, are drawn or electronically determined, and

(III) in which the game is won by the first person covering a previously designated arrangement of numbers or designations on such cards, including (if played in the same location) pull-tabs, lotto, punch boards, tip jars, instant bingo, and other games similar to bingo, and

(ii) card games that--

(I) are explicitly authorized by the laws of the State, or

(II) are not explicitly prohibited by the laws of the State and are played at any location in the State, but only if such card games are played in conformity with those laws and regulations (if any) of the State regarding hours or periods of operation of such card games or limitations on wagers or pot sizes in such card games.

(B) The term “class II gaming” does not include--

(i) any banking card games, including baccarat, chemin de fer, or blackjack (21), or

(ii) electronic or electromechanical facsimiles of any game of chance ~~or slot machine of any kind.~~

(C) Notwithstanding any other provision of this paragraph, the term “class II gaming” includes those card games played in the State of Michigan, the State of North Dakota, the State of South Dakota, or the State of Washington, that were actually operated in such State by an Indian tribe on or before May 1, 1988, but only to the extent of the nature and scope of the card games that were actually operated by an Indian tribe in such State on or before such date, as determined by the Chairman.

(D) Notwithstanding any other provision of this paragraph, the term “class II gaming” includes, during the 1-year period beginning on the date of enactment of this Act [enacted Oct. 17, 1988], any gaming described in subparagraph (B)(ii) that was legally operated on Indian lands on or before May 1, 1988, if the Indian tribe having jurisdiction over the lands on which such gaming was operated requests the State, by no later than the date that is 30 days after the date of enactment of this Act [enacted Oct. 17, 1988], to negotiate a Tribal-State compact under section 11(d)(3)

(E) Notwithstanding any other provision of this paragraph, the term “class II gaming” includes, during the 1-year period beginning on the date of enactment of this subparagraph [enacted Dec. 17, 1991], any gaming described in subparagraph (B)(ii) that was legally operated on Indian lands in the State of Wisconsin on or before May 1, 1988, if the Indian tribe having jurisdiction over the lands on which such gaming was operated requested the State, by no later than November 16, 1988, to negotiate a Tribal-State

compact under section 11(d)(3) of this title.

(F) If, during the 1-year period described in subparagraph (E), there is a final judicial determination that the gaming described in subparagraph (E) is not legal as a matter of State law, then such gaming on such Indian land shall cease to operate on the date next following the date of such judicial decision.

**(G) Notwithstanding any other provision of this Act, “Class II gaming” is also subject to the Gambling Devices Act, 15 U.S.C. §§ 1171 et seq.**

(8) The term “class II gaming” means all forms of gaming that are not class I gaming or class II gaming.

(9) The term “net revenues” means gross revenues of an Indian gaming activity less amounts paid out as, or paid for, prizes and total operating expenses, excluding management fees.

(10) The term “Secretary” means the Secretary of the Interior.