



Remote Gaming and the Gambling Industry

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Summary

Gambling, once widely outlawed, is today a regulated, taxed activity that is legal in some form—bingo, card games, slot machines, state-run lotteries, casinos—in all but two states. State governments have the main responsibility for overseeing gambling, but Congress historically has played a significant role in shaping the industry, most recently by passing the Unlawful Internet Gambling Enforcement Act (UIGEA; P.L. 109-347) in 2006.

UIGEA, while preventing payments to illegal gambling-related businesses, does not outlaw any form of remote gaming. To the contrary, the law allows states and Indian tribes to offer remote gaming within their territory so long as certain conditions are met. Already a majority of states allow remote betting on horse racing, and a number use the web for lottery promotions. Several states are debating legislation to legalize online poker or other games. Indian tribes are using cutting-edge computer gambling technology at tribal casinos. U.S. gaming companies have created subsidiaries to focus on remote gaming and seem likely to expand rapidly if the legal issues are clarified.

While UIGEA did not outlaw remote gaming, it also did not clarify the scope of long-standing laws that the Department of Justice has used to prosecute illegal Internet gambling, such as the Wire Act, 18 U.S.C. 1084. In April 2011 the Justice Department announced it had indicted executives of three online poker websites that were located outside the United States, but accepted wagers from U.S. bettors, on charges of money laundering, fraud, and illegal gambling, citing the Wire Act and the UIGEA among other statutes. The Justice Department in August 2011 filed a civil suit accusing Full Tilt Poker, one of the targeted sites, of defrauding bettors. The cases, which remain pending, appear to have dampened U.S. betting in the for-profit online poker market, and have generated new interest in federal legislation to more precisely define what types of online gaming are legal.

During the 112th Congress, lawmakers have introduced legislation to allow, regulate, and tax online gaming—from narrow bills covering only poker, to broader bills that would allow a range of interstate online gaming. House and Senate committees have held hearings and roundtable discussions on the issue. Those in favor of allowing expanded online gaming cite potential federal revenue from taxing and registering online gambling operations, as well as the need for comprehensive regulation. Opponents question whether it is possible to have stringent regulation of online gambling, which they say holds the potential for increased fraud and money laundering. Among other issues Congress faces are the proper balance of federal and state regulation and the possible social costs of expanded gaming, including problem gambling.

Legalization of additional forms of remote gaming could pose a challenge to many existing types of gambling, from lotteries to casinos to racetracks with slot machines. The industry has been going through a difficult stretch, with receipts falling in 2009 for the first time in more than three decades, and many brick-and-mortar casinos and racetracks experiencing revenue declines. Revenues did begin to rebound in 2010, but were still below 2008 levels. Even if it leads to the growth of employment and gambling revenues at the national level, federal remote gaming legislation has the potential to affect particular locations, especially venues that cater to day trippers rather than vacationers. These effects are likely to depend upon the details of whatever legislation Congress passes and the specific actions taken by individual states in response.

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Introduction

Gambling, once widely outlawed, is today a regulated, taxed activity that is legal in some form—bingo, card games, slot machines, state-run lotteries, casinos—in all but two states.¹ State governments have the main responsibility for overseeing gambling, but Congress historically has played a significant role in shaping the industry. Congressional actions include 1960s-era anti-racketeering laws, a 1988 statute setting policy for Indian gaming, and a 1992 law banning state involvement in sports betting.²

Most recently, Congress addressed Internet gambling in a 2006 law, the Unlawful Internet Gambling Enforcement Act (UIGEA; P.L. 109-347). The law, passed partly in response to the recommendations of a congressionally created commission,³ bars gambling-related businesses from accepting checks, credit card charges, and other forms of payment for Internet gambling that is outlawed by state or federal statutes, and sets fines and penalties on banks and financial firms that process such payments. However, UIGEA does not outlaw any specific types of gambling over the Internet, and allows states and tribes to continue or initiate Internet gaming within their borders if they meet certain safeguards.

Today, states and tribes are using technological innovations, including the Internet and advances in computing and telecommunications, to transform the ways in which gambling activity takes place in the United States. In nearly 30 states, bettors can now use the Internet, television hookups, or other remote technology to place bets on horse racing.⁴ Nevada regulators recently approved a BlackBerry application for remote sports betting within the state.⁵ A private company is developing a remote poker application that would link players at Indian casinos on reservations around the country.⁶ Lotteries in Minnesota, New York, New Hampshire, North Dakota, and Virginia offer web-based subscriptions. Minnesota is considering a number of online options, including gift certificates and purchases via smart phones.⁷ In Las Vegas, hand-held mobile

¹ Lucy Dadayan and Robert B. Ward, *For the First Time A Smaller Jackpot: Trends in State Revenues from Gambling*, Nelson A. Rockefeller Institute of Government, September 21, 2009, http://www.rockinst.org/pdf/government_finance/2009-09-21-No_More_Jackpot.pdf. Gambling is not legal in Hawaii and Utah.

² CRS Report 97-619, *Internet Gambling: Overview of Federal Criminal Law*, by Charles Doyle. Laws include the 1961 Wire Act, 18 U.S.C. 1084; the Indian Gaming Regulatory Act of 1988, 25 U.S.C. 2701, and the Professional and Amateur Sports Protection Act, 26 USC 3701.

³ National Gambling Impact Study Commission, *National Gambling Impact Study Commission Final Report, Chapter 5: Internet Gambling*, 1999, <http://govinfo.library.unt.edu/ngisc/reports/5.pdf>. Citing concerns about the potential for increased underage gambling and fraud, the Commission recommended that the federal government “should prohibit, without allowing new exemptions or the expansion of existing federal exemptions to other jurisdictions, Internet gambling not already authorized within the United States or among parties in the United States and any foreign jurisdiction.”

⁴ Martin D. Owens, Jr., “Some Assembly Required: Planning for State-Licensed Online Poker in the United States,” *Gaming Law Review and Economics*, Vol. 13, No. 6, 2009, p. 455.

⁵ *Las Vegas Business Press*, “BlackBerry to the future: Gaming takes step ahead,” Jan. 20, 2011, http://www.lvbusinesspress.com/articles/2011/01/10/opinion/columnists/schwartz/iq_41216200.txt.

⁶ Atlantis Internet Group, “2011 Letter to Shareholders,” August 19, 2011, <http://www.atlantisinternetgroup.com/ATIG%20Stockholders%202010%20thru%202011%20Review.pdf>.

⁷ Patricia McQueen, “Touching the Web Through Subscription Play,” *Lottery Insights*, North American Association of State and Provincial Lotteries, September 2011, pp. 38-43, <http://viewer.zmags.com/publication/365bb328#/365bb328/44>.

devices are being used for play-by-play wagering on sporting events.⁸ Further, millions of Americans are said to visit poker websites each month, despite questions about the legality of online poker; the extent to which players' winnings are declared to federal and state tax authorities is not clear.⁹

There are many reasons why the remote gaming sector appears poised for rapid growth. Tens of millions of Americans use computers and hand-held mobile devices for shopping, news, and entertainment. The advent of software that uses global positioning technology, Internet addresses, and other data to track the age and geographic position of gamblers can make it possible for states to offer legal, remote gaming within their borders.¹⁰ Regulations to implement UIGEA appear to have made it easier for state lotteries and other legal gaming operators to receive payment via credit cards and other electronic payments.¹¹ Remote gaming offers the potential for billions of dollars in lottery receipts and gambling tax revenues—a powerful draw for legislators in financially stressed states. Some analysts have observed that the expansion of legal gambling in the United States began during the Great Depression, as states looked to stimulate economic activity and help charitable organizations, and see parallels to the current situation.¹²

However, while UIGEA included exceptions for intrastate online betting, it did not clarify the scope of long-standing laws that the Department of Justice has used to prosecute illegal Internet gambling, such as the Wire Act, 18 U.S.C. 1084. In mid-April 2011 the Justice Department indicted executives of three online poker websites, which were located outside the United States but accepted wagers from U.S. bettors, on charges of money laundering, fraud, and illegal gambling, citing the Wire Act and the UIGEA among other statutes. The Justice Department in August 2011 filed a civil suit accusing Full Tilt Poker, one of the affected sites, of defrauding bettors. The lawsuits, which remain pending, appear to have dampened U.S. betting in the for-profit online poker market, and have generated new interest in federal legislation that explicitly defines what types of online gaming are legal.

Issues before Congress include the adequacy of UIGEA to meet its stated goals of addressing “a growing cause of debt collection problems for insured depository institutions and the consumer credit industry” and creating “new mechanisms for enforcing gambling laws on the Internet”;¹³ the desirability of new federal legislation to legalize and tax interstate remote gaming; and the value of a greater federal role in regulation. During the 112th Congress, lawmakers have introduced a range of legislation to allow, regulate, and tax online gaming—from narrow bills allowing only poker, to broader measures that would legalize a range of interstate online gaming. The measures are being debated against the background of widely divergent state policies to promote or discourage various forms of gambling and to address problem gambling. Whatever action Congress may choose to take with respect to remote gaming could have significant

⁸ Michael Kaplan, “The Big Score,” *Wired*, November, 2010.

⁹ comScore, “comScore Media Metrix Ranks Top 50 U.S. Web Properties for September 2010,” Press Release, October 21, 2010, [http://comscore.com/Press_Events/Press_Releases/2010/10/comScore_Media_Metrix_Ranks_Top_50_U.S._Web_Properties_for_September_2010/\(language\)/eng-US](http://comscore.com/Press_Events/Press_Releases/2010/10/comScore_Media_Metrix_Ranks_Top_50_U.S._Web_Properties_for_September_2010/(language)/eng-US).

¹⁰ UIGEA allows online, intrastate gaming (or gaming that links tribal gaming establishments) so long as there are safeguards to verify the geographic location of gamers and to ensure that minors do not wager.

¹¹ Nelson I. Rose, “The New UIGEA Regulations: Opportunities for Operators,” *Gambling and the Law*, June 1, 2010, <http://www.gamblingandthelaw.com/articles/261-the-new-uigea-regulations-opportunities-for-operators.html>.

¹² Roger Dunstan, *Gambling in California*, California Research Bureau, 1997, p. II-7, <http://www.library.ca.gov/crb/97/03/97003a.pdf>.

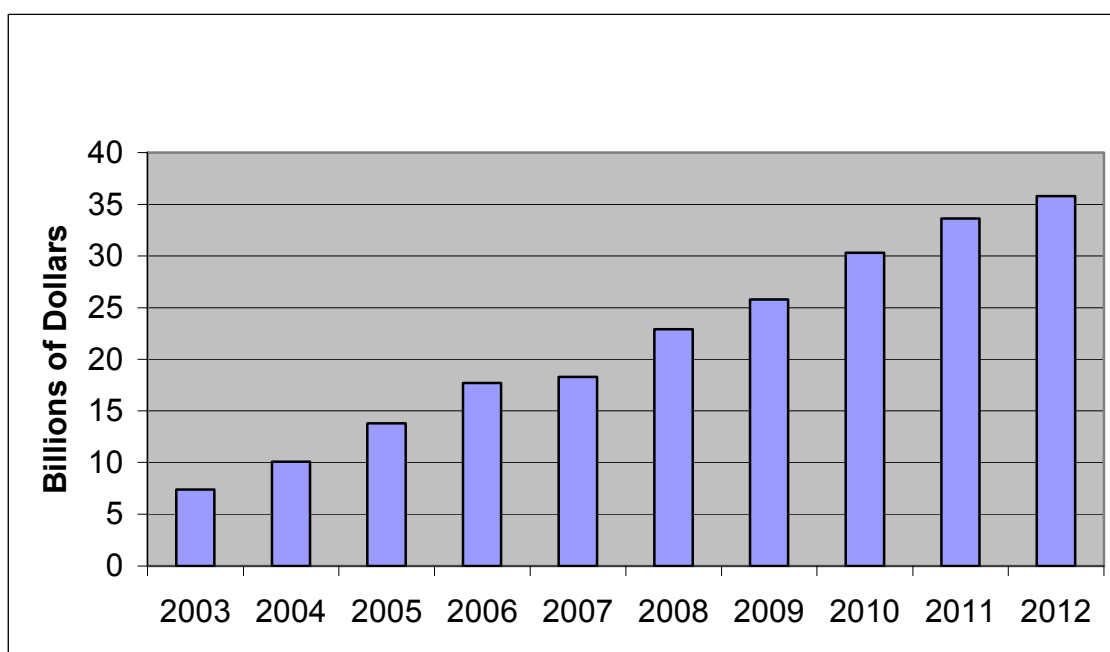
¹³ From §5361, congressional findings and purpose of UIGEA.

competitive effects on lotteries, casinos, racetracks, and other legal gambling operations, and on the receipts of certain state governments that rely heavily on revenue from gambling.

The Rise of Remote Gaming

Remote gaming began to develop in the 1980s and experienced broad expansion with the increased availability of Internet access in the 1990s. According to private estimates, global revenue from online, television, and mobile gambling is predicted to be in the range of \$35.8 billion by 2012, representing an approximately 600% increase over 10 years.¹⁴ (See **Figure 1**.)

Figure 1. Global Internet Gaming Revenues



Source: H2Gambling Capital, May 2010 Presentation to Investors. The years 2011 and 2012 are forecasts.

Congress has been concerned about Internet gambling since the late 1990s. The 1999 report by the National Gambling Impact Study Commission estimated that in 1998, 14.5 million gamblers spent \$651 million on hundreds of online gambling websites, here and abroad.¹⁵ Early on, sports betting was the predominant form of Internet gambling,¹⁶ as electronic casino games and online poker were slower to develop. The commission's report expressed concern about underage gaming and potential fraud, and recommended prohibiting additional Internet gaming.

¹⁴ H2Gambling Capital Presentation to Investors, May 2010.

¹⁵ *National Gambling Impact Study Commission Final Report*, Chapter 5. Internet Gambling, p. 5-1, <http://govinfo.library.unt.edu/ngisc/reports/5.pdf>.

¹⁶ David O. Stewart, *An Analysis of Internet Gambling and its Policy Implications*, American Gaming Association, p. 3, http://www.americangaming.org/assets/files/studies/wpaper_internet_0531.pdf.

As online gaming grew, state attorneys general and the Department of Justice moved to shut down or halt payments to selected Internet sites. Federal officials acted under a series of 1960s statutes, including the Wire Act, 18 U.S.C. 1084, which makes it a federal crime to use the telephone or telecommunications to conduct illegal gambling. In one of the best-known cases, Jay Cohen, a co-operator of the Antigua-based World Sports Exchange, was arrested in 1998 and charged with violating the Wire Act for advertising his services in the United States and accepting wagers from bettors in states where such gaming was illegal. Cohen was sentenced to 21 months in prison and fined \$5,000.¹⁷ The U.S. Supreme Court declined to hear his appeal.

The Department of Justice in 2003 warned media outlets that ran advertisements for gambling websites that they could be aiding illegal activities. Microsoft, Google, and Yahoo agreed in 2007 to pay a combined total of \$31.5 million to resolve Department of Justice claims that they were promoting illegal gambling by running advertisements for certain websites.¹⁸

Congress addressed Internet gambling in UIGEA, barring gambling-related businesses from accepting checks, credit card charges, electronic transfers, and similar payments for Internet gambling that is outlawed by state or federal statutes. Violators are subject to criminal fines of up to \$250,000 (or \$500,000 if the defendant is an organization), imprisonment of up to five years, or both. After considerable delay, the Federal Reserve Board and the Department of the Treasury in late 2009 issued final rules to implement the law. Those rules took effect in June 2010.¹⁹

There is evidence that UIGEA initially damped the Internet gaming market. Shortly after the law was passed, some major gambling software companies announced that their products could no longer be used to provide gambling services to U.S. residents,²⁰ and publicly traded online gaming companies suffered losses in overseas stock markets due to concerns about the impact of the legislation and the loss of U.S. clients.²¹ London-based consulting firm H2 Gambling Capital

¹⁷ United States of America v. Jay Cohen, 260 F.3d 68 (2nd Cir., 2001).

¹⁸ Grant Gross, "Microsoft, Google, Yahoo Settle Gambling Charges," *IDG News*, December 19, 2007, http://www.pcworld.com/article/140678/microsoft_google_yahoo_settle_gambling_charges.html.

¹⁹ CRS Report RS22749, *Unlawful Internet Gambling Enforcement Act (UIGEA) and Its Implementing Regulations*, by Brian T. Yeh and Charles Doyle. The delay was due to concerns of financial firms and banks that proposed rules were too broad and would affect non-gambling payments, as well as to the sheer complexity of both online payments and state and federal laws governing gambling. UIGEA's definition of "unlawful Internet gambling" does not specify what gambling activity is illegal; rather, the statute says legality is determined by underlying federal or state gambling laws. Adding to legal uncertainty, the Department of Justice contends that the 1961 Wire Act, designed to limit wagering by telephone, applies to the Internet and gives it power to prohibit certain wagering. The Federal Reserve and the Department of the Treasury, in final regulations to implement UIGEA, said they considered making a list of Internet gambling activities outlawed by state and federal law, but chose not to on the grounds that "Creating such a list would require the Agencies to formally interpret those laws that are written and enforced by other entities, such as State legislatures and law enforcement agencies. Accordingly, interpretations by the Agencies in these areas may not be determinative in defining the Act's legal coverage and could set up conflicts or confusion with interpretations by the entities that actually enforce those laws." (Federal Reserve System 12 CFR Part 233, Regulation GG; Docket No. R-1298.) The House Financial Services Committee in its report on H.R. 2267 (H.Rept. 111-656, Part I) notes that the UIGEA regulations "like the underlying legislation, fail to define the term unlawful Internet gambling, leaving it to each financial institution to reconcile conflicting state and federal laws, court decisions and inconsistent Department of Justice interpretations, when determining whether to process a transaction. Furthermore, some of the information needed to make this determination would generally be unavailable to banks because customers or financial institutions in foreign jurisdictions will likely be unwilling or unable to provide it."

²⁰ Robert J. Williams, coordinator, Alberta Gaming Research Institute, University of Lethbridge, *Internet Gambling: A Comprehensive Review and Synthesis of the Literature*, August 31, 2007, <http://www.uleth.ca/dspace/bitstream/10133/432/1/2007-InternetReview-OPGRC.pdf>.

²¹ Ian Swanson, "Internet Gambling Ban Stung Foreign Bookies," *The Hill*, June 11, 2008.

Consultants (H2G) estimated that U.S. wagering on international Internet sites, a \$6 billion business in 2006, declined to \$4 billion in 2007 after passage of UIGEA. The firm said business began to rebound in 2010, and will continue to grow in 2011, but more slowly than expected due to the Justice Department indictments of online poker websites, the Japanese earthquakes, which disrupted a major market, and delays in the launch of products in some international regulated markets.²² An October 2010 survey by the Annenberg Public Policy Center at the University of Pennsylvania found that 16% of U.S. college-age males reported visiting an Internet gambling site at least once a month in 2010, compared to 4.4% in 2008.²³ (The percentage saying they visited such websites more frequently, once a week, did not rise.)

But on what online poker players have dubbed “Black Friday,” the U.S. Attorney for the Southern District of New York on April 15, 2011, indicted the founders of three major Internet poker websites—Poker Stars, Full Tilt Poker, and Absolute Poker/Ultimate Bet—for allegedly using phony corporations and websites to disguise illegal payments to their operations.²⁴ The Justice Department charged that the companies, which were located overseas but took bets from U.S. players, violated UIGEA, the Wire Act, and other federal laws. In September 2011 the Justice Department filed a civil suit against Full Tilt Poker for allegedly defrauding bettors.²⁵

Prior to the April indictment, Full Tilt Poker and PokerStars had an estimated 60% of the global Internet poker market. While U.S. bettors no longer have access to those sites, an estimated 300 offshore gambling operators continue to offer services in the United States through websites, according to estimates for the U.S. gaming industry.²⁶ Since the indictments were handed down, traffic at other non-U.S.-based poker websites appears to have increased, but the overall level of online poker receipts has declined, according to an industry association.²⁷

Even though legal questions remain, there are a number of indications that companies and states are poised to expand remote gaming as part of a larger trend toward online entertainment and communications. Nearly two-thirds of U.S. households have access to high-speed broadband,²⁸ and millions more have mobile devices and cell phones that could be used for gambling. In the near future, interactive television is expected to become widely available, offering more potential

²² H2 Gambling Capital Consultants, May 2010 Presentation to Investors and H2 Gambling Press Release, “Post Q2/FullTilt Closure H2 eGaming Dataset Now Available,” July 8, 2011, <http://www.h2gc.com/news.php?article=Post+Q2%2FFullTilt+Closure+H2+eGaming+Dataset+Now+Available>.

²³ The Annenberg Public Policy Center of the University of Pennsylvania, “Internet Gambling Grows Among Male Youth Ages 18 to 22; Gambling Also Increases in High School Age Female Youth, According to National Annenberg Survey of Youth,” Press Release, October 14, 2010, <http://www.annenbergpublicpolicycenter.org/NewsDetails.aspx?myId=395>.

²⁴ U.S. Department of Justice, “Manhattan U.S. Attorney Charges Principals of Three Largest Internet Poker Companies with Bank Fraud, Illegal Gambling Offenses and Laundering Billions in Illegal Gambling Proceeds,” April 15, 2011, <http://www.justice.gov/usao/nys/pressreleases/April11/scheinbergetalindictmentpr.pdf>. Indictment is available at <http://www.scribd.com/doc/53107543/Indictment-DOJ-vs-Scheinberg-Bitar-Tom-et-al>.

²⁵ Alexandra Berzon, “U.S. Alleges Poker Site Stacked Deck,” *Wall Street Journal*, September 21, 2011, <http://online.wsj.com/article/SB10001424053111904106704576582741398633386.html>.

²⁶ David O. Stewart, Ropes & Gray, for the American Gaming Association, *Online Gaming Five Years After UIGEA*, May 2011, p. 8, http://www.americangaming.org/files/aga/uploads/docs/final_online_gambling_white_paper_5-18-11.pdf.

²⁷ Ibid.

²⁸ U.S. Department of Commerce, National Telecommunications and Information Administration, *Digital Nation: 21st Century America’s Progress Toward Universal Broadband Internet Access*, February 2010, p. 4, http://www.ntia.doc.gov/reports/2010/NTIA_internet_use_report_Feb2010.pdf.

platforms for betting. Nelson I. Rose, a professor at the Whittier Law School, argues that UIGEA and the regulations to implement it may have paved the way for expansion of remote gaming:

By issuing these [regulations] federal agencies have now made it clear that some forms of gambling on the Internet are legal in the United States. This creates opportunities for existing or expanding legal state gaming, and for bolstering faltering state budgets. But, mostly it opens some doors for creative Internet gaming operators ... The result will be a major expansion of Internet gambling. The major obstacles facing legal online gaming are the customers' fear that they might be breaking the law and their difficulty in getting money to sites they trust. Individual patrons will now be able to use their credit cards to make bets. And they will know that they are not breaking the law and the gaming operation is honest when the gambling site is operated by a state lottery or licensed by a state racing or gaming board, or has a reasoned legal opinion.²⁹

Many participants in the existing gambling industry, from Indian tribes to state lottery commissions to casino operators, have been exploring ways to increase their involvement in remote gaming. In 2009, Harrah's Entertainment, which owns the rights to the World Series of Poker, formed Harrah's Interactive Entertainment to handle interactive and online operations.³⁰ In November 2010, Goodson Gaming and Foxwoods Development Company announced a joint venture, Velocity Gaming, to focus on legal online gaming, lottery, and related ventures worldwide.³¹ Atlantis Internet Group in September 2010 signed a licensing agreement with Cake Gaming of Nevada to create a system that could remotely link poker players in tribal casinos in more than 30 states.³² Gambling equipment manufacturer International Game Technology, which created IGT Interactive in 2010 to focus on mobile and Internet gaming opportunities, is embracing online gambling as a core part of its business.³³

Companies not involved in the traditional gaming industry also have set their sights on online gaming. Social networking sites such as Facebook provide online venues for not-for-cash gaming such as bingo and poker.³⁴ Another form of gaming is called Internet sweepstakes cafes: consumers buy phone cards that, as a bonus, include sweepstakes entries and then use the cards to play games that resemble slot machines.³⁵ Wall Street brokerage firm Cantor Fitzgerald has moved into the gaming sector, developing a mobile device that can be used for sports betting

²⁹ Nelson I. Rose, "The New UIGEA Regulations: Opportunities for Operators," *Gambling and the Law*, June 1, 2010, <http://www.gamblingandthelaw.com/articles/261-the-new-uigea-regulations-opportunities-for-operators.html>.

³⁰ *Marketwire*, "Harrah's Entertainment Forms Harrah's Interactive Entertainment," May 22, 2009, <http://www.marketwire.com/press-release/Harrahs-Entertainment-Forms-Harrahs-Interactive-Entertainment-994127.htm>.

³¹ *Marketwire*, "Goodson Gaming and Foxwoods Development Company Form New Joint Venture," Press Release, November 1, 2010, <http://www.marketwire.com/press-release/Goodson-Gaming-and-Foxwoods-Development-Company-Form-New-Joint-Venture-1344376.htm>.

³² *Marketwire*, "Atlantis Internet Group Signs Agreement to Supply Legal Online Poker Nationwide to Indian Casinos," September 8, 2010.

³³ *iGamingBusiness*, "Introducing IGT Interactive," Issue 65, November/December 2010, p. 65, http://media.igt.com/marketing/PressKits/NewsRelease_iGaming%20Business%20Gideon%20Bierer%20Q&A_Nov&Dec%202010_11_11_2010.pdf.

³⁴ Mark Summerfield and Wade Loo, *Online Gaming: A Gamble or a Sure Bet?*, KPMG International, p. 6, <http://www.kpmg.com/Global/en/IssuesAndInsights/ArticlesPublications/Documents/Online-gaming-A-gamble-or-a-sure-bet.pdf>.

³⁵ Susan Saulny, "'Sweepstakes' Cafes Thrive, Despite Police Misgivings," *New York Times*, May 6, 2010, <http://www.nytimes.com/2010/05/07/us/07gambling.html>; Jorge Valencia, "Internet Cafe's Legality at Question," *The Roanoke Times*, September 12, 2010, <http://www.roanoke.com/news/roanoke/wb/260116>.

inside Las Vegas casinos. The product goes beyond general bets on the results of a contest, allowing consumers to wager during a live game on such things as the outcome of a field goal kick or an at-bat.³⁶ The Nevada Gaming Control Board has approved a BlackBerry application that enables people to bet on sports via the mobile devices within the state.³⁷

Because of concern about the legality of some remote gaming activities in the United States, U.S. companies are looking to certain foreign markets where Internet gaming is legal. Many of the top Internet gambling sites are licensed in the European Union (EU), especially in the United Kingdom, Gibraltar, Malta, Ireland, and Austria.³⁸ While noting the dearth of accurate data, the EU in a 2009 report called the sector “economically significant,” estimating that it employed more than 10,000 people. Betfair, a major online gambling firm, is listed on the London Stock Exchange.

Regulation of Remote Gaming

One major question in regard to UIGEA and the other recent legislative initiatives is whether it is possible to construct an effective system to regulate gaming that occurs outside identified physical locations. Enforcement of remote gaming laws presents logistical difficulties, including monitoring myriad websites to make sure that minors do not gamble; verifying the geographic location of gamblers on sites that are limited to certain states or territories; and auditing websites and payment systems. Consumers may experience difficulty resolving disputes with online operators whose physical location may be in countries with weak law enforcement or extreme banking secrecy.

Final federal rules to implement UIGEA required financial firms to engage in due diligence to ensure that businesses engaged in Internet gambling furnish proof of legal authority to operate the business and that state or tribal gambling ordinances include requirements verifying the age and geographic location of clients.³⁹ Nonetheless, the Department of Justice, the Department of State and state attorneys general have raised questions about the potential for fraud and money laundering on Internet gambling sites. In a November 2009 letter to Representative Spencer Bachus, Shawn Henry, Assistant Director of the FBI Cyber Division, cautioned that Internet poker could be used to “transfer ill gotten gains” via the creation of private tournaments on online poker programs. He cast doubt on the ability of the gaming industry to accurately verify the age of gamblers or their geographic location and noted that Internet addresses could be manipulated to provide misleading information about location.⁴⁰

³⁶ Susanne Craig, “Taking Risks, Making Odds,” *New York Times*, December 24, 2010, <http://dealbook.nytimes.com/2010/12/24/taking-risks-making-odds>.

³⁷ PR Newswire, “American Wagering Launches Legal Sports Betting Application for BlackBerry® Users in Nevada,” Press Release, August 31, 2010, <http://www.prnewswire.com/news-releases/american-wagering-launches-legal-sports-betting-application-for-blackberry-users-in-nevada-101936788.html>.

³⁸ European Union Staff Working Paper, *Report to the Trade Barriers Regulation Committee*, June, 2009, http://trade.ec.europa.eu/doclib/docs/2009/june/tradoc_143405.pdf.

³⁹ American Bankers Association, “UIGEA Final Rule, Frequently Asked Questions, Fact Sheet,” <http://www.aba.com/NR/rdonlyres/62A8C8BC-70E9-4D97-9568-53540F3045B5/57544/UIGEAFAQs.pdf>.

⁴⁰ Rep. Spencer Bachus, “Enforce Ban on Illegal Internet Gambling Congressman Bachus Says,” Press Release containing link to FBI letter, December 3, 2009, http://bachus.house.gov/index.php?option=com_content&view=article&id=912:enforce-ban-on-illegal-internet-gambling-congressman-bachus-says&catid=40:2009-press-releases&Itemid=132.

Soon after regulations to implement UIGEA took effect in June 2010, the Department of Justice announced several high-profile settlements with online gambling operations. In September 2010, the Department of Justice entered into a non-prosecution agreement with British-based Sportingbet PLC, which operates betting websites in 21 countries. As part of the settlement, Sportingbet agreed to pay \$33 million and publicly admit that it created payment methods designed to hide its customers' transactions from U.S. credit card firms, which did not allow their cards to be used for Internet gambling.⁴¹

The Oregon Racing Commission had addressed some of the regulatory issues in its procedures for licensing firms that provide Advanced Deposit Wagering (ADW) on horse races. To offer their services in Oregon, such firms must be licensed by the commission. ADW firms must provide

- financial information including resources and detailed projections of revenue, expenditures, and cash flows by month;
- a list of all personnel;
- a segregated account with a federally insured bank to hold the funds of its account holders;
- a \$50,000 security fee;
- proof of “an operational presence within the State of Oregon,” such as a call center or a subcontract with an existing call center.

The Oregon Racing Commission conducts on-site audits of licensed companies, whether or not they are physically headquartered in the state.⁴² Some ADW firms ran into difficulties after final regulations to implement UIGEA took effect. Several large credit card issuers initially blocked payment to the companies, worried that they might be handling payments to illegal gambling operations.

The Remote Gambling Association (RGA), a trade association of licensed gambling operators in the United Kingdom and Europe, has worked with regulators to develop industry standards. In July 2010 the RGA issued anti-money laundering guidelines for the Internet casino industry, designed to supplement existing laws and regulations.⁴³ The guidelines recommend third-party verification of data, including use of software or approved third parties for “face to face” verification of customer documents; validating a customer’s address; and ensuring that transactions are carried out through recognized credit institutions.

⁴¹ Sportingbet, “Non-prosecution agreement concluded with U.S. authorities,” Press Release, September 21, 2010, <http://www.sportingbetplc.com/21Sep2010nonprosecution.aspx>.

⁴² Oregon Racing Commission, http://areweb.sos.state.or.us/rules/OARS_400/OAR_462/462_220.html. Some ADW firms have run into difficulties since final regulations to implement UIGEA took effect. Several large credit card issuers initially blocked payment to the companies, worried that they might be handling payments to illegal gambling operations. The ADW companies have been working to resolve the issue.

⁴³ Remote Gambling Association, “Anti-Money Laundering: Good Practice Guidelines for the Online Gambling Industry,” July 14, 2010, http://www.rga.eu.com/data/files/rga_aml_guidance_2010.pdf.

A Short History of Legal U.S. Gambling and Lotteries

Government-supported gambling has been part of America's development since the earliest days, starting with a 1612 London lottery to raise money for the Virginia Colony.⁴⁴ While gambling restrictions were imposed in some of the early colonies, the Continental Congress used lotteries to raise funds for forces during the Revolutionary War. Lotteries were used to finance public works projects and establish universities, including Harvard, Yale, Columbia, Dartmouth, and Princeton.⁴⁵ By 1832, there were more than 400 lotteries in eight states.⁴⁶ Annual ticket sales came to 3% of national income and were several times larger than the federal budget.⁴⁷

Public opinion began to sour due to high-profile scandals and graft in lotteries, and by the time of the Civil War legal lotteries basically had been halted.⁴⁸ Some gambling and gamblers moved west with the Gold Rush. During Reconstruction, Louisiana created a special lottery to help rebuild the state, drawing players from around the nation. The Louisiana Lottery continued for years, despite evidence of mismanagement and theft. Congress intervened, passing legislation in 1876 banning the use of mails for lottery advertising. Congress approved a second bill in 1890 to ban the use of mail to sell lottery tickets, and in 1895 banned the transport of lottery tickets in interstate commerce.

By 1910, U.S. legal gambling, with the exception of some horse racing, was moribund. State-sanctioned gaming began a comeback during the Great Depression, as a means to raise money for charity and government services. States began to legalize bingo games in the 1930s, and Nevada legalized casino gambling in 1931.

Illegal gambling also proliferated, leading Congress in 1950 to investigate organized crime and gambling casinos. In 1951 lawmakers passed the Johnson Act, which barred transport of gambling machines in interstate commerce unless they were being moved to a legal jurisdiction. A second round of congressional investigations (from 1955 to 1960) resulted in a series of laws to combat gambling and racketeering.

In 1964 New Hampshire became the first state to reinstate a lottery. There were seven state lotteries by 1973, and 43 by 2006.⁴⁹ In 1976, New Jersey voted to allow casinos in Atlantic City. In 1979, Indian gambling began on the Seminole reservation in Florida.⁵⁰ In 1987 the Supreme Court upheld the right of Indian tribes to offer unregulated gambling on sovereign lands, so long as they did not violate state criminal laws. In response, Congress in 1988 passed the Indian Gaming Regulatory Act (IGRA) providing for Indian gambling to be regulated under compacts negotiated between state governments and tribes. In 1992, Congress passed legislation limiting states' ability to offer sports gambling. After viewing the success of Indian gaming, states began approving non-Indian casinos, riverboat gambling, and racinos, which are racetracks with other forms of gambling such as video slot machines. By 1994, casinos were authorized or operating in 23 states, and Tunica County, Mississippi, with an expansion of riverboat gambling, had moved from one of the poorest counties in the country to one of the fastest-growing.⁵¹

⁴⁴ Unless otherwise noted, many of the dates come from the Chronology of Gambling Events included in: William N. Thompson, *Gambling in America: An Encyclopedia of History, Issues and Society* (Santa Barbara, CA: ABC-CLIO, 2001).

⁴⁵ Roger Dunstan, California Research Bureau, *Gambling in California*, CRB-97-003, January 1997, <http://www.library.ca.gov/crb/97/03/crb97003.html#toc>.

⁴⁶ Rex M. Rogers, *Gambling: Don't Bet on It*, (Grand Rapids, MI: Kregel Publications, 2005), p. 31.

⁴⁷ William N. Thompson, *Gambling in America: An Encyclopedia of History, Issues and Society*, p. 227.

⁴⁸ Roger Dunstan, California Research Bureau, *Gambling in California*, CRB-97-003, January 1997, <http://www.library.ca.gov/crb/97/03/crb97003.html#toc>.

⁴⁹ Charles Clotfelter and Philip Cook, Duke University, "Ends and Means in State Lotteries: The Importance of a Good Cause," Presentation at Gambling and the American Moral Landscape Conference, Boston College, October 25, 2007. Numbers are adjusted for inflation based on 2006 data.

⁵⁰ 500 Nations, "Brief History of Indian Casinos," http://500nations.com/news/Indian_Casinos/history.asp.

⁵¹ Adam M. Zaretsky, "Laissez le Bon Temps Roulette: Letting the Good Times Roll on Riverboat Casinos," *The Regional Economist*, Federal Reserve Bank of St. Louis, July 1994.

The European Parliament in a 2008 report on online gambling said it found “limited hard evidence of gambling operators defrauding consumers.” The fraud it had seen included sites collecting money and then shutting down; refusing to pay; selling gamblers’ personal details to other websites; and installing viruses on users’ computers.⁵²

The Competitive Impact of Remote Gaming

Industry officials have raised concerns that legalization of additional forms of remote gaming could pose a challenge to many existing forms of gambling. The existing industry, taking such forms as horse racing, card rooms, lotteries, charitable games, and casino gaming, appears to have annual revenue in the range of \$90 billion (**Table 1**). The vast majority of this amount is collected by casinos and state-run lotteries. Annual U.S. gross gambling revenues rose about 46% from 2000 through 2009, according to the American Gaming Association and Christiansen Capital Advisors.⁵³ The revenue growth is a sign that gambling, once barred in much of the country on moral grounds or to combat graft, has lost much of its stigma and become a government-sanctioned form of entertainment and revenue.

Table 1. U.S. Gaming Revenue by Industry: 2008 to 2009

In Millions of Dollars

Industry	2008	2009
TOTAL	\$91,980	\$89,554
Card Rooms	\$1,282	\$1,232
Commercial Casinos	\$33,031	\$31,379
Charitable Games/Bingo	\$2,131	\$2,067
Indian Casinos	\$26,739	\$26,482
Legal Bookmaking	\$136	\$136
Lottery—Traditional	\$21,133	\$20,874
Lottery—Video Lottery Terminal	\$4,387	\$4,556
Pari-mutuel wagering	\$3,141	\$2,827

Source: Christiansen Capital Advisors LLC. Prepared for the American Gaming Association (AGA) 2008. Pari-mutuel—Association of Racing Commissioners International, CCA, estimates where noted. Lottery—La Fleur’s World Lottery Almanac 2010. Charity and Lotteries—State Regulatory Commissions, estimates where noted.

Notes: Total includes other industries not noted. Figures for pari-mutuel wagering, charitable games, commercial casinos, and card rooms are estimates. Figures refer to gross gaming revenues, which is sales minus the amount paid out to gamblers.

⁵² European Parliament, Policy Department, Economic and Scientific Policy, *Online Gambling: Focusing on Integrity and a Code of Conduct for Gambling*, November 2008, p. 7, <http://www.europarl.europa.eu/activities/committees/studies/download.do?file=23191>.

⁵³ American Gaming Association, Fact Sheet: “Gaming Revenue 10-Year Trends,” http://www.americangaming.org/Industry/factsheets/statistics_detail.cfv?id=8, in addition to supplemental Christiansen Capital Advisors data in **Table 1**.

The gambling industry hit a rough patch in 2009, with overall revenue collections from lotteries, casinos, and racinos falling for the first time in at least three decades.⁵⁴ There are signs that the industry is reviving. State gambling revenues rose by 2% in 2010 compared to 2009, though they remained below the 2008 level.⁵⁵ In addition to poor economic conditions, many brick-and-mortar casinos and racetracks face increased competition from the growing number of casinos, racinos (racetracks with slot machines, video lottery terminals, table games, or other gambling in addition to horse or dog racing), and other gambling businesses in certain areas of the country, particularly the Mid-Atlantic.

Lotteries

Lotteries are generally defined as games of chance, with the winner chosen via the drawing of lots. Since New Hampshire reinstated the modern lottery in 1964, state offerings have moved from rudimentary games with preprinted tickets and weekly or monthly drawings to instant scratch-off tickets, lotto games (where players pick their own combination of numbers) and, in a growing number of states, video lottery terminals that offer casino-type games such as blackjack and poker or look like spinning slot machines.⁵⁶

States have banded together to offer lottery games such as Powerball across state lines, working through the Multi-State Lottery Association and the Mega Millions consortium.⁵⁷ (The two lottery groups in 2010 agreed to cross-sell tickets.) Such mega-games allow states to offer jackpots that can be in the millions of dollars, increasing demand.

Lottery gross revenues were more than \$25 billion in 2009 (**Table 1**). State lottery revenues rose about 48%, adjusted for inflation, from 1993 to 2007, with much of the growth driven by the increased number of video lottery terminals.⁵⁸ As revenue growth has become less robust, state lottery administrators have experimented with strategies to improve sales and returns, such as online sales. Some states have debated privatizing their lotteries; Illinois was the first state to move in that direction, in the expectation that a private operator might be better able to boost sales while the state would benefit from an up-front payment.⁵⁹ But privatization also raises questions about the extent to which states should go to encourage gambling.⁶⁰

⁵⁴ Lucy Dadayan and Robert B. Ward, *For the First Time, a Smaller Jackpot*, Nelson A. Rockefeller Institute of Government, September 21, 2009, p. 3, http://www.rockinst.org/pdf/government_finance/2009-09-21-No_More_Jackpot.pdf.

⁵⁵ Lucy Dadayan and Robert Ward, *Back in the Black*, The Nelson A. Rockefeller Institute of Government, June 23, 2011, http://www.rockinst.org/pdf/government_finance/2011-06-23-Back_in_the_Black.pdf.

⁵⁶ According to the North American Association of State and Provincial Lotteries, “Unlike slot machines, video lottery terminals do not dispense money. Rather, a winning player is provided a ticket that is redeemed by the retailer for prizes.”

⁵⁷ Multi-State Lottery Association, <http://www.musl.com>; Mega Millions, <http://www.megamillions.com>.

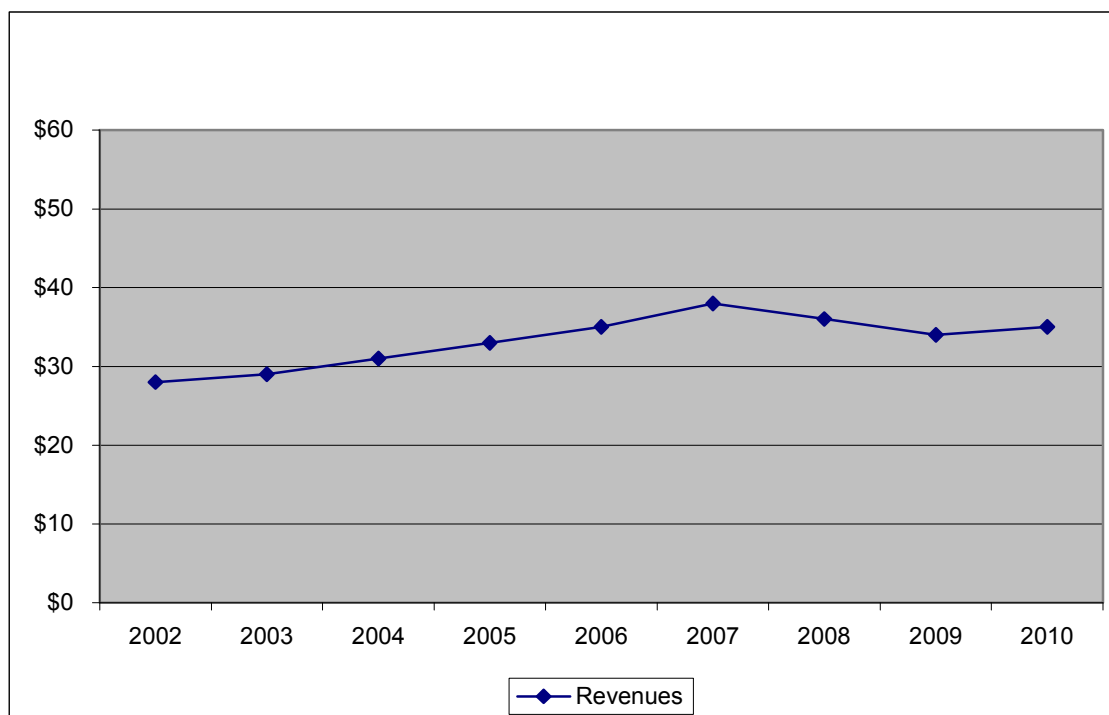
⁵⁸ Lucy Dadayan and Robert B. Ward, *For the First Time, a Smaller Jackpot*, Nelson A. Rockefeller Institute of Government, September 21, 2009, p. 9. There are several measures of lottery returns: total sales; profits, which are sales minus payouts and all other expenses; and gross revenues, which are sales minus payouts to players. Government-sponsored lotteries in 44 states, the District of Columbia and Puerto Rico generated about \$58 billion in total sales in fiscal 2009, and about \$17.6 billion in profits, according to the North American Association of State and Provincial Lotteries. Those numbers are a decline from 2008, when lotteries generated more than \$60 billion in sales and nearly \$18 billion in profits. Real, year-over-year growth in lottery collections has slowed to about 3.2 percent in 2007, from 5.4 percent in 2005.

⁵⁹ Illinois Department of Revenue, “Recommendation of a Private Manager for the Illinois State Lottery,” September (continued...)

Commercial Casinos

According to the American Gaming Association (AGA), in 2010 there were 438 land- or riverboat-based commercial casinos in the United States, along with 45 racinos and 510 card rooms.⁶¹ Commercial casinos, owned and managed by private companies without the involvement of Indian tribes, were in operation in 15 states. Racinos were operating in a dozen states. Commercial casino operators had gross revenues of \$34.6 billion in 2010 and directly employed more than 340,000 people, according to the AGA.⁶² (See **Figure 2**.)

Figure 2. U.S. Commercial Casino Revenues
Annual Gambling Revenues at Commercial Casinos



Source: American Gaming Association, State Regulatory Agencies.

(...continued)

10, 2010; James Kilsby, "Pennsylvania, Delaware Deal Growth For Shuffle Master," *GamblingCompliance Ltd.*, September 10, 2010.

⁶⁰ Jonathan Walters, "Turning the Lottery Loose," *Governing*, August 31, 2008, <http://www.governing.com/topics/transportation-infrastructure/Turning-the-Lottery-Loose.html>.

⁶¹ American Gaming Association, *2011 State of the States*, p. 4, <http://www.americangaming.org/files/aga/uploads/docs/sos/aga-sos-2011.pdf>. The AGA defines a commercial casino as a private-sector establishment (i.e., nongovernmental)—whether land-based, riverboat, dockside, limited-stakes or racetrack casino—that offers games of chance and is regulated and taxed by the state where it is located. While Indian casinos are included in the AGA count to total casinos, racinos, and card rooms, the \$34.6 billion industry revenue total does not include Indian gaming. Some video lottery terminal receipts are also counted in state lottery revenue totals.

⁶² American Gaming Association, *2011 State of the States*. AGA casino revenue and employment figures do not include Indian gaming establishments.

Commercial casinos are regulated by the states, which generally mandate background checks for key employees, specify the level of payouts to players, and require audits and inspections. Many large casino companies, such as MGM Resorts International, Wynn Resorts, and Las Vegas Sands Corp., are publicly traded, which also makes them subject to Securities and Exchange Commission financial reporting requirements.

Table 2. Top U.S. Casino Markets, by Annual Revenue

Numbers Are for Calendar Year 2010

1	Las Vegas Strip, NV	\$5.777 billion
2	Atlantic City, NJ	\$3.573 billion
3	Chicagoland, IN/IL	\$2.057 billion
4	Connecticut	\$1.385 billion
5	Detroit, MI	\$1.378 billion
6	St. Louis, MO/IL	\$1.086 billion
7	Tunica/Lula, MS	\$926.92 million
8	Biloxi, MS	\$830.86 million
9	Philadelphia, PA	\$816.31 million
10	Shreveport, LA	\$764.92 million
11	Boulder Strip, NV	\$757.03 million
12	Kansas City, MO (includes St. Joseph)	\$753.44 million
13	Reno/Sparks, NV	\$684.05 million
14	Lawrenceburg/Rising Sun/Belterra, IN	\$676.17 million
15	New Orleans, LA	\$640.94 million
16	Lake Charles, LA	\$639.13 million
17	Black Hawk, CO	\$625.17 million
18	Yonkers, NY	\$582.23 million
19	Pittsburgh/Meadow Lands, PA	\$531.80 million
20	Downtown Las Vegas, NV	\$493.39 million

Source: American Gaming Association and the Innovation Group.

Notes: Gross revenue is earnings after payouts to gamblers but before taxes, salaries, and expenses are paid.

Slot machines account for 70% of revenue on casino floors, according to the AGA. The machines are increasingly sophisticated, using electronic screens that display a variety of games, and offering combined jackpots that can run into the millions of dollars.⁶³ Commercial casinos in Colorado, Iowa, and South Dakota earn more than 90% of revenues from slot machines.⁶⁴ In

⁶³ David Stewart, Ropes & Gray, LLP, *Demystifying Slot Machines and Their Impact in the United States*, White Paper for the American Gaming Association, July 2010, http://www.americangaming.org/Publications/AGA_studies.cfm.

⁶⁴ American Gaming Association, *2010: State of the States*, p. 33.

Nevada, where table games are more important than in other states, slot machines accounted for more than 60% of gambling revenues from January through August 2010.⁶⁵

Las Vegas has the largest number of commercial casinos with 256, but Atlantic City, the Chicago area (including nearby parts of Indiana), Connecticut, Detroit, and St. Louis each generated \$1 billion or more in casino revenues in 2010. (See **Table 2.**) While many casinos, such as riverboat casinos, cater to day visitors, major casinos in Las Vegas, Atlantic City, and other select areas market themselves as vacation destinations, with high-end amenities, convention and meeting facilities, and big-name entertainers. On the Las Vegas strip, casino revenues make up 35%-45% of hospitality revenues and a similar share of profits, according to an analysis by Standard & Poor's.⁶⁶

Tribal Gaming

According to the National Indian Gaming Commission, 236 of the 564 federally recognized tribes ran some type of gaming operation in 2010.⁶⁷ Indian facilities generated \$26.5 billion in gross gaming revenue, as tribes built casinos and opened card rooms and other facilities. (See **Figure 3.**) Tribal operations have been affected by the recession. Indian gaming revenues in 2009 and 2010 were down from the \$26.7 billion level of 2008—the first drop since the Indian Gaming Regulatory Act (IGRA) was passed in 1998.⁶⁸

Many of the more than 450 Indian establishments are rural and relatively small. But Indian gaming includes major casinos, such as the Mohegan Sun in Uncasville, CT, which is operated by the Mohegan Tribal Gaming Authority Management Board, and Foxwoods Resort Casino in Ledyard, CT, which is owned and operated by the Mashantucket Pequot Tribal Nation. Foxwoods is not only the nation's largest tribal casino, but one of the largest casinos in the United States. Illustrating the differences in scale, the top 20 Indian gaming operations account for 55.5% of tribal gaming revenues.⁶⁹

Indian Gaming Regulatory Act

The 1988 IGRA provides the legal framework for gaming on Indian lands.⁷⁰ Among its purposes was the promotion of tribal economic development, self-sufficiency, and strong tribal governments.⁷¹ Congress passed the law after the Supreme Court, in the 1987 decision

⁶⁵ University of Nevada Las Vegas, Center for Gaming Research, "2010 Nevada Gaming Market," http://gaming.unlv.edu/reports/NV_market_2010.pdf.

⁶⁶ Mark Basham and Esther Y. Kwon, *Industry Surveys, Lodging & Gaming*, Standard and Poor's, May 20, 2010, p. 12.

⁶⁷ National Indian Gaming Commission, "National Indian Gaming Commission Announces 2010 Gross Gaming Revenue," Press Release, July 19, 2011, http://www.nigc.gov/Media/Press_Releases/2011_Press_Releases/PR-175_07-2011.aspx.

⁶⁸ Mark Basham and Esther Y. Kwon, *Industry Surveys, Lodging & Gaming*, Standard & Poor's, May 20, 2010, p. 1.

⁶⁹ National Indian Gaming Association, "Proceeds of Indian Gaming," Fact Sheet, <http://www.indiangaming.org/info/pr/presskit/PROCEEDS.pdf>.

⁷⁰ CRS Report RL34325, *Indian Gaming Regulatory Act (IGRA): Gaming on Newly Acquired Lands*, by M. Maureen Murphy.

⁷¹ The IGRA's statement of policy states that the legislation is intended to, among other things, promote tribal economic development, self-sufficiency, and strong tribal governments; and provide a statutory basis for the regulation of gaming by an Indian tribe adequate to shield it from organized crime and other corrupting influences.

California v. Cabazon Band of Mission Indians, 480 U.S. 202, held that Indian tribes had considerable authority to conduct gaming operations on their land that did not comply with all state laws and regulations.

IGRA authorizes three classes of gaming: class I social gaming, for prizes of minimal value or in connection with traditional tribal ceremonies; class II bingo and card games, but not games such as baccarat or slots; and class III casino gaming. For a tribe to offer class II and class III gaming on a reservation or land held in trust, the tribe must be “located in a State that permits such gaming for any purpose by any person, organization or entity.”⁷² Federal courts have interpreted this provision to permit tribes to conduct any type of gaming permitted in the state, but without state limits or conditions. For example, tribes in states that permit “Las Vegas” nights for charitable purposes may seek to negotiate a compact with a state that allows for class III casino gaming. On the other hand, the fact that state law permits some form of lottery is not, in itself, sufficient to permit a tribe-state compact allowing all forms of casino gaming.⁷³

Class I gaming is subject to tribal regulation; class II to tribal and federal regulation; and class III to both state and tribal control through a tribe-state compact mechanism, which must comply with a federal framework. There has been controversy regarding so-called “reservation shopping,” in which tribes, often in rural areas, seek to locate casinos on land closer to urban centers in order to attract more customers.⁷⁴ The Secretary of the Interior has authority over tribe-state compacts. The National Indian Gaming Commission oversees class II gaming, tribal gaming ordinances, and some regulatory issues. Its chairman is appointed by the President and confirmed by the Senate. The other two commissioners are appointed by the Secretary of the Interior.

IGRA places limits on the use of tribal revenues from Indian gaming. Among the permissible uses are education, health care, tribal government and other development activities, and per capita distributions to tribal members.⁷⁵ Because Indian tribes are sovereign nations, they do not pay taxes on income generated by commercial activities. Tribes pay employment taxes, however, and are taxed on wagering.⁷⁶ In negotiating compacts with state governments, some tribes have pledged to share a portion of proceeds from class III gambling with the state. The National Indian Gaming Commission estimates that in 2009, Indian gaming returned \$2.4 billion to states in the form of taxes, revenue sharing, and other payments including compact revenue agreements.⁷⁷

⁷² CRS Report RL34325, *Indian Gaming Regulatory Act (IGRA): Gaming on Newly Acquired Lands*, by M. Maureen Murphy. The law requires states in such compacts to negotiate in good faith.

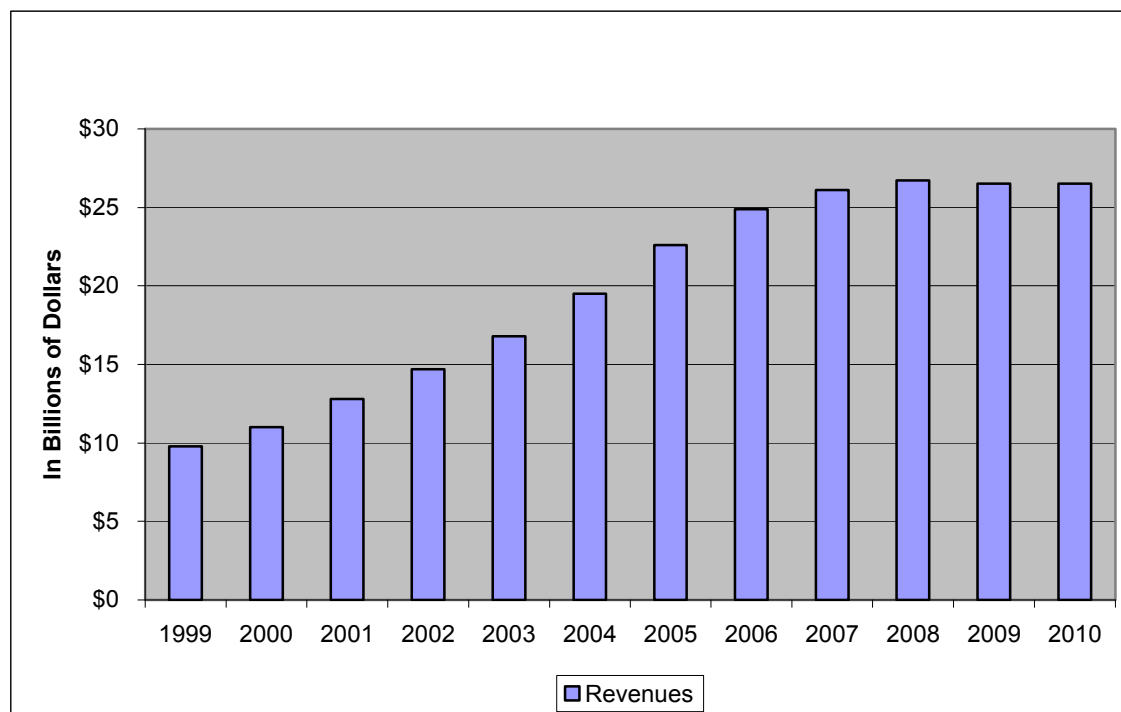
⁷³ *Ibid.*

⁷⁴ Judy Keen, “Tribes, City At Odds Over Casino,” *USA TODAY*, November 4, 2010, http://www.usatoday.com/news/nation/2010-10-04-reservations04_ST_N.htm.

⁷⁵ National Indian Gaming Commission, “Frequently Asked Questions,” http://www.nigc.gov/About_Us/Frequently_Asked_Questions.aspx.

⁷⁶ Internal Revenue Service, *Gaming Tax Law and Bank Secrecy Act Issues for Indian Tribal Governments*, 2008, <http://www.irs.gov/pub/irs-pdf/p3908.pdf>. Income can be taxed for certain corporations set up as separate and distinct from a tribe.

⁷⁷ National Indian Gaming Association, *The Economic Impact of Indian Gaming*, 2009, http://www.indiangaming.org/info/NIGA_2009_Economic_Impact_Report.pdf.

Figure 3. Indian Gambling Revenues

Source: National Indian Gaming Commission.

Financing Uncertainty

As is the case with commercial casinos, some tribal operations that expanded in recent years have been having difficulty meeting or restructuring debt obligations. The Mashantucket Pequot Nation, which operates the Foxwoods casino, since late 2009 has missed some scheduled debt payments on its gaming operations and has been negotiating to refinance nearly \$2 billion in debt.⁷⁸ The Mohegan Tribal Gaming Authority, which has \$1.64 billion in debt, announced layoffs at the Mohegan Sun in 2010. Because tribes are sovereign nations, there are emerging complications for lenders. For example, the Mohegan tribe's constitution gives its Gaming Disputes Court, made up of a trial court and an appeals court, exclusive jurisdiction over disputes involving gaming. The Mohegan Sun *2009 Annual Report* spelled out some of the potential legal issues:

We, the Tribe and our wholly-owned subsidiaries may not be subject to, or permitted to seek protection under, the federal bankruptcy laws since an Indian tribe and we, as an instrumentality of the Tribe, may not be a "person" eligible to be a debtor under the U.S. Bankruptcy Code. Therefore, our creditors may not be able to seek liquidation of our assets or other action under federal bankruptcy laws. Also, the Gaming Disputes Court may lack powers typically associated with a federal bankruptcy court, such as the power to non-consensually alter liabilities, direct the priority of creditors' payments and liquidate certain assets. The Gaming Disputes Court is a court of limited jurisdiction and may not have

⁷⁸ Mike Spector, "Proposed Foxwoods Deal Is Gamble for Creditors," *Wall Street Journal*, August 15, 2011.

jurisdiction over all creditors of ours or our subsidiaries or over all of the territory in which we and our subsidiaries carry on business.⁷⁹

An ongoing dispute between Wells Fargo Bank and Saybrook Investors LLC, and Wisconsin's Lac du Flambeau Band of Lake Superior Chippewa Indians could affect gaming financing. Wells Fargo has sued the tribe over its failure to make monthly payments on a \$50 million tribal bond to consolidate debt and invest in a riverboat casino operation in Mississippi. The U.S. District Court for the Western District of Wisconsin in 2010 found that the bond deal was invalid because it had not been reviewed by the National Indian Gaming Commission, as the court said was required under IGRA.⁸⁰ Wells Fargo has appealed.⁸¹

Pari-mutuel Betting

Pari-mutuel betting is defined as “player-banked betting with all the bets pooled and prizes awarded from the pool.”⁸² The most common examples in the United States are dog and horse racing and jai alai (a game played on a court with a ball and wicker racket).

Pari-mutuel betting is legal in 43 states, and the industry has developed an extensive system of Internet and off-track wagering. In 2000, Congress approved legislation to amend the definition of “interstate off-track wager” in the Interstate Horseracing Act (15 U.S.C. 3001-3007). Proponents claim the amendment permits tracks to accept bets online from individuals located in states where pari-mutuel betting is legal (although not necessarily where either off-track or online betting is legal); the Department of Justice disagrees.⁸³ Legislation introduced in the 112th Congress, H.R. 2702, would clarify that the Wire Act and other laws do not apply to the Interstate Horseracing Act.

Despite the legal uncertainty, interstate pari-mutuel betting with remote devices is growing through the use of Advance Deposit Wagering (ADW). Under ADW, consumers set up accounts with companies such as TwinSpires (owned by the Churchill Downs racetrack), You Bet, or TV Games Network (TGV). They then use their account to place bets on races over the phone, through the Internet, or with mobile device applications and set-top remote control devices linked to TGV channels that broadcast horse racing.⁸⁴ Fans can also go to off-track betting parlors to watch a simulcast of a race and place bets. States have also attempted to revive racetracks that have been losing patronage by turning them into racinos with video lottery terminals, slot machines, and other gambling.

⁷⁹ Mohegan Sun, *2009 Annual Report*, p. 37.

⁸⁰ *Wells Fargo Bank N.A. vs. Lake of the Torches Economic Development Corporation*, United States District Court, Western District of Wisconsin, Case No. 09-CV-768, January 5, 2010.

⁸¹ Alexandra Berzon, “Tribal-Casino Loans are Tested by Ruling,” *Wall Street Journal*, May 12, 2010.

⁸² William N. Thompson, *Gambling in America: An Encyclopedia of History, Issues and Society*, 2001, ABC-CLIO, Santa Barbara, p. 289.

⁸³ CRS Report 97-619, *Internet Gambling: Overview of Federal Criminal Law*, by Charles Doyle. The language was amended to read: “‘interstate off-track wager’ means a legal wager placed or accepted in one State with respect to the outcome of a horserace taking place in another State and includes pari-mutuel wagers, where lawful in each State involved, placed or transmitted by an individual in one State via telephone or other electronic media and accepted by an off-track betting system in the same or another State, as well as the combination of any pari-mutuel wagering pools.” 15 U.S.C. 3002(3); sec. 629, P.L. 106-553, 114 Stat. 2762-108 (2000).

⁸⁴ Information from Oregon Racing Commission. ADW wagering is not allowed in every state in which pari-mutuel betting is legal.

The Oregon Racing Commission, which licenses and audits many of the nation's largest ADWs, reports that online wagering via its licensed companies rose to \$1.3 billion in 2009, from \$883 million in 2004.⁸⁵ According to a study by the Texas Racing Commission, ADW companies accounted for 13% of all U.S. wagers on horse racing in calendar year 2009, up from 3% in 2002.⁸⁶ The total pari-mutuel market has been estimated at \$14 billion a year.

Sports Betting

Congress in 1992 passed the Professional and Amateur Sports Protection Act (PASPA; P.L. 102-559) with strong support from the National Basketball Association, National Football League (NFL), and National Collegiate Athletic Association, among others. The law generally barred state governments from licensing, sponsoring, or engaging in sports gambling. It contained select exceptions for Nevada, Oregon, Delaware, and Montana, each of which allowed certain types of sports betting at the time of passage. Nevada currently permits a range of wagering on sporting events.⁸⁷ Delaware, which allowed only limited multi-game or parlay betting⁸⁸ on NFL contests at the time the 1992 law was passed, enacted a law in 2009 to create a state sports lottery. The NFL and other sports leagues challenged the law, and the U.S. Third Circuit Court of Appeals in Philadelphia ruled that the state was limited to offering narrow betting, similar to what existed in 1992. The U.S. Supreme Court in May 2010 declined to hear an appeal, effectively ending Delaware's effort to expand sports betting.⁸⁹

Remote Competition

If Congress acts to encourage the expansion of remote gaming, some analysts forecast an increase in gambling activity. In a report prepared for a 2010 House Ways and Means Committee hearing, consulting firm H2 Gambling Capital forecast that regulated interstate remote gaming could create tens of thousands of new jobs, depending on how many states participated and whether sports wagering was allowed.⁹⁰ According to the analysis, legal remote gaming revenues, currently estimated at \$6 billion, could reach nearly \$40 billion five years after passage of broad legislation.

A number of casinos, states, and tribes have clearly concluded that the technological shift now under way offers the potential for enhanced earnings and revenues. But while many major industry participants look forward to new revenue opportunities, analysts are divided on whether remote gaming will help or hurt brick-and-mortar casinos and racetracks. In Nevada, for example, some Las Vegas-based casino operators are actively preparing remote gaming options, while in

⁸⁵ Ibid.

⁸⁶ Texas Racing Commission, *Strategic Plan, 2011-2015, Excerpt*, <http://www.txrc.state.tx.us/agency/meetings/materials/StrategicPlanExcerpt.pdf>.

⁸⁷ CRS Report 97-619, *Internet Gambling: Overview of Federal Criminal Law*, by Charles Doyle.

⁸⁸ A parlay bet is a wager that links two or more bets. The bettor wins only if all the linked wagers fall his or her way. The potential payout is higher, but the odds of winning are longer.

⁸⁹ Office of the Commissioner of Baseball v. Markell, 579 F.3d 293 (3d. Cir. 2009); Warren Richey, "Supreme Court turns back Delaware bid to expand sports betting," *Christian Science Monitor*, May 3, 2010, <http://www.csmonitor.com/USA/Justice/2010/0503/Supreme-Court-turns-back-Delaware-bid-to-expand-sports-betting>.

⁹⁰ H2 Gambling Capital, *United States: Regulated Internet Gambling Economic Impact Assessment*, April 15, 2010, http://democrats.waysandmeans.house.gov/media/pdf/111/2010May19_H2_Gambling_Capital_Submission.pdf.

nearby Reno and Lake Tahoe, officials of smaller casinos worry that legalizing online poker could pull dollars away from their casinos, which have seen declining revenues during the past several years.⁹¹

Casinos that primarily serve day trippers with slot machines may face the greatest challenges. As Standard & Poor's wrote in a recent analysis of the U.S. gambling industry,

Standard & Poor's thinks some players will migrate all their gambling to online venues, but we also believe that casino properties that are able to offer a differentiated experience or other options, such as theater shows, spas, restaurants, and shopping, will continue to appeal to certain customers. We believe that Internet sites would find it difficult to offer experiences of camaraderie and indulgence that some physical properties can provide, although we think younger players could more easily adapt to Internet gaming. However, we believe companies will need to become more proactive in deciding how to differentiate their product/property, whether that means developing an online presence or providing a better value or experience at their properties. As the music industry has already found out, adapting to and successfully incorporating new technology could be critical to casino industry profits.⁹²

Federal remote gaming legislation could benefit some sectors of the gaming industry more than others, depending on how it is crafted. State lottery officials, for example, have expressed concern that proposals that would give existing gambling establishments preference for online poker licenses could give those businesses an advantage in the market. By the same token, commercial casinos are worried that under the existing legal framework, online state lottery promotions, such as keno-type games, could encroach on their turf. A report for the state of New Hampshire noted concerns about market saturation and the possibility that the federal government could legalize online gaming, which could have an impact on the competitiveness of the state market. The report said it was difficult to quantify the potential impact of federal regulation and liberalization of Internet gambling.⁹³

Even if it leads to the growth of gambling revenues and employment at the national level, federal remote gaming legislation has the potential to cause revenue and employment declines in particular locations. These effects may well depend upon the details of whatever legislation Congress passes and the specific actions taken by individual states in response.

⁹¹ Scott Sonner, "Smaller Casinos Say Online Poker Will Hurt," *Associated Press*, December 9, 2010.

⁹² Esther Y. Kwon, *Lodging & Gaming*, Standard & Poor's Industry Survey, December 2, 2010, p. 10.

⁹³ New Hampshire Gaming Study Commission, *Final Report of Findings*, May 18, 2010, p. 18.

Problem Gambling

As states have expanded legal gambling, a number have also created programs—funded through tax revenues or assessments on private companies—for treatment of individuals who are considered problem or pathological gamblers.⁹⁴ The National Council on Problem Gambling estimates, based on previous research, that about 1% of the population can be classified as pathological gamblers and another 3% as problem gamblers.⁹⁵ Adolescents and males are considered to be at higher risk of a gambling disorder.⁹⁶

According to a survey by the Association of Problem Gambling Service Administrators, more than 30 states offer some type of publicly funded gambling addiction service, though only about 15 states fund employees who work full-time on the issue.⁹⁷ Spending ranges from a high of about \$1.60 per capita in Oregon to less than 5 cents per capita in Maryland. A recent study prepared for the state of Connecticut noted that Connecticut's Problem Gambling Services division had a more than six-fold increase in its caseload from 2001 to 2008.⁹⁸

The National Council on Problem Gambling endorsed legislation before the 111th Congress, H.R. 2906, to include problem and pathological gambling in federal mental health programs and to initiate research on problem gambling. Opponents of legislation to expand remote gaming cite the potential for an increase in problem gambling. In dissenting views in H.Rept. 111-656, accompanying H.R. 2267 in the 111th Congress, Representative Spencer Bachus and others noted that

[y]oung people are particularly at risk. John Kindt, Professor of Business Administration at the University of Illinois says: "It's 'click the mouse, lose your house.' It puts gambling at every work desk and every school desk and in every living room. It would increase problem gambling rates exponentially." By approving this bill, the largest expansion of gambling in history, the Committee has taken steps to open casinos in every home, dorm room, library, iPod, Blackberry, iPad and computer in America.⁹⁹

⁹⁴ According to the National Council on Problem Gambling, problem gambling is characterized by an increasing preoccupation with gambling, a need to bet more money more frequently, restlessness or irritability when attempting to stop, "chasing" losses, and loss of control manifested by continuation of the gambling behavior in spite of mounting, serious, negative consequences. The American Psychiatric Association defines pathological gambling as: "Persistent and recurrent maladaptive gambling behavior" that meets at least five of 10 criteria.

⁹⁵ National Council on Problem Gambling, citing H. Shaffer, M. Hall, and J. Vander Bilt, "Estimating the prevalence of disordered gambling behavior in the United States and Canada: a research synthesis," *American Journal of Public Health*, 1999, 89:1369-1376.

⁹⁶ National Council on Problem Gambling, "Advancing Health Through System Reform-Problem Gambling," May 22, 2009.

⁹⁷ Jeff Marotta, Thomas Moore, Tim Christensen, *2010 Survey of State Agencies Providing Problem Gambling Services*, Association of Problem Gambling Service Administrators, http://www.problemgamblingservices.org/CMS_uploads/APGSA%202010%20Survey%20Summary.pdf.

⁹⁸ National Council on Problem Gambling, <http://www.ncpgambling.org/i4a/pages/index.cfm?pageid=1>.

⁹⁹ H.Rept. 111-656, Part 1, p. 56, <http://www.gpo.gov/fdsys/pkg/CRPT-111hrpt656/pdf/CRPT-111hrpt656-pt1.pdf>.

Gambling as a Government Revenue Source

Lotteries and taxes on casinos and other gambling provide on average 2%-2.5% of states' general revenues (excluding federal grants).¹⁰⁰ State revenues from gambling rose more slowly than revenues from other tax sources from 1998 through 2008. Although state gambling revenues rose from \$15 billion in 1998 to nearly \$25 billion in 2008, a significant part of the increase was due to the fact that more casinos, racinos, and lottery products came into the market.¹⁰¹

While minor on a national scale, gambling taxes are extremely important for certain states. They provide about a third of Nevada's general fund revenues¹⁰² and are the third-largest revenue source in Rhode Island and the fifth-largest in Connecticut.¹⁰³ Although Las Vegas is the nation's number one gambling venue, more commercial casino tax revenue was collected by Pennsylvania (\$1.3 billion) and Indiana (\$875 million) than Nevada (\$835 million) in 2010.¹⁰⁴ The difference is explained partly by tax rates. Pennsylvania tax revenues amounted to more than 50% of the state's gross gaming revenues in 2009, whereas Nevada has a graduated rate of up to 6.75% on gross gaming revenue, with additional county fees and levies.¹⁰⁵

The recession that began in December 2007 and ended in June 2009 hurt the gaming industry.¹⁰⁶ Lottery revenues declined in 28 states in 2009.¹⁰⁷ Commercial casino profits declined, with Las Vegas receipts dropping by more than 10% in 2009 from the previous year—the largest one-year decline since Nevada began keeping records in 1958.¹⁰⁸ Commercial casino revenues fell by 10.4% in Nevada in 2009, 13.3% in New Jersey, and 8.9% in Illinois. Some states have responded to the decline by encouraging increased gambling. Commercial casino revenues rose in Pennsylvania, where new gambling operations opened.¹⁰⁹ Delaware added table games such as

¹⁰⁰ Lucy Dadayan and Robert B. Ward, *For the First Time, a Smaller Jackpot*, Nelson A. Rockefeller Institute of Government, September 21, 2009, p. 3.

¹⁰¹ William F. Fox, "Can State and Local Governments Rely on Alternative Tax Sources?" *Regional Economic Development*, Federal Reserve Bank of St. Louis, Vol. 6, No. 1, 2010, p. 95, <http://research.stlouisfed.org/publications/red/2010/01/Fox.pdf>.

¹⁰² Center for Gaming Research, University of Nevada Las Vegas, "Nevada Gaming: Revenue Growth & Decline," August 2010, http://gaming.unlv.edu/reports/nv_revchanges.pdf; State of Nevada Division of Budget & Planning, "Major General Fund Revenues," http://budget.state.nv.us/general_fund.

¹⁰³ Spectrum Gaming Group, *Gambling in Connecticut: Analyzing the Economic and Social Impacts*, prepared for the State of Connecticut, June 22, 2009, p. 8, http://www.ct.gov/dosr/lib/dosr/june_24_2009_spectrum_final_final_report_to_the_state_of_connecticut.pdf.

¹⁰⁴ American Gaming Association, *2011 State of the States*, p. 6.

¹⁰⁵ *Ibid*, p. 13-19.

¹⁰⁶ The National Bureau of Economic Research has a system for dating recessions, including looking a series of economic indicators. The fact that the NBER determines a recession has ended does not mean that the economy has returned to potential growth. It does indicate economic deterioration has ended.

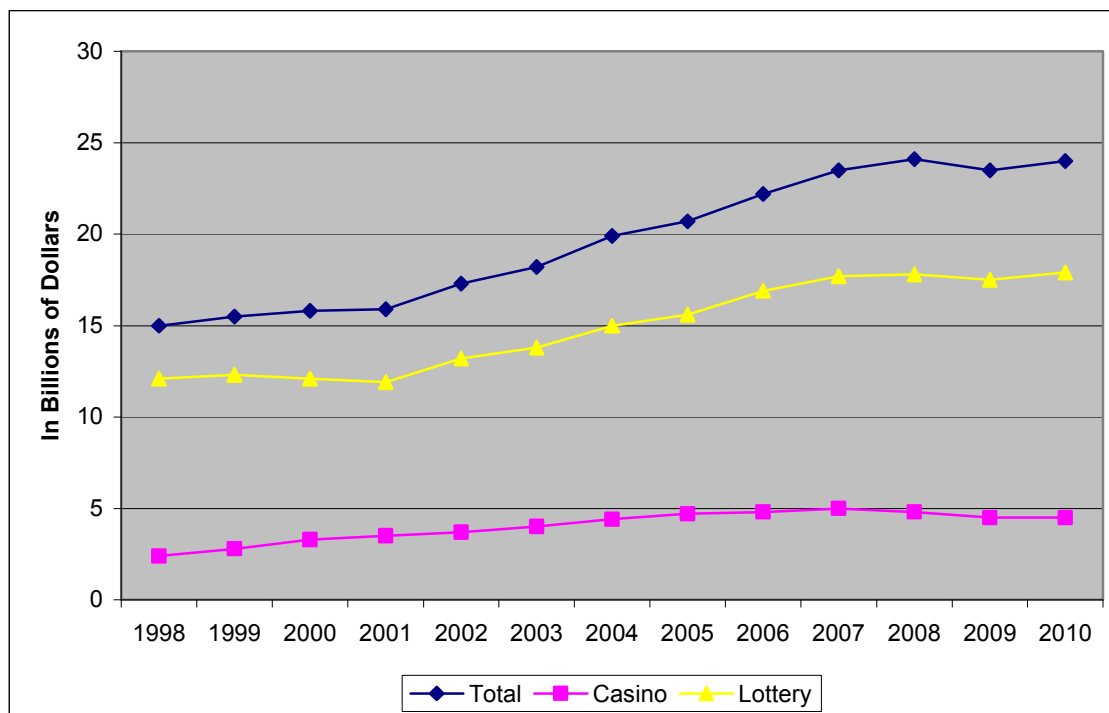
¹⁰⁷ National Conference of State Legislatures, "Lackluster Lotteries," *State Legislatures*, September, 2010, p. 6. Figures are compiled by state fiscal year.

¹⁰⁸ Howard Stutz, "Gaming Recession: Gaming Revenues Fall by Biggest Percentage Ever," *Las Vegas Review-Journal*, February 12, 2010, <http://www.lvrj.com/news/gaming-revenues-fall-by-biggest-percentage-ever-84117117.html>. Nevada began keeping records on gaming revenue in 1956.

¹⁰⁹ American Gaming Association, *State of the States: 2010*, p. 5.

poker and blackjack to its legal gaming options in 2010. Other states are considering gambling proposals as they try to close budget gaps.¹¹⁰

Figure 4. Trends in State Gambling Revenue, FY1998-FY2010



Source: Nelson A. Rockefeller Institute of Government.

Notes: Total also includes pari-mutuel betting and racinos. Totals based on state fiscal years.

It is uncertain, however, whether expansion of gambling will lead to increased revenue for all state governments. Some industry experts warn that the creation of new lottery games and construction of casinos may be leading to market saturation, especially in the Northeast. For example, about half of the rebound in state gambling revenues in 2010 was due mainly to expanded gaming opportunities in a small number of states, including Pennsylvania.¹¹¹

As they search for new ways to increase gambling revenues, states are looking to remote gaming.

- Legislators in California for several years have debated legislation to allow intrastate online poker. In the wake of another failed effort in 2011, a coalition of Indian tribes launched websites where consumers can play poker—but not wager for money. There is a push for revenue from online poker. A 2009 report by the state Legislative Analyst’s Office cited studies indicating that illegal poker websites were garnering \$300 million to \$400 million annually in gross revenue from Californians. The report said the state could capture some of these revenues

¹¹⁰ Amy Lee, “Lawmakers Expected to Consider Drastically Expanding Gambling,” Southtownstar.com (Illinois), November 9, 2010.

¹¹¹ Lucy Dadayan and Robert Ward, *Back in the Black*, The Nelson A. Rockefeller Institute of Government, June 23, 2011, http://www.rockinst.org/pdf/government_finance/2011-06-23-Back_in_the_Black.pdf.

by legalizing online poker, but also faced other considerations, including the impact on existing tribal gaming compacts, questions about how deeply the state wanted to get involved in regulating online poker, and the possibility of federal legislation that could affect the amount of revenues the state collected.¹¹²

- The Nevada Legislature on May 19, 2011, approved Assembly Bill No. 258, which was signed by Nevada Governor Brian Sandoval. The measure allows the Nevada Gaming Commission to write rules for licensing and operation of interactive intrastate gambling, in the event that such gaming is deemed legal at the federal level.¹¹³
- In New Jersey, legislators have been implementing a financial rescue of gambling mecca Atlantic City, which has experienced a sharp drop in gambling revenues since 2008 due to the recession and increased availability of legal gaming in Connecticut, Delaware, Pennsylvania, and New York.¹¹⁴ The New Jersey Assembly in 2010 approved a bill to allow Internet gaming within the state, based out of Atlantic City casinos.¹¹⁵ The bill was vetoed by New Jersey Governor Chris Christie for a number of reasons, including concerns it violated the state constitution.¹¹⁶ Consulting firm Econsult has estimated that New Jersey casinos would see annual gross revenues of more than \$200 million from legal online gambling, with about \$30 million of that total dedicated to the state treasury.
- The District of Columbia in 2010 voted to allow online gambling within its boundaries. Implementation of the law has been delayed for a number of reasons, including technical issues.¹¹⁷

¹¹² Laurel Rosenhall, "California tribes launch free poker sites," *Sacramento Bee*, Nov. 9, 2011, <http://www.sacbee.com/2011/10/11/3973754/california-tribes-launch-free.html>; Legislative Analyst's Office, "Authorization of Online Poker in California," February 9, 2010, http://lao.ca.gov/handouts/state_admin/2010/Online_Poker_02_09_10.pdf. Information on specific 2011 bills at http://www.leginfo.ca.gov/pub/11-12/bill/sen/sb_0001-0050/sb_40_bill_20110706_amended_sen_v96.pdf and http://www.leginfo.ca.gov/pub/11-12/bill/sen/sb_0001-0050/sb_45_bill_20101208_introduced.pdf.

¹¹³ From the *Nevada Legislative Counsel's Digest*:

Existing law authorizes certain gaming establishments to obtain a license to operate interactive gaming. (NRS 463.750) This bill requires the Nevada Gaming Commission to establish by regulation certain provisions authorizing the licensing and operation of interactive gaming under certain circumstances. This bill further provides that a license to operate interstate interactive gaming does not become effective until: (1) the passage of federal legislation authorizing interactive gaming; or (2) the United States Department of Justice notifies the Commission or the State Gaming Control Board that interactive gaming is permissible under federal law.

Available at http://www.leg.state.nv.us/Session/76th2011/Bills/AB/AB258_EN.pdf.

¹¹⁴ *Associated Press*, "Atlantic City Casino Competition Expands With 61 Gaming Halls Opened, Planned in Northeast," August 9, 2010.

¹¹⁵ Suzette Parmley, "N.J. Assembly backs A.C. plan," *Philadelphia Inquirer*, January 11, 2011.

¹¹⁶ Office of Gov. Chris Christie, "Governor Christie Vetoes Internet Gaming Bill as Inconsistent with the Goals of Revitalizing Atlantic City's Tourism and Gaming Industries," March 3, 2011, <http://www.state.nj.us/governor/news/news/552011/approved/20110303b.html>.

¹¹⁷ The Lottery Modernization Amendment Act of 2010, part of the "Fiscal Year 2011 Supplemental Budget Support Act of 2010" (D.C. Code §3-1313), authorizes the D.C. Lottery and Charitable Games Control Board to offer both games of skill and games of chance via the Internet. The DC government is currently in the process of implementing the law, which has not yet taken effect. See also Justin Jouvenal and Michael Laris, "'Hot spots' part of D.C. officials' plan to allow Internet-based gambling in city," *Washington Post*, April 13, 2011, <http://www.washingtonpost.com/> (continued...)

- Iowa Governor Terry Branstad on May 26, 2011, signed Senate File 526, which included a section directing the Iowa Racing and Gaming Commission to conduct a study on regulating Internet poker. The report is due by Dec. 1, 2011.¹¹⁸

At the federal level, the congressional Joint Committee on Taxation estimated during the 111th Congress that the federal government could collect an additional \$42 billion over 10 years under legislation, H.R. 4976, (the Internet Gambling Regulation and Tax Enforcement Act of 2010). That legislation would have imposed a license fee for online gambling operations equal to 2% of all funds deposited by customers into special accounts that could be used for online wagering, and would have given states and tribes the option of accepting from licensees, on a monthly basis, an online gambling fee “equal to 6 percent of all deposited funds deposited by customers residing in each State or area subject to the jurisdiction of an Indian tribal government.”¹¹⁹ The \$42 billion revenue gains were based on the assumption that no states opted out of the system.¹²⁰ Revenue estimates were much lower under other scenarios, suggesting that the impact of increased remote gaming on state receipts will depend heavily upon the specifics of any federal legislation.

Congressional Action on Internet Gaming

The 112th Congress is considering legislation to legalize and regulate interstate, Internet gambling. The House Energy and Commerce Subcommittee on Commerce, Manufacturing, and Trade on October 24, 2011, held a hearing on the pros and cons of Internet gaming.¹²¹ The Senate Committee on Indian Affairs in July 2011 held a roundtable discussion with tribal leaders, seeking input on how expanded Internet gaming could help or hurt Indian gambling operations.¹²²

In July 2011 Senate Majority Leader Harry Reid and Senator John Kyl sent a joint letter to the Justice Department asking officials to clarify the department’s position on the legality of Internet gambling. Reid, near the close of the 111th Congress, floated a proposal to allow, license, and regulate interstate online poker. The Reid plan, for the first two years after enactment, would have given some existing establishments, such as casinos, racetracks, and slot machine makers, preference for online gambling licenses¹²³ and prohibited other forms of online gaming, while strengthening enforcement in the area.¹²⁴

(...continued)

local/politics/dc-officials-plan-to-allow-internet-based-gambling-at-hot-spots-in-city/2011/04/13/AFbTRHZD_story.html.

¹¹⁸ Senate File 526, http://coolice.legis.state.ia.us/linc/84/external/SF526_Enrolled.pdf.

¹¹⁹ CRS Report RS22749, *Unlawful Internet Gambling Enforcement Act (UIGEA) and Its Implementing Regulations*, by Brian T. Yeh and Charles Doyle.

¹²⁰ Joint Committee on Taxation, letter to Rep. Jim McDermott, October 23, 2009, <http://www.safeandsecureig.org/sites/default/files/InternetGamblingScore.pdf>.

¹²¹ House Energy and Commerce Committee Subcommittee on Commerce, Manufacturing, and Trade, “Internet Gaming: Is There a Safe Bet?,” <http://energycommerce.house.gov/hearings/hearingdetail.aspx?NewsID=9027>.

¹²² Senate Committee on Indian Affairs, “Roundtable on the Future of Internet Gaming: What’s at Stake for Tribes?,” July 26, 2011, <http://www.indian.senate.gov/hearings/hearing.cfm?hearingID=3d9031b47812de2592c3baeba61b2f52>.

¹²³ Liz Bentson and Karoun Demirjian, “Harry Reid Rushes Effort to Legalize Internet Poker,” *Las Vegas Sun*, December 7, 2010, <http://www.lasvegassun.com/news/2010/dec/07/reid-pushes-online-poker-bill/>.

¹²⁴ Senate Majority Leader Harry Reid, “Reid Statement on Online Poker Bill,” December 9, 2010, <http://reid.senate.gov/newsroom/onlinepokerbill.cfm>.

Among measures introduced in the 112th Congress is H.R. 2366, by Representative Joe Barton, to legalize and regulate Internet interstate online poker while restricting some other forms of Internet gaming. Under the Barton bill, online poker sites would be licensed by a state or tribal gambling oversight commission approved by a new Office of Internet Poker Oversight in the Department of Commerce. Registered sites would be subject to regulation and inspection to, among other things, prevent minors from playing, prevent money laundering, and identify problem gamblers. States would have the ability to limit activities. Certain established gambling businesses would initially have preference for licenses.

Representative John Campbell has introduced H.R. 1174 to allow, regulate, and license many forms of Internet gambling. While UIGEA has exceptions that allow states, tribes, and the pari-mutuel industry to offer limited, lawful Internet gambling, Campbell's bill would allow Indian tribes and states to opt out of the law if they wished to ban such gaming within their territory. Representative Christopher Gibson has sponsored H.R. 2702 to clarify the status of pari-mutuel betting on horse racing. Representative Jim McDermott has introduced H.R. 2230 to license and tax Internet gaming, including requiring tax withholding on Internet gambling winnings and extending excise taxes to Internet gaming bets.

Gambling groups and companies, which have been at odds in the past over Internet gaming, have lobbied to have the Joint Select Committee on Deficit Reduction¹²⁵ include provisions in any broad budget deficit reduction proposal to legalize and tax Internet poker. The Poker Players Alliance, for example, has urged its members to push for legalization of Internet poker. A group called Fair Play USA, which includes state law enforcement officers and gambling industry representatives, is also supporting legislation on online for-profit poker. There has been some pushback from the states. For example, Maryland Governor Martin O'Malley, in an October 2011 letter to leaders of the Joint Select Committee on Deficit Reduction, said efforts to federalize poker and casino gambling threaten the \$500 million in receipts his state generates annually from its lottery, as well as other gambling revenues.¹²⁶

Indian gaming officials have expressed concerns about attaching Internet gaming legislation to any deficit reduction bill. The American Indian Gaming Association has a set of conditions it wants to see met in any bill to legalize interstate Internet gaming. The tribes, as sovereign nations, want to ensure that their Internet gambling revenues are not taxed, that qualified tribal operations are allowed to participate in the online market from the outset, and that existing state-tribal compacts are not undermined. The American Indian Gaming Association has been concerned about versions of Internet gaming bills that would give commercial casinos and other established businesses early entrée in the market, possibly putting tribal operations at a disadvantage.

¹²⁵ CRS Report R42013, *The Budget Control Act of 2011: Effects on Spending Levels and the Budget Deficit*, by Marc Labonte and Mindy R. Levit.

¹²⁶ Letter from Gov. Martin O'Malley, <http://thehill.com/images/stories/blogs/flooraction/Jan2011/omalley.pdf>.

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