

1 HB154
2 116201-1
3 By Representative Black
4 RFD: Tourism and Travel
5 First Read: 12-JAN-10

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8 SYNOPSIS: This bill proposes a general law that will
9 relieve non-Indian operators of bingo from certain
10 legal disabilities that do not apply to Indian
11 tribes conducting bingo under the Indian Gaming
12 Regulatory Act.

13
14 A BILL
15 TO BE ENTITLED
16 AN ACT
17

18 To recognize that Indian tribes may conduct bingo
19 games using electronic bingo equipment under the Indian Gaming
20 Regulatory Act ("IGRA") free of certain legal burdens that
21 potentially encumber the non-Indian operators of bingo games
22 in the state that are equivalent to the bingo games conducted
23 by Indian tribes; to relieve certain qualified persons engaged
24 in Indian equivalent bingo from legal burdens that are not
25 applicable to Indian tribes conducting competitive bingo
26 games; to define terms that include or are relevant to
27 substantive provisions of this act, including Class II gaming

1 under IGRA, Indian equivalent bingo, and any qualified person
2 to be relieved of legal burdens under this act; to provide
3 limitations on the scope of this act; to provide retroactively
4 and prospectively that state and local sales or privilege
5 taxes are inapplicable to the gross receipts or revenues of
6 qualified persons derived from Indian equivalent bingo; to
7 provide that there shall be no recovery from any qualified
8 person of gambling losses incurred by patrons of Indian
9 equivalent bingo; to provide that no criminal prosecution
10 under any provision of Title 13A, Chapter 12, Article 2, Code
11 of Alabama 1975, shall be brought or maintained against any
12 qualified person for engaging in Indian equivalent bingo; to
13 provide that bingo equipment permitted to be used in Class II
14 gaming under IGRA shall not constitute, or be deemed to be, a
15 "gambling device" or "slot machine" within the meaning of
16 Section 13A-12-20(5) and (10), Code of Alabama 1975, if such
17 bingo equipment is used by a qualified person engaged in
18 Indian equivalent bingo; to preclude the forfeiture by any
19 qualified person of real or personal property used or involved
20 in Indian equivalent bingo; to declare that certain "gambling
21 devices" as defined by federal law may be transported into or
22 out of the state without violating federal law; to provide
23 that the provisions of this act shall be severable; and to
24 specify the effective date of this act.

25 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

26 Section 1. Definitions.

1 The following words and phrases used in this act
2 shall have the following respective meanings:

3 (1) BINGO EQUIPMENT. Any electronic or mechanical
4 equipment, machine or device that is permitted to be used in
5 Class II gaming by IGRA or federal law enforcement practices
6 with respect to Indian gaming in the state, including, without
7 limitation thereto, electronic player terminals, central
8 computer servers containing processing capabilities for remote
9 player terminals, video consoles capable of providing game
10 results in different display modes, telephones and telephone
11 circuits, televisions, cables and other telecommunication
12 circuits, and satellites and related transmitting and
13 receiving equipment.

14 (2) CLASS II GAMING. The game of bingo as authorized
15 by IGRA to be conducted for the general public by an Indian
16 tribe in the state without the necessity of a tribal-state
17 compact applicable to such game of bingo. With respect to the
18 interpretation and application of this act, Class II gaming
19 shall be deemed to refer only to the nature of the game of
20 bingo itself that is conducted by the Indian tribe, including
21 the playing of such game with bingo equipment, and any
22 condition imposed by IGRA on Class II gaming related to the
23 use of tribal lands or matters of tribal governance, such as
24 the adoption of a tribal ordinance concerning Class II gaming,
25 the approval of such ordinance by the Chairman of the National
26 Indian Gaming Commission or the issuance of a tribal license
27 for Class II gaming, shall not be relevant in determining

1 whether Indian equivalent bingo is conducted in the same
2 manner, to the same extent, and under the same conditions as
3 Class II gaming. Further, for purposes of determining the
4 equivalence between Class II gaming and Indian equivalent
5 bingo, the nature, conditions and limits of Class II gaming
6 shall not be based upon any theoretical interpretation of IGRA
7 but on the actual game of bingo, including the use of bingo
8 equipment in playing such game, that is conducted by the
9 Indian tribe offering such game to the general public as
10 allowed by the regulations and practices of the National
11 Indian Gaming Commission and as enforced by federal officials
12 pursuant to 18 U.S.C. §1166.

13 (3) ENGAGE OR ENGAGEMENT. When used with respect to
14 any qualified person in connection with Indian equivalent
15 bingo, the words "engage in," "engaging in," "engaged in," or
16 "engagement in" shall be construed to embrace any or all
17 activities or relationships of such qualified person in any
18 way connected with Indian equivalent bingo, including, without
19 limitation thereto, the following: (i) The ownership,
20 possession, transportation, installation, maintenance, leasing
21 (as lessor or lessee), use or operation of bingo equipment;
22 (ii) the ownership, leasing (as lessor or lessee), use or
23 management of any real or personal property (other than bingo
24 equipment) that is used to conduct Indian equivalent bingo;
25 (iii) the organization and operation of any business, however
26 legally organized or established, that conducts, facilitates
27 or aids Indian equivalent bingo, whether for the profit making

1 account of such business or as the agent, administrator or
2 manager of Indian equivalent bingo for the account or benefit,
3 or under license from, one or more charities or not-for-profit
4 corporations; (iv) the ownership of any interest in, or the
5 performance of an executive, managerial or administrative
6 function for any business entity or organization that
7 conducts, facilitates or aids Indian equivalent bingo; and (v)
8 any management contract, lease or other arrangement through
9 which Indian equivalent bingo is conducted for the benefit of,
10 or under license from, any charity or not-for-profit
11 corporation, provided, however, that "engaging in" Indian
12 equivalent bingo shall not be deemed to include any activities
13 or relationships that are unlawful under federal or state law
14 other than the provisions of Title 13A, Chapter 12, Article 2,
15 Code of Alabama 1975, or any other state law intended to
16 prohibit or restrict gambling.

17 (4) IGRA. The Indian Gaming Regulatory Act enacted
18 by the Congress of the United States, 25 U.S.C. §§2701-2721,
19 including all amendments thereof and supplements thereto at
20 any time enacted and the regulations promulgated thereunder
21 and maintained in effect by the National Indian Gaming
22 Commission.

23 (5) INDIAN EQUIVALENT BINGO. The game of bingo,
24 including the use of bingo equipment in the playing of such
25 game, that, insofar as the nature of the game itself is
26 concerned, is conducted for the general public on land that is
27 not Indian tribal lands by a person or persons other than an

1 Indian tribe in the same manner, to the same extent, and under
2 the same conditions (excluding regulation and supervision by
3 the National Indian Gaming Commission) as Class II gaming
4 conducted in the state by an Indian tribe. The ineligibility
5 of a person under IGRA to receive a tribal license to conduct
6 Class II gaming on Indian lands shall not be relevant in
7 determining whether such person is engaged in Indian
8 equivalent bingo at any other location in the state. Indian
9 equivalent bingo shall never be allowed to be different in
10 nature or scope from Class II gaming, and if changes in IGRA,
11 whether due to Congressional enactment, an effective federal
12 court decision, or changes in the regulations or practices of
13 the National Indian Gaming Commission, should change the
14 nature or reduce the scope of Class II gaming or modify the
15 conditions thereof, the nature, scope or conditions of Indian
16 equivalent bingo shall ipso facto be changed, reduced or
17 modified, as the case may be, to correspond with the altered
18 Class II gaming.

19 (6) QUALIFIED PERSON. Any person that engaged in
20 Indian equivalent bingo at any location in the state on or
21 before December 1, 2009, and that since such date has
22 continued to engage in Indian equivalent bingo at such
23 location. To be a qualified person with respect to Indian
24 equivalent bingo, such person is not required to have operated
25 the same bingo equipment continuously at the same location
26 during the period for which such person is to be deemed a
27 qualified person under this act, provided that such person did

1 engage in Indian equivalent bingo with bingo equipment at such
2 location in the state on or before December 1, 2009.

3 (7) PERSON. Any natural person, corporation or
4 limited liability company, whether or not operated for profit,
5 partnership, association or other legal entity capable of
6 being sued or made subject to a criminal prosecution.

7 Section 2. Scope of Act.

8 (a) Nothing in this act shall be construed to
9 authorize any form of gambling in this state that would expand
10 Class II gaming now permitted to Indian tribes by IGRA or that
11 would obligate the state to negotiate a tribal-state compact
12 under IGRA with respect to Class III gaming.

13 (b) This act effectuates purposes unrelated to the
14 meaning or implementation of any amendment to the Constitution
15 of Alabama that authorizes games denominated as bingo in a
16 particular county or municipality, and this act shall be
17 interpreted and applied without regard to the meaning of any
18 such local constitutional amendment. Nothing contained in this
19 act shall be construed as attempting to supersede, modify or
20 affect the interpretation of any such local amendment to the
21 Constitution of Alabama.

22 (c) Nothing in this act shall be construed to
23 authorize lotteries or gift enterprises for any purpose in
24 contravention of Section 65 of the Constitution of Alabama.

25 Section 3. Inapplicability of Sales Tax to Bingo
26 Revenues of Qualified Person.

1 Any qualified person shall have no liability for any
2 sales, privilege or license tax attempted to be levied on, or
3 determined as a percentage of, the gross receipts or revenues
4 of any qualified person derived from engaging in Indian
5 equivalent bingo pursuant to Section 40-23-2(2), Code of
6 Alabama 1975, or any other general or local law; provided,
7 however, that any such sales, privilege or license taxes
8 heretofore collected from a qualified person and remitted to
9 the state or any local taxing authority shall not be refunded.
10 This section of this act is curative and declarative of
11 existing law and shall be given retroactive effect with
12 respect to any qualified person for such period as that person
13 shall have been engaged in Indian equivalent bingo, with the
14 effect that all claimed liability of such qualified person for
15 sales, privilege or license taxes based on, or determined as a
16 percentage of, gross receipts or revenues shall be
17 extinguished (except, as aforesaid, for the amount of such
18 taxes, if any, heretofore remitted to the state or any local
19 taxing authority).

20 Section 4. No Recovery of Losses by Patrons of
21 Indian Equivalent Bingo.

22 No person shall have any cause of action to recover
23 from any qualified person gambling losses incurred at any
24 time, whether before or on or after the effective date of this
25 act, as a patron of Indian equivalent bingo. Further, the
26 provisions of Title 8, Chapter 1, Article 8, Code of Alabama
27 1975, shall be both retroactively and prospectively

1 inapplicable to the recovery from any qualified person of
2 gambling losses at any time incurred by a patron of Indian
3 equivalent bingo. The preceding provisions of this section
4 shall not be applied, however, in contravention of Section 95
5 of the Constitution of Alabama to take away any cause of
6 action on which suit was commenced prior to the effective date
7 of this act.

8 Section 5. Certain Criminal Provisions Not to Apply
9 to Qualified Persons Engaged in Indian Equivalent Bingo.

10 (a) No criminal prosecution under any provisions of
11 Title 13A, Chapter 12, Article 2, Code of Alabama 1975, shall
12 be brought or maintained against any qualified person for
13 engaging in Indian equivalent bingo.

14 (b) No real or personal property, including, but
15 without limitation thereto, cash, financial assets, and bingo
16 equipment, used or involved in Indian equivalent bingo shall
17 be forfeited to the state pursuant to any provision of Title
18 13A, Chapter 12, Article 2, Code of Alabama 1975, by any
19 qualified person because of such person's engagement in Indian
20 equivalent bingo.

21 (c) Bingo equipment used by a qualified person
22 engaged in Indian equivalent bingo shall not constitute, or be
23 deemed to be, a "gambling device" or "slot machine" within the
24 meaning of Section 13A-12-20(5) and (10), Code of Alabama
25 1975.

26 Section 6. Transportation of Certain Gambling
27 Devices Is Exempt from Federal Law.

1 The State of Alabama, acting by and through the
2 enactment of this act, and in accordance with the provisions
3 of 15 U.S.C. §1172, does hereby declare that the
4 transportation into or out of the state of any and all
5 "gambling devices" as defined in 15 U.S.C. §1171 is exempt
6 from the provisions of said §1172 and that such gambling
7 devices may be transported into or out of the state without
8 violating said §1172, or any other applicable federal law, if
9 such gambling devices are used, or are to be used, or have
10 been used by qualified persons to conduct Indian equivalent
11 bingo.

12 Section 7. The provisions of this act shall be
13 deemed to be severable expressions of the will of the
14 Legislature with respect to the matters respectively addressed
15 in such provisions, and any final adjudication of the
16 constitutional invalidity of any particular provision of this
17 act shall not impair or invalidate any other provisions
18 hereof, it being the express will of the Legislature that no
19 provision of this act be held invalid because of its
20 connection with any other provision of this act, but that the
21 separate and independent objective of the Legislature be
22 recognized with respect to the constitutionality of each
23 provision of this act.

24 Section 8. This act shall become effective
25 immediately following its passage and approval by the
26 Governor, or its otherwise becoming law.