

# WHAT'S IN THE CARDS FOR TRIBAL SPORTS BETTING IN 2021 AND BEYOND?

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“Three years removed from the federal repeal of PASPA [Professional and Amateur Sports Protection Act], legalized sports betting is sweeping across the country and its expansion is sure to continue.”<sup>1</sup> In 2020, New Jersey brought in \$49.4 million in new tax revenue through sports betting.<sup>2</sup> Although the legalization of sports betting has been spreading across the United States over the past several years,<sup>3</sup> the practical reality of legalizing sports betting is much more complicated than it may seem. Not only do state legislatures need to pass new laws, but, perhaps most importantly, any state with tribal casinos needs to ensure that any action taken comports with existing tribal-state compacts and is respectful of the unique relationship between tribes and states.

Tribal-state compacts govern Class III gaming on reservations under the Indian Gaming Regulatory

Act (IGRA).<sup>4</sup> In seeking to legalize sports betting, the state must first consider existing obligations under tribal-state compacts and, if need be, seek to renegotiate with the tribe to amend the compact or enter into a new compact. Not only that, once a state legalizes sports betting, the tribe can then either engage in sports betting depending on the language of the tribal-state compact, or the state and tribe may need to negotiate with each other to amend the tribal-state compact to include sports betting.

This article provides an overview of the process for allowing sports betting through the lens of tribal-state compacts. Within each state, the provisions of each compact with the state and any particular tribe may differ. Therefore, each tribe and the applicable compact it has with the state must be considered on a case-by-case basis.

## I. BACKGROUND

In *Murphy v. National Collegiate Athletic Association*, the United States Supreme Court struck down the Professional and Amateur Sports Protection Act, allowing states to authorize sports betting.<sup>5</sup> The Court's decision immediately sparked interest across states regarding the potential of conducting sports betting. However, because many tribal-state compacts became effective before 2018, most either expressly prohibit sports betting or are silent on the topic.

In 1988, Congress enacted the IGRA to provide a framework for the conduct of gaming on Indian lands.<sup>6</sup> The IGRA establishes the National Indian Gaming Commission (NIGC) and the regulatory structure for tribal gaming in the United States.<sup>7</sup> The IGRA separates different forms of gaming into three classifications: Class I, II, or III.<sup>8</sup> Each type of gaming fits within one of these three classifications.

**Keywords:** sports betting, tribal-state compact, gaming law, IGRA, Class III Gaming

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<sup>1</sup>The *US Sports Betting Picture: What is America's Top Model?*, BONUS SEEKER, <https://www.bonusseeker.com/sports-betting> (last visited May 24, 2021).

<sup>2</sup>Jackson Brainerd, *The Early Bets Are In: Is Sports Betting Paying Off?*, NAT'L CONF. OF ST. LEGIS. (Mar. 1, 2021), <https://www.ncsl.org/research/fiscal-policy/the-early-bets-are-in-is-sports-betting-paying-off.aspx>.

<sup>3</sup>*Id.*

<sup>4</sup>25 U.S.C. § 2701 et seq.

<sup>5</sup>*Murphy v. Nat'l Collegiate Athletic Ass'n*, 138 S. Ct. 1461, 1481 (2018).

<sup>6</sup>25 U.S.C. § 2710 et seq.

<sup>7</sup>25 U.S.C. §§ 2704(a); 2706. “If any Indian tribe proposes to engage in, or to authorize any person or entity to engage in, a class III gaming activity on Indian lands of the Indian tribe, the governing body of the Indian tribe shall adopt and submit to the Chairman [of the NIGC] an ordinance or resolution that meets the requirements of [25 U.S.C. § 2710(b)].” 25 U.S.C. § 2710(d)(2)(A).

<sup>8</sup>25 U.S.C. § 2703(6)–(8).

Under the IGRA, “Indian tribes have the exclusive right to regulate gaming activity on Indian lands if the gaming activity is not specifically prohibited by Federal law and is conducted within a State which does not, as a matter of criminal law and public policy, prohibit such gaming activity.”<sup>9</sup> Sports betting is considered a Class III game.<sup>10</sup>

Based on the foregoing, for a tribe to lawfully engage in sports betting on its lands, the activity must: (1) be located in a state that permits such gaming for any purpose by any person, organization, or entity; (2) be permitted pursuant to an effective compact; and (3) be authorized by a tribal ordinance or resolution approved by the NIGC.<sup>11</sup>

## II. TRIBAL-STATE COMPACTS

For a tribe to conduct sports betting on the reservation and a state to permit sports betting off the reservation, both parties must consider any obligations under existing tribal-state compacts. The compacts governing Class III gaming activities obligate the state and the tribe to negotiate in good faith.<sup>12</sup> If litigation ensues, the courts carefully review the pertinent proceedings between the states and tribes to determine whether “good faith” was indeed part of the negotiations.<sup>13</sup>

In states where tribes already conduct Class III gaming pursuant to a tribal-state compact, the tribe likely will be able to conduct sports betting if the following are in place: (a) the state “permits” sports betting; (b) an existing compact that includes sports betting as a permissible form of Class III gaming (or conversely, does not prohibit sports betting); and (c) an existing gaming ordinance that permits sports betting—if not, they will need to enact a new or amended gaming ordinance and obtain approval of the ordinance from the NIGC.<sup>14</sup> If these components are not met, the tribe will likely need to seek to negotiate a new or amended compact with the state that includes sports

betting as a permissible form of Class III gaming. The tribe also may need to wait for the state to pass legislation permitting sports betting.

For tribes and states with existing tribal-state compacts, there are two major pathways to incorporating sports betting into tribal gaming operations—reinterpretation or renegotiation.

Determining which pathway is best depends on whether: (1) the state already “permits” sports betting;<sup>15</sup> (2) the existing tribal-state compact grants the tribe exclusivity over Class III gaming; and (3) the tribal-state compact prohibits sports betting.

## III. DOES THE STATE “PERMIT” SPORTS BETTING?

Tribes likely cannot conduct sports betting unless the state “permits” such gaming. The IGRA’s requirement that the gaming activity be “located in a State that permits such gaming for any purpose by any person, organization, or entity” has generated at least two different approaches regarding the scope of negotiations required between tribes and states under the IGRA.<sup>16</sup>

In *Northern Arapaho Tribe v. Wyoming*, the court called the two approaches the “categorical approach” and the “game-specific approach.”<sup>17</sup>

The “Wisconsin” analysis or “categorical” approach requires courts to first review the general scope of gaming permitted by the state. *See, e.g., Lac du Flambeau Band of Lake Superior Chippewa Indians v. Wisconsin*, 770 F. Supp. 480 (W.D.Wis.1991). If the state permits any form of Class III gaming, the tribe must negotiate to offer all forms of Class III gaming because the state is merely “regulating,” rather than “prohibiting,” this type of gambling. *Id.* at 484–88. This categorical approach has been adopted by at

<sup>9</sup>25 U.S.C. § 2701(5).

<sup>10</sup>25 U.S.C. § 2703(8) (“The term ‘class III gaming’ means all forms of gaming that are not class I gaming or class II gaming.”); 25 C.F.R. § 502.4(c) (including sports betting in the definition of Class III gaming).

<sup>11</sup>25 U.S.C. § 2710(d).

<sup>12</sup>25 U.S.C. § 2710(d)(3)(A).

<sup>13</sup>*Rincon Band of Luiseno Mission Indians of Rincon Rsv. v. Schwarzenegger*, 602 F.3d 1019, 1041 (9th Cir. 2010) (“We therefore hold that good faith should be

evaluated objectively based on the record of negotiations, and that a state’s subjective belief in the legality of its requests is not sufficient to rebut the inference of bad faith created by objectively improper demands.”).

<sup>14</sup>25 U.S.C. § 2710(d).

<sup>15</sup>25 U.S.C. § 2710(d)(1)(B).

<sup>16</sup>*Id.*

<sup>17</sup>389 F.3d 1308, 1311 (10th Cir. 2004).

least one circuit. See *Mashantucket Pequot Tribe v. Connecticut*, 913 F.2d 1024, 1031–32 (2d Cir.1990).

The “Florida” analysis or “game-specific” approach requires courts to review whether state law permits the specific game at issue. See, e.g., *Coeur d’Alene Tribe v. Idaho*, 842 F. Supp. 1268, 1278 (D. Idaho 1994) (citing *Seminole Tribe of Florida v. Florida*, 1993 WL 475999 (S.D. Fla. Sept. 22, 1993)). If the state allows a particular game for any purpose, it must negotiate with the tribe over that specific game. *Id.* at 1279–80. Similarly, if the state entirely prohibits a particular game, the state is not required to negotiate with the Tribe as to that game, even if the state permits other games in the same category. *Id.* Under this approach, the state’s permissive treatment as to one type of Class III game does not mean that the state must negotiate with tribes as to all Class III games. At least two circuits follow the “game-specific” approach. See *Rumsey Indian Rancheria of Wintun Indians v. Wilson*, 64 F.3d 1250, 1257–58 (9th Cir.1994); *Cheyenne River Sioux Tribe v. South Dakota*, 3 F.3d 273, 278–79 (8th Cir.1993).<sup>18</sup>

Under either approach, “the legislative history [of the IGRA] reveals that Congress intended to permit a particular gaming activity, *even if conducted in a manner inconsistent with state law*, if the state law merely regulated, as opposed to completely barred, that particular gaming activity.”<sup>19</sup> Attempting to limit negotiations based on state law restrictions against commercial gaming has been generally rejected by courts.<sup>20</sup>

Therefore, whether a state “permits” sports betting is dependent on the state’s laws and the approach the state applies to determining the scope of negotiations.

#### IV. REINTERPRETATION

The reinterpretation of an existing tribal-state compact and state laws can involve either the categorical approach or the game-specific approach. The key to reinterpretation is an expansive compact that permits “any and all Class III games,” or contains similar wording to the same effect.

With respect to the categorical approach, if the state permits any game of chance,<sup>21</sup> there is likely no hurdle with the analysis regarding whether the state “permits” sports betting. For tribes in states with broad tribal-state compacts, the tribes may not need to seek to renegotiate their compact, but rather assert the compact already provides for sports betting due to its expansive language.

With respect to the game-specific approach, if the state passes a law legalizing sports betting, even if only exclusively legal for the tribe, for tribes in states with broad tribal-state compacts, tribes may not need to seek to renegotiate their compact, but rather may begin engaging in sports betting as soon as the state passes a law legalizing sports betting.

The best example of successful reinterpretation is the allowance of sports betting at the tribal casinos in New Mexico. The New Mexico compacts are quite broad in terms of authorized Class III gaming—allowing tribes to offer “any or all forms of Class III gaming.”<sup>22</sup>

The foregoing language has been interpreted as expansively as the plain text suggests. In 2015, the New Mexico attorney general determined that the intent of the legislature had been to allow tribal casinos to conduct any form of Class III gaming, without exception.<sup>23</sup> “Betting” and “gaming activity” are

<sup>18</sup>*Id.*

<sup>19</sup>*Id.* at 1313 (quoting *United States v. Sisseton–Wahpeton Sioux Tribe*, 897 F.2d 358, 365 (8th Cir. 1990)) (emphasis in original) (alteration in original).

<sup>20</sup>*Id.* at 1313; see *Mashantucket Pequot Tribe v. Conn.*, 913 F.2d 1024, 1032 (2d Cir. 1990) (holding that limited permission by a state for occasional, charitable gaming does not preclude commercial gambling by a tribe under the IGRA); *Ysleta Del Sur Pueblo v. Texas*, 852 F. Supp. 587, 595–96 (W.D. Tex. 1993) (holding that limited permission for only social gaming under state law does not preclude commercial gambling the tribe seeks under the IGRA), *rev’d on other grounds*, 36 F.3d 1325 (5th Cir. 1994).

<sup>21</sup>In *Mashantucket Pequot Tribe v. Connecticut*, the Second Circuit Court of Appeals found the state had to negotiate with the tribe concerning the conduct of casino-type games of chance on the reservation because state law permitted games of chance in a highly regulated form. 913 F.2d 1024, 1031–32 (2d Cir. 1990). The

state permitted games of chance for certain nonprofit organizations during “Las Vegas nights.” *Id.* at 1029. The court reasoned that, even though casino-style games were highly regulated, they were still permitted within the meaning of section 2710 (d)(1)(B)—which meant the state had to negotiate with the tribe to offer such games. *Id.* at 1027. “[I]f the intent of a state law is generally to prohibit certain conduct, it falls within [the area] of criminal jurisdiction, but if the state law generally permits the conduct at issue, subject to regulation, it must be classified as civil/regulatory. . . . The shorthand test is whether the conduct at issue violates the State’s public policy.” *Id.* at 1029 (quoting *California v. Cabazon Band of Mission Indians*, 480 U.S. 202, 209 (1987)).

<sup>22</sup>N.M. STAT. ANN. §11-13, APP. 2007 Tribal-State Class III Gaming Compact § 3 (A); 2015 Tribal-State Class III Gaming Compact § 3(A) [hereinafter N.M. Compact].

<sup>23</sup>N.M. Att’y Gen. Op. No. 13-02 (2013) [hereinafter Class III A.G. Report].

generally prohibited in New Mexico.<sup>24</sup> Although these prohibitions cover sports betting,<sup>25</sup> they explicitly exempt any betting or gaming “otherwise permitted by law.”<sup>26</sup> New Mexico permits Class III betting made pursuant to a Class III tribal-state compact.<sup>27</sup> Thus, tribes operating casinos in New Mexico are legally authorized to offer sports betting without amending their existing tribal-state compacts.

The more favorable interpretation for tribes wanting to offer sports betting is the categorical approach because it does not require any additional action on the part of the tribe or the state; however, the applicable approach will depend on the specific jurisdiction. For tribes without expansive tribal-state compacts, reinterpretation of an existing tribal-state compact is likely not an option.

## V. RENEGOTIATION AND AMENDMENT CONSIDERATIONS

Tribes without an existing tribal-state compact that is broad or includes sports betting as a permissible form of Class III gaming likely will need to seek to renegotiate their compacts.

If a tribal-state compact expressly lists the Class III games in which the tribe may engage and sports betting is not specifically listed, the tribe likely will need to seek to renegotiate the compact with the state to include sports betting. For example, in the Amended and Restated Tribal-State Compact Between the State of California and the Viejas Band of Kumeyaay Indians (the “CA Compact”), the Tribe is given exclusive rights to engage in gaming in the state of California.<sup>28</sup> This exclusivity provision is identical in all of the tri-

bal gaming compacts in the state of California. The CA Compact authorizes the Tribe to engage in certain gaming activities expressly listed in the CA Compact, but prohibits Class III gaming activities that are not expressly permitted.<sup>29</sup> The CA Compact authorizes gaming devices, any banking or percentage card game, and the operation of any devices or games authorized under state law to the California State Lottery.<sup>30</sup> There is also a specific prohibition on Class III gaming that is not expressly authorized in the CA Compact,<sup>31</sup> which would include sports betting.

Additionally, as part of some tribal-state compacts, the tribe enjoys the exclusive right within the state to conduct all types of Class III gaming with limited exception in exchange for a revenue sharing obligation to pay the state a portion of its Class III gaming revenues.<sup>32</sup> And oftentimes, the compact contains a “poison pill” provision that stipulates compacts may become null and void, or other adverse consequences ensue, if either side violates the terms of the agreement.<sup>33</sup> For instance, if a tribe operates more table games than allowed in the compact, or the state grants gaming rights to non-tribal entities, the action may trigger the “poison pill” and could jeopardize all or part of the tribal-state compact. In such circumstances, if the state wants to permit sports betting on non-tribal lands (“off-reservation”), the state likely will need to negotiate with the tribe to include provisions allowing the state to permit such off-reservation gaming without triggering the “poison pill.”

Renegotiation will likely result in the need for either new tribal-state compacts or compact amendments.<sup>34</sup> For a compact or amendment to become effective, it must be approved by the Secretary of the Department

<sup>24</sup>N.M. STAT. ANN. §§ 30-19-2 to -3; 60-2E-4. Specifically, N.M. STAT. ANN. § 30-19-2 makes it a misdemeanor to, among other things, place a “bet,” while § 30-19-3 makes it a fourth-degree felony to establish a commercial facility that receives “bets.” Further, the New Mexico Gaming Control Act prohibits all “gaming” unless authorized by the Act, or, state or federal law that permits the activity. N.M. STAT. ANN. § 60-2E-4.

<sup>25</sup>“Bet” is defined as a “bargain in which the parties agree that, dependent upon chance, even though accompanied by some skill, one stands to win or lose anything of value specified in the agreement” but does not include business contracts, contests, the state-run lottery, or betting otherwise permitted by law. N.M. STAT. ANN. §30-19-1(B).

<sup>26</sup>N.M. STAT. ANN. §30-19-1(B)(4); *see* N.M. STAT. ANN. §60-2E-4(B) (“Gaming activity is permitted in New Mexico only if it is conducted in compliance with and pursuant to: . . . a state or federal law . . . that expressly permits the activity or exempts it from the application of the state criminal law, or both.”).

<sup>27</sup>Class III A.G. Report, *supra* note 23 (“In summary, based on the language and history of the Compacts, we believe the Compacts were always intended to allow tribes to conduct any and all forms of Class III gaming at their casinos.”).

<sup>28</sup>Preamble, 2014 Amended and Restated Compact Between the State of California and the Viejas Band of Kumeyaay Indians, [https://www.ca.gov/archive/gov39/wp-content/uploads/2017/09/8.12.14\\_Compact.pdf](https://www.ca.gov/archive/gov39/wp-content/uploads/2017/09/8.12.14_Compact.pdf) [hereinafter CA Compact].

<sup>29</sup>CA Compact § 3.1.

<sup>30</sup>CA Compact § 4.1(a)–(c).

<sup>31</sup>CA Compact § 4.1(e).

<sup>32</sup>N.M. Compact § 11(A); *see* Sault Ste. Marie Tribe of Chippewa Indians v. Engler, 93 F. Supp. 2d 850, 852 (W.D. Mich. 2000) (“[T]he Tribes enjoy the exclusive ‘right to operate’ so long as the Tribes are the only persons or entities who have and can exercise the ‘right to operate’ . . . in the State or, in other words, as long as all others are prohibited or shut out from the ‘right to operate’ such games.”).

<sup>33</sup>Carmen Forman and Ben Giles, *Arizona Lawmaker Pushes to Legalize Sports Betting*, ARIZ. CAP. TIMES (Jan 29, 2019), <https://azcapitoltimes.com/news/2019/01/29/arizona-lawmaker-pushes-to-legalize-sports-betting/>.

<sup>34</sup>*See, e.g.*, CA Compact § 12.0.

of the Interior (“Secretary”), as provided for under the IGRA.<sup>35</sup> The tribe and the state should submit the new compact or amendment for approval only after it has been legally entered into by both parties.<sup>36</sup>

Once the tribe and state agree to the new compact or amendment, it is submitted to the Secretary for approval.<sup>37</sup> The Secretary has 45 days to approve or disapprove it. If the Secretary takes no action within that time, the compact or amendment is “deemed approved” to the extent it does not conflict with the IGRA.<sup>38</sup> The compact or amendment is considered valid, binding, and effective once it is published in the Federal Register.<sup>39</sup>

In April of 2021, Arizona Governor Doug Ducey signed tribal-state compact amendments with 20 tribes, which include expanded Class III game offerings at the tribal casinos. Sports betting (called “event wagering”) is among the expanded gaming available.<sup>40</sup> In exchange for the tribes’ continued exclusivity of Class III gaming in the state—other than limited exceptions for off-reservation gaming—certain tribes will continue to pay revenue sharing to the state. Additionally, the state of Arizona enacted a new law which legalized sports betting on and off the reservation, which aligned with the compact amendments.<sup>41</sup> Arizona also will benefit from revenue sharing paid by the off-reservation gaming venues for sports betting, daily fantasy sports contests, and keno.

The Secretary affirmatively approved the Arizona tribal-state compact amendments on May 21, 2021. The amendments became effective on May 24, 2021, when they were published in the Federal Register.<sup>42</sup>

## VI. TRIBAL SPORTS BETTING IN OTHER STATES

The tribes and states that have already launched sports betting can serve as examples of the process. There are active sportsbooks at tribal-owned properties in multiple states, including Colorado, Oregon, Mississippi, New York, New Mexico, Michigan, and North Carolina.<sup>43</sup>

In Colorado, Sky Ute Tribal Casino launched a statewide sports betting app in 2020.<sup>44</sup> In Oregon, the Chinook Winds Casino owned by the Siletz Tribe offers sports betting.<sup>45</sup> In Mississippi, tribal casinos owned by the Mississippi Band of Choctaw Indians have active sportsbooks.<sup>46</sup> Mississippi tribal casinos Bok Homa, Golden Moon, and Silver Star—all part of the Pearl River Resort—allow mobile wagers while on the casino premises via an app.<sup>47</sup>

In New York, sports betting is permitted at the tribal casinos.<sup>48</sup> Out of the eight federally recognized tribes in New York, three tribes currently conduct gaming pursuant to Class III compacts.<sup>49</sup> Under the New York tribal-state compacts, the tribes can offer Class III gaming, including sports betting, provided the tribes conduct the games in accordance with state-approved specifications.<sup>50</sup> Earlier in 2021, New York legalized mobile sports betting; however, it is unclear how and if tribes will be able to offer mobile sports betting.<sup>51</sup>

In June 2020, the Nottawaseppi Huron Band of the Potawatomi in Michigan opened Dacey’s Sportsbook at the FireKeepers Casino, the first tribal casino retail

<sup>35</sup>25 U.S.C. § 2710(d)(8); 25 C.F.R. § 293.4 (“Compacts are subject to review and approval by the Secretary. . . . All amendments, regardless of whether they are substantive amendments or technical amendments, are subject to review and approval by the Secretary.”); 25 C.F.R. § 293.3 (“The Secretary has the authority to approve compacts or amendments “entered into” by an Indian tribe and a State, as evidenced by the appropriate signature of both parties.”).

<sup>36</sup>25 C.F.R. § 293.7.

<sup>37</sup>25 U.S.C. § 2710(d)(8).

<sup>38</sup>25 U.S.C. § 2710(d)(8)(C).

<sup>39</sup>25 U.S.C. § 27140(d)(8)(D). The tribe must also submit an ordinance, which is independently approved by the federal government. 25 U.S.C. § 2710(d)(2).

<sup>40</sup>2021 State of Arizona Amended and Restated Gaming Compact § 3(a)(1).

<sup>41</sup>See ARIZ. REV. STAT. ANN. § 5-1314.

<sup>42</sup>Indian Gaming; Approval of Tribal-State Class III Gaming Compacts in the State of Arizona, 86 Fed. Reg. 27,889 (May 24, 2021), <https://www.govinfo.gov/content/pkg/FR-2021-05-24/html/2021-10877.htm>.

<sup>43</sup>See Brett Smiley, *Colorado’s Sky Ute Become First to Launch Statewide Tribal Sports Betting App*, USBETS (June 9, 2020), <https://www.usbets.com/sky-ute-usbookmaking-tribal-colorado/>.

<sup>44</sup>*Id.*

<sup>45</sup>*Oregon Sports Betting*, SPORTS BETTING DIME (May 18, 2021), <https://www.sportsbettingdime.com/oregon/>.

<sup>46</sup>*Mississippi Sports Betting Information—Sportsbooks, Betting Sites*, SPORTS HANDLE, <https://sportshandle.com/mississippi/> (last visited May 24, 2021).

<sup>47</sup>*Id.*

<sup>48</sup>N.Y. RAC. PARI-MUT. WAG. & BREED. LAW §§ 1367; 1367-a.

<sup>49</sup>*Frequently Asked Questions*, N.Y. ST. GAMING COMM’N, <https://www.gaming.ny.gov/gaming/indianFAQ.php#FAQ5> (last visited May 24, 2021).

<sup>50</sup>Nation-State Gaming Compact Between the Seneca Nation of Indians and the State of New York § 16(c), <https://www.bia.gov/sites/bia.gov/files/assets/as-ia/oig/pdf/idc-038394.pdf>.

<sup>51</sup>*Mobile Sports Wagering Questions & Answers*, N.Y. ST. GAMING COMM’N (Apr. 23, 2021), <https://www.gaming.ny.gov/pdf/MSW%20FAQ%2004.23.21.pdf>. The

sportsbook in Michigan.<sup>52</sup> Additionally, the Nottawa-seppi Huron Band signed a deal earlier in 2021 with Scientific Games to conduct online and mobile sports betting.<sup>53</sup> At present, there are 23 tribal casinos in Michigan permitted to offer sports betting.<sup>54</sup>

In 2020, the Eastern Band of Cherokee Indians and the state of North Carolina amended their tribal-state compact to include sports betting as an authorized Class III gaming.<sup>55</sup> This amendment was negotiated after North Carolina passed legislation permitting sports betting on Indian lands within the state.<sup>56</sup> The Tribe now offers sportsbooks at two casinos in North Carolina.<sup>57</sup>

In Washington, 15 tribes have sought to amend their tribal-state compacts to include sports betting.<sup>58</sup> As of early June 2021, 11 of the 15 compacts still required a final vote by the commissioners of the Washington State Gambling Commission,<sup>59</sup> then the signature of each tribe's tribal chair and the governor.<sup>60</sup> Once signed by both the tribal chair and the governor, each tribe will send the amendment to the Secretary of the Department of the Interior for review. If approved, the amendments are considered effective upon publication in the Federal Register.<sup>61</sup>

In May 2021, the Florida legislature approved a new compact between the state and the Seminole Tribe of Florida, essentially providing the Tribe with exclusive rights to sports betting on and off the reservation in the state.<sup>62</sup> The compact, however, has been viewed as controversial with respect to mobile sports betting be-

cause of the placement of servers on tribal lands while patrons can place bets anywhere in the state of Florida, including off the reservation. As of early June, the compact had not yet been submitted to the Secretary to commence the 45-day IGRA review process.

Lastly, the Pokagon Band of Potawatomi Indians finalized a Class III gaming compact with the state of Indiana in May 2021, which includes sports betting.<sup>63</sup> As with the Seminole Compact, the Pokagon Compact had not yet begun the Secretarial review process at the time this article was prepared.

## VIII. CONCLUSION

Whether it is reinterpretation or renegotiation—one thing is certain: tribal-state compacts are at the center of the issue of legalizing sports betting in many states around the country. Although New Jersey's significant increase in tax revenue may be appealing,<sup>64</sup> each state with tribal casinos likely must engage in a tribal-state compact reinterpretation or renegotiation process before seeking to move forward with sports betting both on and off tribal lands. The IGRA provides "a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments"<sup>65</sup> and states should be respectful of the process associated with gaming on tribal lands, particularly in recognizing and navigating the legislative and compact-based process of integrating sports betting into Class III gaming.

servers must be located at a commercial casino. "No servers will be located on Indian lands therefore by operation of law no wagering activity will take place on Indian land or within their exclusivity zones." *Id.* at 4.

<sup>52</sup>*FireKeepers Casino & Hotel Review*, PLAY MICH., <https://www.playmichigan.com/firekeepers/> (last visited May 24, 2021); see MICH. COMP. LAWS ANN. §§ 432.406–.407.

<sup>53</sup>*FireKeepers Casino & Hotel Review*, *supra* note 52.

<sup>54</sup>*Michigan Sports Betting*, LEGAL SPORTS REPORT, <https://www.legalsportsreport.com/michigan/> (last visited May 24, 2021).

<sup>55</sup>Second Amended and Restated Tribal-State Compact Between the Eastern Band of Cherokee Indians and the State of North Carolina, [https://e38e6130-c60d-48ff-8956-cbeb0b9f9940.filesusr.com/ugd/d1e310\\_21bfeaa0cb7f4dd686e2df21e556b943.pdf](https://e38e6130-c60d-48ff-8956-cbeb0b9f9940.filesusr.com/ugd/d1e310_21bfeaa0cb7f4dd686e2df21e556b943.pdf).

<sup>56</sup>*Id.*; see N.C. GEN. STAT. ANN. § 14-292.2.

<sup>57</sup>*The Book*, CHEROKEE TRIBAL GAMING COMM'N, <https://www.cherokeegamingcommission.com/sports-book-information> (last visited May 24, 2021).

<sup>58</sup>*More Tribes Seek Sports Betting Licenses in Washington*, LEGAL SPORTS BETTING (May 21, 2021), <https://www.legalsportsbetting.com/news/more-tribes-seek-sports-betting-licenses-in-washington/>.

<sup>59</sup>"The Gambling Commission will review and vote on this compact amendment at a June 10, 2021 public hearing." *Gambling Commission Has Reached Tentative Agreement on a Sports Wagering Compact Amendment with Eleven Additional Tribes*, WASH. ST. GAMBLING COMM'N (May 13, 2021), <https://www.wsgc.wa.gov/news/press-releases/gambling-commission-has-reached-tentative-agreement-sports-wagering-compact>. By the publication of this article, the eleven compacts likely will have been approved and sent to the Secretary for approval.

<sup>60</sup>*Id.*

<sup>61</sup>*Id.*

<sup>62</sup>*Florida Lawmakers Approved Legalized Sports Betting. Now What?*, TAMPA BAY TIMES (May 20, 2021), <https://www.tampabay.com/news/florida-politics/2021/05/20/florida-lawmakers-approved-legalized-sports-betting-now-what/>.

<sup>63</sup>Gemma DiCarlo, *Indiana Gov. Eric Holcomb Signs Historic Gaming Compact with Pokagon Band Leaders*, 88.1 WVPE (May 4, 2021), <https://www.wvpe.org/post/indiana-gov-eric-holcomb-signs-historic-gaming-compact-pokagon-band-leaders>; *Pokagon Band Finalizes Historic Gaming Compact with Indiana*, INDIANZ.COM (May 3, 2021), <https://www.indianz.com/News/2021/05/03/pokagon-band-finalizes-historic-gaming-compact-with-indiana/>. In 2019, Indiana legalized sports betting. See IND. CODE ANN. § 4-38-4-1 et seq.

<sup>64</sup>Brainerd, *The Early Bets Are In: Is Sports Betting Paying Off?*, *supra* note 2.

<sup>65</sup>25 U.S.C. § 2702(1).