

IN THE SENATE

SENATE BILL NO. 1185

BY STATE AFFAIRS COMMITTEE

AN ACT

1 RELATING TO GAMING; AMENDING SECTION 67-7401, IDAHO CODE, TO REVISE THE
2 PURPOSE OF THE STATE LOTTERY AND TO MAKE A TECHNICAL CORRECTION; AMEND-
3 ING SECTION 67-7403, IDAHO CODE, TO REVISE OPERATIONS OF THE STATE
4 LOTTERY; AMENDING SECTION 67-7404, IDAHO CODE, TO REVISE DEFINITIONS;
5 AMENDING SECTION 67-7408, IDAHO CODE, TO REVISE POWERS AND DUTIES OF
6 THE LOTTERY COMMISSION AND TO MAKE TECHNICAL CORRECTIONS; AMENDING
7 SECTION 67-7438, IDAHO CODE, TO REVISE ELIGIBILITY FOR PRIZE CLAIMING
8 AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 67-429A, IDAHO
9 CODE, TO REVISE PROVISIONS RELATING TO STATE-TRIBAL GAMING COMPACTS;
10 AMENDING SECTION 67-429C, IDAHO CODE, TO REVISE PROVISIONS RELATING TO
11 AMENDMENTS TO STATE-TRIBAL GAMING COMPACTS AND TO MAKE TECHNICAL COR-
12 RECTIONS; AMENDING CHAPTER 4, TITLE 67, IDAHO CODE, BY THE ADDITION OF
13 A NEW SECTION 67-429D, IDAHO CODE, TO AUTHORIZE LEGAL ACTIONS TO DETER-
14 MINE THE CONSTITUTIONALITY OF THE USE OF TRIBAL VIDEO GAMING MACHINES
15 AND TO AUTHORIZE THE EXPENDITURE OF FUNDS; AND PROVIDING SEVERABILITY.
16

17 Be It Enacted by the Legislature of the State of Idaho:

18 SECTION 1. That Section 67-7401, Idaho Code, be, and the same is hereby
19 amended to read as follows:

20 67-7401. PURPOSE. The purpose of this legislation is to establish a
21 state lottery to generate revenue for the state with a director and a state
22 lottery commission to oversee lottery operations, consistent with section
23 20, article III, of the constitution of the state of Idaho. This chapter es-
24 tablishes a state lottery account for the deposit of receipts, for payment
25 of prizes and expenses, and provides that revenues generated in the lottery
26 account, after allowances for prizes and expenses, shall be distributed for
27 the public benefit. This chapter provides for contracting with lottery re-
28 tailers and authorizes the promulgation of administrative rules ~~and regula-~~
29 ~~tions~~ necessary for carrying out the intent of this chapter. The lottery
30 commission and the director of the lottery shall be responsible for operat-
31 ing the lottery at the least public expense and the smallest staffing possi-
32 ble, commensurate with all other policies stated in this chapter. Addition-
33 ally, all advertising by the lottery shall be conducted in a manner consonant
34 with the dignity of the state and the sensibilities of its citizens.

35 SECTION 2. That Section 67-7403, Idaho Code, be, and the same is hereby
36 amended to read as follows:

37 67-7403. INITIATION AND OPERATION OF THE LOTTERY. The lottery shall be
38 initiated at the earliest feasible and practical time. The lottery shall be
39 operated to produce the maximum amount of net income to benefit the public
40 purposes described in this chapter consonant with the public good and con-

1 sistent with section 20, article III, of the constitution of the state of
 2 Idaho. Other state government departments, boards, commissions, agencies
 3 and their officers shall cooperate with the lottery to aid the lottery in
 4 fulfilling these objectives.

5 SECTION 3. That Section 67-7404, Idaho Code, be, and the same is hereby
 6 amended to read as follows:

7 67-7404. DEFINITIONS. As used in this chapter:

8 (1) "Administrative costs" means personnel costs, capital outlay, and
 9 reasonable expenses incurred by other state agencies to effectuate the pur-
 10 poses of this chapter.

11 (2) "Commission" means the Idaho state lottery commission.

12 (3) "Director" means the director of the lottery.

13 (4) "Expenses" means all costs of doing business including, but not
 14 limited to, prizes, commissions and other compensation paid to retailers,
 15 advertising and marketing costs, personnel costs, capital outlay, reason-
 16 able expenses incurred by other state agencies to effectuate the purposes of
 17 this chapter, depreciation of property and equipment, and other operating
 18 costs, all of which are to be recorded on the accrual basis of accounting in
 19 accordance with generally accepted accounting principles.

20 (5) "Lottery" or "state lottery" means the state lottery established
 21 and operated pursuant to this chapter and consistent with section 20, arti-
 22 cle III, of the constitution of the state of Idaho.

23 (6) "Lottery contractor" means a person with whom the lottery has con-
 24 tracted for the purposes of providing goods and services for the state lot-
 25 tery.

26 (7) "Lottery game retailer" or "retailer" means a person with whom the
 27 lottery has contracted for the purpose of selling tickets or shares in lot-
 28 tery games to the public.

29 (8) "Lottery revenue" means revenue derived from the sale of lottery
 30 tickets and shares. Such revenues shall be recorded on the accrual basis of
 31 accounting in accordance with generally accepted accounting principles.

32 (9) "Lottery vendor" or "vendor" means any person who submits a bid,
 33 proposal or offer as part of a major procurement for goods or services as de-
 34 fined in subsection (11) of this section.

35 (10) "Low, medium and high tier claims" means the dollar amount of
 36 prizes awarded in accordance with rules of the state lottery.

37 (11) "Major procurement" means any contract with a vendor supplying
 38 lottery tickets or shares, data processing systems utilized to track, sell,
 39 distribute or validate lottery tickets or shares, any goods or services in-
 40 volving the determination or generation of winners in any lottery game or any
 41 auditing services.

42 (12) "Net income" means lottery revenue and nonlottery revenue, less
 43 expenses, as defined in this chapter.

44 (13) "Person" shall be construed to mean and include an individual, as-
 45 sociation, corporation, club, trust, estate, society, company, joint stock
 46 company, receiver, trustee, assignee, referee or any other person acting
 47 in a fiduciary or representative capacity, whether appointed by a court or
 48 otherwise, and any combination of individuals. "Person" shall also be con-
 49 strued to mean and include departments, commissions, agencies and instru-

1 mentalities of the state of Idaho, including counties and municipalities and
2 agencies or instrumentalities thereof.

3 (14) "Redemption value" means the sum total of all winnings upon the
4 ticket presented for payment.

5 (15) "Share" means any intangible evidence of participation in a game
6 conducted by the state lottery.

7 (16) "Ticket" means any tangible evidence issued by the lottery to pro-
8 vide participation in a game conducted by the state lottery.

9 (17) "Value" means any ticket shall be taken at face value.

10 (18) "Video gaming machine" means a video slot machine and other forms
11 of electrical, electromechanical, mechanical, computer or on-line games
12 including, but not limited to, video poker, video bingo, video craps, video
13 keno, video lotto, video Touch Tabs, or any video game based on or involv-
14 ing the random or chance matching of different pictures, words, numbers,
15 or symbols not dependent on the skill or dexterity of the player, and which
16 requires the deposit of any coin, token, or use of any credit card, debit
17 card or any other method that requires payment to play the game. "Video gam-
18 ing machine" does not include coin-operated machines, video games, pinball
19 machines, and other computer, on-line, electronic, electromechanical or
20 mechanical devices that are operated for amusement, that involve the use of
21 skill or dexterity to solve problems or tasks or to make varying scores or
22 tallies and that do not emit, issue, display, print out, or otherwise record
23 any receipt, paper, coupon, token or other form of record which is capable
24 of being redeemed, exchanged, or repurchased for cash or cash equivalent
25 prizes.

26 SECTION 4. That Section 67-7408, Idaho Code, be, and the same is hereby
27 amended to read as follows:

28 67-7408. POWERS AND DUTIES OF THE COMMISSION. The commission shall be
29 responsible for establishing the goals and objectives of the lottery and
30 shall have the following duties, powers and responsibilities in addition to
31 others herein granted:

32 (1) The commission shall adopt, upon recommendation of the director,
33 such rules ~~and regulations~~ governing the establishment and operation of the
34 lottery as it considers necessary under this chapter to ensure the integrity
35 of the lottery and its games and to maximize the net income of the lottery
36 for the benefit of the state. Such rules ~~and regulations~~ shall generally ad-
37 dress, but not be limited to:

38 (a) The different types of lottery games to be conducted;

39 (b) The range of prize structures of each lottery game;

40 (c) The method, odds and frequency of selecting winning tickets and
41 shares and the manner of paying prizes to the owners of the winning tick-
42 ets and shares;

43 (d) The terms and conditions of lottery game retailer contracts which
44 may include retailer compensation, bonuses, incentives, fees for re-
45 deemming claims, payment and credit terms, retailer application and re-
46 newal fees, telecommunication costs, if any, to be paid or allocated to
47 retailers and bonding requirements;

1 (e) The methods to be utilized in selling and distributing lottery
 2 tickets or shares, including the use of machines, terminals, telecommu-
 3 nications systems and data processing systems; ~~and~~

4 (f) Other matters necessary or appropriate for the efficient operation
 5 and administration of the lottery, for the convenience of the public,
 6 and to carry out the provisions of this chapter. Every rule promulgated
 7 within the authority conferred by this chapter shall be of temporary
 8 effect and must be ratified by the legislature at the regular session
 9 first following their adoption. Rules not approved in the above manner
 10 shall be rejected, null, void and of no force and effect on July 1, fol-
 11 lowing their submission to the legislature;

12 (g) No type of lottery game may be conducted without first being promul-
 13 gated by rule as required by this section. Any lottery game conducted
 14 without such rule first being promulgated shall be discontinued immedi-
 15 ately; and

16 (h) Consistent with section 20, article III, of the constitution of the
 17 state of Idaho, no lottery games may be authorized by the commission
 18 which employ any form of casino gambling including, but not limited to,
 19 blackjack, craps, roulette, poker, baccarat, keno and slot machines,
 20 or employ any electronic or electromechanical imitation or simulation
 21 of any form of casino gambling. Video gaming machines, as defined in
 22 section 67-7404, Idaho Code, are expressly found to be prohibited by
 23 the constitution of the state of Idaho and shall not be allowed to be
 24 conducted in the state of Idaho.

25 (2) The commission shall approve major procurements.

26 (3) The commission shall approve the transfer of net income in accor-
 27 dance with the provisions of this chapter.

28 (4) The commission shall have the authority to enter into written
 29 agreements or contracts, negotiated and prepared by the director, with any
 30 other state or states, the government of Canada, the provinces of Canada or
 31 an agency or contractor of any of those entities for the operation and promo-
 32 tion of a joint lottery or joint lottery games.

33 (5) The commission shall perform all other acts necessary to carry out
 34 the purposes and provisions of this chapter.

35 SECTION 5. That Section 67-7438, Idaho Code, be, and the same is hereby
 36 amended to read as follows:

37 67-7438. PRIZE CLAIMING PERIOD. Prizes may be claimed for a period of
 38 one hundred and eighty (180) days after the drawing in which the prize was won
 39 or from the last day tickets from that specific game were sold. Prizes won
 40 through an electronic terminal shall be payable in accordance with rules ~~and~~
 41 ~~regulations~~ of the commission. If a claim is not made for the prize within
 42 the applicable period, the prize money shall be added to future prize pools,
 43 to be used in addition to prize allotments already allocated, except as pro-
 44 vided in section 67-7433, Idaho Code, and shall not be contrary to the pro-
 45 hibitions contained in section 20, article III, of the constitution of the
 46 state of Idaho or section 67-7408 (h), Idaho Code.

47 SECTION 6. That Section 67-429A, Idaho Code, be, and the same is hereby
 48 amended to read as follows:

1 67-429A. STATE-TRIBAL GAMING COMPACTS. (1) The governor or his de-
 2 signee may represent the state of Idaho in any gaming negotiations the state
 3 is requested to participate in pursuant to 25 U.S.C. section 2701 et seq. The
 4 director of legislative services or his designee may attend all negotiations
 5 pursuant to this section as an observer and shall brief the membership of the
 6 legislative council on the status of the negotiations.

7 (2) The state may enter into those gaming compacts negotiated with In-
 8 dian tribes pursuant to this section provided:

9 (a) The compact only authorizes an Indian tribe to conduct those forms
 10 of gaming authorized by Idaho law;

11 (b) The compact does not obligate the state of Idaho to appropriate
 12 state funds; ~~and~~

13 (c) The governor serves a copy of the compact on each member of the leg-
 14 islative council at least twenty-one (21) calendar days before the com-
 15 pact is signed; and

16 (d) The gaming compact is ratified by both houses of the legislature by
 17 adoption of a concurrent resolution.

18 (3) Any proposed gaming compact not complying with subsection (2) of
 19 this section shall be null and void ~~unless ratified by both houses of the leg-~~
 20 ~~islature by adoption of a concurrent resolution.~~

21 (4) No power, privilege or other authority shall be exercised under the
 22 provisions of this section where otherwise prohibited by the constitution or
 23 laws of the state of Idaho or the United States.

24 (5) The provisions of this section shall not be construed as a waiver of
 25 any defenses or immunities to which the state of Idaho is entitled under ei-
 26 ther the constitution or the laws of the state of Idaho or the United States.

27 SECTION 7. That Section 67-429C, Idaho Code, be, and the same is hereby
 28 amended to read as follows:

29 67-429C. AMENDMENT OF STATE-TRIBAL GAMING COMPACTS. (1) Any tribe
 30 with an existing state-tribal gaming compact may amend its compact through
 31 the procedure set forth in subsection (2) ~~below~~ of this section to incorpo-
 32 rate all of the following terms:

33 (a) As clarified by this compact amendment, the tribe is permitted
 34 to conduct gaming using tribal video gaming machines as described in
 35 ~~S~~section 67-429B, Idaho Code.

36 (b) In the ten (10) years following incorporation of this term into its
 37 compact, the number of tribal video gaming machines the tribe may pos-
 38 sess is limited to the number of tribal video gaming machines possessed
 39 by the tribe as of January 1, 2002, plus twenty-five percent (25%) of
 40 that number; ~~provided,~~ however, that no increase in any single year
 41 shall exceed five percent (5%) of the number possessed as of January 1,
 42 2002. Thereafter, the tribe may operate such additional tribal video
 43 gaming machines as are agreed to pursuant to good faith negotiations
 44 between the state and the tribe under a prudent business standard.

45 (c) To the extent such contributions are not already required under the
 46 tribe's existing compact, the tribe agrees to contribute five percent
 47 (5%) of its annual net gaming income for the support of local educa-
 48 tional programs and schools on or near the reservation. The tribe may
 49 elect to contribute additional sums for these or other educational pur-

1 poses. Disbursements of these funds shall be at the sole direction of
2 the tribe.

3 (d) The tribe agrees not to conduct gaming outside of Indian lands.

4 (2) To amend its compact to incorporate the terms set forth in subsec-
5 tion (1) above of this section, a tribe shall deliver to the ~~Secretary of~~
6 ~~State~~ governor a tribal resolution signifying the tribe's acceptance of the
7 terms of its proposed amendment. ~~Immediately upon delivery of such tribal~~
8 ~~resolution to the Secretary of State,~~ (a) ~~t~~The tribe's state-tribal gaming
9 compact shall be deemed amended to incorporate the its proposed terms; ~~(b)~~
10 ~~the tribe's compact as so amended shall be deemed approved by the state in~~
11 ~~accordance upon compliance with Ssection 67-429A(2), Idaho Code,~~ without
12 ~~the need for further signature or action by the executive or legislative~~
13 ~~branches of state government,~~ and (c) ~~e~~Except to the extent federal govern-
14 ment approval is required, the newly incorporated compact terms shall be
15 deemed effective immediately upon compliance with section 67-429A(2), Idaho
16 Code.

17 (3) Nothing in this section shall be construed to (a) indicate that any
18 gaming activity currently conducted by any tribe is unauthorized or other-
19 wise inappropriate under Idaho law or the tribe's existing compact, or (b)
20 prohibit a tribe from negotiating with the state for an initial compact or a
21 compact amendment regarding tribal video gaming machines or any other mat-
22 ter through a procedure other than the procedure specified in subsection (2)
23 above of this section or which that contains terms different than those spec-
24 ified in subsection (1) above of this section.

25 SECTION 8. That Chapter 4, Title 67, Idaho Code, be, and the same is
26 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
27 ignated as Section 67-429D, Idaho Code, and to read as follows:

28 67-429D. DETERMINATION OF CONSTITUTIONALITY. Any member of the con-
29 stitutional defense council created in section 67-6301(1), Idaho Code,
30 shall have authority and standing to pursue a declaratory judgment action
31 in the council member's own name, or in conjunction with other state or
32 county officers, to determine whether the provisions of sections 67-429B and
33 67-429C, Idaho Code, authorizing the use of tribal video gaming machines,
34 violate section 20, article III, of the constitution of the state of Idaho
35 and to enforce such declaratory judgment. In such actions, the use of the
36 constitutional defense council fund established in section 67-6301(5),
37 Idaho Code, is hereby authorized for such purposes, including the hiring of
38 outside legal counsel.

39 SECTION 9. SEVERABILITY. The provisions of this act are hereby declared
40 to be severable and if any provision of this act or the application of such
41 provision to any person or circumstance is declared invalid for any reason,
42 such declaration shall not affect the validity of the remaining portions of
43 this act.