

EXHIBIT F

Indian Gaming Regulatory Act

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The Indian Gaming Regulatory Act (Pub.L. 100-497, 25 U.S.C. § 2701 *et seq.*) is a 1988 United States federal law that establishes the jurisdictional framework that governs Indian gaming. There was no federal gaming structure before this act.^[1] The stated purposes of the act include providing a legislative basis for the operation/regulation of Indian gaming, protecting gaming as a means of generating revenue for the tribes, encouraging economic development of these tribes, and protecting the enterprises from negative influences (such as organized crime).^[2] The law established the National Indian Gaming Commission and gave it a regulatory mandate. The law also delegated new authority to the U.S. Department of the Interior and created new federal offenses, giving the U.S. Department of Justice authority to prosecute them.

The law has been the source of extensive controversy and litigation. One of the key questions is whether the National Indian Gaming Commission and Department of Interior can be effective in regulating tribal economic decisions related to Indian gaming. Some in Congress are in favor of greater regulation, while a prominent professor in the field is skeptical that such regulation is effective.^[3] Many of the controversies have produced litigation, some of it reaching the U.S. Supreme Court.

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History

In 1976, in a case called *Bryan v. Itasca County*, the Supreme Court made a ruling that sowed the legal seeds that would eventually give rise to the Indian gaming industry.^[4] In an opinion written by Justice William J. Brennan, Jr., the Supreme Court highlighted tribal independence from state regulatory authority. Since regulatory authority is the primary legal mechanism for regulating some forms of gambling, this case would prove relevant to the impending controversy of Indian gaming.

Gambling is a part of many traditional Indian cultures (as well as the larger US society.) Tribal games include dice and shell activities, archery competitions, races, and so on. The use of gaming to generate profit did not begin until the late 1970s and early 1980s within Indian communities. Several tribes,

especially in California and Florida, opened bingo parlors as a way to earn revenue. Their actions were related to the search for new sources of revenue, given the emphasis the Ronald Reagan administration placed on economic self-sufficiency for the tribes.

While bingo was legal in California and Florida, the states had stringent regulations. Operating on the history of tribal sovereignty, some tribes did not comply with these laws. High-stakes Indian bingo operations soon arose in California, Florida, New York and Wisconsin. The industry grew rapidly. State governments began contending that revenues from their own gaming operations dropped as Native American operations increased the potential stakes.

Discussions about codifying Indian gaming began in 1983.^[5] In 1987, the U.S. Supreme Court ruled in *California v Cabazon Band of Mission Indians* that as sovereign political entities, tribes could operate facilities free of state regulation. The court also recognized that gaming could be used to encourage tribal self-sufficiency and economic development. This court case can be seen as a victory for the tribes. As the growth in Indian gaming continued in the 1980s (grossing over \$110 million in 1988), though, tensions increased.^[6]

States began lobbying the federal government to allow states to regulate Indian gaming. States argued that their regulation was needed to stop infiltration by organized crime. Furthermore, states wanted to be able to tax revenues gained by Indian gaming. Tribes fought the states in an effort both to maintain tribal sovereignty and to protect Indian gaming revenues to support economic development.^[7] Congress responded with the set of compromises which evolved into the Indian Gaming Regulatory Act ^[5]

The primary legislators involved in drafting the Act were Senator Daniel Inouye of Hawaii, Representative and then (as of 1987) Senator John McCain of Arizona, and Representative Mo Udall of Arizona.^[8] As S.555, the bill passed the United States Senate by voice vote on September 15, 1988.^[5] The House then passed the same bill, without it going through committee, by a 323–84 margin on September 27.^[5] President Ronald Reagan signed it into law on October 17, 1988.^[5]

As often is the case, some aspects of the law had to be clarified later through court cases. Whether revenue from the Indian casinos was subject to other governmental taxation was determined in *Chickasaw Nation v. United States*.^[9]

Three classes

The Act establishes three classes of games with a different regulatory scheme for each:

Class I

Class I gaming is defined as traditional Indian gaming and social gaming for minimal prizes. Regulatory authority over class I gaming is vested exclusively in tribal governments and is not subject to IGRA's requirements.^[10]

Class II

Class II gaming is defined as the game of chance commonly known as bingo (whether or not electronic, computer, or other technological aids are used in connection therewith) and if played in the same location as the bingo, pull tabs, punch board, tip jars, instant bingo, and other games similar to bingo. Class II gaming also includes non-banked card games, that is, games that are played exclusively against

other players rather than against the house or a player acting as a bank. The Act specifically excludes slot machines or electronic facsimiles of any game of chance from the definition of class II games. Tribes retain their authority to conduct, license, and regulate class II gaming so long as the state in which the Tribe is located permits such gaming for any purpose and the Tribal government adopts a gaming ordinance approved by the National Indian Gaming Commission (NIGC). Tribal governments are responsible for regulating class II gaming with Commission oversight. Only Hawaii and Utah continue to prohibit all types of gaming.^[11]

Class III

The definition of class III gaming is broad. It includes all forms of gaming that are neither class I nor II. Games commonly played at casinos, such as slot machines, blackjack, craps, and roulette, clearly fall in the class III category, as well as wagering games and electronic facsimiles of any game of chance. Generally, class III is often referred to a casino-style gaming. As a compromise, the Act restricts Tribal authority to conduct class III gaming.

Before a Tribe may lawfully conduct class III gaming, the following conditions must be met:

- The Particular form of class III gaming that the Tribe wants to conduct must be permitted in the state in which the tribe is located.
- The Tribe and the state must have negotiated a compact that has been approved by the Secretary of the Interior, or the Secretary must have approved regulatory procedures.
- The Tribe must have adopted a Tribal gaming ordinance that has been approved by the Chairman of the Commission.

The regulatory scheme for class III gaming is more complex than a casual reading of the statute might suggest. Although Congress clearly intended regulatory issues to be addressed in Tribal-State compacts, it left a number of key functions in federal hands, including approval authority over compacts, management contracts, and Tribal gaming ordinances. Congress also vested the Commission with broad authority to issue regulations in furtherance of the purposes of the Act. Accordingly, the Commission plays a key role in the regulation of class II and III gaming.

FBI jurisdiction

The Act provides the Federal Bureau of Investigation (FBI) with federal criminal jurisdiction over acts directly related to Indian gaming establishments, including those located on reservations under state criminal jurisdiction. Since the inception of IGRA, the FBI has devoted limited investigative resources to Indian gaming violations.^[citation needed]

The Indian gaming industry has grown from one that produced nearly \$100 million in total revenues in its first year, to one that exceeds \$22 billion annually. This total exceeds the combined gaming revenues of Las Vegas and Atlantic City. This growth, coupled with confusing jurisdictions and limited regulatory resources, has generated great concern over the potential for large-scale criminal activity and influence in the Indian gaming industry. Recent allegations of large-scale fraud and corruption have led to extensive media scrutiny and inquiries from Congressional leaders as to the FBI's response to these allegations.

The industry

The most recent Indian gaming statistics, provided by the National Indian Gaming Commission (NIGC), indicate there are approximately 360 Indian gaming establishments in the United States. These casinos are operated by approximately 220 federally recognized tribes, and they offer Class I, Class II and Class III gaming opportunities. The revenues generated in these establishments can be substantial.

Tribal casinos located in the eastern United States generated roughly \$3.8 billion in FY02. Those located in the Central United States recorded gross revenues of approximately \$5.9 billion, while those located in the Western United States generated close to \$4.8 billion. Most of the revenues generated in the Indian gaming industry are from Indian casinos located in, or near, large metropolitan areas. Currently, 12% of Indian gaming establishments generate 65% of Indian gaming revenues. Indian gaming operations located in the populous areas of the West Coast (primarily California) represent the fastest growing sector of the Indian gaming industry.

There are 565 federally recognized tribes in the United States. While not all tribes will seek to establish tribal gaming establishments, it is likely that more may do so. Additionally, many of the non-federally recognized tribes are seeking federal recognition to gain access to Indian gaming opportunities and other benefits of the federal relationship.

Regulations

The Act's purpose is to provide a statutory basis for the operation of gaming by tribes to promote tribal economic development, self sufficiency, and strong tribal governments. IGRA provides a basis for the regulation of Indian gaming adequate to: shield it from organized crime and corrupting influences; ensure that the tribe is the primary beneficiary of gaming revenues; and ensure Indian gaming operations are fair and honest for the operator and the players. IGRA also establishes an independent federal regulatory authority for gaming on Indian lands, Federal standards for gaming on Indian lands, and the creation of the NIGC.

NIGC's headquarters is located in Washington, D.C. It is managed by a chairman, appointed by the President of the United States, and has five regional divisions. NIGC Regional Headquarters are located in Portland, Oregon; Sacramento, California; Phoenix, Arizona; St. Paul, Minnesota; and Tulsa, Oklahoma. NIGC auditors and investigators ensure that Indian gaming establishments are complying with the minimum gaming standards outlined in IGRA. To accomplish this, NIGC auditors conduct yearly audits of gaming records maintained by Indian gaming establishments and, when appropriate, investigate regulatory matters. The NIGC has a major responsibility in the growing Indian gaming industry. Based on its congressional mandate, it is dependent on the FBI and/or other federal agencies to investigate allegations of criminal activity in Indian gaming establishments.

The National Indian Gaming Association

The National Indian Gaming Association (NIGA) is a non-profit organization founded in 1985 of 184 Indian Nations, with additional nonvoting associate members.^[12] The purpose of the NIGA is "to protect and preserve the general welfare of tribes striving for self-sufficiency through gaming enterprises in Indian country," and to "maintain and protect Indian sovereign governmental authority in Indian Country." The NIGA seeks to advance the lives of Indian people economically, socially, and politically. The NIGA's office building is located in Washington, D.C. The NIGA headquarters building was purchased by a tribal collective. It is the first structure to be owned by Native Americans in Washington, D.C.^[12]

The Indian Gaming Working Group (IGWG)

In February 2003, in an effort to identify and direct resources to Indian gaming matters, the FBI and NIGC created the IGWG. The IGWG's purpose is to identify resources needed to address the most pressing criminal violations in the area of Indian gaming. This group consists of representatives from a variety of FBI subprograms (i.e. Economic Crimes Unit, Money Laundering Unit, LCN/Organized Crime Unit, Asian Organized Crime Unit, Public Corruption/Government Fraud Unit, Cryptographic Racketeering Analysis Unit, and Indian Country Special Jurisdiction Unit) and other federal agencies, which include Department of Interior Office of Inspector General (DOI-OIG), NIGC, Internal Revenue Service Tribal Government Section (IRS-TGS), Department of Treasury Financial Crimes Enforcement Network (FINCEN), Department of Justice (DOJ), Office of Foreign Assets Control (OFAC), US Department of the Treasury, and Bureau of Indian Affairs Office of Law Enforcement Services (BIA-OLES). The IGWG meets monthly to review Indian gaming cases deemed to have a significant impact on the Indian gaming industry. As a result of these meetings, several investigations have been initiated. The IGWG through its member agencies has provided financial resources, travel funds, liaison assistance, personnel resources, coordination assistance and consultation.

The IGWG works as follows:

1. If suspected criminal activities are taking place in the Indian gaming industry and the interested office/agency does not have adequate resources to investigate this matter, the office/agency contacts the Indian Country Special Jurisdiction Unit, FBIHQ, at 202-324-3666. This contact may come from the FBI or an outside source or agency.
2. A small group of IGWG members will convene to determine if the alleged criminal violation is a matter of "national importance" in its effect(s) on the Indian gaming industry. If so, the IGWG will invite representatives from the affected FBI division, other federal agencies (if appropriate), the affected United States Attorney's office, and IGWG member agencies to meet and further review the case.
3. During this review, the agency eliciting the support of the IGWG will make a case presentation. Following a full review, the IGWG will assist the requesting office/agency to identify and obtain resources to assist in the investigation.
4. Throughout the investigation, the IGWG will assist by providing "experts" to assist in the investigation; allocating special funding (i.e., facilitating TDY travel, Title III support, special forensic examination, etc.); conducting liaison with other federal agencies; facilitating the establishment of Indian gaming task forces, and/or providing consultation.

To properly detect the presence of illegal activity in the Indian gaming industry law enforcement offices with jurisdiction in Indian gaming violations should:

1. Identify the Indian gaming establishments in their territory.
2. Establish appropriate liaison with Tribal Gaming Commission (TGC) members, State Gaming Commission Representatives, State Gaming Regulatory Agency Representatives, and Casino Security Personnel.
3. Establish liaison with representatives from the NIGC and regional Indian gaming intelligence committees. Both will provide valuable information on scams, allegations of criminal wrongdoing, and other patterns of illegal activity.
4. Make proactive attempts during crime surveys to identify criminal activity in Indian gaming establishments.
5. Send investigators and financial analysts to training which provides them with the knowledge and skills they need to effectively investigate criminal activity in Indian gaming establishments.

Proposed changes to IGRA

The IGRA has proven to be a major focus of the controversy surrounding Indian gambling. Since its passage a variety of changes and proposals have been considered, and changes are still being considered. Congress has discussed proposals to impose a moratorium on any new tribal-state compacts or on new Indian gaming operations.

The Indian Trust Lands Reform Act was introduced in 1995 and 1997, marking an attempt to deny the Secretary of Interior the power to take additional lands in trust for Native American tribes if it were for "commercial" purposes (such as gaming). Several Congressional members have expressed concern about the lack of regulation related to revenue sharing from funds generated by gaming.^[13] It is important to note that the regulations and methods of Indian gaming are still evolving and changing.

See also

- Gambling in the United States
- Gaming law

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External links

- National Indian Gaming Commission

- Federal Bureau of Investigation: Indian Gaming Investigations

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