

FEDERAL LAW	MAINE (MICSA/MIA)	TASK FORCE RECOMMENDATION
<p>In the absence of federal authorization, states generally lack regulatory authority over tribal gaming. <i>See California v. Cabazon Band of Mission Indians</i>, 480 U.S. 202 (1987).</p> <p>Indian Gaming Regulatory Act of 1988 (“IGRA”) provides regulatory framework for gaming activities on Indian land.</p> <ul style="list-style-type: none"> • “Indian land” includes “all lands within the limits of any Indian reservation” and “any lands title to which is either held in trust by the United States for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to restriction by the United States against alienation and over which an Indian tribe exercises governmental power.” 25 U.S.C. § 2703. <p>Subject to various exceptions, tribes may not conduct gaming on land acquired by the Secretary in trust for the benefit of a tribe after October 17, 1988. 25 U.S.C. § 2719(a). Exceptions:</p> <ul style="list-style-type: none"> • One exception is for lands “located within or contiguous to the boundaries of the reservation of the Indian tribe on October 17, 1988.” 25 U.S.C. § 2719(a)(1). • Another exception is for lands “taken into trust as part of . . . a settlement of a land claim.” 25 U.S.C. § 2719(b)(1)(B). <p>Class I gaming is “social games solely for prizes of minimal value or traditional forms of Indian gaming engaged in by individuals as part of, or in connection with, tribal ceremonies or celebrations.” 25 U.S.C. § 2703(6).</p> <ul style="list-style-type: none"> • Class I gaming on Indian land is within the exclusive jurisdiction of the tribe. 25 U.S.C. § 2710(a)(1). <p>Class II gaming includes bingo (including electronic) as well as card games played in accordance with State laws regarding permitted hours and prize limits. Class II gaming does <u>not</u> include banked card games where players play against the house or electronic facsimiles of games of chance or slot machines.¹</p>	<p>State laws govern:</p> <p>“Except as otherwise provided in this Act, all Indians, Indian nations, and tribes and bands of Indians in the State and any lands or other natural resources owned by them, held in trust for them by the United States or by any other person or entity shall be subject to the laws of the State and to the civil and criminal jurisdiction of the courts of the State to the same extent as any other person or lands or other natural resources therein.” 30 M.R.S. § 6204; <i>see also</i> MICSA, § 6(a) and (b) (Passamaquoddy Tribe and Penobscot Nation subject to the jurisdiction of the State to the extent provided in the MIA, and, with certain exceptions, other tribes and bands of Indians “shall be subject to the civil and criminal jurisdiction of the State, the laws of the State, and the civil and criminal jurisdiction of the courts of the State, to the same extent as any other person or land therein”).</p> <p>Applicability of federal law:</p> <p>Section 16(b) of MICSA states: “The provisions of any Federal law enacted after the date of enactment of this Act for the benefit of Indians, Indian nations, or tribes or bands of Indians, which would affect or preempt the application of the laws of the State of Maine, including application of the laws of the State to lands owned by or held in trust for Indians, or Indian nations, tribes, or bands of Indians, as provided in this Act and the Maine Implementing Act, shall not apply within the State of Maine, unless such provision of such subsequently enacted Federal law is specifically made applicable within the State of Maine.” 25 U.S.C. §1735(b).</p> <p>The U.S. Court of Appeals for the First Circuit has held that, by virtue of § 16(b) of the MICSA, the Indian Gaming Regulatory Act (“IGRA”) does not apply in Maine. <i>See</i></p>	

¹ Canby, William C., Jr., AMERICAN INDIAN LAW IN A NUTSHELL 348-49 (6th ed. 2015) (interpreting definition in 25 U.S.C. § 2703(7)).

<ul style="list-style-type: none"> • Tribes, with oversight by the National Indian Gaming Commission, may license and regulate Class II gaming on Indian land if the state “permits such gaming for any purpose by any person, organization or entity.” 25 U.S.C. §2710(b)(1). <p>Class III gaming includes “all forms of gaming that are not Class I gaming or Class II gaming”, including banked-card games like blackjack as well as other table games and slot machines.²</p> <ul style="list-style-type: none"> • If the state “permits such gaming for any purpose by any person, organization, or entity” then Class III gaming may be conducted in conformance with a Tribal-State compact that is approved by the Secretary of the Interior. 25 U.S.C. §2703(d)(1)(B), (d)(1)(C), (d)(3)(B). • “The State shall negotiate with the Indian tribe in good faith to enter into such a compact.” 25 U.S.C. § 2703(d)(3)(A). The compact may address issues including, <i>inter alia</i>, application of criminal and civil laws and regulations of the tribes and state; division of criminal and civil jurisdiction between the state and tribe; licensing standards for gaming facility; taxation by the tribe in amounts comparable to state taxes for similar activity; and assessments imposed by state to defray necessary costs of regulating the activity. 25 U.S.C. § 2710(d)(3)(C). <p>Additional limits on Class II and III gaming:</p> <ul style="list-style-type: none"> • The Indian tribe must have “sole proprietary interest and responsibility for the conduct of any gaming activity,” 25 U.S.C. §2710(b)(2)(A), (d)(2)(A); and • Net revenues from tribal gaming may only be used to: <ul style="list-style-type: none"> ○ “fund tribal government operations or programs”; ○ “provide for the general welfare of the Indian tribe or its members”; ○ “promote tribal economic development”; ○ “donate to charitable organizations” or ○ “help fund operations of local government agencies.” 25 U.S.C. §2710(b)(2)(B); (d)(2)(A). 	<p><i>Passamaquoddy Tribe v. State of Maine</i>, 75 F.3d 784 (1st Cir. 1996).³</p> <p>Generally applicable laws:</p> <p><i>Games of Chance / Bingo:</i> The Gambling Control Unit may issue licenses to conduct “card games” (ex: poker, blackjack or cribbage) and tournament card games or may accept a registration to operate games of chance, raffles, or beano/bingo to specific types of organizations, including:</p> <ul style="list-style-type: none"> • Bona fide nonprofit charitable, educational, political, civic, recreational, fraternal, patriotic or religious organizations. 17 M.R.S.A. § 1832(2); § 313-C(1)(C). • Comprehensive laws limit the operation of the games, including the fees that may be charged to participants and prizes that may be awarded. <i>See</i> Title 17, ch. 62 & 13-A. <p><i>Casinos:</i> The Gambling Control Board is only authorized to issue 2 casino operator licenses: one to a commercial track that was licensed to operate a slot machine facility on 1/1/2011 (<i>i.e.</i>, Hollywood Casino in Bangor) and another located in Oxford County (<i>i.e.</i>, Oxford Casino). 8 M.R.S.A. § 1011(2-A).</p> <p>Specific tribal gaming law: The State’s Gambling Control Unit may issue licenses to federally recognized Indian tribes to:</p> <ul style="list-style-type: none"> • Operate high-stakes beano or high-stakes bingo for a maximum of 27 weekends (Sat. & Sun. only) per year; 17 M.R.S.A. § 314-A(1), (3); <u>and</u> • Sell “lucky seven or similar sealed tickets” during the period beginning 2 hours before and ending 2 hours after a beano/bingo game. 17 M.R.S. § 314-A(1-A); § 324-A. 	
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² Canby, William C., Jr., AMERICAN INDIAN LAW IN A NUTSHELL 34849 (6th ed. 2015) (interpreting definition in 25 U.S.C. § 2703(8)).

³ Given this decision that IGRA does not apply to Maine under the terms of federal law (IGRA and MICSA), if the MIA were amended to eliminate the applicability of state gaming laws in Indian territory, the pre-IGRA framework of *Cabazon*—that states lack authority to regulate gaming in Indian country—would apply in Maine.

