REFERENCE TITLE: sports betting; tribes; liquor establishments

State of Arizona
Senate
Fifty-fourth Legislature
First Regular Session
2019

SB 1158

Introduced by
Senator Borrelli: Representatives Biasiucci, Finchem

AN ACT

AMENDING TITLE 5, ARIZONA REVISED STATUTES, BY ADDING CHAPTER 10; AMENDING SECTIONS 13-3301, 13-3302, 13-3305 AND 42-5073, ARIZONA REVISED STATUTES; RELATING TO AMUSEMENT AND SPORTS.

(TEXT OF BILL BEGINS ON NEXT PAGE)
Be it enacted by the Legislature of the State of Arizona:

Section 1. Title 5, Arizona Revised Statutes, is amended by adding chapter 10, to read:

CHAPTER 10
SPORTS BETTING
ARTICLE 1. GENERAL PROVISIONS

5-1201. Sports betting; authority to contract with licensed liquor establishments; requirements

A. Each federally recognized Indian tribe that has a tribal-state gaming compact entered into pursuant to Chapter 6 of this title and that has tribal headquarters on Indian lands located in this state may operate sports betting as defined in section 13-3301. No other person or entity may operate sports betting.

B. An Indian tribe that is authorized to operate sports betting pursuant to this section may operate sports betting through kiosks or similar machines that are located at one or more premises that have a bar license, a beer and wine bar license or a private club license that is issued pursuant to title 4 and may enter into a lease or a rental agreement for the purpose of operating sports betting with a person that holds a bar license, a beer and wine bar license or a private club license. This subsection does not allow an Indian tribe to operate more gaming devices than otherwise allocated under section 5-601.02. This subsection shall be construed in a manner that is consistent with the gaming device operating rights prescribed in section 5-601.02.

C. If an Indian tribe enters into an agreement for rent, lease or licensing or for the provision of marketing, technical, administrative or management services, these agreements shall affirm that the Indian tribe is the sole and exclusive operator of all sports betting activity that is authorized under this chapter. Any agreement that does not comply with this subsection is of no force and effect.

D. This chapter does not amend any tribal-state gaming compact executed pursuant to section 5-601.02.

5-1202. Department of gaming; sports betting licensing; rules

A. To ensure honesty and integrity in the gambling activity, the department of gaming shall regulate sports betting under this chapter in a manner that is consistent with the regulation of tribal gaming pursuant to section 5-602. An Indian tribe may operate sports betting through a tribal gaming operator that is wholly owned by the Indian tribe. The tribal gaming operator is subject to licensure.

B. The department of gaming may adopt rules to carry out the purposes of this section.

C. For the purposes of licensure, the owner, partner, shareholders or beneficiaries of the tribal gaming operator do not include the members or government officials of an Indian tribe.
Sec. 2. Section 13-3301, Arizona Revised Statutes, is amended to read:

13-3301. Definitions

In this chapter, unless the context otherwise requires:
1. "Amusement gambling" means gambling involving a device, game or contest which is played for entertainment if all of the following apply:
   (a) The player or players actively participate in the game or contest or with the device.
   (b) The outcome is not in the control to any material degree of any person other than the player or players.
   (c) The prizes are not offered as a lure to separate the player or players from their money.
   (d) Any of the following:
      (i) No benefit is given to the player or players other than an immediate and unrecorded right to replay which is not exchangeable for value.
      (ii) The gambling is an athletic event and no person other than the player or players derives a profit or chance of a profit from the money paid to gamble by the player or players.
      (iii) The gambling is an intellectual contest or event, the money paid to gamble is part of an established purchase price for a product, no increment has been added to the price in connection with the gambling event and no drawing or lottery is held to determine the winner or winners.
      (iv) Skill and not chance is clearly the predominant factor in the game and the odds of winning the game based upon chance cannot be altered, provided the game complies with any licensing or regulatory requirements by the jurisdiction in which it is operated, no benefit for a single win is given to the player or players other than a merchandise prize which has a wholesale fair market value of less than ten dollars $10 or coupons which are redeemable only at the place of play and only for a merchandise prize which has a fair market value of less than ten dollars $10 and, regardless of the number of wins, no aggregate of coupons may be redeemed for a merchandise prize with a wholesale fair market value of greater than five hundred fifty dollars $550.

2. "Conducted as a business" means gambling that is engaged in with the object of gain, benefit or advantage, either direct or indirect, realized or unrealized, but not when incidental to a bona fide social relationship.

3. "Crane game" means an amusement machine which is operated by player controlled buttons, control sticks or other means, or a combination of the buttons or controls, which is activated by coin insertion into the machine and where the player attempts to successfully retrieve prizes with a mechanical or electromechanical claw or device by positioning the claw or device over a prize.
4. "Gambling" or "gambles" means one act of risking or giving something of value for the opportunity to obtain a benefit from a game or contest of chance or skill or a future contingent event but does not include bona fide business transactions which are valid under the law of contracts including contracts for the purchase or sale at a future date of securities or commodities, contracts of indemnity or guarantee and life, health or accident insurance.

5. "Player" means a natural person who participates in gambling.

6. "Regulated gambling" means either:

   (a) Gambling conducted in accordance with a tribal-state gaming compact or otherwise in accordance with the requirements of the Indian gaming regulatory act of 1988 (P.L. 100-497; 102 Stat. 2467; 25 United States Code sections 2701 through 2721 and 18 United States Code sections 1166 through 1168); or

   (b) Gambling to which all of the following apply:

     (i) It is operated and controlled in accordance with a statute, rule or order of this state or of the United States.

     (ii) All federal, state or local taxes, fees and charges in lieu of taxes have been paid by the authorized person or entity on any activity arising out of or in connection with the gambling.

     (iii) If conducted by an organization which is exempt from taxation of income under section 501 of the internal revenue code, the organization's records are open to public inspection.

     (iv) Beginning on June 1, 2003. None of the players is under twenty-one years of age.

7. "Social gambling" means gambling that is not conducted as a business and that involves players who compete on equal terms with each other in a gamble if all of the following apply:

   (a) No player receives, or becomes entitled to receive, any benefit, directly or indirectly, other than the player's winnings from the gamble.

   (b) No other person receives or becomes entitled to receive any benefit, directly or indirectly, from the gambling activity, including benefits of proprietorship, management or unequal advantage or odds in a series of gambles.

   (c) Until June 1, 2003, none of the players is below the age of majority. Beginning on June 1, 2003. None of the players is under twenty-one years of age.

   (d) Players "compete on equal terms with each other in a gamble" when no player enjoys an advantage over any other player in the gamble under the conditions or rules of the game or contest.

8. "SPORTS BETTING":

   (a) MEANS THE PLACEMENT OF A WAGER ON THE OUTCOME OF A SPORTING EVENT WHERE A WINNING OUTCOME IS BASED ON THE SCORE, POINT TOTAL, POINT SPREAD OR PERFORMANCE OF A TEAM IN A TEAM SPORT OR ON THE SCORE, POINT
TOTAL, POINT SPREAD OR PERFORMANCE OF AN INDIVIDUAL ATHLETE IN A NON-TEAM SPORT.

(b) DOES NOT INCLUDE WAGERING ON SPORTING EVENTS THAT IS PROHIBITED BY THE NATIONAL COLLEGIATE ATHLETIC ASSOCIATION.

Sec. 3. Section 13-3302, Arizona Revised Statutes, is amended to read:

13-3302. Exclusions
A. The following conduct is not unlawful under this chapter:
1. Amusement gambling.
2. Social gambling.
3. Regulated gambling if the gambling is conducted in accordance with the statutes, rules or orders governing the gambling.
4. Gambling that is conducted at state, county or district fairs and that complies with section 13-3301, paragraph 1, subdivision (d).
5. SPORTS BETTING THAT IS CONDUCTED PURSUANT TO TITLE 5, CHAPTER 10.

B. An organization that has qualified for an exemption from taxation of income under section 501 of the Internal Revenue Code may conduct a raffle that is subject to the following restrictions:
1. The nonprofit organization shall maintain this status and no member, director, officer, employee or agent of the nonprofit organization may receive any direct or indirect pecuniary benefit other than being able to participate in the raffle on a basis equal to all other participants.
2. The nonprofit organization has been in existence continuously in this state for a five-year period immediately before conducting the raffle.
3. No person, except FOR a bona fide local member of the sponsoring organization, may NOT participate directly or indirectly in the management, sales or operation of the raffle.
4. Paragraph 1 or 3 of this subsection does not prohibit:
   (a) A licensed general hospital, a licensed special hospital or a foundation established to support cardiovascular medical research that is exempt from taxation of income under section 501(c)(3) of the Internal Revenue Code from contracting with an outside agent who participates in the management, sales or operation of the raffle if the proceeds of the raffle are used to fund medical research, graduate medical education or indigent care and the raffles are conducted no more than three times per calendar year. The maximum fee for an outside agent shall not exceed fifteen percent of the net proceeds of the raffle.
   (b) An entity that is exempt from taxation of income under section 501(c)(3) of the Internal Revenue Code and that has at least a twenty-year history of providing comprehensive services to prevent child abuse and to provide services and advocacy for victims of child abuse from contracting with an outside agent who participates in the management, sales or operation of the raffle if the proceeds of the raffle are used to provide
comprehensive services to prevent child abuse and to provide services and
advocacy for victims of child abuse and the raffles are conducted no more
than three times per calendar year. The maximum fee for an outside agent
shall not exceed fifteen percent of the net proceeds of the raffle.

C. A state, county or local historical society designated by this
state or a county, city or town to conduct a raffle may conduct the raffle
subject to the following conditions:

1. A member, director, officer, employee or agent of the historical
society may not receive any direct or indirect pecuniary benefit other
than being able to participate in the raffle on a basis equal to all other
participants.

2. The historical society must have been in existence continuously
in this state for a five-year period immediately before conducting the
raffle.

3. A person, except for a bona fide local member of the sponsoring
historical society, may not participate directly or indirectly in the
management, sales or operation of the raffle.

D. A nonprofit organization that is a booster club, a civic club or
a political club or political organization that is formally affiliated
with and recognized by a political party in this state may conduct a
raffle that is subject to the following restrictions:

1. A member, director, officer, employee or agent of the club or
organization may not receive any direct or indirect pecuniary benefit
other than being able to participate in the raffle on a basis equal to all
other participants.

2. A person, except for a bona fide local member of the sponsoring
club or organization, may not participate directly or indirectly in the
management, sales or operation of the raffle.

3. The maximum annual benefit that the club or organization
receives for all raffles is ten thousand dollars $10,000.

4. The club or organization is organized and operated exclusively
for pleasure, recreation or other nonprofit purposes and no part of the
club's or organization's net earnings inures to the personal benefit of
any member, director, officer, employee or agent of the club or
organization.

Sec. 4. Section 13-3305, Arizona Revised Statutes, is amended to
read:

13-3305. Betting and wagering; classification

A. Subject to the exceptions contained in section SECTIONS 5-112
AND 5-1201, no person may engage for a fee, property, salary or reward in
the business of accepting, recording or registering any bet, purported
bet, wager or purported wager or engage for a fee, property, salary or
reward in the business of selling wagering pools or purported wagering
pools with respect to the result or purported result of any race, sporting
event, contest or other game of skill or chance or any other unknown or
contingent future event or occurrence whatsoever.

B. A person shall not directly or indirectly knowingly accept for a
fee, property, salary or reward anything of value from another to be
transmitted or delivered for wagering or betting on the results of a race,
sporting event, contest or other game of skill or chance or any other
unknown or contingent future event or occurrence whatsoever conducted
within or without this state or anything of value as reimbursement for the
prior making of such a wager or bet on behalf of another person.

C. A person who violates this section is guilty of a class 1
misdemeanor.

Sec. 5. Section 42-5073, Arizona Revised Statutes, is amended to
read:

42-5073. Amusement classification

A. The amusement classification is comprised of the business of
operating or conducting theaters, movies, operas, shows of any type or
nature, exhibitions, concerts, carnivals, circuses, amusement parks,
menageries, fairs, races, contests, games, THE NET PROCEEDS FROM SPORTS
BETTING THAT IS CONDUCTED OUTSIDE A TRIBAL CASINO, billiard or pool
parlors, bowling alleys, public dances, dance halls, boxing and wrestling
matches, skating rinks, tennis courts, except as provided in subsection B
of this section, video games, pinball machines or sports events or any
other business charging admission or user fees for exhibition, amusement
or entertainment, including the operation or sponsorship of events by a
tourism and sports authority under title 5, chapter 8. For the purposes
of this section, admission or user fees include, but are not limited to,
any revenues derived from any form of contractual agreement for rights to
or use of premium or special seating facilities or arrangements. The
amusement classification does not include:

1. Activities or projects of bona fide religious or educational
institutions.

2. Private or group instructional activities. For the purposes of
this paragraph, "private or group instructional activities" includes, but
is not limited to, performing arts, martial arts, gymnastics and aerobic
instruction.

3. The operation or sponsorship of events by the Arizona exposition
and state fair board or county fair commissions.

4. A musical, dramatic or dance group or a botanical garden, museum
or zoo that is qualified as a nonprofit charitable organization under
section 501(c)(3) of the United States internal revenue code if no part of
its net income inures to the benefit of any private shareholder or
individual.

5. Exhibition events in this state sponsored, conducted or operated
by a nonprofit organization that is exempt from taxation under section
501(c)(3), 501(c)(4) or 501(c)(6) of the internal revenue code if the
organization is associated with major league baseball teams or a national
1  touring professional golfing association and no part of the organization's
2  net earnings inures to the benefit of any private shareholder or
3  individual. This paragraph does not apply to an organization that is
4  owned, managed or controlled, in whole or in part, by a major league
5  baseball team, or its owners, officers, employees or agents, or by a major
6  league baseball association or professional golfing association, or its
7  owners, officers, employees or agents, unless the organization conducted
8  or operated exhibition events in this state before January 1, 2018 that
9  were exempt from taxation under this section.
10  6. Operating or sponsoring rodeos that feature primarily farm and
11  ranch animals in this state and that are sponsored, conducted or operated
12  by a nonprofit organization that is exempt from taxation under section
13  501(c)(3), 501(c)(4), 501(c)(6), 501(c)(7) or 501(c)(8) of the internal
14  revenue code if no part of the organization's net earnings inures to the
15  benefit of any private shareholder or individual.
16  7. Sales of admissions to intercollegiate football contests if the
17  contests are both:
18  (a) Operated by a nonprofit organization that is exempt from
19  taxation under section 501(c)(3) of the internal revenue code and no part
20  of the organization's net earnings inures to the benefit of any private
21  shareholder or individual.
22  (b) Not held in a multipurpose facility that is owned or operated
23  by the tourism and sports authority pursuant to title 5, chapter 8.
24  8. Activities and events of, or fees and assessments received by, a
25  homeowners organization from persons who are members of the organization
26  or accompanied guests of members. For the purposes of this paragraph,
27  "homeowners organization" means a mandatory membership organization
28  comprised of owners of residential property within a specified residential
29  real estate subdivision development or similar area and established to own
30  property for the benefit of its members where both of the following apply:
31  (a) No part of the organization's net earnings inures to the
32  benefit of any private shareholder or individual.
33  (b) The primary purpose of the organization is to provide for the
34  acquisition, construction, management, maintenance or care of organization
35  property.
36  9. Activities and events of, or fees received by, a nonprofit
37  organization that is exempt from taxation under section 501(c)(6) of the
38  internal revenue code if the organization produces, organizes or promotes
39  cultural or civic related festivals or events and no part of the
40  organization's net earnings inures to the benefit of any private
41  shareholder or individual.
42  10. Arranging an amusement activity as a service to a person's
43  customers if that person is not otherwise engaged in the business of
44  operating or conducting an amusement personally or through others. This
exception does not apply to businesses that operate or conduct amusements pursuant to customer orders and send the billings and receive the payments associated with that activity, including when the amusement is performed by third-party independent contractors. For the purposes of this paragraph, "arranging" includes billing for or collecting amusement charges from a person's customers on behalf of the persons providing the amusement.

B. The tax base for the amusement classification is the gross proceeds of sales or gross income derived from the business, except that the following shall be deducted from the tax base:

1. The gross proceeds of sales or gross income derived from memberships, including initiation fees, that provide for the right to use a health or fitness establishment or a private recreational establishment, or any portion of an establishment, including tennis and other racquet courts at that establishment, for participatory purposes for twenty-eight days or more and fees charged for use of the health or fitness establishment or private recreational establishment by bona fide accompanied guests of members, except that this paragraph does not include additional fees, other than initiation fees, charged by a health or fitness establishment or a private recreational establishment for purposes other than memberships that provide for the right to use a health or fitness establishment or private recreational establishment, or any portion of an establishment, for participatory purposes for twenty-eight days or more and accompanied guest use fees.

2. Amounts that are exempt under section 5-111, subsection G.

3. The gross proceeds of sales or gross income derived from membership fees, including initiation fees, that provide for the right to use a transient lodging recreational establishment, including golf courses and tennis and other racquet courts at that establishment, for participatory purposes for twenty-eight days or more, except that this paragraph does not include additional fees, other than initiation fees, that are charged by a transient lodging recreational establishment for purposes other than memberships and that provide for the right to use a transient lodging recreational establishment or any portion of the establishment for participatory purposes for twenty-eight days or more.

4. The gross proceeds of sales or gross income derived from sales to persons engaged in the business of transient lodging classified under section 42-5070, if all of the following apply:

(a) The persons who are engaged in the transient lodging business sell the amusement to another person for consideration.

(b) The consideration received by the transient lodging business is equal to or greater than the amount to be deducted under this subsection.

(c) The transient lodging business has provided an exemption certificate to the person engaging in business under this section.
5. The gross proceeds of sales or gross income derived from:

(a) Business activity that is properly included in any other business classification under this article and that is taxable to the person engaged in that classification, but the gross proceeds of sales or gross income to be deducted shall not exceed the consideration paid to the person conducting the activity.

(b) Business activity that is arranged by the person who is subject to tax under this section and that is not taxable to the person conducting the activity due to an exclusion, exemption or deduction under this section or section 42-5062, but the gross proceeds of sales or gross income to be deducted shall not exceed the consideration paid to the person conducting the activity.

(c) Business activity that is arranged by a person who is subject to tax under this section and that is taxable to another person under this section who conducts the activity, but the gross proceeds of sales or gross income to be deducted shall not exceed the consideration paid to the person conducting the activity.

6. The gross proceeds of sales or gross income derived from entry fees paid by participants for events that either:

(a) Until March 1, 2017, consist of a run, walk, swim or bicycle ride or a similar event, or any combination of these events.

(b) Are operated or conducted by nonprofit organizations that are exempt from taxation under section 501(c)(3) of the internal revenue code and of which no part of the organization's net earnings inures to the benefit of any private shareholder or individual, if the event consists of a run, walk, swim or bicycle ride or a similar event, or any combination of these events.

7. ALL OF THE AMOUNTS RECEIVED BY AN INDIAN TRIBE FROM THE GROSS AMOUNT OF MONIES RECEIVED FOR THE CONDUCT OF SPORTS BETTING, AND ALL AMOUNTS HELD BY AN INDIAN TRIBE FOR PAYMENT OF WINNINGS TO SPORTS BETTING PATRONS ARE EXEMPT FROM THIS CHAPTER. AMOUNTS SUBJECT TO THIS CHAPTER OR AMOUNTS THAT ARE SUBJECT TO ANY MUNICIPAL TAX CODE, OR BOTH, SHALL NOT RESULT IN A COMBINED STATE, COUNTY AND CITY TAX LIABILITY THAT EXCEEDS SIX AND SEVENTY-FIVE ONE HUNDREDTHS PERCENT OF ADJUSTED GROSS RECEIPTS. THE TRIBAL GAMING OPERATOR SHALL PAY AND BE RESPONSIBLE FOR PAYMENTS OF THE TRIBAL GAMING OPERATOR'S TAX LIABILITY UNDER THIS SUBSECTION. FOR THE PURPOSES OF THIS PARAGRAPH, THE OWNER, PARTNER, SHAREHOLDERS OR BENEFICIARIES OF THE TRIBAL GAMING OPERATOR DO NOT INCLUDE THE MEMBERS OR GOVERNMENT OFFICIALS OF AN INDIAN TRIBE. FOR THE PURPOSES OF THIS SUBSECTION, FOR A BUSINESS THAT IS OPERATING SPORTS BETTING PURSUANT TO TITLE 5, CHAPTER 10, "GROSS INCOME" AND "GROSS PROCEEDS OF SALES" MEANS THE RECEIPTS REMAINING AFTER DEDUCTING THE MONIES PAID FOR WINNINGS FROM GROSS RECEIPTS.
C. For the purposes of subsection B of this section:

1. "Health or fitness establishment" means a facility whose primary purpose is to provide facilities, equipment, instruction or education to promote the health and fitness of its members and at least eighty percent of the monthly gross revenue of the facility is received through accounts of memberships and accompanied guest use fees that provide for the right to use the facility, or any portion of the facility, under the terms of the membership agreement for participatory purposes for twenty-eight days or more.

2. "Private recreational establishment" means a facility whose primary purpose is to provide recreational facilities, such as tennis, golf and swimming, for its members and where at least eighty percent of the monthly gross revenue of the facility is received through accounts of memberships and accompanied guest use fees that provide for the right to use the facility, or any portion of the facility, for participatory purposes for twenty-eight days or more.

3. "Transient lodging recreational establishment" means a facility whose primary purpose is to provide facilities for transient lodging, that is subject to taxation under this chapter and that also provides recreational facilities, such as tennis, golf and swimming, for members for a period of twenty-eight days or more.

D. Until December 31, 1988, the revenues from hayrides and other animal-drawn amusement rides, from horseback riding and riding instruction and from recreational tours using motor vehicles designed to operate on and off public highways are exempt from the tax imposed by this section. Beginning January 1, 1989, the gross proceeds or gross income from hayrides and other animal-drawn amusement rides, from horseback riding and from recreational tours using motor vehicles designed to operate on and off public highways are subject to taxation under this section. Tax liabilities, penalties and interest paid for taxable periods before January 1, 1989 shall not be refunded unless the taxpayer requesting the refund provides proof satisfactory to the department that the taxes will be returned to the customer.

E. If a person is engaged in the business of offering both exhibition, amusement or entertainment and private or group instructional activities, the person's books shall be kept to show separately the gross income from exhibition, amusement or entertainment and the gross income from instructional activities. If the books do not provide this separate accounting, the tax is imposed on the person's total gross income from the business.

F. The department shall separately account for revenues collected under the amusement classification for the purposes of section 42-5029, subsection D, paragraph 4, subdivision (b).
G. For the purposes of section 42-5032.01, the department shall separately account for revenues collected under the amusement classification from sales of admissions to:

1. Events that are held in a multipurpose facility that is owned or operated by the tourism and sports authority pursuant to title 5, chapter 8, including intercollegiate football contests that are operated by a nonprofit organization that is exempt from taxation under section 501(c)(3) of the internal revenue code.

2. Professional football contests that are held in a stadium located on the campus of an institution under the jurisdiction of the Arizona board of regents.

Sec. 6. Emergency

This act is an emergency measure that is necessary to preserve the public peace, health or safety and is operative immediately as provided by law.