

BY HEIDI MCNEIL STAUDENMAIER & ED HERMES

Arizona-Tribal 2021 Gaming Compact Amendments

What You Need to Know

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On April 15, 2021, Arizona Gov. Doug Ducey signed House Bill 2772 (“2021 Gaming Act”), and on the same day, the State of Arizona and 20 Tribes in Arizona submitted Amendments to their respective Arizona–Tribal Gaming Compacts for review and approval by the Department of Interior. The Amendments were affirmatively approved on May 21, 2021, and became effective on May 24, 2021, through publication in the Federal Register by the Secretary of the Interior.¹

These historic Compact Amendments resulted in the most significant changes and expansion in the Arizona gaming landscape in a generation. The Amendments were the result of nearly five years of negotiations between the State and the Tribes, and they allow for the expansion of both tribal and off-reservation gaming. Specifically, these changes were intended to modernize gaming in Arizona, including the legalization of “event wagering” (sports betting), daily fantasy sports contests, keno games, and additional Class III games at the Tribal casinos.

The Compact Amendments have an initial term of 10 years, with an additional 10-year extension (“First Renewal Term”) plus two years (“Final Renewal Term”), and are expected to bring in increased revenues to the participating Tribes and the State of Arizona.² This article explores the anticipated changes brought about by the 2021 Gaming Act and the Compact Amendments.

Changes to Tribal Gaming

Gaming on tribal land is governed by state, tribal and federal law under the Indian Gaming Regulatory Act (“IGRA”), passed in 1988, and the federally required tribal–state gaming compacts. The State of Arizona has had Gaming Compacts in place with many of the Arizona Tribes since the early 1990s. New Compacts were signed in 2002 and 2003 after the Arizona voters approved Proposition 202 in 2002, which authorized the continuation of Tribal gaming in the State. As of November 2017, when Arizona signed a Compact with the Hopi Tribe, all 22 of the federally recognized Tribes in Ari-

zona had a Tribal–State Gaming Compact.

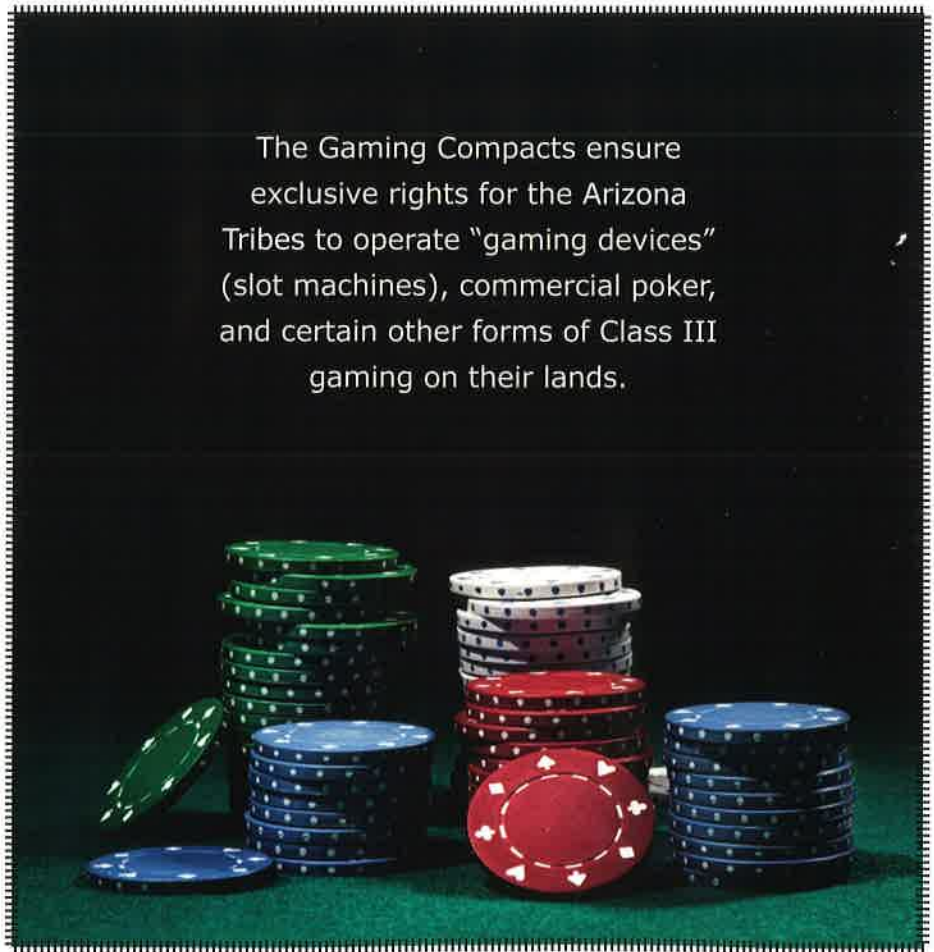
Each of the Compacts with Arizona’s Tribes is substantially identical, and the Compacts have been embodied into state law.³ These Compacts ensure exclusive rights for the Arizona Tribes to operate “gaming devices” (slot machines), commercial poker, and certain other forms of Class III gaming on their lands.⁴ However, until

the 2021 Gaming Act and the Compact Amendments, sports betting, craps, roulette, Pai gow, Sic bo, blackjack, and certain other Class III games were not authorized to be conducted at the Tribal casinos.⁵ Under the newly approved Compact Amendments, Arizona tribal casinos will now be able to offer these expanded table games and event wagering.⁶

The Compact Amendments allow certain Tribes to pursue additional casinos in Arizona if the Tribes are successful in having the land taken into trust for gaming purposes. These new Tribal casinos are proposed for the following locations: (1) Far West Valley, Phoenix (Tohono O’odham Nation); (2) Lower Highway 89, Northern Arizona (Navajo Nation); and (3) Tucson (Pascua Yaqui Tribe).⁷ Several other Tribes may be able to pursue new casino locations under certain circumstances.⁸

Notably, the Compact Amendments have not changed the revenue sharing paid by the Tribes to the State and its municipalities.⁹ The revenue sharing contributions range between one percent and eight percent of

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Class III Net Win on a quarterly basis. Of these contributions, 88 percent of the funds are distributed to education, health care and other statewide programs benefiting all citizens of Arizona (“Arizona Benefits Fund”), and 12 percent are distributed directly to cities, towns and counties around the State. While the revenue sharing percentages have not changed, it is anticipated the total revenues from Tribal gaming will increase with the expanded Class III gaming—likely leading to greater revenues for both the Tribes and the State of Arizona.¹⁰

Although all the Tribes will continue to make revenue-sharing contributions to the State, most Tribes signing the Amendments will see a reduction in the net Class III revenues (“Class III Net Win”) that they share with the State. Fifteen of the signing Tribes will eliminate the tiered rate structure of the 2003 Compacts ranging from one percent to eight percent of Class III Net Win (depending on revenues) in favor of a flat seventy five hundredths of one percent (0.75 percent) of Class III Net Win.

For the five Tribes located near Phoenix

and Tucson—Salt River Pima-Maricopa Indian Community, Gila River Indian Community, Ak-Chin Indian Community, Tohono O’odham Nation, and Pascua Yaqui Tribe—the revenue sharing tiered structure remains unchanged.

One significant change of the Amendments is the creation of the Compact Trust Fund. This Fund was conceived, negotiated and structured by and between the Tribes and, at the Tribes’ request, will be administered by the State. In essence, the Fund provides a mechanism that lets Tribes outside the Phoenix Metropolitan Area benefit from the expansion of gaming in and around Phoenix. Contributing Tribes that operate gaming facilities around the Phoenix area have agreed to voluntarily make payments into the Fund for the benefit of Tribes who are located in the more rural areas of the State.

The Amendments continue the Transfer Agreements from the 2003 Compact, which permit non-gaming Tribes to transfer their allotted gaming device operating rights to other Tribes.

Sports Betting on and off Tribal Lands

Since the U.S. Supreme Court struck down the Professional and Amateur Sports Protection Act of 1992 (“PASPA”) in 2018, which had prohibited states from legalizing sports betting, numerous states have legalized sports betting.¹¹ The 2003 Compacts, combined with state law, provided exclusive rights to the Arizona Tribes to operate gaming on their lands. This meant that, until recently, Arizona could not authorize sports betting in a manner that other states have done, without potentially jeopardizing the gaming revenues that the Tribes share with the State. The 2021 Gaming Act and Compact Amendments carve out a limited number of exceptions to that exclusivity, in exchange for more gaming opportunities—including authorization of sports betting—both on- and off-reservation.

Among other things, the 2021 Gaming Act and Compact Amendments permit event wagering on Tribal lands at the Tribal casinos. The Gaming Act also permits cer-

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tain entities located off Tribal lands to apply for event wagering licenses and offer limited sports books and statewide mobile event wagering.¹² These entities include professional sports franchises and Tribes, with up to 10 licenses awarded to Tribes and up to 10 licenses awarded to Arizona professional sports teams.¹³

For off-reservation betting, this means the Arizona Cardinals (NFL), Arizona Diamondbacks (MLB), Phoenix Suns (NBA), Phoenix Coyotes (NHL), NASCAR, and the Professional Golf Association could apply for sports betting licenses.¹⁴ In turn, these entities could contract with secondary locations to serve as off-track betting locations. The professional teams will be permitted to open sports books within their stadiums and arenas, as well as within five blocks of those stadiums (unless located within one mile of a tribal casino).¹⁵ Racetracks also could partner with an entity

for seeking an event wagering license.

The Arizona Department of Gaming is the regulatory authority having jurisdiction over the expanded off-reservation gaming,

would permit wagering on everything from professional sports to collegiate games. “Proposition bets” would be allowed on professional games.

In addition to sports betting, the 2021 Gaming Act formally legalized daily fantasy sports in Arizona. Furthermore, civic and veteran’s groups like the American Legion, Elks Club and VFW Halls have previously been able to offer raffles, pull tabs, and other certain forms of limited games for years.¹⁷ The Gaming Act gives these fraternal organizations the exclusive right to offer keno on their premises. Limited off-track betting sites also may be permitted to offer keno.¹⁸ The Arizona Lottery still will be ultimately responsible for

running the keno games and providing the winning numbers.

As with sports betting and the fantasy sports leagues, the State will receive a share of profits from the keno games. The reve-

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and it will be responsible for administering and managing the event wagering license application process.¹⁶ The new law provides the option to place bets by phone anywhere in the State. The online betting sites

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nue sharing paid to the State from the off-reservation gaming will not be less than the highest percentage paid by the Tribes to the State under the Compact Amendments. It has been estimated that the revenue sharing paid to the State from the off-reservation gaming activities could be as much as \$32 million annually.¹⁹

Conclusion

Both the State and Tribes are betting that additional Tribal casinos and expanded Class III gaming will lead to more Class III Net Win—resulting in a win-win in terms of greater revenues for the Tribes and increased revenue-sharing to the State, as well as continuing to protect the Tribes' exclusivity (with the exceptions carved out for off-reservation sports betting, fantasy sports and limited keno). With federal approval of the Compact Amendments, the Arizona Tribes and the State will now have more certainty as to gaming and revenues for decades to come. 

endnotes

1. Federal Register Vol. 86, No. 98, FR Doc No: 2021-10877 pages 27889-27890 (May 24, 2021), at: www.govinfo.gov/content/pkg/FR-2021-05-24/html/2021-10877.htm.
2. Ryan Randazzo, *New Casinos, More Slots Coming to Arizona as Gov. Doug Ducey Signs Deal with Tribes*, ARIZ. REP., April 15, 2021.
3. Tribal-State of Arizona Amended and Restated Gaming Compact 2021, approved by the U.S. Dept. of Interior May 24, 2021, at: https://gaming.az.gov/sites/default/files/2021%20Amended%20and%20Restated%20Compact%20-%20EXEMPLAR%20COPY_0.pdf.
4. *Id.*
5. *Id.*
6. *Id.*
7. *Id.*
8. *Id.*
9. *Id.*
10. Arizona Joint Legislative Budget Committee Fiscal Note re. SB 1797-HB 2772 (Feb. 21, 2021), at: www.azleg.gov/legtext/55leg/1R/fiscal/SB1797.DOCX.pdf.
11. Heidi McNeil Staudenmaier & Ed Hermes, *Betting the Opening Line Is Sports Betting in the Cards for Arizona?* ARIZ. ATT'Y (July/August 2020), at 58.
12. A.R.S. §§ 5-1303–1319.
13. *Id.*
14. *Id.* §§ 5-1301, 5-1304.
15. *Id.*
16. *Id.*
17. *Id.* §§ 5-554(K), (O); 5-1205(C).
18. *Id.*
19. Arizona Joint Legislative Budget Committee Fiscal Note re. SB 1797-HB 2772 (Feb. 21, 2021), at: www.azleg.gov/legtext/55leg/1R/fiscal/SB1797.DOCX.pdf.

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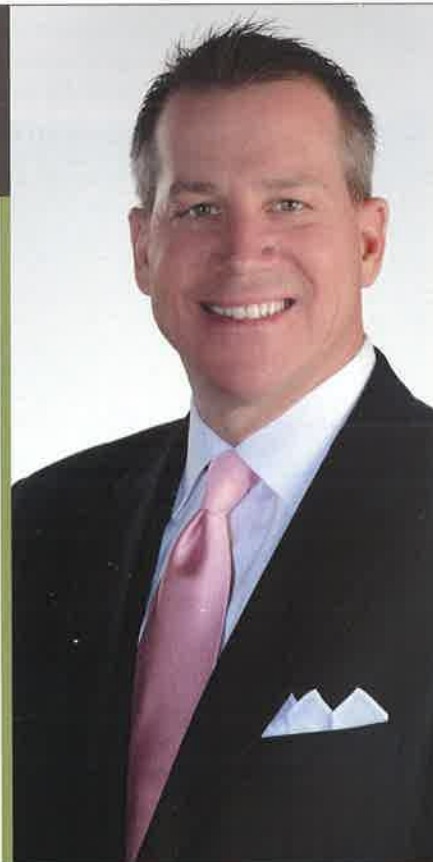
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