

**NATIONAL
INDIAN
GAMING
COMMISSION**

AUG 19 1999

Honorable Dee Ketchum
Chief, Delaware Tribe of Indians
220 N.W. Virginia
Bartlesville, Oklahoma 74003

Dear Chief Ketchum:

This letter responds to your request to review and approve the tribal gaming ordinance, Resolution No. 99-22, adopted on June 15, 1999, by the Delaware Tribe of Indians (Tribe). This letter constitutes such approval under the Indian Gaming Regulatory Act (IGRA). Such approval does not constitute approval of specific games. It is important to note that the gaming ordinance is approved for gaming only on Indian lands as defined in the IGRA.

With the Chairman's approval of the Tribe's gaming ordinance, the Tribe is now required to conduct background investigations on its key employees and primary management officials. The National Indian Gaming Commission (NIGC) expects to receive a completed application for each key employee and primary management official pursuant to 25 C.F.R. §556.5(a) and an investigative report on each background investigation before issuing a license to a key employee or primary management official pursuant to 25 C.F.R. §556.5(b).

Thank you for submitting the ordinance of the Delaware Tribe of Indians for review and approval. The NIGC staff and I look forward to working with you and the Tribe in implementing the IGRA.

Sincerely yours,



Montie R. Deer
Chairman



DELAWARE TRIBE OF INDIANS

220 N.W. VIRGINIA • BARTLESVILLE, OKLAHOMA 74003

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JUN 21 1999

A RESOLUTION OF THE TRIBAL COUNCIL OF THE DELAWARE TRIBE OF INDIANS ADOPTING THE DELAWARE INDIAN GAMING ACT

Resolution 99-22

WHEREAS, The Delaware Tribal Council is authorized by Article V of the Constitution and By-laws of the Delaware Tribe (1982) to represent and act in all matters that concern the general welfare of the Delaware Tribe of Indians, a federally recognized Indian tribe; and,

WHEREAS, On February 13, 1999, the tribal membership meeting in General Council voted to authorize the governing body of the Delaware Tribe to pursue and engage in Class II and Class III Indian gaming pursuant to the federal Indian Gaming Regulatory Act, 25 U.S.C. Sec. 2704; and,

WHEREAS, Tribally owned gaming facilities are a viable source of revenue that will foster and promote economic growth, tribal self-sufficiency, and strong tribal government; and,

WHEREAS, A tribal gaming ordinance regulating the operation of Indian gaming on tribal lands is required under federal law to commence tribal gaming operations.

NOW THEREFORE BE IT RESOLVED, that the Delaware Tribal Council hereby adopts the Delaware Indian Gaming Act for the purposes of regulating Indian gaming operations on tribal lands, and hereby directs the Chief to submit the Act to the National Indian Gaming Commission for approval.

CERTIFICATION

I hereby certify that the foregoing was considered by the Tribal Council of the Delaware Tribe of Indians and adopted this 15 day of June, 1999, with a vote of 5 yes, and 1 no, and 0 abstaining.


Dee Ketchum, Chief


Paula Pechonick, Secretary

DELAWARE INDIAN GAMING ACT

Approved by the Delaware Tribal Council on May 17, 1999

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DELAWARE INDIAN GAMING ACT

Approved by the Delaware Tribal Council on May 17, 1999

Section 1. Title of Act

This Act shall be known as the "Delaware Indian Gaming Act," and shall be codified in Delaware Tribal Statutes in such manner as directed by the Delaware Tribal Council.

Section 2. Findings and Purpose

The Delaware Tribal Council hereby finds:

- (a) Tribally owned gaming facilities are a viable source of revenue that will foster and promote economic development, tribal self-sufficiency, and strong tribal government;
- (b) Revenues from gaming operations will enable the tribe to better meet the health, education, and welfare needs of our tribal members and the surrounding communities; and,
- (c) Tribal legislation providing for the comprehensive regulation of gaming on tribal lands is necessary and is enacted herein to:
 - (1) Insure that such gaming is conducted in a fair and honest manner for the protection of the visiting patrons;
 - (2) Insure that the tribe is the primary financial beneficiary of the gaming operation as opposed to any other commercial interests; and
 - (3) Insure that said gaming is conducted only in conformity with applicable tribal, federal, and state laws.

Section 3. Definitions

Unless the context clearly indicates a different meaning, the following terms as used herein are defined as follows:

(a) *Tribe or Delaware Tribe* (and any of its derivatives) shall mean the Delaware Tribe of Indians having its seat of government located in Bartlesville, Oklahoma.

(b) *NIGC* shall mean the National Indian Gaming Commission of the Department of Interior as defined and established by the federal Indian Gaming Regulatory Act, 25 USC § 2704, and the Code of Federal Regulations, 25 CFR § 501, et. seq.

(c) *Tribal Gaming Commission* shall mean the Delaware Tribal Gaming Commission as established herein for regulation of the Indian gaming on tribal lands in compliance with applicable tribal, state, and federal law.

(d) *Tribal Council* shall mean the Delaware Tribal Council created and authorized under Article 4 of the Constitution and Bylaws of the Delaware Tribe of Indians (1982), as amended.

(e) *Tribal Court* shall mean the Delaware Tribal Court as created and authorized under Article 12 of the Constitution and Bylaws of the Delaware Tribe of Indians (1982), as amended.

(f) *Tribal Lands* shall mean lands over which the Delaware Tribe of Indians exercises governmental jurisdiction, to-wit:

1. Any lands which are located within the counties of Washington, Nowata, Rogers, Craig, and north of Township 22 North of Tulsa County, State of Oklahoma, the title to which is either held in trust by the United States for the benefit of the Delaware Tribe, or for the benefit of an enrolled member of the Delaware Tribe who is not also an enrolled member of any other federally recognized Indian tribe; and,
2. Any lands located in the five county area described above that were originally allotted under a "D" allotment number to a Registered Delaware whose name appeared on the February 18, 1867, Delaware Registry, and are now owned in fee by the Delaware Tribe, or are now owned in fee by a member of the Delaware Tribe who is not also an enrolled member of any other federally recognized Indian tribe, the title to which is restricted by the United States against alienation; and,
3. Any other lands located outside the above referenced five county area, the title to which is taken in trust by the United States for the benefit of the Delaware Tribe.

(g) *Tribal Law* shall mean the statutes, regulations, resolution, and case law of the Delaware Tribe of Indians.

(h) *State Law* shall mean the applicable laws of the state, if any, in which a tribal gaming operation is located.

(i) *Federal Law* shall primarily, but not exclusively, refer to Title 25 and Title 18 of the United States Code, and Title 25 of the Code of Federal Regulations.

(j) *Gaming Operation* shall mean each economic activity or facility that is licensed and owned by the tribe that operates games, receives revenues, issues prizes, and pay the expenses of the activity. A gaming operation may be operated and managed by the tribe directly, or may be contracted to another entity, such as a management group, for management and operation for operation on behalf of the tribe.

(k) *Class I Gaming* shall mean social games solely for prizes of minimal value or traditional forms of Indian gaming when played by tribal members as part of, or in connection with, official tribal ceremonies or celebrations.

(l) *Class II Gaming* shall mean those games as defined in the Indian Gaming Regulatory Act, 25 U.S.C. § 2703(7), and by the regulations promulgated by the NIGC at 25 CFR § 502.3, or as may be subsequently defined under federal law, including:

- (1) "Bingo" or "lotto" (whether or not electronic, computer, or other technologic aids are used) when players play for prizes with cards bearing numbers or other designations by covering numbers or designations when objects, similarly numbered or designated, are drawn or electronically determined, and win the game by being the first person to cover a designated patter on such cards; and,
- (2) "Pull Tabs", "Punch Boards", "Tip Jars", "Instant Bingo", and other similar games to bingo; provided, said games are played in the same location as bingo or lotto; and,
- (3) "Non-Banking Card" games that are explicitly authorized by state law , or are not explicitly prohibited by state law, and are played legally anywhere within the relevant state, and players play in conformity with state laws and regulations concerning hours, periods of operation, and limitation on wagers and pot sizes.

(m) *Class III Gaming* shall mean all forms of gaming that are not Class I or Class II gaming, as defined in the Indian Gaming Regulatory Act, 25 U.S.C. § 2703(8), and by the regulations promulgated by the NIGC at 25 C.F.R. § 502.4, or as may be subsequently defined under federal law, including but not limited to:

- (1) Any house banking game, including card games such as baccarat, chemin de fer, blackjack, and pai gow, if play as house banking games, and, casino games such as

roulette, craps, and keno; and,

- (2) Any slot machines as defined under federal law, 15 U.S.C. § 1171 (a)(1) and electronic and electro mechanical facsimiles of any game of chance; and,
- (3) Any sports betting and parimutuel wagering including but not limited to wagering on horse racing, dog racing, or jai alia; and,
- (4) Lotteries.

(n) *Net Revenue* shall mean the gross revenues of a gaming operation less amounts paid out as prizes and the total gaming-related operation expenses excluding management fees.

(o) *Tribal Gaming Director* shall mean a person appointed and employed directly by the Tribal Council to be responsible for all facets of the development, maintenance, and management of tribally owned gaming operations.

Section 4. Class I Gaming Authorized.

Class I Gaming as defined above is hereby authorized on tribal lands without further regard to the regulatory requirements of this Act; Provided, that any person seeking to engage in a Class I gaming activity or operation shall first obtain a written confirmation from the Tribal Gaming Commission that the proposed activity in fact constitutes Class I gaming.

Section 5. Class II and Class III Gaming Authorized; Ownership Restrictions; and Gaming Facility Licenses

(a) Generally. Class II and Class III Gaming as defined above is hereby authorized to be conducted on tribal lands in strict conformity with applicable tribal, federal, and state laws; Provided, the Delaware Tribe of Indians as an entity shall have and at all times retain the sole proprietary interest in and responsibility for the conduct of Class II and Class III gaming activities, facilities, and operations on tribal lands.

(b) Tribal Gaming Operations Licenses. Pursuant to federal law, each and every Class II and Class III gaming operation or facility located on tribal lands shall at all times have prominently displayed for public viewing a Tribal Gaming Operation License, issued by the Delaware Tribal Council and signed by the Chief of the Delaware Tribe, describing therein the name and address of the gaming facility, the type

of gaming authorized under said license, the date of issuance, the tribe's formal name, the address of the tribe's principal seat of government, and the service agent for complaints against the tribe arising from the gaming operation.

Section 6. Delaware Tribal Gaming Commission

(a) **Establishment.** There is hereby established, chartered, and created the Delaware Tribal Gaming Commission as a governmental subdivision of the tribe.

(b) **General Authority of Commission.** Except as to those authorities specifically retained by the Tribal Council under this Act, the Tribal Gaming Commission is given exclusive authority to regulate all gaming activities or operations under this Act.

(1) **Sovereign Attributes.** As a governmental subdivision of the Delaware Tribal Council, the Tribal Gaming Commission is hereby delegated the substantial governmental function of regulating tribal gaming pursuant to applicable tribal, federal, and state laws. Notwithstanding any authority delegated to the Tribal Commission, the Tribal Council reserves the right to bring suit against any person or entity in its own right, on behalf of the tribe or on behalf of the Tribal Gaming Commission, whenever the Tribal Council deems it necessary to protect the sovereignty, rights, and interests of the tribe or the Tribal Gaming Commission.

(2) **No Proprietary Functions.** The Tribal Gaming Commission shall have no authority or responsibility for monitoring or managing the tribe's financial interests in gaming operations.

(c) **Location and Offices.** The Tribal Gaming Commission shall be a resident of and maintain its headquarters and principal office at the tribe's principal offices and seat of government. Upon the express approval of the Tribal Council, the Tribal Commission may also establish satellite offices in such other locations as may be necessary to better execute its duties.

(d) **Appointment of Tribal Gaming Commissioners.** The Commission shall consist of no less than three (3) tribal members, one of whom shall be designated as Chairman, all of whom shall be appointed by the Tribal Council.

(1) **Qualifications.** To be eligible to serve as a Commissioner, a tribal member must be at least twenty-five (25) years of age, be of high moral character or integrity, and never have been convicted of a felony criminal offense or a misdemeanor offense involving a crime of dishonesty or moral turpitude;

- (2) Term of Office. The term of office for each Commissioner shall be three (3) years; Provided, however, in order to stagger the expiration of the terms of office, the first member appointed shall serve a term of three (3) years, the second member a term of two (2) years, and the third member a term of one (1) year.
- (3) Removal. Commissioners may only be removed from office before the expiration of their term of office by a vote of the Tribal Council for neglect of duty, corruption, abuse of authority, malfeasance, or other good cause shown following a hearing before the Tribal Council upon written notice, and subject to appeal to the Delaware Tribal Court.
- (4) Vacancy. In case of a vacancy in office, the Tribal Council shall within thirty (30) days fill the vacancy for the remaining unexpired term. The Tribal Council may designate a temporary Commissioner pending the outcome of a Commissioner's appeal before the Tribal Court for removal from office.

(e) Compensation for Commissioners. Provided sufficient funds are available in the tribal treasury, the Commissioners may be compensated in the form of a monthly stipend and at a rate to be established annually by the Tribal Council commensurate with the duties to be performed. At no time shall any such stipend be paid directly from any gaming operations and at no time shall the Commissioners be considered employees of the tribe.

(f) Conflicts of Interest. No Tribal Gaming Commissioner or any employees of the Commission shall be allowed to gamble in tribal gaming establishments, or engage in any business relationships that is directly or indirectly related to any gaming operation or any other tribal business venture. No member of the Tribal Council, Tribal Court, or any other elected, appointed, or salaried tribal position may concurrently hold a position as a Commissioner or an employee of the Commission.

(g) Meetings & Reports.

- (1) The Tribal Gaming Commission shall meet no less than once per month at a regularly designated time and location to execute its duties. Except as otherwise provided herein, the meetings of the Tribal Gaming Commission shall be open to the public. For the purposes of discussing the merits of a licensing application, or any personnel matters, or attorney-client communications, the Commission shall retire to executive session for discussion and deliberation, provided, that any votes of the Commission shall be done only in an open meeting. A quorum shall consist of no less than three (3) members. All questions arising in connection with the actions and duties

of the Commission shall be decided by a majority vote.

- (2) The Chairman shall submit monthly written reports to the Tribal Council regarding the activities of the Commission which shall include at a minimum the following: The names of all individuals for whom a Gaming Employee License was issued or denied; a summary of any disputes filed against the tribal gaming operation; a summary of any notices of non-compliance issued by the commission or any other regulatory or policing entity; a summary of any fines issued for gaming violations; a summary of the appeals filed before the Tribal Court and the outcome of those appeals; a summary of any problems experienced with the management of the gaming operation; a summary of all the Commission's expenditures; and, a copies of the minutes of the commission meetings. None of the minutes of any meeting shall include discussions or deliberations done in executive session.

(h) **Organizational and Operating Procedures.** Unless otherwise directed by the Tribal Council, the Tribal Gaming Commission shall develop its own internal organization, staff positions, and operating procedures as necessary to properly execute its responsibilities.

(i) **Operating Budget.** The Tribal Gaming Commission shall submit a proposed annual budget to the Tribal Council no later than September 1st of the preceding fiscal year. The Tribal Council shall annually approve or amend such budget, and appropriate sufficient funds for the use and expenditure of the Tribal Gaming Commission in execution of the Commission's duties. Upon written resolution of the Tribal Council and upon a demonstrated need, the Commission may establish its own banking accounts to fund its day to day operations, and for depositing fines and licensing fees. At no time shall any of the funding for the Commission come directly from the gaming operation, revenue, or management group.

Section 7. Responsibilities and Enforcement Authorities of the Tribal Gaming Commission.

(a) **General Responsibilities.** The responsibilities and authorities of the Tribal Gaming Commission shall include but not necessarily be limited to the following:

- (1) Promulgate regulations as deemed necessary to perform properly and fully the responsibilities and authorities vested in the Tribal Gaming Commission under this Act.
- (2) Promulgate minimum internal control regulations for the operation of gambling devices, equipment, game rules, and other gaming operations including the operation's credit and money handling policies. Establish standards/criteria for gaming

machines and facilitate the testing of machines for compliance.

- (3) Establish or approve video surveillance standards and procedures. Maintain a surveillance log recording all surveillance activities in the monitoring room of each gaming facility and to maintain a security log of all unusual occurrences in any gaming facility.
- (4) Continually monitor, inspect, and police all gaming operations for compliance with applicable tribal, federal, and state gaming laws.
- (5) Conduct investigations of possible violations of gaming procedures, issue citations and fines, and defend all appeals of the Commission's actions before the Tribal Court.
- (6) Develop Gaming-Employee Licensing and Background Investigation regulations and procedures consistent with this Act, and applicable tribal, federal, and state gaming law.
- (7) Employ sufficient staff persons for carrying out investigatory, regulatory, licensing, and policing responsibilities under this Act.
- (8) Interact with other regulatory and law enforcement agencies regarding the regulation of gaming.
- (9) Establish minimum health and safety and building regulations for the tribal gaming operations, and monitor and enforce the same.
- (10) Establish a list of people barred from any gaming facility because of their criminal history or association with career offenders or career offenders organizations, or previous lawful expulsion from the tribal gaming facility.
- (11) To consult with and make recommendations to the Tribal Council regarding changes in tribal gaming laws and policies, including advising of any changes in federal statutes and regulations.
- (12) Recommend further licensing and regulation for persons who deal with the gaming operations such as manufacturers and suppliers of machines, equipment, goods, and services.
- (13) Maintain a correct and full accounting of all fees, penalties, interest, and fines received under the authority of this Act, and provide a monthly accounting of the same

to the Tribal Council.

- (14) Subject to ratification by the Tribal Council, adopt a schedule of fees to be charged for licensing and fines to be issued for violations.
- (15) Perform audits of business transactions to ensure compliance with regulations and policy, including review, on demand, such books and records of the gaming operation.
- (16) Assure that a copy of the annual audit of the tribal gaming operations is transmitted to the NIGC and any other relevant entities.
- (17) Resolve patron disputes with the gaming operation regarding payment of winnings.

(b) Enforcement Authority. In executing its regulatory duties hereunder, the Tribal Gaming Commission shall have authority to take the following action to coerce compliance with this Act, or regulations and orders issued pursuant to this Act:

- (1) Levy fines for violations in an amount not to exceed \$ 1,000.00 for each violation;
- (2) Issue notices of violations and orders requiring timely corrective action and compliance;
- (3) Suspend or revoke any Gaming-Employee License, or any other licenses that may be subsequently issued by the Tribal Gaming Commission;
- (4) To bring a civil cause action in the Tribal Court against any individual or entity to reduce to judgement any unpaid civil fines, with interest and penalties, and to proceed with execution and collection of said judgement in any tribal, state, or federal court;
- (5) To seek any other injunctive and declaratory relief from the Tribal Court to prohibit violations of this Act; and,
- (6) To request the assistance of law enforcement entities when necessary for the execution of the Commission's responsibilities.

Section 8. Tribal Gaming Commission Regulations.

(a) The Tribal Gaming Commission regulations necessary to carry out the orderly performance of its duties and powers shall include, but shall not be limited to the following:

- (1) Internal operational procedures for the Tribal Commission and its staff;
- (2) Interpretation and application of this Act as may be necessary to carry out the Commission's responsibilities and exercise its authorities;
- (3) A regulatory system for all gaming activity, including accounting, contracting, management, and supervision;
- (4) Reports or other information required by or necessary to implement this Act;
- (5) The conduct of inspections, investigations, enforcement actions, and other such actions; and,
- (6) A schedule of Commission fees for licensing and related activities, and a schedule of fines, including penalties and interests, for specified violations.

(b) No regulation of the Tribal Gaming Commission shall be of any force or effect unless it is adopted by written resolution and subsequently approved by written resolution of the Tribal Council and both filed for record with the office of the Tribal Secretary, the office of the Tribal Court, and with the NIGC.

(c) The Tribal Court and any other Court of competent jurisdiction shall take judicial notice of all Tribal Gaming Commission regulations adopted pursuant to this Act.

Section 9. Interim and Residual Responsibilities of the Tribal Council.

Until such time as the Delaware Tribal Gaming Commission is fully established and organized, the Tribal Council shall remain responsible for the execution of the Tribal Gaming Commissions responsibilities. In addition, the Tribal Council shall remain responsible for any regulatory responsibilities under federal law that have not otherwise been assigned to the Tribal Gaming Commission. The Tribal Council further reserves to itself the authority to take such actions and issue such orders as the Tribal Council may deem necessary to protect the general welfare of the tribe.

Section 10. Management Contracts [Reserved]

Section 11. Environmental, Health, and Safety Standards

Pursuant to federal law, the construction and maintenance of any gaming facility and the operation of gaming activities shall be conducted in a manner which adequately protects the environment and the public health and safety, and for that purpose shall comply with the requirements of any applicable Tribal-State Compact and all other applicable health, safety and environmental standards enacted by the tribe which shall be at least as stringent as those of the relevant state or municipality.

Section 12. Restrictions on Use of Gaming Revenues

Pursuant to federal law, the Tribal Council shall assure that the net revenues from any tribal gaming operation shall only be expended for the following purposes:

- (a) To fund tribal government operations or programs;
- (b) To provide for the general welfare of the tribe and its members;
- (c) To donate to charitable organizations; and,
- (d) To help fund operations of local governmental agencies.

Section 13. Annual Audits

Pursuant to federal law:

- (a) Generally. The Tribal Council shall direct that the financial records of each gaming operation be audited once per year by a certified public accountant or firm not otherwise affiliated with the tribe, its elected officials, or its staff. A copy of each audit shall be provided within fifteen (15) days of completion to the Tribal Gaming Commission and the NIGC.
- (b) Subjects. All contracts for supplies, services, or concessions for a contract amount in excess of \$ 25,000 annually (except contracts for professional legal or accounting services) relating to such gaming shall be subject to said independent audits; Provided, that nothing herein shall mean that the annual gaming audit shall be less stringent or comprehensive than the annual audit of the tribe's other financial records.
- (c) Financial Record Keeping. All financial records of each gaming operation, including annual audits, shall be maintained by the tribe in a secure and orderly fashion for no less than ten (10) years.

Section 14. Gaming-Employee Licensing and Background Investigations

Pursuant to federal law:

(a) Generally. No person shall be employed at a tribal gaming operation in the position of a Key Employee or a Primary Management Official, as defined below, for more than ninety (90) days unless said person has obtained a Gaming-Employee License from the Tribal Gaming Commission; Provided, this section shall not apply if the tribe has entered into an approved Tribal-State Compact for Class III Gaming that gives the relevant state exclusive jurisdiction, and responsibility for background investigations and the issuance of gaming-employee type licenses.

(b) Definitions. Within the meaning of this Act, the following definitions shall apply:

(1) *Key Employee* shall mean a person working at a tribal gaming operation who performs one of the following functions:

(A) Bingo Caller; Counting Room Supervisor; Chief of Security; Custodian of Gaming Supplies or Cash; Floor Manager; Pit Boss; Dealer; Croupier; Credit Manager; Custodian of Gambling Devices (including persons having access to cash and accounting records within such devices);

(B) Any other person who total cash compensation is in excess of \$ 50,000.00 per year and the four most highly compensated persons in the gaming operation.

(2) *Primary Management Official* shall mean a person working at a tribal gaming operation who:

(A) Will have management responsibility for a management contract;

(B) Will have authority to hire and fire employees, or to set up working policy for the gaming operation;

(C) Will be a chief financial officer, or other person who has financial management responsibility.

(c) Applications for Licenses. Applications for Gaming-Employee Licenses shall include the following notices which shall be pre-printed at the beginning each applications:

In compliance with the Privacy Act of 1974, the following information is provided: Solicitation of the information on this form is authorized by

25 U.S.C. 2701, et. seq. The purpose of the requested information is to determine the eligibility of the individuals to be employed in a gaming operation. The information will be used by the National Indian Gaming Commission members and staff who have need for the information in the performance of their official duties. The information may be disclosed to appropriate Federal, Tribal, State, local, or foreign law enforcement and regulatory agencies when relevant to civil, criminal, or regulatory investigations or prosecutions or when pursuant to a requirement by a tribe or the National Indian Gaming Commission in connection with the hiring or firing of an employee, the issuance or revocation of a gaming licence, or investigations of activities while associated with a tribe or gaming operations. Failure to consent to the disclosures indicated in this notice will result in a tribe's being unable to hire you in a primary management official or key employee position.

The disclosure of your Social Security Number (SSN) is voluntary. However, failure to supply a SSN may result in errors in processing your application.

A false statement on any part of this application may be grounds for not hiring you, or for firing you after you begin work, and may subject you to criminal charges punishable by fine or imprisonment under federal law pursuant to 18 U.S.C. 1001.

(d) Information Required. Each application for Gaming-Employee License shall at a minimum request the following information:

- (1) Full name, previous names used, nick names, social security number, birth date, place of birth, citizenship, gender, and a description of the applicant's immediate family including an explanation of relationships described (e.g., parents, guardians, etc.);
- (2) The full residential address of the applicant for the previous five years and the full name, address, and current telephone number of each individual with whom the applicant may have resided at those addresses;
- (3) Each position of employment, including self-employment, held by the applicant, and the relevant dates employed, for the previous five (5) years, including the full name and address of the employer, and the full name of the applicant's supervisor at said employment;
- (4) All ownership interests of any nature held in any business entity or venture for the previous five (5) years, including the name of the business, the relative interests held, and the business' principal place of business;

- (5) The name, current address, and telephone number of at least three personal references, which shall include a personal reference who was acquainted with the applicant during each period of residence for the previous five (5) years;
- (6) Current business (work) telephone number and residential telephone number;
- (7) A description of any existing and previous business relationships of any nature whatsoever with any Indian tribe, including ownership interests in those businesses;
- (8) A description of any existing and previous business relationships of any nature whatsoever with gaming industry generally, including a description of the type of business, the name of the business, the nature of any ownership interests, and the business' principal place of business;
- (9) The name and address of any licensing or regulatory agency with which the person has filed an application for a license or permit related to gaming, and/or related to an alcohol or tobacco distribution, within the previous ten (10) years, whether or not such license or permit was granted;
- (10) For each felony for which there is an ongoing prosecutions or a conviction, the charge, the name and address of the court involved, and the date and disposition if any;
- (11) For each misdemeanor conviction or ongoing misdemeanor prosecution (excluding minor traffic violations), within 10 years of the date of the application, the name and address of the court involved and the date of disposition;
- (12) For each criminal charge (excluding minor traffic charges), whether or not there is a conviction, if such criminal charge occurred within 10 years of the date of the application and is not otherwise reported on the application, the criminal charge, the name and address of the court involved, the date of the charge, and the date of the disposition;
- (13) The name and address of any professional licensing boards with which the person has filed an application for an occupational license or permit, regardless of whether or not such license or permit was granted;
- (14) A copy of applicant's Federal income tax returns for the previous two (2) years. If none are available or have been filed, then an explanation as to why.
- (15) A copy of the applicant's driver's license and social security card, front and back. If applicant does not maintain or have a current driver's license or security card then an explanation as to why.

(16) A list of the names and addresses of each financial institution holding a financial account in the name of the applicant, or naming applicant as a beneficiary, and the types of accounts held.

(17) A copy of a current passport held by applicant, if any.

(18) Any other information the Tribal Gaming Commission deems reasonably necessary and relevant.

(e) Additional Requirements. Concurrent with the submission of an application to the Tribal Gaming Commission for a Gaming-Employee License, the applicant shall also:

(1) Present themselves to the Tribal Gaming Commission Office, or a local law enforcement agency contracted by the tribe, for photographing and fingerprinting; and,

(2) Execute a notarized release on a pre-printed form prepared by the Tribal Gaming Commission authorizing the release of the following records to the Tribal Gaming Commission: Personnel records held by applicant's former employers; Applicant's credit report; Applicant's criminal history from any governmental entity or agency; and any other appropriate specified records regarding applicant and deemed relevant by the Tribal Gaming Commission that might otherwise be unavailable on the grounds of privacy; and,

(3) Execute a notarized release on a pre-printed form prepared by the NIGC authorizing the release of all records and information obtaining during the licensing process to the NIGC and other appropriate tribal, state, and federal law enforcement and regulatory agencies; and,

(4) Tender a non-refundable standard license-processing fee as determined by the Tribal Gaming Commission, which shall not exceed seventy-five dollars (\$75.00).

(f) Eligibility Determinations. Upon receiving the above described information and application, the Tribal Gaming Commission shall complete a comprehensive background check consistent with the background investigation procedures further described under this Act. Upon completion of the background investigation, the Tribal Gaming Commission shall make an initial determination on whether to issue a license to the applicant. In making its initial determination, the Tribal Gaming Commission shall compile a Licensing Report which shall include the original application submissions, a description of the steps taken in and the results obtained in the background investigation, and a summary of the Tribal Gaming Commission's determination based on whether to grant or deny the applicant's license. If at this time, the applicant is deemed ineligible for a Gaming-Employee License, the

Tribal Gaming Commission shall immediately give written notice to the relevant manager at the gaming operation that the applicant will not be issued a license and must be immediately removed from any employment requiring a Gaming-Employee License. The notice shall clearly state an objective basis for denial of the application and the right of the applicant to appeal the decision to the Delaware Tribal Court within thirty (30) days of the issuance of the notice. A copy of the written notice also shall be immediately sent by certified mail to the last known address of the applicant.

(g) Standard Criteria for Eligibility. Prior to accepting any applications for a Gaming-Employee License, the Tribal Gaming Commission shall issue regulations setting forth a standard set of criteria to be used in approving or disapproving an application for a Gaming-Employee License. The Commission's regulations shall take into account the applicant's prior activities, any criminal record, reputations, habits, fiscal responsibility, and criminal associations to make a finding concerning whether to grant or deny a license. The criteria established for licensing determinations shall insure that no person who poses a threat to the public interest or the effective regulation of gaming, or creates or enhances dangers of unsuitable, unfair, or illegal practices and methods and activities in the conduct of gaming, will be issued a Gaming-Employee License.

(h) Reports to NIGC. The Tribal Gaming Commission Licensing Report described above shall be completed and forwarded to the NIGC within forty-five (45) days following the original submission of the license application to the Tribal Gaming Commission. The NIGC shall have thirty (30) days to notify the Tribal Gaming Commission of any objection it may have to the Tribal Gaming Commission's decision to issuance a license to the applicant. The Tribal Gaming Commission shall provide any additional information requested by the NIGC, and upon such request, the thirty (30) day requirement shall be suspended until the NIGC receives such information.

(i) NIGC Objections and Supplemental Reports. If within the thirty-day time frame, the NIGC provides the Tribal Gaming Commission with a statement itemizing the objections to the issuance of a Gaming-Employee License to the applicant, the Tribal Gaming Commission shall review the NIGC objections, reconsider its initial approval to license the applicant, and shall prepare a supplemental Licensing Report addressing the NIGC's objections, and a summary of the Tribal Gaming Commission's supplemental determination, based on standardized criteria, on whether to grant or deny the applicant's license. A copy of the Supplemental Report shall be forwarded to the NIGC. If the supplemental determination finds that the applicant is not eligible for issuance of a license, written notice as provided in section (f) above shall be immediately issued.

(j) License Revocation or Suspension. If after the issuance of a Gaming-Employee License, the Tribal Gaming Commission receives additional information from the NIGC or otherwise that an applicant should not have received a license or is no longer eligible for a license, the Tribal Gaming Commission shall review its initial determination, make a Supplemental Report, and forward the same to the NIGC. If the supplemental determination finds that the applicant is not eligible, written notice as provided in section (f) above shall be immediately issued with the additional notice that the Gaming-

Employee License shall be suspended for a period of thirty (30) days pending appeal of the suspension to the Delaware Tribal Court. Unless the Tribal Gaming Commission reverses its position or the Tribal Court finds that applicant is or remains eligible, a notice of revocation shall issue to the gaming operation and to applicant's last known address upon expiration of the time for appeal or completion of the appeals process.

(k) Compliance with Tribal Court Decisions. If the applicant should prevail on appeal before the Delaware Tribal Court, the Tribal Gaming Commission shall immediately issue the applicant a Gaming-Employee license or a notice of reinstatement of the license, and shall notify the NIGC of the court's decision.

(l) Record Keeping. The Tribal Gaming Commission shall keep all records obtained during the application process in a secure and orderly fashion for a period of at least three (3) years from the date of the application or the termination of employment, whichever is longer. The licensing records shall be made available for inspection upon the written request of the Chairman of the NIGC, or a designated NIGC agent, or other appropriate tribal, state, or federal law enforcement agencies. The licensing records shall also be made available for inspection by the Tribal Council upon written resolution of the Tribal Council citing the need for such information in the best interests of the tribe. In defending an appeal by an applicant for a denial of a license, the Tribal Gaming Commission may divulge only such information and documentation as was explicitly relied upon for a denial of the license; Provided, however, upon filing any appeal of a denial of the license, the applicant shall be deemed to have waived any privacy considerations for the purposes of disclosure of information during the appeal. Except as provided herein, the Tribal Gaming Commission is otherwise strictly prohibited from releasing, copying, or divulging any information obtained during the licensing process or contained in the licensing records to any person, individual, or entity, including the applicant for license.

(m) No Right to Employment. The issuance of a Gaming-Employee License shall not create any guarantee of employment, or vest any right whatsoever in the holder of the license to employment with any tribal gaming operation.

Section 15. Procedures for Background Investigations

(a) General Responsibility. Unless otherwise provided in a State-Tribal Compact, the Delaware Tribal Gaming Commission shall be exclusively responsible for conducting background investigations and the issuance of the Gaming-Employee Licenses for Key Employees and Primary Management Officials.

(b) Investigator. The Tribal Gaming Commission shall employ Tribal Gaming Investigator(s) who shall be responsible for receiving licensing applications as described above, conducting background investigations, and compiling all relevant information in Licensing Reports and Supplemental Reports

for submission to the Tribal Gaming Commissioners with a recommendation of approval or denial. The Investigator(s) shall be at least 21 years of age, achieved at least a high school education, and preferably have some experience in investigative work. Any person who has been convicted in any tribal, state, or federal court of any felony offense or a misdemeanor offense involving dishonesty or a crime of moral turpitude within the preceding ten (10) years or while employed as an Investigator shall be ineligible for employment in the position.

(c) **Non-delegation of Licensing Responsibility.** The Tribal Gaming Commissioners shall be responsible for reviewing Licensing Reports and Supplemental Reports, and by a majority vote shall make the ultimate determination to approve or disapprove an Employee-Gaming License. The Tribal Gaming Commissioners shall be responsible for assuring that all Licensing Reports, Supplemental Reports, and other similar notices are transmitted to the NIGC, and where applicable the gaming operation and applicant, within the time limits prescribed and shall be responsible for receiving all information and correspondence from the NIGC.

(d) **Fingerprinting/Photographing Procedures.** For the purpose of obtaining finger prints and photographs, the Tribal Gaming Commission shall either:

- (1) Employ a person suitably trained to obtain each licensing applicant's photograph, and fingerprints in compliance with commonly accepted law enforcement procedures and practices, for transmittal directly to the Federal Bureau of Investigation for a criminal background check or pursuant to a memorandum of agreement for transmittal to the NIGC for processing through the Federal Bureau of Investigation; or,
- (2) Contract with a local law enforcement agency to obtain and process each applicant's photographs and fingerprints which shall be transmitted either directly to the Federal Bureau of Investigation for a criminal background check or pursuant to a memorandum of agreement to the NIGC for processing through the Federal Bureau of Investigation.

(e) **Regulations for Standard Criteria .** The Tribal Gaming Commission shall issue regulations setting forth a standard set of criteria to be used in approving or disapproving an application for a Gaming-Employee License and shall develop a standard analytical form for determining whether an applicant has met the particular criteria.

- (1) At a minimum the analytical form shall include a check-list of the following criteria: a) Financial responsibility confirmed or acceptable explanation; b) No felony or relevant misdemeanor criminal record within previous ten years for each state and city of residence; c) No incarceration in a state or federal penitentiary within the previous fifteen years; d) Valid Driver's License confirmed or acceptable explanation; e) Two year

history of Federal Income Tax confirmed or acceptable explanation ; f) Residential stability confirmed or acceptable explanation; g) Employment stability confirmed or acceptable explanation; h) No negative character reports from previous employers or personal references; i) No current passport confirmed or acceptable explanation; j) Federal and State Bureaus of Investigation Reports unremarkable; k) No evidence of current or recent drug and/or alcohol abuse.

- (2) The analytical form shall further indicate whether each criteria is supported by documentation or narrative report.

(f) Investigative Procedures. The Tribal Gaming Commission shall further promulgate regulations providing for the investigative procedures to be followed by each Inspector to complete a background investigation for each application which shall at a minimum require the Investigator to:

- (1) Verify by written, or oral communication memorialized, that the information submitted by applicant is substantially correct which shall require the Investigator to contact previous landlords, employers, businesses, family, associates, financial institutions, professional licensing boards, etc., and obtain a credit report on applicant from a nationally recognized institution; and,
- (2) Contact the law enforcement agency for each city and county within which the applicant resided in the previous five (5) years, and requesting a copy of any and all criminal or driving records or a statement that none exist; and,
- (3) Contact each state bureau of investigation and the Federal Bureau of Investigation, providing any necessary information including applicant's fingerprints, and request a copy of any criminal history records, or a statement to the effect that none exist; and,
- (4) Memorialize any verbal interview from previous employers, personal references, family, licensing boards, regulatory boards of negative character reports; and,
- (5) Acquire a copy of applicant's credit history for any evidence of financial instability, unusual financial activity, and judgments against applicant; and,
- (6) Follow-up and further investigate with appropriate sources any unusual or inconsistent information obtained during the investigation; and,
- (7) Interview applicant and request explanations or further information upon finding any unusual or inconsistent information or if the circumstances otherwise warrant an interview.

(g) Standard Formats for Licensing Reports. The Tribal Gaming Commission shall further create and require a standard format for each Licensing Report and Supplemental Report which shall contain at a minimum: 1) The original application and submissions; 2) A description of the procedures taken in conducting the background check; 3) The standard analytical form listing whether the applicant has met the criteria for licensing; 4) Supporting written documentation including criminal background reports, narrative reports or written memorials of verbal interviews including the time, date, and full name of persons interviewed; 5) A statement of standard information lacking; 6) The recommendation of the Investigator; 7) All NIGC information or correspondence regarding applicant; 8) The final determination specifically describing the supporting grounds by the Tribal Gaming Commission, copies of all notices issued to applicant, and copies of any decisions of the Tribal Court.

Section 16. Tribal Gaming Director.

(a) Proprietary Function. For the purposes of representing the proprietary interests of the tribe, as opposed to regulatory interests, in all facets of tribal gaming development, operations, and management, the Tribal Council may at its discretion appoint and employ a Tribal Gaming Director to serve at the pleasure and under the direction of the Tribal Council.

(b) The duties and responsibilities of the Tribal Gaming Director may include:

- (1) Identifying and developing tribal interests and opportunities in the gaming industry on behalf of and in the best interests of the tribe;
- (2) Identifying, monitoring, and addressing the concerns of other tribal, state, local, and federal concerns regarding the development of tribal gaming opportunities;
- (3) Negotiating all tribal gaming-related agreements including Tribal-State Compacts, Land Acquisitions, and Management Contracts;
- (4) Performing initial background and financial checks of management groups seeking to do business with the tribe;
- (5) Representing, informing, and advising the Tribal Council on all gaming related activity, and recommended courses of action; and,
- (6) Remain responsible for the management and oversight of all tribal gaming operations and activities on behalf of the Tribal Council; Provided, if the Tribal Council chooses to engage a management group to manage the gaming operations on behalf of the tribe, the Tribal Gaming Director shall, nonetheless, continue to serve as the Tribal Council's representative and liaison between the tribe and the management group and shall be actively involved all facets of management operations, decisions, and financial

accounting.

- (7) Accounting to the Tribal Council and Tribal Management on a weekly basis as to the income and revenues of the gaming operation.
- (8) Working with the Tribal Gaming Commission to assure legal compliance by the managers of the gaming operation.
- (9) Acting as the single authorized and designated spokesperson on behalf of the Tribal Council on all gaming and gaming-related issues.
- (8) Any other proprietary functions that the Tribal Council may deem necessary to monitor and protect the financial interests of the tribe in gaming activities.

(c) **Qualifications.** To be eligible for appointment as the Tribal Gaming Director, the person shall at a minimum be at least twenty-five (25) years of age and possess a bachelor's level degree in business or related field from a college or university. No person who has been convicted in any tribal, state, or federal court of any felony offense or a misdemeanor offense involving dishonesty or a crime of moral turpitude within the preceding ten (10) years shall be eligible for consideration.

(d) **Restrictions on Agency Authority.** The Tribal Gaming Director shall not have authority to incur debt in the tribe's name, establish credit, bind the tribe in any contractual agreements, waive any sovereign immunity, or otherwise act in any legal capacity on behalf of the tribe without a written resolution of the Tribal Council specifically authorizing the actions.

(e) **Conflicts of Interest.** The Tribal Gaming Director shall at all times: 1) Act in the best interests of the tribe; 2) Shall be prohibited from gambling in any tribal gaming establishment; 3) Shall be prohibited from engaging in any gaming related business activity outside of his duties as Tribal Gaming Director; 4) Other than receiving salaried compensation, shall be prohibited from accepting any gift, donation, or honorarium from any gaming related business or entity or from any person as a result of the position as Tribal Gaming Director; 5) Shall be prohibited from usurping any business interest or business opportunity of the tribe; 6) And shall otherwise zealously guard against any appearance of impropriety or conflict of interest while acting on behalf of the tribe or otherwise.

Section 17. Gaming Age Limits.

No person under 18 years of age shall be permitted to be a player in any Class II gaming facility. No person under the age of 21 years shall be permitted to gamble or to place any wager in a Class III gaming facility, either directly or indirectly, or to be present in the immediate area of any gaming

activities of any Class III type gaming facility.

Section 18. Dispute Resolution

(a) Payment of winnings dispute.

- (1) In the event of a dispute between a patron and the gaming operation regarding the payment of a bet or distribution of winnings, the patron may make a written claim to the gaming operation within thirty (30) days of the incident giving rise to the claims. Failure to file a claim within thirty (30) days shall forever bar further claims or causes of actions.
- (2) The primary management official on duty at the time of the claim is made shall attempt to resolve the dispute without delay.
- (3) If the primary management official is unable to resolve the issue, the primary management official shall refer the patron to the Tribal Gaming Commission for further actions. The Tribal Gaming Commission shall investigate the matter and issue a final ruling within thirty (30) days of receiving the claim.
- (4) The patron shall be given notice of a right to appeal the final decision of the Tribal Gaming Commission to the Delaware Tribal Court within thirty (30) days of the date of the final decision.
- (5) Notice of the procedures for resolving these disputes, including the name and address for the service agent for the tribe, the Tribal Gaming Commission, and any Management Group, shall be posted throughout the gaming operation.

(b) Personal Injuries or Property Loss Claims.

- (1) In the event that a patron alleges a personal injury or property loss against the gaming operation or against the tribe arising from the gaming activity, the patron shall be asked to file a written claim detailing the date, time, events, witnesses, and the proximate loss, if know. Claims for personal injuries or property loss against the gaming operation or against the tribe arising from the gaming activity shall be filed with the gaming operation within thirty (30) days after the alleged loss occurs. Failure to file a claim within thirty (30) days after the alleged loss shall forever bar further claims or losses.
- (2) The primary management official shall immediately report the claim to any

relevant liability insurance carrier. If the total claim is for less than \$ 1,000 total loss, the claim may be resolved in the discretion of the primary management official by execution of a settlement agreement and release of liability.

- (3) Any claims for loss exceeding \$ 1,000 shall be referred to the relevant liability carrier for resolution following those procedures agreed to between the carrier and the gaming operation.
- (4) In the event that the patron will not accept a proposed settlement offered by a liability carrier, the patron will be referred to the Delaware Tribal Court for litigation of the claim which shall be filed no later than one (1) year following the alleged loss, presuming the initial thirty (30) day claims was filed as required above.
- (5) Notice of the procedures for resolving these disputes, including the name and address for the service agent for the tribe, the Tribal Gaming Commission, and any Management Group, shall be posted throughout the gaming operation.

Section 19. Appeals of Tribal Gaming Commission Decisions to Tribal Court.

(a) Any person or entity may appeal any orders, licensing denials, revocations, and suspensions, fines, or any other final decision of the Tribal Gaming Commission to the Delaware Tribal Court for a de novo review within thirty (30) days after such decision by filing a notice of appeal and a complaint with the Tribal Court and serving a copy thereof upon the Tribal Gaming Commission.

(b) In all appeals from the Tribal Gaming Commission, the Tribal Court shall give proper deference to the administrative expertise of the Commission. The Court shall not set aside, modify, or remand, any determination by the Commission unless it finds that the determination is arbitrary and capricious, unsupported by substantial evidence, or contrary to law. The Tribal Court shall issue a written decision on all appeals which decision shall be final.

Section 20. Enforcement.

(a) Personal Jurisdiction.

(1) Criminal Jurisdiction. For the purposes of any gaming-related activity:

(A) Indians. The tribe shall exercise concurrent criminal jurisdiction with the state or

federal government over tribal members and other Indians in accordance with federal law, subject to any applicable provisions of the Tribal-State Compact.

(B) Non-Indians. The state or federal government shall have exclusive criminal jurisdiction over non-Indians in accordance with federal law.

(2) Civil jurisdiction. For the purposes of any cause of action arising from gaming-related activity, the tribe shall exercise concurrent jurisdiction over both Indians and non-Indians, but exclusive jurisdiction over the tribal government, elected officials and employees while acting within the lawful scope of their official governmental duties, subject to any applicable provisions of a Tribal-State Compact.

(c) Cross-Deputization Agreement. To the extent permitted by law, the tribe and the state may enter into such cross-deputization agreements as may be necessary and proper to facilitate cooperation between tribal and state law enforcement personnel.

(d) Prohibited Acts. [Reserved]

(e) Criminal Penalties. Any person or entity who is found guilty in Tribal Court by clear and convincing evidence to have knowingly and wilfully violated a provision this Act while on tribal lands may be punished by a fine of not less than \$ 100.00 and not more than \$ 10,000.00, or may be incarcerated for a period not to exceed six (6) months.

(f) Civil Penalties. In order to coerce compliance with this Act and tribal gaming regulations, and in addition to any other civil remedies or causes of action that may be available in Tribal Court, any person or non-governmental entity refusing to comply therewith may be fined by the Tribal Gaming Commission not in excess of \$ 1,000.00, or if the relevant gaming-related activity falls within the enforcement responsibilities reserved to the Tribal Council, may be fined by the Tribal Council not in excess of \$ 5,000.00. All civil fines shall be subject to an appeal to the Tribal Court within thirty (30) days, and upon the appropriate filing following the time for appeal, may be reduced to a civil judgement for execution and collection in any tribal, state, or federal court having competent jurisdiction.

Section 21. Service of Process. All legal notices to the tribe or service of process upon the tribe shall served upon:

Chief of the Delaware Tribe of Indians
220 N.W. Virginia Street
Bartlesville, Ok. 74003

Section 22. Sovereign Immunity.

All inherent sovereign rights of the Delaware Tribe of Indians, its governmental entities, elected officials and employees while acting within the lawful scope of their official governmental duties, are hereby expressly reserved. Sovereign immunity of the tribe or any of its governmental entities, employees and elected leaders, may only be waived by express written resolution of the Tribal Council. Waivers of immunity shall not be general in nature but shall be specific and limited as to duration, grantee, transaction, and any affected property or funds. Nothing within this Act shall be construed to waive or limit the sovereign immunity of tribe or any sovereign authority of the tribe.

Section 23. Amendments.

Any amendments to this Act shall not take effect until duly submitted to the NIGC for approval.

Section 24. Conflict of Law.

To the extent that any portion of this Act, or any regulation promulgated under this Act, is contrary to federal statute or regulations, or an approved Tribal-State Compact, the same shall be deemed void.

Section 25. Effective Date.

This Act shall become effective upon the approval of the NIGC.

CERTIFICATION

The above and foregoing Delaware Indian Gaming Act was duly enacted by the Delaware Tribal Council on the 15 day of June, by a vote of 5 yes, 1 no, and 0 abstaining.


Dee Ketchum, Chief


Paula Pechonick, Tribal Council Secretary