

MINUTES OF THE HOUSE TOURISM COMMITTEE.

The meeting was called to order by Chairperson Carol E. Beggs at 3:30 p.m. on February 20, 2002 in Room 243-N of the Capitol.

All members were present

Committee staff present: Hank Avila, Research Department
Russell Mills, Research Department
Bob Nugent, Revisor of Statutes
Carol Doel, Committee Secretary

Conferees appearing before the committee:

Proponents: Rep. Shari Weber, House Majority Leader
Rep. R.J. Wilson
Ted Hayes, Kansas Sports Hall of Fame
Otto Schnellbacher, Inductee, Hall of Fame
John Pinegar, Washburn University
Senator Chris Steineger

Opponents: Rebecca Rice, Kansas Clubs and Associates
Steve Ortiz, Prairie Band Pottawatomini Nation Tribal Council
Ron Hein, Pottawatomini Band Tribal Council
Rep. Hainey, Bowling Proprietors Assn.

Others attending: See Attached List

Hearing on HB 2896

Appearing before the committee as a proponent for **HB 2896** was Ted Hayes, Executive Director of the Kansas Hall of Fame. The Kansas All-Sports Hall of Fame was founded in 1961 with a mission to "honor those individuals whose achievements in sports have brought pride and distinction to themselves, their communities and the entire state of Kansas". The Hall of Fame started out as a temporary display at the Topeka Fairgrounds and in 1972 was moved to the Watkins Museum in Lawrence. In 1989 it was voted to expand the museum and after reviewing proposals from several Kansas communities, the Trustees selected Abilene as the permanent site. The Hall of Fame houses a museum composed of plaques, trophies, uniforms, photographs and biographical material. (Attachment 1)

Next to appear before the committee as a proponent for **HB 2896** was House Majority Leader, Representative Shari Weber. Representative Weber stated that this legislation would add a women's sport and mandate that all institutions participate. During the 1997 session of the Kansas Legislature, **SB 370** was introduced. During the hearings on **SB 370**, the Hall of Fame was asked to meet with the Regents institutions to see if a compromise could be reached to eliminate the need for legislature to intervene. Representatives from both parties met and reported back to the committee the following compromise points:

- (1) The Hall of Fame agreed to withdraw its request for legislation (**SB 370**) with the right to submit in the event of contract default or failure to reach an agreement on the business plan.
- (2) The Regents institutions agreed to assist the Hall of Fame in preparing a five-year business plan for the Hall of Fame.
- (3) The regents institutions agreed to continue their support of the Hall of Fame under the present terms and conditions of the contracts until the five-year business plan was complete. At that time the Board of Regents would evaluate their continuing support giving consideration to: (a) the findings of the business plan; (b) the needs of the Regents institutions' athletic budgets; (c) the ability of the Hall of Fame to sustain itself through other revenue means.

CONTINUATION SHEET

MINUTES OF THE HOUSE TOURISM COMMITTEE at on February 20, 2002 in Room 243-N of the Capitol.

Representative Weber continued with the fact that if the Kansas Sports Hall of Fame is able to establish a stable funding source, it will be able to actively market itself through "on-campus" activities and special events. This enables the agency to further their mission and raise more private funds.

Additionally, the committee was provided with a cash flow history of the Kansas Sports Hall of Fame dating from January 1, 1991 through January 31, 2002. (Attachment 2)

Otto Schnellbacher, an inductee into the Kansas Hall of Fame, testified as a proponent for **HB 2896**. Mr. Schnellbacher reports that it is his feeling that the Kansas Hall of Fame has more than just history, but also has an economic impact on the state. (No written testimony)

Rep. R.J. Wilson, 3rd District, Pittsburg, Kansas, submitted written testimony in support of **HB 2896**. Rep. Wilson feels that the Kansas Sports Hall of Fame is a tremendous opportunity for our state to showcase the hard work and dedication that is required of the young men and women throughout Kansas who attempt to achieve betterment of self through athletics. (Attachment 3)

Appearing before the committee to read the testimony of Jerry B. Farley, President of Washburn University, was Mr. John Pinegar. Washburn University supports **HB 2896** which would provide funding to the Kansas Hall of Fame through a \$1 surcharge on tickets for selected intercollegiate athletic events. The facility in Abilene serves as a place where our young people can learn about the individuals who have had outstanding careers in sports and see how this success contributed to their lives and careers. (Attachment 4)

OPPONENTS TO HB 2896

Written testimony was provided by Sheila Frahm, Executive Director KACCT in opposition of **HB 2896**. In her testimony, Ms Frahm feels that we should encourage alternative solutions be sought for funding of the Sports Hall of Fame. (Attachment 5)

Also submitted in opposition to **HB 2896**, was a letter signed by Dr. Kay Schallenkamp, President, Emporia State University; Dr. Jon Wefald, President, Kansas State University; Dr. Edward Hammond, President, Fort Hays University; Dr. Robert Hemenway, Chancellor, University of Kansas; Dr. Tom Bryant, President, Pittsburg State University and Dr. Donald Beggs, President, Wichita State University. This letter stated that funding the Kansas Sports Hall of Fame through fees from other state agencies may be setting a precedent which should be avoided. It was also stated that statutorily imposing these precedent setting surcharges on student, alumni, community members, and fans could be fraught with legal challenges. (Attachment 6)

With the approval of the committee, Chairman Beggs concluded the hearing on **HB 2896** and called for final action. Representative McClure offered an amendment which would make the bill take effect on publication in the Register instead of the statute book, seconded by Representative Levinson. Motion carried.

Representative Ballou made a motion to pass **HB 2896** favorably, as amended, seconded by Representative Osborne. Motion carried.

Hearing on HB 2183 - racing and gaming; electronic gaming machines

First to appear as a conferee before the committee as a proponent for **HB 2183** was Senator Chris Steineger. Senator Steineger stated that **HB 2183** wasn't the best bill - just the oldest. His main testimony was in regards to the fact that the Indian casino didn't have to disclose their revenue, but all Indian casino's in the US were lumped together in income ranges and they only had to state the range in which their receipts fell, however on their calculations there are 2400 slots at the 4 Indian casinos in Kansas with each averaging about 200-225 per day per machine or a total of \$157 million in revenue a year. Senator Steineger stated that this is money that isn't taxed. He also reported on the number of cars with Kansas license plates in the parking lots of the river boats in Missouri and the many bus trips that go to other states just for gambling. (No written testimony)

Chairman Beggs closed the hearings on **HB 2183** and waited to hear opposition testimony together with **HB 2822**.

CONTINUATION SHEET

MINUTES OF THE HOUSE TOURISM COMMITTEE at on February 20, 2002 in Room 243-N of the Capitol.

Hearing on HB 2822 - authorized video lottery

Rex Hainey of the Bowling Proprietors Association testified as a proponent of **HB 2822**. The Kansas Bowling Proprietors Association represents 127 bowling centers in Kansas and has over 2600 employees. This bill gives the Executive Director of the Lottery discretion to conduct games through the use of electronic gaming machines. Any facility which is a lottery vendor and which also is licensed under the Club and Drinking Establishment Act, or any pari-mutuel dog or horse racing facility, would be eligible to have lottery electronic gaming machines placed on their premises, but it would be up to the Lottery to determine where machines would be placed and the number of machines. The machines would actually be owned and operated by the State Lottery. Mr. Hainey states that the bill provides that the State would receive 70% of the net game proceeds. (Attachment 7)

OPPONENTS:

Appearing before the committee in opposition to **HB 2822** on behalf of the Prairie Band Potawatomi Nation, was Mr. Steve Ortiz. Casino profits have energized the members of the Prairie Band Potawatomi Nation. Rather than to settle for a subsistence lifestyle, the members of the nation have been given a chance to build a long-term vision. There are many new initiatives on the reservation that Indian Gaming has allowed. (Attachment 8)

Legislative counsel for the Prairie Band Potawatomi Nation, Mr. Ron Hein appeared before the committee to oppose **HB 2822**. Mr. Hein reports that it is their feeling that once Kansas Legislature starts gaming expansion, it will be difficult to stop and secondly how quickly other groups are interested in participating with the end result being the legislature is presented proposals by the bowling proprietors, the veteran's organizations, the convenience store owners, and others who would argue, "If the state is going to authorize slots, then give us the opportunity to operate slot machines as well. Why just grant a state monopoly to two individuals?" (Attachment 9)

Hearings closed on **HB 2822**

Each member was given a copy of the National Gambling Impact Study Commission Final Report as requested at the February 13, 2002 meeting. (Attachment 10)

The next meeting is Monday, February 25, 2002 in Room 243-N.

Meeting adjourned

HOUSE TOURISM COMMITTEE GUEST LIST

DATE Feb. 20, 2002

NAME	REPRESENTING
John A. Pinegar	Washburn University
Randy Conroy	Pottawatomie Nation
Jin Leonard	KSC
Keith Kocher	KS Lottery
Ed Van Petten	KS Lottery
Steve Ortiz	Pottawatomie Nation
Whitney Daman	Kickapoo/Sac & Fox Nations
Chris Wilson	KS Bowling Proprietors
Steve Johnson	Kansas Gas Service
David Cherry	KSHSAA
Gary Mungovan	"
Judy Shaw	PMCA
Rebecca Guerny	Federico Consulting
Scott Anglemyer	KDOC&H
C. Thorne	KSM
John Schellbacher	Holly Fame
Roy Wyatt	KSHOF
Rick Williams	KSHOF
Jed Hayes	KSHOF

HOUSE TOURISM COMMITTEE GUEST LIST

DATE _____

NAME	REPRESENTING
<i>Sam Adkins</i>	<i>Hein Law Firm</i>
<i>Ken Adkins</i>	<i>Prossie Band Potawatomi</i>
<i>Carrie O'Jole</i>	<i>PBP Gaming Commission</i>
<i>Karl Peterson</i>	<i>Kansas Taxpayers Network</i>
<i>Lori Alvarado</i>	<i>SRS/SAPTR</i>
<i>Stephanie Buchanan</i>	<i>DOB</i>
<i>Rebecca Rice</i>	<i>KS Child & Assoc.</i>
<i>Therese Strubbe</i>	<i>CEO of IWS</i>
<i>Glenn Thompson</i>	<i>Stand Up For KS,</i>
<i>Shari Strubbe</i>	<i>House</i>
<i>Patrick Hurley</i>	<i>COITRA</i>
<i>John Peterson</i>	<i>K2 Governmental Consultancy</i>
<i>Bill Sneed</i>	<i>Ks Speedway Corp</i>
<i>Trisha Ruiz</i>	<i>Rep. Derg Patterson</i>
<i>SEAN GUNDEL</i>	<i>SPARKER PATTISON'S OFFICE</i>
<i>Robin Jennison</i>	<i>Ruffin Companies</i>

HOUSE COMMITTEE ON TOURISM

TESTIMONY ON HB 2896

February 20, 2002

Presented by
Ted R. Hayes, Executive Director
Kansas Sports Hall of Fame

Thank you, Chairman Beggs and Members of the Committee, for the opportunity to appear before you today in support of House Bill 2896.

The Kansas All-Sports Hall of Fame was founded in 1961 as part of the Kansas Centennial Celebration and charged with the mission to "honor those individuals whose achievements in sports have brought pride and distinction to themselves, their communities and the entire state of Kansas."

The Hall of Fame started out as a temporary display at the Topeka State Fairgrounds and in 1972 was moved to the Watkins Museum in Lawrence where it remained until 1990.

In the early years, funding for the HOF came from fees levied upon boxing and wrestling gate receipts under the governance of the Kansas Athletic Commission. The KAC was abolished in 1981 and the HOF was statutorily attached to the State Historical Society, giving the society responsibility of statutory representation in the budget process and state accounting system for the Hall of Fame.

In 1986, legislative action (74-2915) established a one-time funding mechanism for the Hall of Fame through a \$0.25 surcharge on tickets for all intercollegiate athletic events from July 1, 1987 to June 20, 1988 at all state Regents institutions. The action generated around \$215,000 in revenue for the Hall of Fame - the annual derived interest of \$8,000 - \$10,000 was used for operation of the Hall of Fame through the Watkins Museum in Lawrence. In 1988, Governor Hayden named the first governor-appointed Board of Trustees for the Hall of Fame.

In 1989, the Douglas County Historical Society voted to expand the Watkins museum for their own exhibits and asked the Hall of Fame to find a new location. After reviewing proposals from several Kansas communities, the Trustees selected Abilene as the permanent site for the Hall of Fame and in March of 1991, the Trustees entered into an agreement with a non-profit corporation in Abilene to provide for the daily operation of the Hall of Fame.

In the Spring of 1991, the Hall of Fame was moved to Abilene and the Trustees approved the hiring of Ted Hayes as Executive Director - the first full-time employee.

In 1992, the Trustees entered into an agreement with all six Kansas Regents institutions and Washburn University, whereby each of the schools agreed to designate certain athletic events as

House Tourism Committee
Meeting Date 2-20-02
Attachment 1

"Hall of Fame Games" starting with the 1992-93 season at which the host universities collected \$1.00 on each ticket for each paying attendee. The agreement was requested by the Regents institutions in lieu of the Trustees going back to the legislature for mandated surcharges as was done through statute 74-2915 in 1986. Annual revenues of approximately \$85,000 were provided to the Hall of Fame from these games hosted by the Regents institutions to help pay the Hall of Fame's annual operating expenses. These Hall of Fame games are presently being hosted by some of the Regents institutions and Washburn University as well as several private four year colleges.

In 1994, the First National Bank in Abilene donated its building to the Hall of Fame, thus providing the first permanent facility for the Hall. The bank building represented a gift in excess of \$450,000. A capital campaign, which raised over \$600,000, enabled the Hall of Fame to renovate the bank building with a magnificent arrangement of state-of-the-art sports exhibits on the first floor. The museum was designed by Ed Scheele and Associates, one of the nation's leading museum designers. The Hall of Fame officially opened its in Abilene on Induction Day, July 19, 1997.

Previously termed the "Kansas All-Sports Hall of Fame," the State of Kansas Sports Hall of Fame museum is composed of plaques, trophies, uniforms, photographs and biographical material beautifully displayed in exhibits representative of Kansas athletes and teams.

Each year, the Hall of Fame Board of Trustees selects a class of individuals who are inducted in a public ceremony. With last year's class of 2001, 90 of Kansas' sports heroes have been enshrined. Eight more deserving Kansans have been notified they will be inducted this year.

Each of the inductees is presented in the museum with a biography and a portrait by nationally recognized artist, John Martin of Kansas City.

Any Kansan can nominate individuals for induction. A screening committee comprised of more than 75 individuals also provide nominations and vote in the screening process. Final selection for induction is made by the Board of Trustees from the finalists presented by the screening committee.

In addition to the museum and induction ceremony, the Hall of Fame sponsors a series of high school awards programs at various locations throughout the state and publishes a statewide sports publication.

Support for the Hall of Fame is provided from private donations, fund-raising events, museum admissions, Kansas Sports Magazine, HOF Game surcharges, gift shop sales and others. Since the HOF moved to Abilene in 1991, it has raised over \$2.5 million. The annual operating budget is \$300,000.

The staff includes three full-time employees, two part-time and approximately 12 volunteers. The museum is open daily year-round and has been visited by thousands of guests from throughout Kansas, the U.S. and numerous foreign countries.

Again, thank you for your time and favorable consideration of HB 2896. I will stand for questions.



**STATE OF KANSAS
SPORTS HALL OF FAME**

**INCOME/EXPENSE SUMMARY
January 1, 1987 - January 31, 2002**

CASH ON HAND 1-1-87	0
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CASH RECEIPTS	
A. 1987 Legislative \$.25 surcharge to Regents Games	215,000
B. Interest from surcharge proceeds	58,563
C. State of Kansas - (1998 \$150,000; 2000 \$50,000; 2001 50,000)	250,000
D. Hall of Fame Games - Contracted with Regents and WU	653,764
E. Museum Admissions	47,407
F. Kansas Sports Magazine Revenues+Record Book	517,217
G. Donations and Grants	686,976
H. Interest Income (not including surcharge proceeds interest B)	10,729
I. Other Income (rental income plus misc.)	20,494
J. Loan Proceeds	248,666
K. Golf Tournaments	105,558
L. Awards Ceremonies	6,126
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TOTAL CASH RECEIPTS	2,820,500
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TOTAL CASH AVAILABLE	2,820,500
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CASH PAID OUT	
A. Operations	1,737,363
B. Displays/Bldg Remodeling/Parking/Campaign Expense	858,207
C. Loan Payments	* 223,568
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TOTAL CASH PAID OUT	2,819,138
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CASH POSITION	1,362
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* Current Notes Payable Balance: \$25,098 (approx) - First National Bank of Abilene

State of Kansas

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68th District
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Majority Leader
House of Representatives

TESTIMONY ON HB 2896
HOUSE TOURISM COMMITTEE
February 20, 2002

Thank you, Mister Chairman and members of the committee, for the opportunity to appear before you today in support of House Bill 2896.

HB 2896 would mandate a \$1.00 surcharge on athletic events for Regents institutions, including community colleges, and Washburn University. The bill would require the institutions to place a surcharge on one men's varsity basketball game, one women's varsity game and one football game or baseball game (WSU). This legislation is similar to current voluntary Hall of Fame games held by some of the Regents universities in which the schools place a surcharge on one football game and one men's basketball game every year. This legislation would add a women's sport and mandate that all institutions participate. HB 2896 directs the Regents institutions and Washburn to collect and remit the surcharges on a semiannual basis to the Kansas Sports Hall of Fame Surcharge Fund. The bill provides for enforcement of the surcharge deposits from the Chief Executive Officer of the Kansas Board of Regents.

As a legislator, I have worked for on-going funding for the Kansas Sports Hall of Fame. Over the past ten years, the Kansas Sports Hall of Fame has struggled financially, despite the efforts of the Governor-appointed Board of Trustees, a non-profit board comprised of volunteers and donors, and several qualified employees. Together, the trustees, volunteers and staff have raised over \$2-million which has been used to develop exhibits and to operate a museum open daily to the public since July 19, 1997.

The Legislature (which created the Board of Trustees and empowered them to enter agreements, hire staff and host induction ceremonies) has not provided an on-going source of funds nor have they provided any direction for how to go about receiving permanent funding. The Legislature has failed to act on several bills placed before them over the past few years.

In 1986, legislative action (74-2915) established a one-time funding mechanism for the Hall of Fame through a \$0.25 surcharge on tickets for all intercollegiate athletic events from July 1, 1987 to June 20, 1988 at all state Regents institutions. The action generated around \$215,000 in revenue for the Hall of Fame - the annual derived interest of \$8,000 - \$10,000 was used for operation of the Hall of Fame through the Watkins Museum in Lawrence. .

Ten years later during the 1997 session of the Kansas Legislature, SB 370 was introduced. The bill would have required the six Regents institutions and Washburn University to honor the terms of the agreements which were in place since 1993 to designate certain games at which they would collect \$1 for the Hall of Fame from each paid attendee at those specific games. During the hearings on Senate Bill 370, the Hall of Fame was asked to meet with the Regents institutions to see if a compromise could be reached to eliminate the need for the legislature to intervene. Representatives from both parties met and reported back to the committee the following compromise points:

(1) The Hall of Fame agreed to withdraw its request for legislation (SB 370) with the right to submit in the event of contract default or failure to reach an agreement on the business plan.

(2) The Regents institutions agreed to assist the Hall of Fame in preparing a five-year business plan for the Hall of Fame.

(3) The Regents institutions agreed to continue their support of the Hall of Fame under the present terms and conditions of the contracts until the five-year business plan was completed. At that time, the Board of Regents would evaluate their continuing support giving consideration to: (a) the findings of the business plan; (b) the needs of the Regents institutions' athletic budgets; and (c) the ability of the Hall of Fame to sustain itself through other revenue means.

It should be noted that from 1993 to 1997, the voluntary surcharge was collected by contract with the Regents. In 1998, several Regents institutions ceased to collect the surcharge.

The very first state appropriation in that decade occurred in 1998. Governor Graves was instrumental in the Hall of Fame receiving \$150,000 from the Omnibus Bill of 1998 and has continued to pledge his assistance by assuring the Hall of Fame that he would sign legislation placed before him to permanently fund the Hall of Fame. So far, the legislature has been unable to pass anything for the Governor to sign.

During the 2000 Legislative Session, House Bill 2732 was introduced to provide a demand transfer of \$80,000 each July 1st from sales tax currently collected at high school playoff games.

The bill was amended with a special education provision and failed to pass the House.

At that time, in order to continue operations of the State of Kansas Sports Hall of Fame, a permanent source of income amounting to approximately \$150,000 per year needed to be identified. The Trustees, appointed by the Governor, were uncertain where to turn to receive the funding they needed to pay the staff they are empowered by the Legislature to employ and to conduct the annual induction ceremony they are mandated to conduct. The non-profit organization, which was covering those expenses for the Trustees in part, by borrowing funds from the First National Bank in Abilene, could not continue to borrow money when the funds to repay were not available from the Legislature and there were no written commitments in place from the Regents institutions to continue adding the \$1 surcharges.

The absence of commitment from the Legislature to provide on-going funding for the Hall of Fame, which it created, is one of the reasons the Hall of Fame is facing the current financial situation. Additionally, the Regents universities could only remit surcharges if University leadership allowed the designation of a Hall of Fame game and the collection of the \$1 surcharge.

During the 2000 Legislative Session, \$50,000 was appropriated to the Sports Hall of Fame from the State budget. Again in 2001 Session, \$50,000 was appropriated and now, in the 2002 Session, the Governor has not recommended an appropriation of any amount. Because of this fact, I have proceeded in crafting the legislation you have before you today.

Throughout this process, I have enlisted the comments of the Regents institutions as well as those from my colleagues who represent Regents institutions located in their legislative districts. I would like to share a few of their suggestions:

- For instance, Kansas high school athletes are recognized in the State of Kansas Sports Hall of Fame with a data base of record holders. Therefore, many individuals believe the high school institutions should participate with a surcharge collected at a designated Hall of Fame game during the year or at championship games to assist in funding the agency.*
- Additionally, it has been suggested that other sports, such as car racing and rodeos, have Hall of Fame events with a \$1.00 surcharge on a designated event.*
- Supporters of the current voluntarily held Hall of Fame games have suggested that the mandate be consistent with the number of current Hall of Fame games - one football and one men's varsity basketball. The current legislation adds one women's varsity event to these two games for a total of three games per year.*

I appreciate the comments of my colleagues and those interested in supporting the ongoing mission of the Kansas Sports Hall of Fame. I am not opposed to any of these suggestions if such added components would work to strengthen the support of this important legislation.

In sponsoring this legislation, many individuals have asked me, "Why should I support the State of Kansas Sports Hall of Fame?" There is not one answer to this question, but several.

First, the Kansas Sports Hall of Fame's fundamental mission is to educate citizens and visitors about the rich tradition of Kansas' sports heroes.


Second, this agency celebrates the achievements of Kansas athletes and coaches from across the state, not just in Abilene.

And third, if the Kansas Sports Hall of Fame is able to establish a stable funding source, it will be able to actively market itself through "on-campus" activities and special events. This enables the agency to further their mission and raise more private funds. Additionally, a foundation could be established for funds that would enable the Hall of Fame to operate for years to come on the interest from the invested dollars.

Finally, by supporting the Kansas Sports Hall of Fame, you give your local university or college the ability to have ownership in the agency. It becomes a part of the school's history and notoriety. In addition, the Kansas Sports Hall of Fame will be able to provide section inductions such as a "Community College Achievements" section, a "NCAA Division II Achievements" section, or a "NCAA Division I Achievements" section. Each of these sections would highlight athletic achievements in the section, giving credit to many athletes and coaches who may be left out of inductions simply because they didn't play at a certain university or college.

Again, thank you for your time and favorable consideration of HB 2896. I will stand for questions.

Sincerely,


Shari Weber
Representative, 68th District

STATE OF KANSAS SPORTS HALL OF FAME

CASH FLOW HISTORY (January 1, 1991 through January 31, 2002)

2-5

	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002
1. CASH (First of Year)*	253,502	218,118	179,008	172,990	175,608	100,905	2,662	34,099	84,176	6,493	3,240	1,257
2. CASH RECEIPTS												
(a) State	0	0	0	0	0	0	0	150,000	0	50,000	50,000	0
(b) HOF Games	0	0	71,851	84,163	82,107	82,136	119,074	48,899	61,046	33,884	70,604	0
(c) Admissions	0	0	0	0	0	0	5,345	13,279	10,268	10,125	8,151	234
(d) KS Magazine	10,795	20,468	54,048	92,522	102,304	39,619	48,037	26,803	36,615	41,470	39,007	3,641
(e) Other Income	0	0	4,461	5,400	5,050	1,300	0	318	3,169	0	RB - 1,952	631
(f) Interest	0	** 20,194	640	642	3,585	1,725	292	1,594	1,354	524	238	4
(g) Donations	1,000	1,140	18,543	2,032	145,413	185,210	124,836	95,304	39,355	37,478	36,095	570
(h) Loan Proceeds	0	0	0	0	0	54,923	35,022	25,994	0	40,000	76,000	16,727
(i) Golf Tourney	0	0	0	0	0	0	0	0	0	61,505	44,053	0
(j) HS Ceremony	0	0	0	0	0	0	0	0	0	0	5,851	275
3. TOTAL RECEIPTS	11,795	41,802	149,543	184,759	338,459	364,913	332,605	362,191	151,807	274,986	332,051	22,081
4. TOTAL AVAILABLE	265,297	259,920	328,551	357,749	514,067	465,818	335,267	396,290	235,983	281,479	335,291	23,339
5. CASH PAID OUT												
(a) Operations	39,679	70,037	116,851	163,198	192,900	134,937	160,258	247,193	202,158	277,705	334,034	21,980
(b) Museum	7,500	10,875	38,710	18,943	220,262	328,219	140,910	64,922	27,332	534	0	0
6. TOTAL PAID OUT	47,179	80,912	155,561	182,141	413,162	463,156	301,168	312,115	229,490	278,239	334,034	21,980
7. CASH POSITION	218,118	179,008	172,990	175,608	100,905	2,662	34,099	84,176	6,493	3,240	1,257	1,359

* Source of Beginning Cash on Hand was 1987 Kansas Legislative 25-cent surcharge proceeds (\$215,000 plus 38,502 in accumulated interest).

** Includes \$20,061 in additional Interest from surcharge proceeds.

Note: All entries rounded to the nearest dollar.

NOTE PAYABLE - BALANCE AS OF 1-31-2002: \$25,098 Approximate

**STATE OF KANSAS
SPORTS HALL OF FAME**

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CASH POSITION	1,362

* Current Notes Payable Balance: \$25,098 (approx) - First National Bank of Abilene

74-2915. Surcharge on tickets for certain intercollegiate athletic events; payment in lieu of surcharge; collection and disposition of amounts remitted. (a) Except as otherwise provided by this section, in addition to any other excise tax imposed by law, there is hereby imposed for the purpose of providing funds for the all-sports hall of fame a surcharge of \$.25 added to the sale price of each ticket which is sold during the period beginning July 1, 1987, and ending June 30, 1988, for each intercollegiate athletic event or contest which is sponsored by an institution of higher education. In the case of a season ticket, the surcharge imposed by this section shall be computed on the basis of \$.25 for each such event or contest for which admission is provided by the season ticket. Each activity card or ticket, which is issued to students of an institution of higher education upon paying a nonoptional activity fee charged and collected by the institution of higher education and which provides admission to activities or events in addition to intercollegiate athletic events or contests, is exempt from the surcharge imposed by this section.

(b) Except as otherwise provided by this section, each institution of higher education shall collect and remit not less often than monthly the total amount of such surcharge collected under this section to the state treasurer who shall deposit the entire amount of each such remittance in the state

treasury to the credit of the all-sports hall of fame trust fund.

(c) In lieu of the provisions of subsections (a) and (b), an institution of higher education may remit an amount equal to the amount that would have been collected under the provisions of subsections (a) and (b) if such provisions had been in effect for the period from July 1, 1986, through June 30, 1987, and no tax shall be collected under this section for intercollegiate athletic events and contests sponsored by such institution of higher education during the period from July 1, 1987, through June 30, 1988, if such institution of higher education makes such remittance. Such amount shall be remitted to the state treasurer prior to January 1, 1988, and shall be remitted from nonstate funds. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the all-sports hall of fame trust fund.

(d) As used in this section, "institution of higher education" means any institution under the supervision and control of the state board of regents, any community college organized and operating under the laws of this state and Washburn university of Topeka.

History: L. 1986, ch. 289, § 1; L. 1987, ch. 294, § 2; May 21.

Attorney General's Opinions:

Activity passes are exempt from surcharge for admission to certain events other than intercollegiate athletic events. 87-90.

74-2915.

History: L. 1986, ch. 289, § 1; L. 1987, ch. 294, § 2; Repealed, L. 1989, ch. 229, § 4; April 27.

**Kansas Sports Hall of Fame Games Funding by University
(1993-2001)**

Emporia State University

1993 - \$3,402.00
1994 - \$1,435.00
1995 - \$1,229.00
1996 - \$2,688.00
1997 - \$1,919.00 (FB/BB)
1998 - \$6,694.00 (FB/BB)
1999 - \$2,145.00 (FB/BB)
2000 - \$2,871.00 (FB/BB)
2001 - \$2,014.00 (FB/BB)
Total - \$24,397.00

Kansas State University

1993 - \$11,464.00
1994 - \$52,062.00
1995 - \$7,849.00
1996 - \$47,456.00
1997 - \$41,928.00 (FB/BB)
1998 - \$9,115.00 (BB)
1999 - \$0.00
2000 - \$8,530.00 (BB)
2001 - \$8,000.00
Total - \$186,404.00

University of Kansas

1993 - \$39,381.00
1994 - \$15,478.00
1995 - \$54,785.00
1996 - \$16,385.00
1997 - \$55,246.03 (FB/BB)
1998 - \$16,807.29 (BB)
1999 - \$53,550.05 (FB/BB)
2000 - \$17,246.02 (BB)
2001 - \$56,309.64 (FB/BB)
Total - \$325,188.03

Wichita State University

1993 - \$10,882.50
1994 - \$9,175.00
1995 - \$12,468.00
1996 - \$7,641.00
1997 - \$10,268.00 (BB/Baseball)
1998 - \$12,348.00 (BB/Baseball)
1999 - \$1,601.00 (Baseball)
2000 - \$0.00
2001 - \$0.00
Total - \$64,383.50

Fort Hays State University

1993 - \$851.00
1994 - \$1,306.00
1995 - \$1,047.05
1996 - \$2,031.05
1997 - \$1,275.05 (FB/BB)
1998 - \$0.00
1999 - \$0.00
2000 - \$0.00
2001 - \$0.00
Total - \$6,510.15

Pittsburg State University

1993 - \$2,723.00
1994 - \$622.00
1995 - \$2,665.67
1996 - \$3,130.00
1997 - \$5,081.17
1998 - \$0.00
1999 - \$0.00
2000 - \$3,000.00 (FB/BB)
2001 - \$358 (BB)
Total - \$17,579.84

Washburn University of Topeka

1993 - \$3,147.00
1994 - \$4,085.00
1995 - \$2,063.68
1996 - \$2,805.00
1997 - \$3,357.00 (FB/BB)
1998 - \$3,935.00 (FB/BB)
1999 - \$3,750.00 (FB/BB)
2000 - \$1,447.00 (BB)
2001 - \$2,568.00 (FB/BB)
Total - \$27,157.68

Bethany

2000 - \$590.00 (FB)
2001 - \$1,115.00 (FB/BB, BB02)
Total - \$1,705.00

Kansas Wesleyan

2001 - \$139.00 (FB)

Ottawa

2000 - \$200.00 (FB)
2001 - \$100.00 (BB)
Total - \$300.00

Office of Revisor of Statutes

300 S.W. 10th Avenue
Suite 322, Statehouse
Topeka, Kansas 66612-1592
Telephone (785) 296-2321 FAX (785) 296-6668

MEMORANDUM

To: Representative Weber
From: Jill Ann Wolters, Assistant Revisor
Date: February 20, 2002
Subject: HB 2896

I have asked Dick Carter, with the Regents, for documentation (the IRS letter ruling) that the athletic corporations are 501c3's. From the information I have, KU, KSU, FHSU and WSU have separate athletic corporations, but ESU and PSU do not. But, even if they are, I have consulted with Don Hayward, our tax attorney, and he believes that even if they are 501c3's they could collect the money without violating that status. The corporations would be collecting money for a not-for-profit not a proprietary business. Further, even if it was deemed unrelated business income by the IRS, they may be taxed on that income, but it would not effect their 501c3 status. Finally, the general counsel of the Board of Regents should give us case law or IRS rulings to support this opinion.

HOUSE OF REPRESENTATIVES
STATE OF KANSAS

608 OAKCREST
PITTSBURG, KANSAS 66762
CRAWFORD COUNTY
620-230-0304

STATE CAPITOL BUILDING
ROOM 272-W
TOPEKA, KS 66612
785-296-7643



TOPEKA

R.J. WILSON
REPRESENTATIVE, THIRD DISTRICT
PITTSBURG, BAKER, CHICOPEE, LONESTAR

COMMITTEE ASSIGNMENTS
CHAIR: SOUTHEAST KANSAS LEGISLATIVE
DELEGATION

MEMBER: TAXATION
FEDERAL & STATE AFFAIRS
ETHICS & ELECTIONS
E-GOVERNMENT
SELECT COMMITTEE
ON REDISTRICTING

Written testimony before the
House Tourism Committee
regarding
February 20, 2002
hearing on
House Bill 2896

Chairman Beggs and the members of the House Tourism Committee:

Thank you for the opportunity to present written testimony on HB 2896. As I am sure you are aware, this bill would allow funding for the state agency known as the Kansas Sports Hall of Fame in Abilene, Kansas. The funding mechanism by which the Hall of Fame would be allowed to operate would involve a user fee on one football and one basketball game at the Regent's universities, the community colleges, and Washburn University during the upcoming sports seasons. Typically, I would be opposed to any legislation which places a significant burden on those individuals which attend Pittsburg State University football and basketball games. In this instance, however, I have found that Pittsburg State sports fans have continually volunteered to participate in this program. Though I am not completely enamored with the idea of placing a mandatory fee on our Regent's universities and community colleges, I do understand the direction in which Representative Weber has directed this legislation and I support her intent. Therefore, Mr. Chairman and members of the Committee, as a Regent's legislator, I feel compelled to support the legislation before you because of the minimal impact to my institution and the importance of the Sports Hall of Fame.

The Kansas Sports Hall of Fame is a tremendous opportunity for our state to showcase the hard work and dedication that is required of the young men and women throughout Kansas who attempt to achieve betterment of self through athletics. This showcase of our state's athletic accomplishment is also a great asset to the tourism that takes place in our state. I hope that your Committee will favorably consider House Bill 2896 and recommend it for passage to the Committee of the Whole.

Again, thank you for the opportunity to testify on this important issue. I will be happy to answer any questions you may have upon my return from Pittsburg on Thursday morning.

House Tourism Committee
Meeting Date 2-20-02
Attachment 3

RJWILSON@KSDP.ORG



WASHBURN UNIVERSITY

**Testimony to the
House Committee on Tourism
regarding House Bill 2896
by
Jerry B. Farley, President
Washburn University
February 20, 2002**

Mr. Chairman, Members of the Committee:

Washburn University supports House Bill 2896 which would provide funding to the Kansas All Sports Hall of Fame through a \$1 surcharge on tickets for selected intercollegiate athletic events. Representative Shari Weber discussed this issue with Mr. David Monical prior to introduction which allowed us an opportunity to discuss it internally with our athletic director and other affected parties.

It is disappointing adequate financial resources cannot be identified for the Kansas All Sports Hall of Fame without statutory reliance on this surcharge. Nevertheless, Washburn University has been a volunteer supporter since this funding mechanism began and is willing to continue this support under HB 2896.

The facility in Abilene serves as a place where our young people can learn about individuals who have had outstanding careers in sports and see how this success contributed to their lives and careers. This tourist attraction also recognizes and tells the accomplishments of the great athletes and coaches of Kansas. Our fans and boosters have been supportive of the All Sports Hall of Fame (and have even served in leadership capacities) and we have been pleased annually to designate a football game and a basketball game as the Kansas All Sports Hall of Fame game.

Again, please accept our support for HB 2896.

House Tourism Committee
Meeting Date 2-20-02
Attachment 4



M E M O

TO: Representative Shari Weber
From: Sheila Frahm, Executive Director KACCT
Dr. Jackie Vietti, Chair, Council of Presidents
Date: February 20, 2002
RE: Sports Hall of Fame

A handwritten signature in black ink, appearing to be 'S. Frahm', written over the 'From:' line of the memo.

Rep. Weber, I appreciated the opportunity to learn of your concerns regarding the ongoing funding for the Kansas Sports Hall of Fame. The background materials Jessica provided were made available last week to each of our nineteen community colleges. Certainly, the funding concerns for the Sports Hall of Fame are understood and appreciated by our leaders.

However, as I think you would anticipate, a majority of both the Council of Presidents meeting and our Association agenda included a discussion of budgets and ongoing/future funding for the community colleges. The state budget discussion indicates, and we understand, that all funding questions are going to be most difficult as we approach FY 2003. Our primary focus must be on the needs of our students and their ability to afford a quality education. Any additional costs – such as those imposed by the proposed tax on community college athletic events -- must be considered as an additional burden.

We, the community college trustees and chief administrators, look forward to continuing to discuss these concerns and others with you; and we encourage alternative solution(s) be sought for funding of the Sports Hall of Fame.

House Tourism Committee
Meeting Date 2-20-02
Attachment 5

February 13, 2002

The Honorable Shari Weber
State Capitol, Room 381-W
Topeka, KS 66612

Dear Representative Weber:

Following your meeting with the legislative liaisons of the Regents universities, we reviewed your proposed legislation for funding the Kansas Sports Hall of Fame. Linking institutions of higher education with independent agencies, while admirable, is inconsistent with the mission of Kansas universities.

The mission of the Regents universities is to serve as centers of high quality teaching, learning, scholarship, and creative endeavor. We are mandated to provide educational programs to develop lifelong learning skills and prepare students for both professions and advanced study. Within the comprehensive programs, these institutions are also a major source of research activity aimed at attaining the highest levels of research productivity reinforcing the educational experience provided, not only to students and faculty, but globally as well.

Funding the Kansas Sports Hall of Fame through fees from other state agencies may be setting a precedent which should be avoided. Statutorily imposing these precedent setting surcharges on our students, alumni, community members, and fans could even be fraught with legal challenges. Many of the athletic programs at the Regents universities operate as separate corporations under the IRS Code Section 501(c)(3). Legislation mandating these corporations to appropriate funding to the Kansas Sports Hall of Fame through fees may be determined inconsistent with the purpose of the corporations.

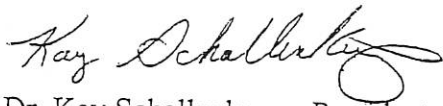
During this time of shrinking revenues, inadequate funding, and proposed severe budget reductions, it is incongruous with the message being sent by the Governor and the legislative body to introduce legislation such as proposed for the Kansas Sports Hall of Fame. Just as we are being urged to review our programs and needs, it seems reasonable that programs such as the Kansas Sports Hall of Fame would be scrutinized regarding it's mission, goals, and impact on the residents of Kansas and beyond.

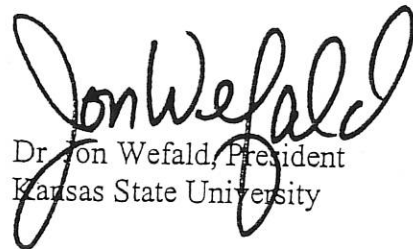
House Tourism Committee
Meeting Date 2-20-02
Attachment 6

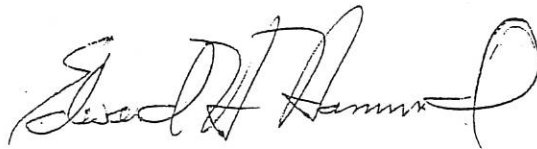
Representative Weber
February 13, 2002
page 2

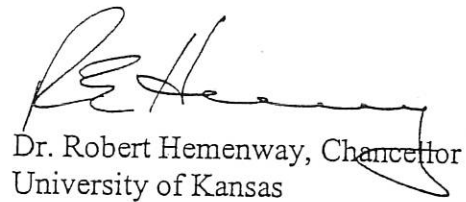
We take this opportunity to go on record and respectfully object to any legislation that imposes additional fees on students and their families. We urge you to consider the potential negative ramifications of this legislation and not go forward with this proposed action.

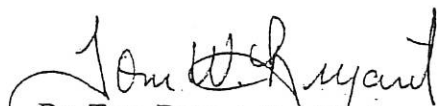
Respectfully,

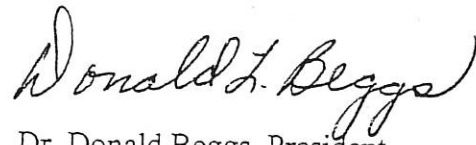

Dr. Kay Schallenkamp, President
Emporia State University


Dr. Jon Wefald, President
Kansas State University


Dr. Edward Hammond, President
Fort Hays State University


Dr. Robert Hemenway, Chancellor
University of Kansas


Dr. Tom Bryant, President
Pittsburg State University


Dr. Donald Beggs, President
Wichita State University

**Testimony
House Bill 2822
House Committee on Tourism
February 20, 2002
Kansas Bowling Proprietors Association**

Mr. Chairman, members of the Committee. We are pleased to appear today to outline for the Committee the provisions of House Bill 2822. We appreciate the Committee's introducing this bill at the request of the Kansas Bowling Proprietors Association. That Association represents the some 127 bowling centers in Kansas which have over 2,600 employees.

We compete every day for the recreation dollar of Kansas consumers, and our businesses would be harmed if gaming were expanded only to the three tracks.

House Bill 2822 gives the Executive Director of the Lottery discretion to conduct games through the use of electronic gaming machines. Any facility which is a lottery vendor and which also is licensed under the Club and Drinking Establishment Act, or any pari-mutuel dog or horse racing facility, would be eligible to have lottery electronic gaming machines placed on their premises - but it would be up to the Lottery to determine where machines would be placed and, subject to certain limitation, the number of those machines.

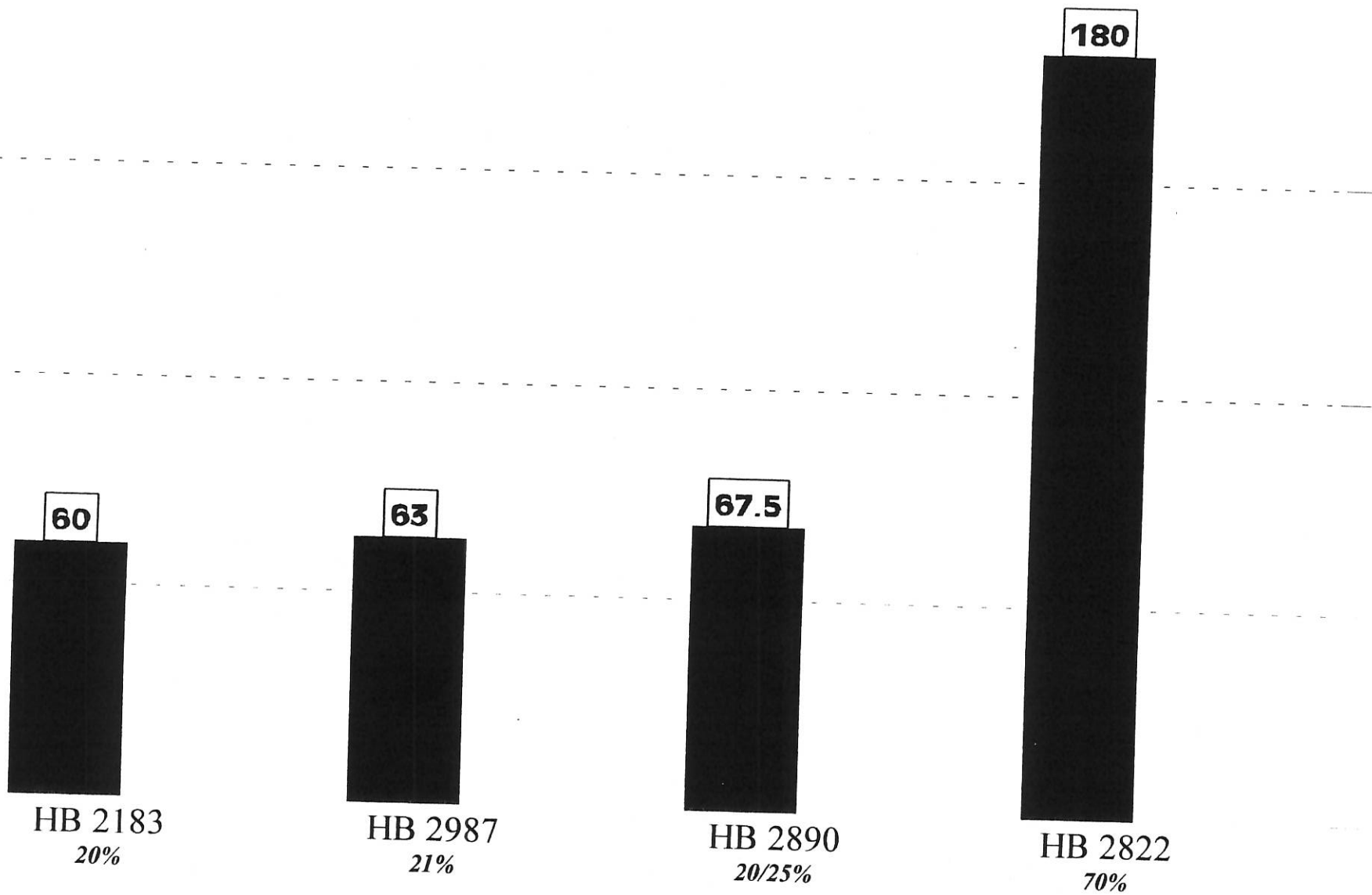
The bill provides that a location could have no more than five machines except that one additional machine could be allowed for every 500 square feet if a facility has been continuously used for at least the previous two years as a sports facility. The bill requires that all such machines be placed in an area where admissions to minors is restricted.

These machines would actually be owned and operated by the State. They would be run directly by the Lottery just as the Lottery currently operates on-line and keno style games. The Kansas Constitution, if these games are to be legal under the Lottery amendment, requires that they must be owned and operated by the State of Kansas and HB 2822 would comply with that requirement. You should carefully examine other proposals that will be before you. They will say that the State owns and operates - but look at the actual language. In bills providing for a monopoly expansion only at the tracks, the tracks decide what machines to purchase, what software programs to utilize, how they will be installed, operated and managed, whether to have progressive games, the days and hours of operation of the machines, and even the length of the term of the contract with the State.

Finally the bill provides that the State would receive 70% of the net game proceeds. We believe that if gaming is to be expanded, it should be to the substantial benefit of the State and that it should involve the potential participation of businesses who provide entertainment and recreation, not just to benefit two businessmen who own the three tracks.

House Tourism Committee
Meeting Date 2-20-02
Attachment 7

Revenue to Kansas*



* based on \$300 million annual net revenue

Steve Ortiz Testimony on the Impact of Tribal Gaming on the Prairie Band Potawatomi Nation

February 20, 2002

My name is Steve Ortiz and I am the Tribal Council Secretary of the Prairie Band Potawatomi Nation. The Prairie Band Potawatomi Nation opposes any expansion of gaming within the State of Kansas.

Prior to 1997, the Prairie Band Potawatomi Nation was surviving through a combination of federal grants and small Bingo Hall revenues. The Nation could not afford to pay its employees a fair wage and a general sense of disillusionment and despair was prevalent among the tribal members. Those with an education often left the reservation in search of more opportunity. The "community" was at best stagnant in growth with little optimism.

The advent of tribal gaming as we know it today stemmed from the Indian Gaming Regulatory Act (1988). One of the express findings of the Act is "a principal goal of Federal Indian policy is to promote tribal economic development, tribal self-sufficiency, and strong tribal government." (25 CFR 2701) Tribal gaming enables Indian Nations to accomplish this very goal.

Since 1997, the Prairie Band Potawatomi Nation has experienced a revitalization of its community. The Tribe has filed with the Bureau of Indian Affairs a specific "revenue allocation plan" that identifies how gaming profits are distributed. Despite notions to the contrary, not all gaming profits are dispersed to the tribal members in the form of Per-Capita payments. Indeed, Per-Capita payments represent only a small fraction of the total. The majority of casino proceeds support the Tribal Government and promotes tribal economic development activities.

Casino profits have energized the members of the Prairie Band Potawatomi Nation. Rather than settle for a subsistence lifestyle, the members of the Nation have been given a chance to build a long-term vision. As opportunities continue to arise, we are finding that out people want to "come home to the Reservation" (either living on or near the Reservation or working on the Reservation). Our best and brightest want to live here.

The attachment lists some of the many new initiatives on the reservation that Indian Gaming has allowed. Please understand that many non-tribal members enjoy the benefits and opportunities that these program afford. Whereas once the Prairie Band Potawatomi Nation may have been considered a burden on the State and County, we now see ourselves as a viable partner in the community.

Thank you for allowing me to speak to you today. I am happy to answer any questions you may have.

House Tourism Committee

Meeting Date 2-20-02

Attachment 8

**PRAIRIE BAND POTAWATOMI NATION
GOVERNMENT PROGRAMS**

<u>Program</u>	<u>Purpose</u>
Road and Bridge	Maintenance and renovation of all roads and bridges on Prairie Band Potawatomi Indian Reservation (121 square miles) – Jackson County no longer pays these expenses
Police	Law enforcement on Reservation – civil jurisdiction for all individuals on reservation, criminal jurisdiction for tribal members
Fire	Top of the Line Fire Station, equipment and training facilities, full service EMS program for all visitors, tribal employees and tribal members
Headstart	Early Headstart and Headstart for tribal children with state-of-the-art Child Care facility
Land	Repurchase of Tribal Land Base on Reservation – non-tribal members own much of the reservation
Human Resources	Tribal employees (1,200 at casino and government) enjoy competitive wages and excellent benefits. Tribal employees comprise only 25% of the total workforce.
Tribal Court	Adjudicates all matters with proper jurisdiction on the reservation
Education	Giving the tools and guidance to all that need educational assistance

Stephen R. Ortiz
(Steve Ortiz)
Secretary
Prairie Band Potawatomi Nation



Term: July 1998 to July 2002

Nation Chain of Command:

Chairman, Vice-Chairman, Secretary, Treasurer, Council Members.

Education:

Bachelor of Business Administration 1976– Washburn University, Topeka, Kansas

Attended Haskell Indian Nations University, Lawrence Kansas

Topeka High School Graduate May 1969

Our Lady of Guadalupe Grade School Graduate May 1965

Military Service:

Honorable Discharge United States Marine Corp– 1969 to 1971 E-3 Lance/Cpl.
Vietnam Era Veteran

United States Army Reserve 410th Evac Hosp. (SMBL)

1972 to 1974 E-5 Specialist– Topeka, KS , Graduate 6th Army NCO Academy, San
Luis Obispo, CA.

Enrolled Prairie Band Potawatomi Tribal Member

Business Experience:

IBM Administrative Staff Assistant General Systems Division 1974 to 1976

Kansas Power Light (Western Resources) Topeka, KS.

Area Manager Gas/Electric Operations 1976 to 1980

Hallmark Cards Inc. Manufacturing Management Section Mgr. 1980 to 1998

United Way Of Douglas County Board of Directors Member 1995 to 1997

Tribal Experience:

Prairie Band Potawatomi Tax Commissioner

National Indian Gaming Commission Health/Safety Task Force

Past Chairman of Topeka Indian Center

Past Chairman of Lawrence Indian Center

Chairman of the Holton Service Unit Health Board

Kansas Representative for the Oklahoma Inter-Tribal Health Board

HEIN LAW FIRM, CHARTERED

5845 SW 29th Street, Topeka, KS 66614-2462

Phone: (785) 273-1441

Fax: (785) 273-9243

Ronald R. Hein
Attorney-at-Law

Email: rhein@hwchtd.com

Testimony re: Gaming (HB 2183 and HB 2822)

House Tourism Committee

Presented by Ronald R. Hein

on behalf of

Prairie Band Potawatomi Nation

February 20, 2002

Mr. Chairman, Members of the Committee:

My name is Ron Hein, and I am legislative counsel for the Prairie Band Potawatomi Nation. The Prairie Band Potawatomi Nation is one of the four Kansas Native American Indian Tribes.

The Prairie Band Potawatomi Nation opposes the expansion of gaming by the state of Kansas to the extent that such gaming would negate the benefits that Tribal gaming has provided to Native American Indian Tribes. The Indian Gaming Regulatory Act is federal legislation that provides for the regulation of gaming at Indian reservations. The Act is, of course, administered at the federal level, but there are provisions for compacts to be entered into with the state, and the state is involved in the oversight of daily gaming operations. There are restrictions on the ability of the states to require payments to the state as a part of the consideration for gaming compacts.

I have heard lobbyists for the tracks and others contend that the state receives no revenue from Tribal gaming. It is correct that the Tribes do not pay a specified percentage of gaming revenues to the state. However, state government, local government, school districts, and other taxing subdivisions do benefit from Tribal gaming by virtue of collection of income taxes, both corporate and individual, liquor taxes, and other taxes paid as a result of Tribal gaming and the economic development that they currently generate for Northeast Kansas.

Part of this myth that no taxes are generated from Tribal gaming exists because some people believe that Native Americans do not pay taxes. So there is no misunderstanding, all Tribal members pay federal income taxes. Regarding state income tax, only those Tribal members who both work and live on the reservation are exempt from state income taxes. In other words, any Tribal member who lives off the reservation but works on the reservation pays state income taxes; and any individual Tribal member who lives on the reservation but works off the reservation pays state income taxes. A very small percentage of Tribal members both live and work on the reservation. Lastly, Tribal members pay sales taxes on purchases made off the reservation.

House Tourism Committee

Meeting Date 2-20-02

Attachment 9

My reason for discussing a few of these tax situations facing the Tribes is twofold: 1) to point out that the state and the community are receiving tax revenues as a result of Tribal gaming; and 2) Tribal gaming revenues is one of the few tools provided by federal and state law for Indian reservations to generate the revenues necessary to run their governmental programs.

It is important to note this second point. Wyandotte County has expressed a need for gaming in order to help stimulate economic development in an area which is economically disadvantaged. In fact, the same can be said for Tribal gaming. The areas being served by Tribal gaming were economically disadvantaged, and specifically, the reservations themselves, were severely economically disadvantaged.

However, Wyandotte County has available other economical advantages that do not exist for the four Kansas resident Tribes. If the Tribes were to attract a private sector business to the reservation, the position of the Kansas Department of Revenue and other political subdivisions of the state would be that such tax revenues belong to them, and not the Tribes. Gaming has been the one economic development program which the federal and state governments have been willing to allow the Tribes to utilize. Now, these bills threaten even that.

You have heard from the Division of Legislative Post Audit that expansion of slots at pari-mutuel tracks pursuant to the provisions of HB 2183 could be estimated to generate revenues for the state of between \$54 million and \$82 million per year. It should be noted that such a fiscal revenue estimate assumes such revenues as new revenues, and does not take into consideration the impact on other economic activities currently taking place in the state.

For example, proponents of expansion of state gaming often testify that gaming expansion will bring money which is being lost to Missouri into the state of Kansas. That general statement is rarely questioned. However, that seemingly common sense statement is subject to much greater scrutiny.

If Kansas would attract some people currently gaming in Missouri to a Kansas casino, will it not still be possible for Missouri to change the rules pursuant to which Missouri gaming facilities operate so as to make them more competitive than Kansas? In the Wichita area, will the revenues generated by that facility still be pulled from the Missouri area, or will they more likely be pulled out of the Sedgwick County and surrounding areas economy? If they are pulled from the surrounding economy, what other businesses will be impacted adversely by this new "entertainment competitor"? Will it be the theater, movie theaters, bowling proprietors, restaurants, or other industries which are currently serving the entertainment market? How much revenue will be lost to the state from income taxes, sales taxes, and other taxes when these dollars move from existing

businesses to these new casinos? How much revenue will be lost to the state from Lottery and bingo revenues? How much will these reductions in other tax revenues impact the total state coffers after the expansion of gaming has occurred?

And, how much will the economic development generated in Northeast Kansas by the existing Tribal gaming be decreased? Our facility has already projected a reduction in gaming which will have the effect of discouraging new hiring, discouraging new expansion, and other effects upon our casino and the economy of Northeast Kansas.

It has been said before that if we do not learn from history, we will be doomed to repeat it. We have much to learn from the history of gaming from what has occurred with pari-mutuel gambling in Kansas, and with gaming in Missouri. This history should help us predict what will happen with gaming in Kansas should this legislation be enacted.

First of all, once the state legislature starts down the slippery slope of gaming expansion, it becomes a slope upon which the legislature cannot dig in its heels and stop itself from falling further.

It would be to the committee's benefit to review the history of pari-mutuel gaming in Kansas. I was around when the legislature approved pari-mutuel gaming with a combined dog and horse track proposal. At that time, the experts were all contending that such a track would be doomed to failure. That was the experience of other tracks throughout the nation. However, the promoters of gaming who were going to build the track argued that was not the case, and this was the one track that was going to be successful. Within a year or two, reality began to set in. The bill of goods that everyone had been sold suddenly needed to be changed a little bit in order for pari-mutuel gaming to survive. What followed was a number of years of additional requests to the legislature to change the rules because otherwise pari-mutuel gaming was not going to be able to remain successful.

Over the years, the legislature responded by changing this and that, tweaking the percentages of distribution of funds, and other items at the request of the pari-mutuel track owners. I can't remember all the changes, but I believe there were changes to the distribution percentages, changes on the number of days horse racing had to occur, and eventually in the approval of simulcasting. Today, we are hearing the same verse. *Deja vou*. If the state is to save pari-mutuel gaming, they have to have slot machines at the tracks.

During this same period of time, there has been an on-going reduction in the amount of revenue generated for the state of Kansas. (From approximately \$9.5 million in FY 1991 to approximately \$425,000 in FY 2001.)

So given the slippery slope of gaming, the question should be asked, "If legislation being considered by the committee is passed this session, how quickly will it be changed, and how will it be changed?"

One of the other observations that can be made of this slippery slope of state gaming is how quickly other groups are interested in participating if you are going to have two individuals who happen to own pari-mutuel tracks benefit from such legislation. Their first question, and it is a good one, is: "Why should only the two individuals who own the pari-mutuel tracks be permitted to benefit economically from gaming?" They also ask, "Why should our businesses, or our fundraising programs be forced to suffer from this additional competition?"

The end result: the legislature is presented proposals by the bowling proprietors, the veteran's organizations, the convenience store owners, and others who argue, "If the state is going to authorize slots, then give us the opportunity to operate slot machines as well. Why just grant a state monopoly to two individuals?" Those issues may be decided this session, but they will continue on into the future. The slippery slope continues.

The other phenomenon of the slippery slope is that the competition will not stand still. If legislation is passed to allow slots in Wyandotte County, is Missouri simply going to stand still and not respond to the competition? Once again, looking at the history of Missouri gaming: there have been repeated changes in the Missouri law at the request of gaming operators in order to insure that gaming continues to exist in Missouri. The legislature has continually been asked to change the rules. Nobody believes that the rules are set in concrete. If Kansas is successful in getting gaming approved, Missouri will, possibly before the end of the legislative session, but probably before a Kansas casino would actually be built, review their options to insure that their casinos are at a competitive advantage to those in Kansas. What will happen in Kansas if that occurs?

One logical prediction based upon the past history of pari-mutuel gaming in Kansas and of gaming in Missouri, is that the gaming operators will be back before the Kansas Legislature seeking "tweaking" of the Kansas statutes so that they are able to "compete" and to be able to continue to exist. The slippery slope continues.

For these, and other reasons, the Prairie Band Potawatomi Nation fears the expansion of gaming by the state of Kansas. Once Kansas gets onto this bobsled ride, the end result may well be one of two things: 1) A successful bob-sled ride (Nevada-type gaming throughout the state); or 2) the bob-sled will crash. Which of these two scenarios would this committee like the state of Kansas to follow?

There is one potential solution to this problem that warrants further consideration by the Governor and this legislature. Tribal gaming pursuant to the Indian Gaming Regulatory

Act is a reality in this country. The Kansas Legislature cannot change that. The Kansas Legislature and the Governor are to be applauded for their efforts in conjunction with the four Kansas resident Native American Indian Tribes to oppose efforts by out-of-state Tribes to establish casinos in this state. We would urge the Legislature and the Governor to continue to oppose such efforts.

If the State of Kansas was to enter into a gaming compact with two or more of the Native American Indian Tribes resident in Kansas who have indicated an interest in Tribal gaming in the Wyandotte County area, coupled with a side agreement similar to that utilized in Connecticut which provides for revenue to be brought to the state from such operation, such a proposal might well address the goals and the concerns of the vast majority of the players in this entire debate.

Wyandotte County would have its casino to help its economic development. Those who are opposed to expansion of gaming could see a reduction in the number of casinos in Kansas. Those who are concerned about the State of Kansas getting onto the slippery slope of conducting the business of gaming would see such gaming continue with the foothold that serves as a break against falling further into the gaming abyss by limiting that gaming only to Tribal gaming. Those individuals who see expansion of gaming as a potential revenue source would see revenue raised for the state from such Tribal gaming that currently does not exist.

To pull such a proposal together would require the support of the Governor, the leaders and the members of the House and the Senate, the respective Tribes that are involved in the transaction, and others. I am not meaning to suggest that this would be the easiest agreement to accomplish. However, it is an issue which I believe warrants your discussion, your consideration, and well could be the proposal that would permit a large number of legislators to come together on this issue.

Thank you very much for permitting me to testify, and I will be happy to yield to questions.

National Gambling Impact Study Commission Final Report

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CHAPTER 1. OVERVIEW

Today the vast majority of Americans either gamble recreationally and experience no measurable side effects related to their gambling, or they choose not to gamble at all. Regrettably, some of them gamble in ways that harm themselves, their families, and their communities. This Commission's research suggests that 86 percent of Americans report having gambled at least once during their lives. Sixty-eight percent of Americans report having gambled at least once in the past year.¹ In 1998, people gambling in this country lost \$50 billion in legal wagering, a figure that has increased every year for over two decades, and often at double-digit rates. And there is no end in sight: Every prediction that the gambling market was becoming saturated has proven to be premature.

THE EXPANSION OF LEGALIZED GAMBLING

The most salient fact about gambling in America—and the impetus for the creation of the National Gambling Impact Study Commission (NGISC)—is that over the past 25 years, the United States has been transformed from a nation in which legalized gambling was a limited and a relatively rare phenomenon into one in which such activity is common and growing. (See Figure 1-1.) Today, all but two states have some form of legalized gambling.² Pari-mutuel racetracks and betting are the most widespread form and are now legal in over 40 states; lotteries have been established in 37 states and the District of Columbia, with more states poised to follow; Indian casinos operate in every region of the country. Non-Indian casino gambling has expanded from Nevada and Atlantic City to the Mississippi Gulf Coast, Midwest riverboats, and

¹ National Opinion Research Center, Gambling Impact and Behavior Study, Report to the National Gambling Impact Study Commission, April 1, 1999, p. 6.

² Hawaii and Utah have no legal gambling; pari-mutuel horse racing is legal in Tennessee, but no racetracks are currently operating there.

western mining towns. As gambling sites proliferate on the Internet and telephone gambling is legalized in more states, an increasingly large fraction of the public can place a bet without ever leaving home at all. Universally available, "round-the-clock" gambling may soon be a reality.

Once exotic, gambling has quickly taken its place in mainstream culture: Televised megabucks drawings; senior citizens' day-trips to nearby casinos; and the transformation of Las Vegas into family friendly theme resorts, in which gambling is but one of a menu of attractions, have become familiar backdrops to daily life.

IMPACT AND CONTROVERSY

This massive and rapid transformation clearly has had significant economic and social impacts on individuals, communities, and on the United States as a whole. But what are they? And is the net impact positive or negative?

Not surprisingly, the spread of legalized gambling has spawned a range of public debates, infused with the drama of contests between great interests and sharpened by a visceral emotional intensity. Typically, proponents of gambling choose to stress the potential economic benefits that the gambling industry can produce, such as jobs, investment, economic development, and enhanced tax revenues; whereas opponents underline the possible social costs, such as pathological gambling, crime, and other maladies.

Many of the positive economic impacts are in fact easy to point to if not always to quantify: Sleepy backwaters have become metropolises almost overnight; skyscrapers rise on the beaches at once-fading tourist areas; legions of employees testify to the hope and opportunities that the casinos have brought them and their families; some Indian nations have leapt from prolonged neglect and deprivation to sudden abundance. Gambling has not just made the desert bloom in Las Vegas but has made it the fastest growing city in the United States.

Others, however, tell a different tale—of lives and families devastated by problem gambling, of walled-off oases of prosperity surrounded by blighted communities, of a massive transfer of money from the poor to the well-off, of a Puritan work ethic giving way to a pursuit of easy money.

Which of these images is true? If elements of both exist, how does one weigh them? Assuming an assessment is even possible, what should be done?

These are obvious questions, but few answers suggest themselves as readily, at least not to all observers. Certainties may abound for the respective partisans; but the ongoing public debate is evidence that these viewpoints have not yet settled the matter. It was for this reason that the NGISC was created and given a mandate to investigate and report on the impact of gambling on America. The task set by Congress—one which the Commissioners confirmed in their own deliberations—was not to shoulder the impossible burden of resolving all disputes, but instead to provide far greater clarity regarding what is really happening in our country, in service of the informed public debate that is a prerequisite for decisionmaking in a democratic society.

A Moving Target

Gambling is an ephemeral subject, the study of it is frustrated by the apparently solid repeatedly slipping away. A good starting point is a recognition that the gambling “industry” is far from monolithic. Instead, it is composed of relatively discrete segments: Casinos (commercial and tribal), state-run lotteries, pari-mutuel wagering, sports wagering, charitable gambling, Internet gambling, stand-alone electronic gambling devices (EGD’s) (such as video poker and video keno), and so forth. Each form of gambling can, in turn, be divided or aggregated into a variety of other groupings. For example, pari-mutuel wagering includes the

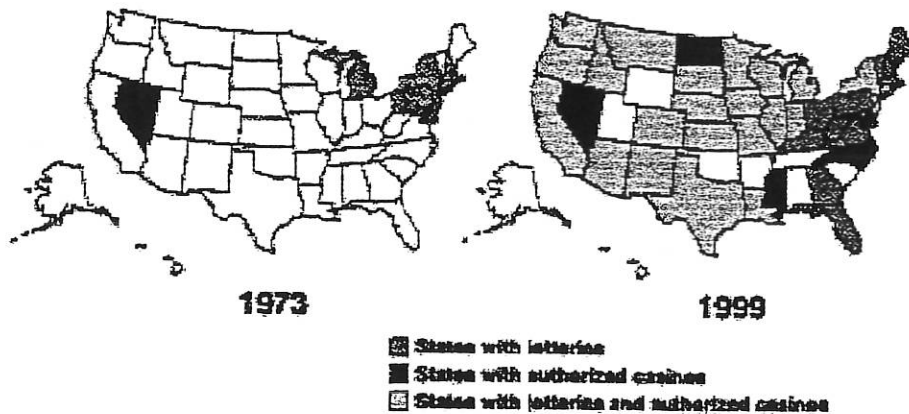
subgroups of horse racing, dog racing, and jai alai. In addition, the terms “convenience gambling” and “retail gambling” have often been used to describe stand-alone slot machines, video keno, video poker, and other EGD’s that have proliferated in bars, truck stops, convenience stores, and a variety of other locations across several states. This term may also be applied to many lottery games. (These groupings will be discussed in greater detail later in this report.)

Each group has its own distinct set of issues, communities of interests, and balance sheets of assets and liabilities. For example, lotteries capture enormous revenues for state governments, ostensibly benefiting the general public in the form of enhanced services, such as education. But critics charge that the states knowingly target their poorest citizens, employing aggressive and misleading advertising to induce these individuals to gamble away their limited means. Casinos spark different discussions. In Atlantic City, the casinos have transformed the Boardwalk and provide employment for thousands of workers. But opponents point to the unredeemed blight only blocks away, made worse by elevated levels of crime that some attribute to the presence of gambling. And so-called convenience gambling may help marginal businesses survive, but at the cost of bringing a poorly regulated form of gambling into the hearts of communities. The Internet brings its own assortment of imponderable issues.

The fortunes of each segment also differ greatly. As a group, the destination casinos have done well. Las Vegas, like America, constantly reinvents itself, with an endless line of new projects. Indian gambling has expanded rapidly, but with enormous disparities in results. Pari-mutuel racetracks have kept their heads above water in the face of increasing competition for gambling dollars, but often only at the price of mutating into quasi-casinos. Lottery revenues have plateaued, prompting some to expand their inventory to include ever-more controversial sources of income, such as video keno.

Figure 1-1

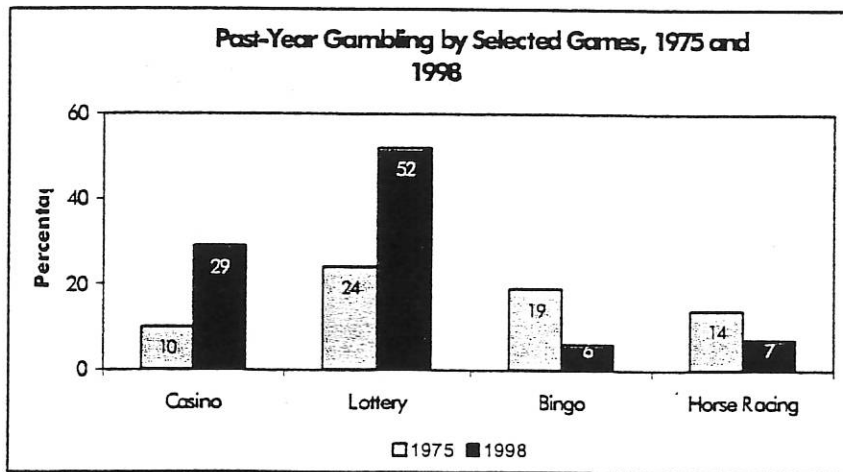
**Increase in states with lottery and casino gambling
1973 versus 1999***



*Excludes pari-mutuel gambling

SOURCES: *Crone Annual Wager*, International Gambling and Wagering Business Magazine, August 1998, p. 2. *Gambling in America*, Final Report to Congress, 1975, pp. 78, 144. *Casino Business Directory*; Reno, Nevada: Nevada Gaming Publishing, 1998 and other sources.

Figure 1-2



SOURCE: National Opinion Research Center at the University of Chicago, Gemini Research, and The Lewin Group. Gambling Impact and Behavior Study. Report to the National Gambling Impact Study Commission. April 1, 1999, p. 7.

The terrain also is becoming more complicated. As gambling has expanded, it has continued to evolve. Technology and competitive pressures have joined to produce new forms, with the onset of the Internet promising to redefine the entire industry.

The participants in the various debates are similarly varied. Even the designations “proponents” and “opponents” must be applied with care because opponents can include those opposed to all gambling, those content with the current extent of gambling but opposed to its expansion, those favoring one type of gambling but opposed to another, and those who simply want to keep gambling out of their particular community, the latter being less motivated by questions of probity than of zoning. Proponents can be similarly divided: Few people in the casino industry welcome the advent of gambling on the Internet, and the owners of racetracks are no friends of the state lotteries. Similarly, if polls are to be believed, a clear majority of Americans favor the continued legalization of gambling (in fact, in any given year a majority of Americans report having gambled; see Figure 1-2) but a clear majority also opposes unlimited gambling, preferring continued regulation. Drawing the line on gambling has proven difficult; and, in fact, most lines in this area become blurred when examined closely. But governments are in business to draw lines, and draw them they do.

THE ROLE OF GOVERNMENT

The public has voted either by a statewide referendum and/or local option election for the establishment or continued operation of commercial casino gambling in 9 of 11 states where commercial casinos are permitted. Similarly, the public has approved state lotteries via the ballot box in 27 of 38 instances where lotteries have been enacted. Whatever the case, whether gambling is introduced by popular referendum or by the decision of elected officials, we must recognize the important role played by government in the industry’s growth and development. Government decisions have influenced the expansion of gambling in

America, and influencing those decisions is the principal objective of most of the public debates on this issue.

Although some would argue that gambling is a business like any other and, consequently, should be treated as such, in fact it is almost universally regarded as something different, requiring special rules and treatment, and enhanced scrutiny by government and citizens alike. Even in the flagship state of Nevada, operation of a gambling enterprise is explicitly defined as a “privilege,” an activity quite apart from running a restaurant, manufacturing furniture, or raising cotton.

Unlike other businesses in which the market is the principal determinant, the shape and operation of legalized gambling has been largely a product of government decisions. This is most obvious in the state lotteries, where governments have not just sanctioned gambling but have become its enthusiastic purveyors, legislating themselves an envied monopoly; and in Native American tribal gambling, where tribal nations own, and their governments often operate, casinos and other gambling enterprises.

But the role of government is hardly less pervasive in other forms of gambling: Governments determine which kinds of gambling will be permitted and which will not; the number, location, and size of establishments allowed; the conditions under which they operate; who may utilize them and under what conditions; who may work for them; even who may own them. All of this is in addition to the normal range of governmental activity in areas such as taxes, regulations, and so forth. And, because governments determine the level and type of competition to be permitted—granting, amending, and revoking monopolies, and restricting or enhancing competition almost at will—they also are a key determinant of the various industries’ potential profits and losses.

No Master Plan

To say that gambling has grown and taken shape in obeisance to government decisions does not imply that there was a well thought-out, overall

plan. All too commonly, actual results have diverged from stated intentions, at times completely surprising the decisionmakers. There are many reasons for this awkward fact.

In the U.S. federalist system, use of the term "government" can easily mislead: Far from a single actor with a clear-eyed vision and unified direction, it is in fact a mix of authorities, with functions and decisionmaking divided into many levels—federal, state, local, and others, including tribal. Each of these plays an active role in determining the shape of legalized gambling. The states have always had the primary responsibility for gambling decisions and almost certainly will continue to do so for the foreseeable future. Many states, however, have delegated considerable authority to local jurisdictions, often including such key decisions as whether or not gambling will be permitted in their communities. And the federal government plays an ever-greater role: Indian gambling sprang into being as a result of federal court decisions and congressional legislation; and even the states concede that only Washington has the potential to control gambling on the Internet.

And almost none of the actors coordinate their decisions with one another. The federal government did not pull the states when it authorized Indian gambling within their borders, nor have Mississippi and Louisiana—nor, for that matter, any other state—seen fit to adopt a common approach to gambling. In fact, rivalry and competition for investment and revenues have been far more common factors in government decisionmaking regarding gambling than have any impulses toward joint planning.

Those decisions generally have been reactive, driven more by pressures of the day than by an abstract debate about the public welfare. One of the most powerful motivations has been the pursuit of revenues. It is easy to understand the impetus: Faced with stiff public resistance to tax increases as well as incessant demands for increased or improved public services from the same citizens, tax revenues from gambling can easily be portrayed as a relatively painless method of resolving this dilemma.

Lotteries and riverboat casinos offer the clearest examples of this reactive behavior on the part of legislatures. The modern history of lotteries demonstrates that when a state authorizes a lottery, inevitably citizens from neighboring states without lotteries will cross the border to purchase tickets. The apparent loss of potential tax revenues by these latter states often gives rise to demands that they institute lotteries of their own, in order to keep this money in-state, for use at home. Once any of these states installs a lottery, however, the same dynamic will assert itself in still other states further afield. This competitive ripple effect is a key reason why lotteries now exist in 37 states and the District of Columbia, with more poised to join the list.

The same pattern surfaced in legislative debates regarding riverboat casinos. As the great majority of these casinos have been sited on borders with other states, they quickly gave rise to charges of one state "raiding" the pocketbooks of its neighbors. This often prompted cries in the affected states to respond by licensing their own riverboats which, when generously distributed along their own borders, in turn, often stimulated similar reactions from other states far removed from the original instigator. For both lotteries and riverboat casinos, the immediate legislative attempt to capture fleeing tax dollars created a powerful yet usually unacknowledged dynamic for the expansion of gambling. Some believe another contributing factor has been the increasing volume of political contributions from interests with an economic stake in virtually every place expansion is sought.

Critics have asserted that this legislative pursuit of revenues has occurred at the expense of consideration of the public welfare, a serious charge indeed, albeit an unproveable one. But advocates have successfully deployed many other arguments for legalizing or expanding gambling: economic development for economically depressed areas, the general promotion of business for the investment and employment opportunities it can bring with it, undermining illegal gambling and the organized crime it supports, and so forth. There is even the eminently democratic motivation of responding

to public demand: A number of election campaigns and referenda have been successfully waged on the issue of legalizing or expanding gambling.

THE LACK OF INFORMATION

Presumably, many of the debates could be settled if either the benefits or costs of gambling could be shown to be significantly greater than the other. But such a neat resolution has evaded would-be arbiters. Efforts to assess the various claims by proponents and opponents quickly encounter gambling's third defining characteristic—the lack of reliable information. Regarding gambling, the available information on economic and social impact is spotty at best and usually inadequate for an informed discussion let alone decision. On examination, much of what Americans think they know about gambling turns out to be exaggerated or taken out of context. And much of the information in circulation is inaccurate or even false, although often loudly voiced by adherents. Add to this the fact that many of the studies that do exist were contracted by partisans of one point of view or another and uncertainty becomes an understandable result. Nevertheless, decisions must be made and governments have shown little hesitation in making them.

The problem is not simply one of gathering information. Legalized gambling on a wide scale is a new phenomenon in modern America and much of the relevant research is in its infancy. Many phenomena are only now beginning to be recognized and defined, a prerequisite to gathering useful information. And many of the key variables are difficult to quantify: Can the dollar costs of divorce or bankruptcy adequately capture the human suffering caused by problem gambling?

The more difficult the measurement; the more the weighing of competing claims retreats from science to art or, with even greater uncertainty, to politics. Nevertheless, the lack of information will not reduce the pressures on governments to make decisions.

To take but one example: What are the economic impacts of gambling? The answer in great part depends on the context selected. On an individual basis, it is obvious that some people benefit and others do not, including both gamblers and nongamblers. The larger the group examined, however, the more ambiguous the possible conclusions. Single communities boasting a positive impact can readily be found, but the radius of their concerns usually does not extend to surrounding areas where negative consequences for others may surface as a direct consequence of this good fortune, such as loss of business, increases in crime, reduced tax revenues, and problem gamblers taking their problems home.

For example, gambling has been touted as an instrument of economic development, especially for poorer areas. In communities like Tunica, Mississippi, the arrival of large-scale gambling has had a highly visible and generally positive role, bringing with it capital investment, increased tax revenues, and enhanced public services, as well as vastly expanded employment opportunities and health-care benefits for many people who formerly were without much of either. But some argue that that prosperity is offset by negative impacts in the surrounding area, including nearby Memphis, a major source of casino patrons. But even if the communities in the immediate area were seen to benefit, or at least not to suffer, what can be said about the impact beyond? Is California hurt, helped, or left untouched by gambling in Nevada? Some claim that Californians leave their spending money and tax dollars in Nevada and bring back a slew of economic and social costs, such as pathological gambling. There are surprisingly few independent studies that have addressed issues such as these. And as for the impact on the national economy, efforts to estimate the net impact of gambling on national statistics such as investment, savings, economic growth, and so forth, break down in the face of our limited knowledge.

But even when the economic benefits are clear and agreed upon, there are other equally important issues to be decided. In fact, the heart

of the debate over gambling pits possible economic benefits against assumed social costs. What are the broad impacts of gambling on society, on the tenor of our communities' lives, on the weakest among us? Because they inevitably involve highly subjective, non-quantifiable factors, assessing these is a more controversial exercise than the more pleasant task of estimating economic benefits. How can one ruined life be compared with the benefits provided to another? How can the actual costs of gambling-related crime be measured? Where is the algorithm that would allow the pursuit of happiness to be measured against the blunt numbers of pathological gambling?

Time for a Pause

It may be that the expansion of gambling accurately reflects the will of the people, as expressed in referenda, state legislatures, tribal reservations, and in Washington. The impressive financial resources already accounted for by businesses, workers, and public officials further strengthen the industry's ability to voice its interests. This Commission, however, believes that gambling is not merely a business like any other and that it should remain carefully regulated. Some Commissioners would wish it to be far more restricted, perhaps even prohibited. But overall, all agree that the country has gone very far very fast regarding an activity the consequences of which, frankly, no one really knows much about.

In an attempt to better understand those consequences, this Commission has examined many issues, received testimony from hundreds of individuals and organizations, and deliberated over a period of 2 years. This broad ingathering of information and discussion of issues will be reflected in the following chapters, which outline the parameters of the many debates, discuss the available evidence, and offer recommendations. Inevitably for a Commission of such diverse makeup, some differences in viewpoint refuse to melt away and the existing evidence is insufficient to compel a consensus. But there is an encouraging breadth of agreement among

Commissioners on many individual issues, such as the immediate need to address pathological gambling; and on one big issue: The Commissioners believe it is time to consider a pause in the expansion of gambling.

The purpose of the pause is not to wait for definitive answers to the subjects of dispute, because those may never come. Additional useful information is, of course, to be hoped for. But the continuing evolution of this dynamic industry has produced visible changes even in the short lifetime of this Commission and indicates that research will always trail far behind the issues of the day and moment. Instead, the purpose of this recommended pause is to encourage governments to do what to date few if any have done: To survey the results of their decisions and to determine if they have chosen wisely.

To restate: Virtually every aspect of legalized gambling is shaped by government decisions. Yet, virtually no state has conformed its decisions in this area to any overall plan, or even to its own stated objectives. Instead, in almost every state whatever policy exists toward gambling is more a collection of incremental and disconnected decisions than the result of deliberate purpose. The record of the federal government is even less laudatory. It is an open question whether the collective impact of decisions is even recognized by their makers, much less wanted by them. Does the result accord with the public good? What harmful effects could be remedied? Which benefits are being unnecessarily passed up?

Without a pause and reflection the future does indeed look worrisome. Were one to use the experience of the last quarter century to predict the evolution of gambling over the next, a likely scenario would be for gambling to continue to become more and more common, ultimately omnipresent in our lives and those of our children, with consequences no one can profess to know.

The Commission, through its research agenda, has added substantially to what is known about the impact of gambling in the United States. The

Commission also has tried to survey the universe of information available from other sources. But it is clear that Americans need to know more. In this context, the Commission's call for a pause should be taken as a challenge—a challenge to intensify the effort to increase our understanding of the costs and the benefits of gambling and deal with them accordingly. Policymakers and the public should seek a comprehensive evaluation of gambling's impact so far and of the implications of future decisions to expand gambling. In fact, state and local versions of this Commission may be an appropriate mechanism to oversee such research. If such groups are formed they will find as did the Commission that the search for answers takes time. Therefore, some policymakers at every level may wish to impose an explicit moratorium on gambling

expansion while awaiting further research and assessment.

Although some communities may decide to restrict or even ban existing gambling, there is not much prospect of its being outlawed altogether. It is clear that the American people want legalized gambling and it has already sunk deep economic and other roots in many communities. Its form and extent may change; it may even disappear altogether. But for the present, it is a reality. The balance between its benefits and costs, however, is not fixed. To a welcome extent, that appears to lie within our power to determine. We can seek to shape the world we live in or simply allow it to shape us. It is in service of the former that this *Final Report* and its recommendations are offered.

CHAPTER 2. GAMBLING IN THE UNITED STATES

In 1999 the gambling landscape is varied and complex. This chapter provides a snapshot of the scope and location of legal gambling activities in the United States,¹ which occurs in a variety of places and takes many forms. The chapter also outlines each form of gambling, describing its scope and availability, and introducing some of the issues raised by each type of gambling.²

LOTTERIES

Lotteries held a prominent place in the early history of America, including an important role in financing the establishment of the first English colonies. Lotteries frequently were used in colonial-era America to finance public works projects such as paving streets, constructing wharves, and even building churches. In the 18th century, lotteries were used to finance construction of buildings at Harvard and Yale. Several lotteries operated in each of the 13 colonies in 1776.

Most forms of gambling and all lotteries were outlawed by the states beginning in the 1870's, following massive scandals in the Louisiana lottery—a state lottery that operated nationally—and which included bribery of state and federal officials. The federal government outlawed the use of the U.S. mail for lotteries in 1890 and, in 1895, invoked the Commerce Clause to forbid shipments of lottery tickets or advertisements across state lines, effectively ending all lotteries in the United States.

The revival of lotteries began in 1964 when New Hampshire established a state lottery. New York followed in 1966. New Jersey introduced its lottery in 1970 and was followed by 10 other

states by 1975. In 1999, 37 states and the District of Columbia have operating lotteries.

Growth of Lotteries

Along with the lottery's rapid expansion, lottery revenues have increased dramatically over the years. In 1973 lotteries were found in 7 states and had total sales of \$2 billion. In 1997 lotteries existed in 37 states and the District of Columbia and garnered \$34 billion in sales, not counting electronic gambling devices (EGD's) sales³. This rapid growth is a result of both the expansion of lotteries into new states and increased per capita sales, from \$35 per capita in 1973 to \$150 in 1997.⁴ (See Table 2-1 and Figure 2-1.)

In addition to expansion and increased per capita sales, technological advances have played a major role in lottery growth, especially on-line computer links between retail outlets and the central computer, which are required for the daily numbers games and lotto. Changing technologies also have allowed lotteries to branch out into new games enabling them to compete with casino-style gambling.

Types of Lottery Games

Before the mid-1970's state lotteries were little more than traditional raffles, with the public buying tickets for a drawing at some future date, often weeks or months away. The introduction of new types of games has almost entirely displaced the original sweepstakes form of the lottery. Today, states offer five principle types of lotteries: instant games, daily numbers games, lotto, electronic terminals for keno, and video lottery.

- Instant games utilize a paper ticket with spaces that can be scratched off, revealing

¹For a discussion on Native American gambling, please refer to the chapter, "Native American Tribal Gambling."

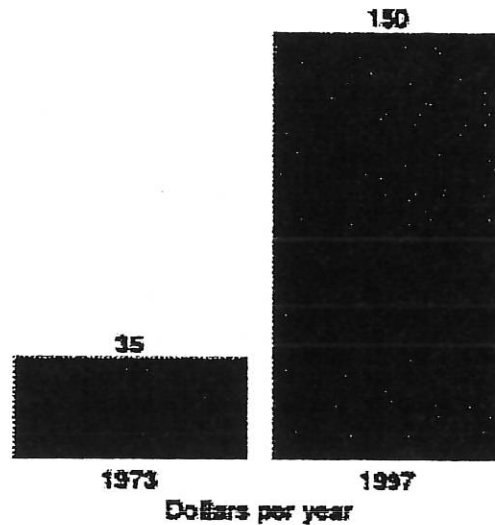
²Recommendations based on the Commission's findings will be included in subsequent chapters.

³Charles T. Clotfelter, Philip J. Cook, et al., "State Lotteries at the Turn of the Century: A Report to the National Gambling Impact Study Commission" at 2 (April 1, 1999).

⁴Ibid.

Figure 2-1

Per capita lottery sales in states with lotteries: 1973 versus 1997*



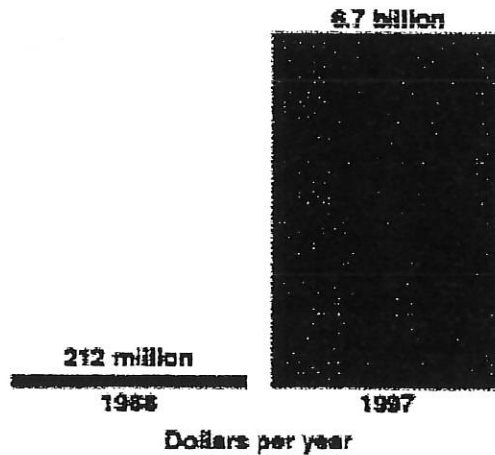
*Per capita based on total lottery sales/population of all states with lotteries.

NOTE: Sales in billions.

SOURCES: Charvater and Cook, "Reclaiming 'Success' in the State Lottery Business," *Journal of Policy Analysis and Management* 9, 1990, Table 1, p. 100; Gross Annual Wager, *International Gaming and Wagering Business Magazine*, April 1988, p. 44, June 1996, pp. 46-48.

Figure 2-2

Increase in tribal gambling revenues: 1988 versus 1997



SOURCES: See chart entitled "Trends in Tribal Casino Gaming Revenues, 1988-1997." Amounts are in constant 1997 dollars based on the CPI-U-XI index in the *Economic Report of the President*, February 1998, p. 328. For Indian gaming revenues from 1988 and 1996, see U.S. General Accounting Office, *Tax Policy: A Profile of the Indian Gaming Industry*, May 1997, p. 8. For Indian gaming revenues in 1988 and 1997, see Gross Annual Wager, *International Gaming and Wagering Business*, August supplement, 1996, p. 1.

numbers or words indicating whether the ticket wins or loses.

- Daily numbers games allow players to choose their own three or four digit number. Often there are a variety of bets that can accompany these numbers, each with a different probability and a different payout.
- The Lotto allows bettors to choose their own numbers by picking from a large set of possibilities. Drawings of winning numbers take place at regular intervals.
- Video Keno requires bettors to choose a few numbers out of a larger group of numbers, with drawings held quite often, sometimes several times an hour. The payoff is a function of how many numbers the bettor chose, which corresponds to the probability of winning in each case.
- EGD's require a terminal that can be programmed to carry a wide variety of games, such as video poker. These games offer bettors a chance to play a game and receive immediate payouts for winning bets.⁵

The Contradictory Role of State Governments

The lottery industry stands out in the gambling industry by virtue of several unique features. First, it is the most widespread form of gambling in the United States. It also is the only form of commercial gambling that a majority of adults report having played. Furthermore, the lottery industry is the only form of gambling in the United States that is a virtual government monopoly. State lotteries have the worst odds of any common form of gambling, but promise the greatest potential payoff to the winner in absolute terms, with prizes regularly amounting to tens of millions of dollars.

One theme that emerged at the Commission hearings is the contradictory role of state government as an active promoter of lotteries while imposing a heavy "sin" tax on the lottery buyer. According to experts, states have "gone

⁵ Ibid.

into business selling a popular consumer product, and they have carried on with Madison Avenue gusto and an unfettered dedication to the bottom line. The complete about-face from prohibition to promotion in one state after another is remarkable, to say the least."⁶

Lotteries are established and run exclusively by state governments and the government of the District of Columbia. Since the beginning of the wave of lotteries in the 1960's, state governments have seized on the lottery as a state-operated monopoly. State governments have become dependent on lottery sales as a source of revenue, and have tried to justify the money by earmarking it for good causes, such as education.

The lotteries are used to finance various state programs and services. Of the 38 state lotteries, the revenue from only 10 go into their general funds. Of the remaining states, 16 earmark all or part of the lottery revenues for education, making that the most common use of lottery funds.⁷ For example, in Georgia lottery money is used for the HOPE Scholarship Program, which provides college scholarships, and for kindergarten education for 65,000 children.⁸ Georgia also sets aside several hundred thousand dollars of lottery profits for gambling treatment programs.⁹ Other uses range from the broad (parks and recreation, tax relief, and economic development) to the narrow (Mariner's Stadium in Washington and police and fireman pensions in Indiana).¹⁰

Although earmarking might be an excellent device for engendering political support for a lottery, there is reason to doubt if earmarked

⁶ Charles T. Clotfelter and Philip J. Cook, *Selling Hope: State Lotteries in America* (1989).

⁷ Charles T. Clotfelter and Philip J. Cook, "State Lotteries at the Turn of the Century: Report to the National Gambling Impact Study Commission," at April 1, 1999.

⁸ Rebecca Paul, Testimony Before the National Gambling Impact Study Commission, Boston, Massachusetts, at 82 (March 16, 1998). (Director of the Georgia Lottery, Past President of the National Association of State and Provincial Lotteries).

⁹ Ibid.

¹⁰ La Fleur's Lottery World (<http://lafleurs.com>) 1/11/99.

lottery revenues in fact have the effect of increasing funds available for the specified purpose. When expenditures on the earmarked purpose far exceed the revenues available from the lottery, as is the case with the general education budget, there is no practical way of preventing a legislature from allocating general revenues away from earmarked uses, thus blunting the purpose of the earmarking.¹¹

Although lotteries often are seen as a principal source of state revenue, actual contributions to state budgets are exceedingly modest. In 1997 total own-source general revenues from the 38 lotteries ranged between .41 percent in New Mexico to 4.07 percent in Georgia.¹² By contrast, state general-sales taxes and income taxes each averaged one-quarter of all own-source general revenue collected by states.¹³

Another important issue regarding lotteries is the ability of government at any level to manage an activity from which it profits. In an anti-tax era, many state governments have become dependent on "painless" lottery revenues, and pressures are always there to increase them. The evolution of state lotteries is a classic case of public policy being made piecemeal and incrementally, with little or no general overview. Authority is divided between the legislative and executive branches, with the result that the general public welfare is taken into consideration only intermittently. Policy decisions taken in the establishment of a lottery are soon overcome by the ongoing evolution of the industry. It is often the case that public officials inherit policies and a dependency on revenues that they can do little or nothing about.

CONVENIENCE GAMBLING AND STAND-ALONE ELECTRONIC GAMBLING DEVICES

The terms "convenience gaming" and "retail gaming" have been used to describe legal, stand-alone slot machines, video poker, video keno, and other EGD's that have proliferated in bars, truck stops, convenience stores, and a variety of other locations across several states. However, these terms do not adequately convey the range of locations at which EGD gambling takes place, nor do they describe the spectrum of laws and regulations that apply (or fail to apply) to EGD's. Some states, including Louisiana, Montana, and South Carolina, permit private sector businesses to operate EGD's; in other states, such as Oregon and California, this form of gambling is operated by the state lottery.

In Nevada, slot machines can be found in many public locations, including airports and supermarkets. Montana was the first state after Nevada to legalize stand-alone EGD's, specifically video poker in bars.¹⁴ In California, video keno operated by the state lottery can be found in most traditional lottery outlets and in many other locations as well. The following table shows the number of EGD's reported in several of the states in which this form of gambling is legal.

Table 2-1

State	Reported Number of Machines	Year of Report
Louisiana	15,000	1999
Montana	17,397	1998-99
Nevada	17,922	1999
New Mexico	6,300	1999
Oregon	8,848	1999
South Carolina	34,000	1999
South Dakota	8,000	1998

South Carolina, where video poker has been legal for 8 years, reports by far the largest

¹¹ Charles T. Clotfelter and Philip J. Cook, *Selling Hope: State Lotteries in America* (1989).

¹² Clotfelter and Cook, "State Lotteries," table 4 (April 1999).

¹³ Own-source general revenue excludes intergovernmental grants as well as special sources of revenue such as that generated by utilities or liquor stores. U.S. Bureau of the Census (1998, Table 515, p. 138).

¹⁴ Paul E. Pozin et al., "From Convenience Stores to Casinos: Gambling—Montana Style." *36 Montana Business Quarterly*, No. 4.2. (January 1, 1998).

number of legal, non-casino EGD's. In that state video poker machines, which can be played 24 hours a day excluding Sundays,¹⁵ operate in about 7,500 separate establishments, including bars, restaurants, gas stations, convenience stores, and "video game malls."¹⁶ Video poker machines started as arcade games where players could only win credits to replay the game, but in 1991, the South Carolina Supreme Court ruled that cash payoffs were legal if the money did not come directly from the gaming device. According to recent figures from the South Carolina Department of Revenue, EGD's in that state generated \$2.5 billion in annual gross machine receipts (cash in) and paid prizes (cash out) to players of \$1.8 billion, a payout rate of approximately 71 percent.¹⁷ Video poker licensing fees yielded \$60 million during the most recent fiscal year.¹⁸

Although several states have legalized stand-alone EGD's, illegal and quasi-legal EGD's offering a similar if not identical gambling experience to legal EGD's are common in the bars and fraternal organizations of many other states, including West Virginia, New Jersey, Alabama, Illinois, and Texas. Quasi-legal EGD's are often referred to as "gray machines" because they exist in a gray area of the law. Typically, they are legal as long as no winnings are paid out—in fact, they are often labeled "For Amusement Only." In practice, however, winnings are not paid out directly by the machine, but are instead paid more or less surreptitiously by the establishment in either monetary or non-monetary forms.

The exact number of gray machines available has not been accurately measured, but there are estimates for some states. For example, in West Virginia, there are approximately 15,000 to

30,000 gray machines.¹⁹ In New Jersey, it is estimated that there are at least 10,000 machines.²⁰ The Alabama Bureau of Investigation estimated that there were 10,000 illegal EGD's across that state in 1993.²¹ Illinois is estimated to have 65,000.²²

Issues

One controversial feature of legal and illegal EGD's is their location. Because this form of gambling occurs in close proximity to residential areas and/or at consumer oriented sites, patrons regularly encounter them in the course of their day-to-day activities. Most other forms of gambling take place at gambling-oriented sites, such as casinos and racetracks, which patrons visit specifically for the purpose of gambling and other entertainment. EGD's proliferate rapidly because they can be purchased and installed quickly at existing sites with a relatively small capital investment. By contrast, casinos and racetracks require substantial capital investment and cannot be built overnight.

This form of gambling creates few jobs and fewer good quality jobs, and it is not accompanied by any significant investment in the local economy.

Opponents of convenience gambling argue that electronic gambling creates dependency and should not be widely available or legalized. Robert Hunter, a clinical psychologist in Las Vegas who specializes in problem and pathological gambling, calls electronic gambling devices "the distilled essence of gambling." He claims that video poker's hold on people is caused by the game's rapid pace (an experienced player can play 12 hands a minute), the ability to play for long periods of time, and the

¹⁵"Industry Stirs Money. Controversy: South Carolina illustrates how gambling can impact a state," *Sarasota Herald-Tribune*. February 22, 1999, p 1, section A.

¹⁶Letter from D. John Taylor, Manager, South Carolina Department of Revenue. Gaming Section, Regulatory Division to National Gambling Impact Study Commission (April 26, 1999).

¹⁷Ibid.

¹⁸Ibid.

¹⁹Phil Kabler. "Legislature may legalize, ignore or ban gray machines in 1999." *Charleston Gazette*. August 29, 1998.

²⁰Report on Video Gambling by New Jersey State Commission of Investigation, September 1991.

²¹"Video poker in running at dog track." *Montgomery Advertiser*, March 22, 1999, p. 1A.

²²Cam Simpson. "Gambling raid in west suburbs," *Chicago Sun-Times*. November 17, 1997.

mesmerizing effect of music and rapidly flashing lights. Of problem and pathological gamblers who use these machines, Mr. Hunter, says "They sort of escape into the machine and make the world go away. It's like a trip to the Twilight Zone."²³

Hunter is widely quoted as calling EGD's "the crack cocaine of gambling."²⁴ Former Gov. David Beasley of South Carolina called the machines "a cancer." Anti-gambling advocates in South Carolina are in the process of filing a class action suit to collect millions on behalf of gambling victims.²⁵ Currently in the discovery stage, the suit has named 36 plaintiffs, with well over a 100 more to join. The class action suit will go after "all profits illegally obtained over the past five years" on behalf of gambling victims.²⁶ According to Columbia, South Carolina attorney Pete Strom, the "illegally obtained" profits are those that break the South Carolina gambling laws, such as the restriction of \$50 in losses to any one gambling in one sitting.

Despite being lucrative, the proliferation of convenience gambling machines is controversial. Much of the controversy regarding convenience gambling stems from its disparate locations outside of traditional gambling venues, its rapid proliferation, the belief that this form of gambling provides fewer economic benefits and higher social costs than more traditional forms of gambling.

CASINOS

Before the beginning of this decade, legalized casinos operated in two jurisdictions: Nevada and Atlantic City. Casinos are now legalized in 28 states. With the multiplication of locations,

there was a metamorphosis of the types of casinos. In addition to Las Vegas resort casinos, there are now nearly 100 riverboat and dockside casinos in six states and approximately 260 casinos on Indian reservations.²⁷ The expansion of gambling to these new sites has been called the "most significant development" in the industry in the 1990s.²⁸

Casinos are an important source of entertainment, jobs, and income. The largest casino markets are: Nevada, with 429 full-scale casinos, 1,978 slots-only locations, one Indian casino, and gross casino revenues for 1997 of \$7.87 billion; New Jersey, with 14 casinos and gross casino revenues for 1997 of \$3.9 billion; and Mississippi, with 29 state-regulated casinos, one Indian casino, and gross casino revenues for 1997 of \$1.98 billion.²⁹

The largest concentration of casinos are in urban areas, including Clark County and Las Vegas, with 211 casinos, 30.5 million visitors in 1997, and gross casino revenues for 1997 of \$6.2 billion accounting for 79 percent of the Nevada market; Atlantic City, where all of New Jersey's 14 casinos are located, with 34.07 million visitors in 1997, and gross casino revenues for 1997 of \$3.9 billion accounting for 100 percent of the New Jersey market; and Tunica County (Mississippi), with 10 casinos, approximately 17.4 million visitors in 1997 and gross casino revenues for 1997 of \$933.3 million accounting for 47 percent of the Mississippi casino market.³⁰

For many people, casinos symbolize the gambling industry. Hence, casino locations are often viewed as indicative of a community's embrace of the gambling industry.

²³"Video poker in running at dog track." *The Montgomery Advertiser*, March 22, 1999, p.1, section A.

²⁴Ibid.

²⁵"Gambling and its Discontents," *The American Spectator*, March 1999.

²⁶Ibid.

²⁷Ibid.

²⁸Harold Vogel, 4 *Entertainment Industry Economics* (1998).

²⁹Bear Stearns, 1998 *Global Gaming Almanac*, at 19 (1998).

³⁰"Industry Stirs Money, controversy: South Carolina Illustrates How Video Gambling Can Impact a State," *Sarasota Herald-Tribune*. February 22, 1999, page 1, section A.

RIVERBOAT CASINOS

Riverboat casinos are a relatively new, and uniquely American, phenomenon. Riverboat casinos began operating in Iowa in 1991, and quickly expanded throughout the Midwest. By 1998 there were over 40 riverboat casinos in operation in Illinois, Indiana, Missouri, Iowa, and nearly 50 riverboat and dockside casinos in Louisiana and Mississippi.³¹ In 1997 revenues for riverboats totaled \$6.1 billion. The same year, riverboats paid over \$1 billion in gambling privilege taxes. And growth has continued, with revenues up 11.3 percent from 1996 to 1997.³²

With these original states now approaching saturation point, several state governments have decided to take a closer look at the record compiled so rapidly by this industry. Iowa, the pioneer state, recently legislated a 5-year moratorium on the expansion of casinos, in part to allow time to assess the impact to date; Indiana has established a commission to examine and report on the economic and social effects stemming from the state's experience with gambling.

In this regional pause, advocates for and against casinos strive to make their arguments heard. The record of state decisionmaking regarding riverboats is not comforting. In the hierarchy of considerations of state policymakers, the original arguments in favor of tourism and economic development have often been displaced by the need to generate and maintain tax revenues. The various states' decisions have been driven to a surprising extent not by a steadfast concern for the public welfare but by a fierce interstate competition for tax dollars (and in the process revealing remarkably similar patterns of decisionmaking).

Prominent in each state's calculations have been the twin desires of securing tax revenues from

the citizenry of neighboring states while also blocking those same states from undertaking a similar raid of their own. Riverboat casinos seemed to be ideal instruments for delivering this budgetary nirvana: when located on the borders of other states, often conveniently near major population centers across the river, they could be assured of drawing at least some of their revenues (and thus tax receipts) from the populations of their benighted neighbors. Unfortunately, the spectacle of their citizens' taxes going to benefit other jurisdictions proved too stress-inducing for the public officials in the targeted states, who quickly retaliated with riverboats of their own in the name of "recapturing" the revenues of their wayward citizens. The fact that they were not above attempting their own raids by locating a portion of their new boats near the casino-deprived populations in states far afield from the original aggressor meant that the pattern tended to be self-propagating.

Despite the intense search for money from outside their borders, the resulting counteractions have meant that the net revenue gains from, and losses to, non-resident populations tend to cancel each other out. But the very same strategy has ensured that every state's population is now within an easy commute of the casinos. In setting out to tap into their neighbors' pocketbooks, state governments have ended up tapping into that of their own citizens.

Measuring the impact of a single industry in a dynamic economy is often complicated by an inability to determine a clear cause-and-effect relationship. For example, a 1994 study by the Illinois Economic and Fiscal Commission on the impact of riverboats found that there had in fact been a measurable increase in non-gambling-related commercial activity in the riverboat communities, but concluded that although some locations did appear to have benefited economically from the casinos, in most locations the improvement was more likely due to an upturn in the general economy than to the riverboats. It did find, however, that those gains

³¹The term "riverboat" casino refers to a boat that is capable of self-contained operation away from land whether or not it ever leaves the dock. "Dockside" casinos float on water but are permanently moored.

³²*Gross Annual Wager*, International Gaming and Wagering Business Magazine (August 1998).

that did occur tended to be greater the smaller the community.³³

Similarly, a separate study of the Illinois riverboat communities concluded that “[o]ne fact is clear: any city fortunate enough to be selected as a site for a riverboat casino is guaranteed a windfall.” However, the same report continues with the caveat that “little is known about the impact that gambling has had on the dozens of municipalities in the region surrounding each riverboat.”³⁴ Thus, it is possible that the benefits to a host community may come at the expense of the surrounding area.

Opponents counter claims of local benefit with the specter of “cannibalization.” This term refers to the phenomenon where the apparent increased economic activity produced by a casino may actually be the result of its having drained money away from local non-gambling businesses. The fate of an area’s restaurants is a commonly used example: subsidized facilities on riverboats may thrive by taking customers away from their land-based, non-casino counterparts. Thus, opponents allege, what appears as an increase in spending on restaurants due to the presence of a casino may in fact represent only a simple transfer of customers and spending from one place to another.

There has also been much information provided to this commission that counters this view. Arthur Andersen’s study of the gaming industry considered “cannibalization,” or the “substitution theory” as it is sometimes called, and reported the following:

First, the size of the U.S. economy is not fixed; rather, it expands over time as new jobs are created. Second, at the macroeconomic level, the industries which some maintain have been affected by consumer spending on gaming have grown concurrently with the gaming industry. Third, economists have known for centuries that for an economy to grow, it must

produce the goods and services which consumers prefer. Fourth, casino gaming relies more heavily than most industries on domestic labor and domestic supplies (including capital). In addition, spending by foreigners in U.S. casinos also represents an export activity for the domestic economy.³⁶

The study conducted by Arthur Anderson of the micro-economic impacts of casino gambling also contained information relative to the “substitution theory.” In each jurisdiction surveyed, this study documented the creation of economic growth fostered by the casino gaming industry.

For example, in Biloxi/Gulfport, Mississippi³⁷:

- Prior to the arrival of casinos, the combined value of commercial construction permits in 1991 and 1992 was \$12 million. During the three years following the arrival of casinos, the combined total was \$447 million.
- From 1990 to 1995, the construction industry added almost 1,300 new jobs—an increase of 50 percent.
- Retail sales growth rates increased from an average of 3 percent a year from 1990 through 1992 to approximately 13 percent between 1993 and 1995.

However, the record of riverboat casinos in promoting general tourism development is mixed: It appears to have been most successful in places such as Galena, Illinois, where the tourism industry was already well established.³⁸ But in other places, the expected boom has yet to appear. The most important reason for this lagging development is that the “evidence shows that most gambling at riverboat casinos is from regional, or day-trip, patrons who do not incur the expense of an overnight stay.” These day-trippers, or “excursionists,” tend to concentrate almost entirely on gambling and to spend little or

³³ Truitt, pp. 92-94.

³⁴ Ibid.

³⁶ Arthur Andersen, *Macro Study*, p. 9.

³⁷ Arthur Andersen, *Micro Study*, Executive Summary, p. 7.

³⁸ Truitt, pp. 91-92.

no time and money at non-gambling locations. Thus, there is often little boost to the local tourist industry in the form of hotel occupancy, retail sales, increased patronage at restaurants, etc.³⁹

The key to large-scale tourism development is inducing gamblers to stay a least one night, and preferably more, which requires attracting individuals from beyond the radius of an easy roundtrip by car. Becoming such a “destination” resort, including the lucrative market of mainstream conventioners, however, involves considerably more investment of capital than has been the case with the vast majority of riverboats, including the creation of an infrastructure of non-gambling-related attractions, such as golf courses and theme parks, as well as airports and highways.

Some critics assert that riverboat casinos that draw their customers primarily from the local population have a regressive economic impact on the community because the profits go to owners outside of the community and the benefits of taxes raised locally are distributed throughout the state. The possibility of a regressive impact becomes more clouded when placed in the context of economic development. Riverboat casinos have often been located in poorer neighborhoods with the specific intention of stimulating economic development there. However, some observers contend that, as a result, a disproportionate amount of the casino’s winnings are drawn from residents of this same community who tend to be poorer and less educated than the state average, thereby hurting the very people the riverboat casino was intended to help.⁴⁰ According to one critic, casinos have drawn monetary resources away from depressed communities and away from individuals who are economically poor—those who can least afford the costs of gambling.

³⁹“The Economic and Fiscal Impacts of Riverboat Casino Gambling in Illinois: Phase One: Direct Impact Data 1991-1995,” Illinois Gaming Board, p. 12.

⁴⁰Conversation with Terrence Brunner.

NATIVE AMERICAN TRIBAL GAMBLING⁴¹

Large-scale Indian casino gambling is barely a decade old. Most Native American tribal gambling started after 1987, when the United States Supreme Court issued a “landmark decision”⁴² in *California v. Cabazon Band of Mission Indians*. This decision, in effect, confirmed the inability of states to regulate commercial gambling on Indian reservations.⁴³ In an effort to provide a regulatory framework for Indian gambling, Congress passed the *Indian Gaming Regulatory Act* (IGRA) in 1988.⁴⁴ IGRA provides a statutory basis for the regulation of Indian gambling, specifying several mechanisms and procedures and including the requirement that the revenues from gambling be used to promote the economic development and welfare of tribes. For casino gambling—which IGRA terms “Class III” gambling—the legislation requires tribes to negotiate a compact with their respective states, a provision that has been a continuing source of controversy and which will be discussed at length later in this chapter.

The result of those two developments was a rapid expansion of Indian gambling. From 1988, when IGRA was passed, to 1997, tribal gambling revenues grew more than thirty-fold, from \$212 million to \$6.7 billion.⁴⁵ (See Figure 2-2.) By comparison, the revenues from non-Indian casino gambling (hereinafter termed “commercial gambling”) roughly doubled over

⁴¹Native American tribal gambling is discussed more fully in the chapter devoted to that topic.

⁴²David H. Getches, Charles F. Wilkinson, and Robert A. Williams, Jr., 4 Cases and Materials on Federal Indian Law, at 739 (1998).

⁴³480 U.S. 202.

⁴⁴25 U.S.C.A. §2701-2721.

⁴⁵See chart entitled “Trends in Tribal Casino Gaming Revenues, 1988-1997.” Amounts are in constant, 1997 dollars based on the CPI-U-X1 index in the *Economic Report of the President* (February 1999), p. 398. For Indian gaming revenues from 1988 and 1995, see U.S. General Accounting Office, *Tax Policy: A Profile of the Indian Gaming Industry* (May 1997), p. 6. For Indian gaming revenues in 1996 and 1997, see International Gaming & Wagering Business, *The Gross Annual Wager* (August supplements, 1997 and 1998).

the same period, from \$9.6 billion to \$20.5 billion in constant 1997 dollars.⁴⁶

As was IGRA's intention, gambling revenues have proven to be a very important source of funding for many tribal governments, providing much-needed improvements in the health, education, and welfare of Native Americans on reservations across the United States. Nevertheless, Indian gambling has not been a panacea for the many economic and social problems that Native Americans continue to face.

More than two-thirds of Indian tribes do not participate in Indian gambling at all. Only a small percentage of Indian tribes operate gambling facilities on their reservations. According to the Bureau of Indian Affairs (BIA), there are 554 federally recognized tribes in the United States, with 1,652,897 members, or less than 1 percent of the U.S. population. Of these 554 tribes, 146 have Class III gambling facilities, operating under 196 tribal-state compacts.⁴⁷ In 1988, approximately 70 Indian casinos and bingo halls were operating in a total of 16 states; in 1998, approximately 298 facilities were operating in a total of 31 states.⁴⁸

For the majority of tribal governments that do run gambling facilities, the revenues have been modest yet nevertheless useful. Further, not all gambling tribes benefit equally. The 20 largest

Indian gambling facilities account for 50.5 percent of total revenues, with the next 85 accounting for 41.2 percent.⁴⁹ Additionally, not all gambling facilities are successful. Some tribes operate their casinos at a loss and a few have even been forced to close money-losing facilities.

Only a limited number of independent studies exist regarding the economic and social impact of Indian gambling. Some have found a mixture of positive and negative results of the impact of gambling on reservations,⁵⁰ whereas others have found a positive economic impact for the tribal governments, its members and the surrounding communities.⁵¹ This is an area greatly in need of further research. However, it is clear from the testimony that the Subcommittee received that the revenues from Indian gambling have had a significant, and generally positive, impact on a number of reservations.

PARI-MUTUEL WAGERING

The pari-mutuel industry, so called for the combining of wagers into a common pool,

⁴⁶ See chart entitled, "Trends in Commercial Casino Gaming Revenues, 1988-1997." Amounts are in constant, 1997 dollars based on the CPI-U-X1 index in the *Economic Report of the President* (February 1999), p. 398. For commercial casino revenues, see International Gaming & Wagering Business, *The Gross Annual Wager* (August Supplements, 1988 to 1997).

⁴⁷ Figures obtained by Commission Staff in oral communication with the Bureau of Indian Affairs, March 4, 1999. The larger number of compacts is due to some tribes operating more than one gambling facility.

⁴⁸ See charts entitled, "States with Tribal Gaming in 1988" and "States with Tribal Gaming in 1998." For 1988, there was no centralized information source, and the data was compiled from numerous sources, including the National Indian Gaming Commission; the Bureau of Indian Affairs; newspaper and magazine articles; and the *Indian Gaming Magazine, Directory of North American Gaming* (1999). For 1998, see National Indian Gaming Commission, "Report to the Secretary of the Interior on Compliance with the Indian Gaming Regulatory Act" (June 30, 1998).

⁴⁹ Letter from Penny Coleman, Deputy General Counsel, NIGC to Donna Schwartz, Research Director, National Gambling Impact Study Commission, dated December 4, 1998.

⁵⁰ See General Accounting Office, Tax Policy: A Profile of the Indian Gaming Industry, GAO/GGD-97-91 (Letter Report, May 5, 1997) (as of December 31, 1996, 184 tribes were operating 281 gaming facilities with reported gaming revenues of about \$4.5 billion); Stephen Cornell, Joseph Kait, Matthew Krepps, and Jonathan Taylor, *American Indian Gaming Policy and Its Socioeconomic Effects: A Report to the National Gambling Impact Study Commission* (July 31, 1998) (a study of five tribes that found gambling was an "engine for economic growth" and "the number of compulsive gamblers ... has grown" but that "head counts of compulsive gamblers ... pale in importance beside the demonstrable improvements in social and economic indicators documented for gaming tribes." At iii-iv); William Bennett Cooper, III, Comment: What is in the Cards for the Future of Indian Gaming? 5 Vill, *Sports & Entertainment Law Forum* 129 (1998) (discussion of the law and economics of Indian gambling that examines revenue increases, Indian cultural backlash, compulsive gambling, and crime); and Gary C. Anders, "Indian Gaming: Financial and Regulatory Issues, Gambling: Socioeconomic Impacts and Public Policy," *The Annals* V. 556 (March 1998), pp. 98-108 (survey and discussion of a number of positive and negative aspects of Indian gambling).

⁵¹ *The Connecticut Economy* (Published by the Department of Economics, University of Connecticut) (Spring 1997), p. 6.

consists of horse racing, greyhound racing, and jai alai. Pari-mutuel wagering provides for winnings to be paid according to odds, which are determined by the combined amount wagered on each contestant within an event. The increased interest in racing and jai alai in the twentieth century is largely attributed to the rise in the pari-mutuel style of betting.

The Horse-Racing Industry

The largest sector within pari-mutuel gambling is the horse-racing industry. Historically rooted with tradition, the first American horse race was run in Hempstead, New York, in the late 1660's. Following the race, the British governor of New York, Colonel Richard Nichols ordered the regular running of races so as to improve the stamina and speed of the horses.⁵² Today, several of the larger racing venues, such as Churchill Downs in Louisville, Kentucky, have been operational since the 1800's.

Many economic and traditional aspects of the horse-racing industry stem from the agro-industrial sector. This base is responsible for the diversity of racing's economic impact. Beyond directly related occupations such as track operators, trainers, owners, breeders, and jockeys, the beneficiaries of the racing industry include veterinarians, stable owners, etc. The total employment for the horse-racing industry has been estimated at 119,000.⁵³

Pari-mutuel wagering on horse racing is legal in 43 states, generating annual gross revenues of approximately \$3.25 billion.⁵⁴ While there are over 150 operational racetracks, most wagering takes place away from the venue of the originating race. Fueling this development is the availability of satellite broadcasting making it possible to simultaneously broadcast races either between racetracks or at Off-Track Betting sites

(OTB), where no racing occurs at all. The simulcasts provide for larger betting pools by increasing patron access to numerous racetracks. Until recently, simulcasting races did not include at-home, pari-mutuel betting. However, several companies have made the transition into cable and are broadcasting races through 24-hour racing channels. Furthermore, one U.S. company is presently broadcasting races through the Internet. Through the process of setting up accounts at racing venues, patrons in eight of the nine states that permit account wagering can telephone their wagers from anywhere, including their homes.⁵⁵ Approximately \$550 million was wagered through account wagering in 1998.⁵⁶

The Greyhound Industry

The greyhound industry began in 1919 with the first track in Emeryville, California.⁵⁷ Today there are 49 tracks operating in 15 states.⁵⁸ Greyhound racing is responsible for approximately 14 percent of the total handle of pari-mutuel betting.⁵⁹ In 1996 the gross amount wagered in the greyhound industry totaled \$2.3 billion with \$505 million in revenues.⁶⁰ The industry accounts for approximately 30,000 jobs directly related to the operation of the racetracks and other agricultural operations.⁶¹

Over the last decade, the greyhound industry has experienced significant financial decline,

⁵²Thomas H. Meeker, "Thoroughbred Racing - Getting Back on Track Equine Law Symposium," *Kentucky Law Journal* 78(1990).

⁵³*Gross Annual Wager*, International Gaming and Wagering Business (Aug. 1997).

⁵⁴Eugene Christiansen, *Gaming and Wagering Business* (July and Aug., 1998).

⁵⁵Account wagering is currently available in eight of the nine states that allow account wagering, including Connecticut, Kentucky, New Mexico, Maryland, Nevada, Ohio, Pennsylvania, Oregon and New York. Florida, Texas, California, Illinois, New Hampshire, Washington, Maryland and New Jersey are presently considering OTB establishments and wagering over the telephone.

⁵⁶The American Horse Council, written testimony to the National Gambling Impact Study Commission.

⁵⁷"Economic Benefits of the Greyhound Racing Industry in the United States," Racing Resource Group, Inc. 1998.

⁵⁸Ibid.

⁵⁹"Pari-mutuel Racing: A Statistical Summary," Association of Racing Commissioners International, Inc. (1996).

⁶⁰Economic Benefits of the Greyhound Racing Industry in the United States," Racing Resource Group, Inc. 1998.

⁶¹Ibid.

dropping \$300,000 in handle annually.⁶² One example is the Wichita Greyhound Park in Kansas, which experienced a 22-percent decline in attendance and a 16-percent decline in betting between 1995 to 1996.

Jai Alai

Jai alai, the smallest segment of the pari-mutuel industry, involves players hurling a hard ball against a wall and catching it with curved baskets in a venue called a "fronton." With a handle of approximately \$275,000 annually, Jai alai accounts for less than 2 percent of the total handle among the three pari-mutuel sectors. Originating in Spain, the sport of jai alai was brought to the United States by a group of wealthy Bostonians.⁶³

Jai alai has experienced a dramatic decline in overall revenues over the last decade. Jai alai hit its peak in the early 1980's with over \$600 million wagered annually.⁶⁴ By 1996, the total amount wagered was less than \$240 million.⁶⁵ Florida, once home to more than 10 frontons, remains the leader in the industry with only 6 facilities throughout the state. Other states with jai alai include Rhode Island and Connecticut. Efforts to rejuvenate the industry include Florida's state legislature passing a law to change the taxing structure on jai alai profits, and a recently proposed bill in that state to allow electronic gambling devices at all pari-mutuel venues, including frontons.

Issues

The issues facing pari-mutuel wagering have changed dramatically in the last 30 years. Legalizing slot machines and other EGD's is a

highly contentious issue throughout the pari-mutuel industry. Even with the increased availability to racing information and account wagering, the pari-mutuel industry is facing economic problems. Industry officials point to the expansion of different forms of gambling as the reason for the downward financial turn. They say that competing for gambling dollars is making it increasingly difficult to maintain wagering pools large enough to pay for the cost of running the races. In response, several members of the pari-mutuel industry have fought for and received the opportunity to provide for alternative forms of gambling at racetracks. Presently, several states—such as Delaware, Rhode Island, South Carolina and West Virginia—permit EGD's at the racing venues. Proponents of installing EGD's point to increased revenues raised at the racetracks from both the machines and from larger number of patrons betting on the actual races.⁶⁶ Other states have fought off the battle for increasing forms of gambling at pari-mutuel venues and are looking for alternatives to keep the industry alive within their state. Recently, Maryland provided \$10 million in subsidies to the state's ailing horseracing industry to stave off another round of campaigning to provide slot machines at racetracks.⁶⁷

EGD's and the Pari-Mutuel Industry

A separate area of controversy regarding EGD's—and an example of how they can blur the former distinctions regarding gambling—are efforts by many dog track, horse track, and jai alai owners to install them at their facilities. Proponents in the pari-mutuel industry contend that they seek a "level playing field" that will allow them to compete with State lotteries and Indian gambling facilities. They argue that the EGD's will draw larger crowds to racetracks and thereby save existing jobs connected with racing

⁶²"Pari-mutuel Racing: A Statistical Summary," Association of Racing Commissioners International, Inc. (1996).

⁶³Edmund Mahoney and Lyn Bixby, "Did the FBI Hinder the Investigation into the 1980's Jai Alai Killings?" *The Hartford Courant* (Nov. 9, 1997), A1.

⁶⁴International Gaming and Wagering Business, "The Topline Numbers," (Aug. 1997), S12.

⁶⁵Ibid.

⁶⁶*Gross Annual Wager*, International Gaming and Wagering Business (Aug. 1997).

⁶⁷Daniel LeDuc and Amy Argetsinger, "Maryland Approves a Prosperity Budget; Assembly Agrees to Funding for New Schools, Racetracks." *The Washington Post* (April 13, 1999), A1.

or even create new jobs. Conversely, opponents contend that track owners view EGD's as means of transforming their businesses into quasi-casinos, thereby allowing them to capture the much larger profits characteristic of that form of gambling, and that the pari-mutuel aspect of the business will be allowed to wither. They also oppose the further spread of casino-style gambling in the form of assisting racetracks. Currently, Delaware, Rhode Island, South Carolina, and West Virginia allow EGD's at their racetracks. According to the National Council Against Legalized Gambling, efforts to legalize EGD's at pari-mutuel facilities have failed in 12 states since 1995.

SIMULCASTING AND ACCOUNT WAGERING

In addition to EGD's and slot machines, the pari-mutuel industry is taking advantage of advances in communication technology and changes in regulations to expand gambling opportunities. In 1978, Congress passed the Interstate Horseracing Act (IHA), 15 U.S.C. Sec. 3001-3007, which extended authority for States and the pari-mutuel industry to provide regulated interstate wagering on races. The law allows the racing industry to create larger wagering pools by combining bets from sources beyond the originating track. To facilitate interstate wagering, the pari-mutuel industry uses satellite communications to instantaneously broadcast races, known as "simulcast" wagering. Even before passage of the IHA, wagering was available at off-track venues, commonly known as off-track betting (OTB) sites. In 1970, the New York legislature approved the first OTB operation. Since then, simulcast wagering has grown rapidly both in the United States and internationally.⁶⁸ Presently, at least 38 States have authorized simulcast interstate wagering.

Along with OTB sites, racetracks began offering telephone account wagering services to their

patrons. Racing patrons now can establish accounts with licensed racetracks in eight of the nine authorized states, which are Connecticut, Kentucky, Maryland, Nebraska, Nevada, New York, Ohio, Pennsylvania, and Oregon.⁶⁹ To establish accounts, individuals must appear in person or provide documentation by mail as well as deposit money in an account, which may be increased or reduced according to their wins and losses. According to the American Horse Council, most money wagered on races now occurs at sites other than where the originating race takes place.⁷⁰ Recent industry figures estimate that off-track and simulcast wagering constitute more than 77 percent of the total annual amount wagered on pari-mutuel races;⁷¹ in 1997 they accounted for \$11.8 billion of the \$15 billion industry total.⁷² In 1998 the amount wagered through telephone account wagering systems reached almost \$550 million.⁷³

Although previously available in some regions for a number of years, various efforts are now underway to expand the broadcasting of races directly into the home, and in some cases, offer accompanying account wagering. Several companies are developing racing channels, which are offered either through basic cable or as a subscription-based channel. For example, Television Games Network (TVG) is a company that combines several communications technologies to provide coverage and account wagering in the home. United Video Group, under its parent company, TV Guide, Inc., operates TVG through the use of satellite technology to broadcast live horse races on a cable channel. To access this technology, hardware is installed on bettor's television set, enabling him or her to use special remotes to scroll through on-screen information menus. To

⁶⁹ Ibid.

⁷⁰ The American Horse Council. Written testimony to the National Gambling Impact Study Commission (February 4, 1999).

⁷¹ Robin A. Farley and Elizabeth Q. Davis, *Hit or Stand? The 1999 Gaming Industry Overview*. BT Alex Brown 28 (November 1998).

⁷² Ibid.

⁷³ This figure excludes Nevada. Telisport W. Putsavage, Written submission to the National Gambling Impact Study Commission, (April 16, 1999).

⁶⁸ The American Horse Council, Written testimony to the National Gambling Impact Study Commission, Subcommittee on Enforcement, Regulation and the Internet (May 21, 1998).

place bets, bettors deposit money in an account with Churchill Downs, the sponsoring racetrack, and place wagers after providing a user name and confidential PIN number. Although currently operating only in Kentucky, TVG has broadcasting agreements with a number of other racetracks in anticipation of offering a wider scale of racing to its patrons.⁷⁴ Many in the horse-racing industry see this system as an integral step toward expanding the base of the pari-mutuel clientele.⁷⁵

SPORTS WAGERING

Despite its popularity, sports wagering in America is illegal in all but two states. Nevada has 142 legal sports books that allow wagering on professional and amateur sports.⁷⁶ Oregon runs a game called "Sports Action" that is associated with the Oregon Lottery and allows wagering on the outcome of pro football games. Outside of these two states, wagering on sports is illegal in the United States.

According to Russell Guindon, Senior research analyst for Nevada's Gaming Control Board, sports wagering reached \$2.3 billion in Nevada's legalized sports books in fiscal 1998.⁷⁷ Nevada sports books took in \$77.4 million in revenue on college and professional sports wagering. According to one major strip resort, betting on amateur events accounted for 33 percent of revenue.⁷⁸ Estimates of the scope of illegal sports

betting in the United States range anywhere from \$80 billion to \$380 billion annually, making sports betting the most widespread and popular form of gambling in America.⁷⁹

Many Americans are unaware of the risks and impacts of sports wagering and about the potential for legal consequences. Even when Americans understand the illegality of sports wagering, it is easy to participate in, widely accepted, very popular, and, at present, not likely to be prosecuted. One reason Americans may not be aware of the illegality of sports wagering is that the Las Vegas "line," or point spread, is published in most of the 48 states where sports wagering is illegal. Some have argued that the point spread is nothing more than a device that appeals to those who make or solicit bets. Critics claim that the point spread does not contribute to the popularity of sports, only to the popularity of sports wagering.

Because sports wagering is illegal in most states, it does not provide many of the positive impacts that other forms of gambling offer. In particular, sports wagering does not contribute to local economies and produces few jobs. Unlike casinos or other destination resorts, sports wagering does not create other economic sectors.

Issues

This Commission heard testimony that sports wagering is a serious problem that has devastated families and careers.⁸⁰ Sports wagering threatens the integrity of sports, it puts student athletes in a vulnerable position, it can put adolescent gamblers at risk for gambling problems, and it can devastate individuals and careers.

There is considerable evidence that sports wagering is widespread on America's college campuses. Cedric Dempsey, executive director of the NCAA, asserts that "every campus has student bookies. We are also seeing an increase

⁷⁴The 16 racetracks that have partnerships with TVG include: Aqueduct Race Track, Churchill Downs, Gulfstream Park, Hollywood Park, Santa Anita, Laurel Park, Arlington International, Lone Star Park, Pimlico, Calder Race Course, Turfway Park, Suffolk Downs, Turf Paradise, Belmont Park, Del Mar, and Saratoga Race Course.

⁷⁵The Television Games Network, Press Release, *NTRA, TVG Announce Agreement on Sponsorship, Joint Projects: New Entities Join Together to Pursue Strategic Development Initiatives* <http://www.televisiongames.com/NTRA.html> (last visited December 9, 1998).

⁷⁶"Odds Against College Ban in Gambling," *San Francisco Examiner*, May 18, 1999, D-8.

⁷⁷Robert Macy, "Ban on College Sports Betting Could Cost State Books Millions," *Las Vegas Review-Journal*, May 18, 1999, 4A.

⁷⁸*Ibid.*

⁷⁹*Ibid.*

⁸⁰Testimony of Mitzi Schlichter before the National Gambling Impact Study Commission, Las Vegas, NV, November 10, 1998.

in the involvement of organized crime on sports wagering.”⁸¹

Students who gamble on sports can be at risk for gambling problems later in life. There is evidence that sports wagering can act as a gateway to other forms of gambling. Therefore, it is important to understand the scope of the problem and educate students to the dangers of sports wagering. The Commission needs to know how widespread the phenomenon of underage sports gambling is now, the relationship between sports wagering and other forms of gambling, and the ways to prevent its spread. Those who attempt to draw adolescents into illegal sports wagering schemes deserve the full attention of law enforcement efforts.

There is much justifiable concern about the rise of sports wagering on college campuses. For example, Dempsey has argued that “there is evidence more money is spent on gambling on campuses than on alcohol.” Dempsey claimed that “[e]very campus has student bookies. We are also seeing an increase in the involvement of organized crime in sports wagering.”⁸² Bill Saum, who is the NCAA official who oversees efforts to address gambling, has called campus betting “the Number One thing in the 90s in college.”⁸³ Three years ago, *Sports Illustrated* called college betting “rampant and prospering.”⁸⁴ Gambling rings have been uncovered at Michigan State, University of Maine, Rhode Island, Bryant, Northwestern, and Boston College, among many other institutions.⁸⁵ While studies of college gambling

are sparse, Lesieur has found in a survey of six colleges in five states that 23 percent of students gambled at least once a week.⁸⁶ The same study found that between 6 and 8 percent of college students are “probable problem gamblers,” which was defined in that study as having uncontrollable gambling habits.⁸⁷ There is some concern that gambling by students may lead to problem or pathological gambling in later life.⁸⁸

INTERNET

Beginning with its introduction on the World Wide Web in the summer of 1995, Internet gambling is the newest medium offering games of chance.⁸⁹ While projected earnings are open to subjective interpretations, the previously small number of operations has grown into an industry practically overnight. In May of 1998, there were approximately 90 on-line casinos, 39 lotteries, 8 bingo games, and 53 sports books. One year later, there are over 250 on-line casinos, 64 lotteries, 20 bingo games, and 139 sportsbooks providing gambling over the Internet.⁹⁰ Sebastian Sinclair, a gambling industry analyst for Christiansen/Cummings Associates, estimates that Internet gambling revenues were \$651 million for 1998, more than double the estimated \$300 million from the previous year.⁹¹ A separate study conducted by Frost and Sullivan shows that the Internet gambling industry grew

⁸¹ Cited in Gary Lundy, “NCAA Says Lady Vols Not Safe from Gamblers,” *Knoxville News-Sentinel*, August 6, 1998, C1.

⁸² *Ibid.*

⁸³ Cited in Susan Yerkes, Gambling “Most Critical Issue for NCAA,” *San Antonio Express News*, March 30, 1998, C1.

⁸⁴ Tim Layden, “Better Education,” *Sports Illustrated* (April 3, 1995) at 68. Layden found that the college better speaks the language of the trade—juice, vig, tease, parlay, quarter (\$25), dollar (\$100), push—and sometimes deals in amounts that would buy sport-utility vehicles. It seems out of place in a youthful, academic setting. Gamblers come equipped with war stories of losing money and winning money, stories you expect to hear from older, harder men. They have the ability to make a campus hangout like a Keno lounge or a storefront off-track betting parlor.

⁸⁵ *Ibid.*

⁸⁶ Henry Lesieur, et. al., Gambling and Pathological Gambling Among University Students, *Addictive Behavior* (1991) at 517-527.

⁸⁷ *Ibid.*

⁸⁸ Bill Saum, Director of Agent and Gambling Activities, National Collegiate Athletic Association, Testimony before the Senate Judiciary Subcommittee on Technology, Terrorism and Government Information 2 (March 23, 1999). “A growing consensus of research reveals that the rates of pathological and problem gambling among college students are higher than any other segment of the population.”

⁸⁹ Kevin A. Mercuri, *Interactive Policy Briefing* presented at the First International Symposium on Internet Gambling Law and Management, Washington, D.C. (November 11-13, 1997).

⁹⁰ Rolling Good Times, <http://www.rgtonline.com> (last visited May 21, 1999).

⁹¹ Sebastian Sinclair, “The Birth of an Industry: Gambling and the Internet,” *The Internet Gambling Report III* (Anthony Cabot ed.).

from \$445.4 million in 1997 to \$919.1 million in 1998.⁹² Both the Sinclair and the Frost and Sullivan studies estimate that revenues for Internet gambling doubled within 1 year.

Several factors have contributed to the dramatic growth. First, Internet access has increased throughout the world, particularly in the United States.⁹³ As interest in the Internet has increased, technologies that drive the Internet have continued to improve. Internet gamblers can participate instantaneously through improved software providing real-time audio and visual games and races. Additionally, the public's confidence in conducting financial transactions on-line has increased.⁹⁴ Furthermore, a number of foreign governments, such as Australia and Antigua, are licensing Internet gambling operators within their borders.

However, along with its meteoric rise, Internet gambling is raising issues never previously addressed and exacerbating concerns associated with traditional forms of gambling. While preventing underage gambling and reducing problems associated with problem and pathological gambling are concerns for all forms of gambling, reducing these concerns is particularly challenging for Internet gambling. The Internet provides the highest level of anonymity for conducting gambling to date. While "know your customer" is a motto of the gambling industry, this becomes particularly challenging through technologies available to Internet users. Screening clients to determine age or if they have a history of gambling problems is difficult at best. For the users of gambling, the Internet fuels concerns regarding the legitimacy of the games and the gambling operators.

General concerns about the relationship between gambling and crime, including money laundering, become particularly acute when considering gambling on the Internet.

Various public officials and interest groups are initiating efforts to address the concerns of Internet gambling. Several states have passed or are considering legislation to ban Internet gambling within their jurisdictions. Several attorneys general have brought lawsuits against Internet gambling operators. Individuals who have incurred credit card debt have brought lawsuits against their credit card companies and their respective banks. The Department of Justice has arrested or issued warrants for arrest on 22 Internet gambling operators and successfully indicted several individuals. Legislation to ban Internet gambling in the United States has been introduced during the 105th and 106th Congress, and is presently under consideration in the Senate. Groups that have supported these measures include state gambling regulators, professional and amateur sports associations, and a rare stance for federal involvement by the National Association of Attorneys General.

Still, mechanisms to enforce prohibitions have raised concerns regarding the role of Internet Service Providers and possible infringement on freedom of speech. Furthermore, most Internet gambling businesses operate offshore and are licensed by foreign governments, making it difficult to prevent access to illegal sites. Politically, sentiments surrounding Internet commerce are unique, as demonstrated by the President's declaration of the Internet as a free-trade zone.⁹⁵

⁹² Glenn Barry, *Seven Billion Gambling Market Predicted* *Interactive Gaming News* (May 11, 1998) <http://www.igamingnews.com>.

⁹³ Market research firm INTECO Corp. conducted a survey comparing the first and last quarters of 1998. After polling 16,400 people throughout the United States, the survey concluded that 108 million adults, or approximately 55 percent of the adult population, accessed the Web during the last quarter of 1998.

⁹⁴ 35 million U.S. adults either placed a product order or made a reservation online during the last quarter of 1998. This number represents a 250 percent increase from the beginning of 1998.

⁹⁵ Presidential Directive on Electronic Commerce, July 1, 1997.

CHAPTER 3. GAMBLING REGULATION¹

Over the past quarter century, legalized gambling in America has undergone a rapid expansion. Once an infrequent experience tinged with the exotic—a trek to the distant Nevada desert once was a common requirement for those seeking casino gambling—it has since become a common feature of everyday life, readily accessible in one form or another to the vast majority of Americans. As it has grown, it has become more than simply an entertaining pastime: The gambling industry has emerged as an economic mainstay in many communities, and plays an increasingly prominent role in state and even regional economies. Although it could well be curtailed or restricted in some communities, it is virtually certain that legalized gambling is here to stay.

Despite its increasing familiarity, nowhere is gambling regarded as merely another business, free to offer its wares to the public. Instead, it is the target of special scrutiny by governments in every jurisdiction where it exists, including even such gambling-friendly states as Nevada. The underlying assumption—whether empirically based or not—is that, left unregulated and subject only to market forces, gambling would produce a number of negative impacts on society and that government regulation is the most appropriate remedy. Thus, the authorization of

¹Regulating Casinos Gaming: A View from State Regulators by Michael A. Belletire, Administrator of the Illinois Board. This document was developed for the NGISC at the request of the Commission's Subcommittee on Regulation, Enforcement, and the Internet. Direct contributions to the content and topics discussed in the document were made by the following individuals: Steve DuCharm and Dennis Neilander (Nevada), Frank Catania (New Jersey), Chuck Patton (Mississippi), George Turner (Colorado), Mel Fischer (Missouri), Jack Thar (Indiana), Jack Ketterer (Iowa), Hillary Crain (Louisiana), and Mac Ryder (Illinois). This chapter also benefited from state reports submitted directly to the Commission. For example, see New Jersey Casino Control Commission, *Casino Gambling in New Jersey: A Report to the National Gambling Impact Study Commission* (January 1998) and Mississippi Gaming Commission, *Regulating Gaming in Mississippi: Policing an Unprecedented Phenomenon: A Report to the National Gambling Impact Study Commission* (1998).

legalized gambling has almost always been accompanied by the establishment of a corresponding regulatory regime and structure.

GOVERNMENTS SET THE RULES

Much of gambling regulation is focused on policing functions that differ little from community to community. The most immediate of these is ensuring the integrity of the games offered, a function often valued most by the proprietors of gambling establishments themselves. In the popular imagination, the “con” man forever hovers in the shadows of gambling; and, in truth, without the stern presence of independent regulators, it would require little effort to conjure methods of conflating “games of chance” with outright deception. Thus, to the extent that governments assume a general responsibility to shield their populations from fraud, regulation is the most effective means of ensuring that such legal gambling as does exist is fair and honest.

A second area of government concern is crime, especially organized crime. Fairly or not, Nevada's casinos were once closely linked in the popular mind with organized crime, a bias given substance by repeated federal and state investigations and prosecutions of casino owners and operators. Because of the volume of cash transactions involved in casino gambling, and in order to minimize any resulting potential for money laundering, casinos must comply with requirements regarding the reporting of these transactions. All of the evidence presented to the Commission indicates that effective state regulation, coupled with the takeover of much of the industry by public corporations, has eliminated organized crime from the direct ownership and operation of casinos.

GAMBLING AND THE PUBLIC INTEREST

In addition to these relatively well-defined policing functions, a broader and far more important role for government regulation is

determining the scope and manifestation of gambling's presence in society and thus its impact on the general public. In this sense, regulation can be broadly defined to include the political process by which the major decisions regarding legalized gambling are arrived at, the corresponding legislation and rules specifying the conditions of its operation, and the direction given to regulatory bodies. Through such means as specifying the number, location, and size of gambling facilities; the types of games that can be offered; the conditions under which licensed facilities may operate; and so forth, governments have considerable control over the benefits and costs legalized gambling can bring with it. These measures can be as simple and straightforward as attempting to prevent underage gambling or as ambitious and contentious as promoting traditional social values.

If this basic responsibility is to be adequately met, government decisions regarding the introduction and regulation of legalized gambling would best be made according to a well-defined public policy, one formulated with specific goals and limits in mind. While governments have established a variety of regulatory structures, it is not at all clear that these have been guided by a coherent gambling policy or even that those making the decisions have had a clear idea of the larger public purpose they wish to promote. Generally, what is missing in the area of gambling regulation is a well thought-out scheme of how gambling can best be utilized to advance the larger public purpose and a corresponding role for regulation. Instead, much of what exists is far more the product of incremental and disconnected decisions, often taken in reaction to pressing issues of the day, than one based on sober assessments of long-term needs, goals, and risks.

There are a number of factors contributing to this gap between measures actually taken and any guiding public purpose, however conceived. One such factor is the existence of multiple decisionmakers: Federal, state, tribal, and local officials all have a say in gambling policy, and coordination among any of them is far more the exception than the rule. In addition, the gambling

industry is not monolithic; each segment—lotteries, Native American casinos, convenience gambling, and so forth—comes with its own particular set of issues, concerns, and interest groups, one result being that the respective regulatory structures and objectives often differ considerably from segment to segment. Further, the dynamism of the industry as a whole requires continuous adaptation on the part of regulation: In addition to a rapid pace of expansion, technology continues to produce new and different forms, often directly aimed at any weak links in government restrictions and regulation.

Far more worrisome than these factors, however, is that most government decisionmaking has been chasing rather than leading the industry's growth and evolution and has often focused on less-than-central concerns, to the neglect of the larger public interest. One of the more damning criticisms of government decisionmaking in this area is the assertion that governments too often have been focused more on a shortsighted pursuit of revenues than on the long-term impact of their decisions on the public's welfare.

Not unexpectedly, the results of decisions regarding legalizing gambling often produce results that surprise even the officials responsible for making them. And not all of these results are positive. Without constant adaptation to this changing industry, time alone will produce a mismatch between the stated goals of government regarding gambling and the actual effects resulting from its decisions. Given the rapid accumulation of decisions regarding gambling, most of the respective governments—and certainly their respective communities—would be well-served by a thorough review of their public policy toward gambling. This review should focus on determining the specific public purpose regarding legalized gambling and an assessment, in that context, of the existing regulatory structure in its entirety: laws, rules, agencies, and so forth. The objective of this review is to identify what changes, if any are needed, with a goal to maximizing the benefits and minimizing the costs.

Although wide-scale legalized gambling is a relatively recent phenomenon, the large number

of jurisdictions involved, operating under many different conditions, has produced a useful variety of experience for other communities to draw on. By examining this variety of positive and negative experiences, governments can draw the appropriate lessons from the successes and mistakes of others and thereby reduce the need to experiment on their communities.

REGULATING GAMBLING

The Federal Role

Until relatively recently, the federal government largely deferred to the states in matters relating to gambling; Washington's attention focused largely on criminal matters, including organized crime, fraud, and the like, especially when these involved activities across state lines.²

In the early 1950's, Congressional investigations into the activities of organized crime in the gambling industry resulted in an enhanced federal role, including the creation of the Special Rackets Squad of the FBI and the enactment of the Gaming Devices Act of 1951 (commonly referred to as the Johnson Act).³

In the 1960's the federal government expanded its regulatory role over gambling activity through such measures as the 1961 Wire Communications Act ("Wire Act"), which prohibits the use of wire communications (telephones, telegrams, etc.) by persons or organizations engaged in the business of wagering to transmit bets or wagers, or information that assists in the placing of bets or wagers, taking care to specifically mention "sporting events or contest."⁴ Similarly, the Travel Act prohibits travel or the use of mail, either inter-state or internationally, for "any

business enterprise involving gambling."⁵ Other federal laws add to these measures, such as the prohibition on the inter-state transportation of wagering paraphernalia.⁶

One of the best known federal measures is the Racketeering Influenced and Corrupt Organizations statutes (RICO).⁷ Enacted in 1971 under the Crime Control Act, the RICO were aimed at combating "the infiltration of organized crime and racketeering into legitimate organizations operating in interstate commerce," including gambling.⁸

In 1985, the Bank Secrecy Act was amended to include casinos, used car dealers, money transfer services, and a number of other "cash-intensive" businesses in the list of financial institutions subject to special requirements that are designed to prevent money laundering. Among other things, the Act requires casinos to report each deposit; withdrawal; exchange of currency, gambling tokens or chips, or other payment; or transfer that is made by, through, or to the casino in amounts greater than \$10,000.⁹ As its name indicates, the Money Laundering Control Act of 1986 was aimed at strengthening federal efforts in this area; it was followed in 1990 by the creation of the Treasury Department's Financial Crimes Enforcement Network (FinCEN) to "establish, oversee and implement policies to prevent and detect money laundering."¹⁰

In the late 1980's, the federal government became directly involved in the area of Native American gambling. Here, federal involvement was an outgrowth of the federal government's responsibility for, and legislative authority over,

² James H. Frey, Introduction, *Federal Gambling Law*, Anthony N. Cabot (ed) 2 (1999), citing an unpublished paper by Cabot.

³ Among its other provisions, the Johnson Act prohibits the transportation of gambling devices across state lines. It was amended to exempt cruise ships but not airlines either originating from or bound for the U.S.

⁴ 18 U.S.C. § 1084.

⁵ 18 U.S.C. § 1952.

⁶ 18 U.S.C. § 1953.

⁷ 18 U.S.C. § 1961 et seq.

⁸ Senate Report No. 91-617, 91st Congress, 1st Session 80 (1969).

⁹ 31 U.S.C. § 103. Also known as the Currency and Foreign Transactions Reporting Act

¹⁰ U.S. Treasury Order No. 105-08.

<http://www.ustreas.gov/fincen/faqs.html> (last visited May 8, 1999).

Native American reservations, and that direct involvement continues to the present.¹¹

THE STATE ROLE

Lotteries

In the modern era, lotteries have been the unique province of state governments. To date, each state that has authorized a lottery has granted itself a monopoly; none has seen fit to allow competitors. In part, the impetus behind this exclusivity is to ensure that the state can capture monopoly profits. But an important additional motive, especially at the dawn of the modern era of lotteries in the 1960's and 1970's, was the assumption that only direct government ownership and control of gambling could guarantee the exclusion of criminal elements. That concern has faded over time with the growth of commercial gambling, but it reappears in states taking up the issue for the first time.

With only minor variations, states with lotteries have implemented remarkably similar regulatory structures. Some are organized as arms of a particular state agency, others exist as separate organizations, with varying degrees of independence.¹² But regardless of their administrative form, all state lotteries share a common subordination to elected state officials, with the responsibility for the form, goals, and operations of lotteries firmly in the hands of the latter. But this arrangement has created a number of problems of its own.

For example, lottery directors are under constant pressure from state political authorities to at least maintain the level of revenues and, if possible, to increase them. Some observers have alleged that, as a result, considerations of public welfare at best take second place. This has often been cast as an inherent conflict of interest: How can a state government ensure that its pursuit of revenues does not conflict with its responsibility

to protect the public? For some, state governments have exceeded their stated objective of using the lottery to modestly enhance public services, and instead have irresponsibly intruded gambling into society on a massive scale through such measures as incessant advertising and the ubiquitous placement of lottery machines in neighborhood stores. In this view, states have become active agents for the expansion of gambling, setting the stage for the introduction of commercial gambling in all its forms. The question arises: Is this a proper function of government?

Particular attention has been devoted to the extent to which, in pursuit of enhanced revenues, lotteries have allegedly targeted vulnerable populations, such as the economically disadvantaged and possible pathological gamblers. The data suggests that lottery play is heaviest among economically disadvantaged populations and among some ethnic groups, such as African-Americans, but it is not clear that these have been deliberately targeted by lottery officials.

With the lottery being such a widely available form of gambling, one area of concern is play by minors. Although illegal in every state, the sale of lottery tickets to minors nevertheless occurs with a disturbing frequency. For example, one survey in Minnesota of 15- to 18-year-olds found that 27 percent had purchased lottery tickets.¹³ Even higher levels of 32 percent, 34 percent, and 35 percent were recorded in Louisiana, Texas, and Connecticut, respectively.¹⁴ In Massachusetts, Connecticut, and other states, lottery tickets are available to the general public through self-service vending machines, often with no supervision regarding who purchases them. Thus, it is not surprising that a survey conducted by the Massachusetts Attorney

¹¹ See the Chapter 6, on "Native American Tribal Gambling" for a full discussion of the IGRA and the classes of gambling.

¹² Clotfelter and Cook, *supra* note 2 at 12.

¹³ Robyn Gearey, "The Numbers Game," *The New Republic*, May 19, 1997, p. 19.

¹⁴ Joe Gyan, Jr. "More Louisiana Youths Try Gambling than Drugs," [Baton Rouge, La.] *Advocate*, August 8, 1997; Lynn S. Wallisch, "Gambling in Texas: 1995 surveys of Adult and Adolescent Gambling Behavior," *Texas Commission on Alcohol and Drug Abuse*, August 1996, p. 78; Lyn Bixby, "Lottery Pitch Seen as Luring Kids," *Hartford Courant*, October 23, 1997, p. A4.

General's office found that minors as young as 9 years old were able to purchase lottery tickets on 80 percent of their attempts, and that 66 percent of minors were able to place bets on keno games. Seventy-five percent of Massachusetts high school seniors report having played the lottery.¹⁵

A further criticism is that, in pursuit of revenues, some lotteries have employed overly aggressive—and even deceptive—advertising and other marketing methods. Lottery advertising has advanced in recent years from simple public-service announcement type ads to sophisticated marketing tools. Critics charge that they are intentionally misleading, especially regarding such matters as the miniscule odds of winning the various jackpots. (As an agency of government, lotteries are not subject to federal "Truth-in-Advertising" standards). Others assert that lottery advertising often exploits themes that conflict with the state's obligation to promote the public good, such as emphasizing luck over hard work, instant gratification over prudent investment, and entertainment over savings.

CASINOS¹⁶

As commercial casino gambling has spread from its original base in Nevada to New Jersey, the Gulf Coast, the Midwest, and to locations such as Deadwood, South Dakota, a variety of different regulatory structures has emerged. As with the lotteries, most of the administrative differences are more superficial than substantive, and basic tasks such as ensuring the integrity of the operations and policing against infiltration by

organized crime vary little from state to state. Of far greater importance are the differences in public purpose that supposedly guide government decisionmaking in this area, with corresponding consequences for each state's economy and society.

Two contrasting, if simplified, approaches can be identified. The first, dubbed here the "Nevada" model, can be characterized as weighted toward viewing gambling as a business, albeit one requiring its own set of safeguards. In this model, the public purpose of legalizing gambling is to secure the maximum possible economic benefits for the state and its citizens, including investment, jobs, and tax revenues. Reserving to government the policing functions—ensuring the integrity of the games, combating organized crime, etc.—this approach emphasizes granting gambling a relatively free hand to respond to the demands of the market regarding the numbers of facilities, their location, and so forth. This welcoming approach—much like that accorded to favored industries in other states—has been a key factor in Nevada's long-time prominence as a center of casino gambling in the United States.

A contrasting approach, dubbed here the "New Jersey" model, focuses on gambling's potential negatives and emphasizes its differences from other businesses. One consequence is a broader and more in-depth role for government in the making of key decisions. In this view, casino gambling is viewed as a potentially dangerous phenomenon, but one nevertheless capable of producing significant benefits under carefully controlled conditions. In New Jersey's case, the legalization of casino gambling in 1976 was a highly controversial issue, but was eventually accepted for the narrow purpose of helping to revive the declining resort community of Atlantic City. It was accompanied by the establishment of a strict and comprehensive regulatory structure, with few areas free from government oversight and approval. Significantly, even after two decades, casino gambling has not been allowed to expand beyond its original base of Atlantic City. As a result, it has never reached its economic

¹⁵ Scott Harshbarger, Attorney General of the Commonwealth of Massachusetts, "Report on the Sale of Lottery Tickets to Minors in Massachusetts," July 1994, pp. 3-4; Scott Harshbarger, Attorney General of the Commonwealth of Massachusetts, "Kids and Keno are a Bad Bet: A Report on the Sale of Keno Tickets to Minors in Massachusetts," October 1996, p. 1; Howard J. Shaffer, "The Emergence of Youthful Addiction: The Prevalence of Underage Lottery use and the Impact of Gambling," Massachusetts Council on Compulsive Gambling, January 13, 1995, p. 9.

¹⁶ Casinos in the United States can be divided into two major groups: Native American tribal casinos and non-Indian "commercial" casinos. This chapter focuses on the latter; Native American tribal casinos will be discussed in the Chapter VI, "Native American Tribal Gambling."

potential, but neither has it been woven into the state's social fabric.

These two approaches can be seen in other states. Most states with riverboat casinos adopted the "New Jersey" approach, employing gambling for purposes of targeting economic development to a finite number of specific communities or to a finite number of communities along specific waterways. According to this approach, casino gambling is akin to enterprise zones intended to deliver economic benefits—in the case of casinos, these benefits are job creation, capital investment, public sector revenue, and increased tourism—to a finite number of specified locations. These states have subjected their gambling industries to relatively strict controls: The fact that gambling was confined to riverboats, symbolically and physically separate from the surrounding communities, underscored the desire to employ gambling for relatively narrow purposes while mitigating perceived potential negative effects. In these states, the limited number of approved licenses has meant that gambling remains confined to a handful of cities.

Mississippi, by contrast, adopted more of a "Nevada" approach, although in fact the approach is something of a Nevada/New Jersey hybrid. There are limits on where casinos may be located (in counties along the Mississippi River or on the Gulf Coast), but there is no limit on the number of permitted casinos either within a particular county or statewide. This regulatory climate has proved favorable: Mississippi's casino industry now ranks among the state's major industries in terms of revenues, taxes, and employment.

Administrative Structure

In some jurisdictions, the gambling board or commission exercises final administrative authority. Other jurisdictions, most notably Nevada, have adopted a two-tiered system in which one body (the Nevada Gaming Control Board) exercises administrative authority, subject to a separate entity (the Nevada Gaming

Commission) that serves as the due process oversight body.¹⁷

Much of casino regulation is concentrated on the day-to-day operations of casinos. Typically, each casino is required to adopt and adhere to a comprehensive set of state-designated procedures, commonly termed the "Minimum Internal Control Standards" (MICS). These MICS focus on the range of gambling-related activity, including the conduct of games, the movement and handling of cash and cash equivalents, and the accounting and record trail of all transactions. State regulators often rely upon the casinos to maintain logs that document irregularities and to "self-report" violations.

In addition to internal control and surveillance, casino regulatory agencies direct and review audits of casino operations. In some states, private sector audit firms are engaged by the regulatory body (usually at the expense of the casino) to conduct compliance audits. The audits measure operator conformity with MICS requirements. These audits are in addition to required annual financial audits conducted by certified public accounting firms that are selected by casino operators, subject to regulatory approval.

Furthermore, the regulatory structure of most states includes statutory language that restricts gambling by those under 21. The state levies fines and other punishments for the failure to adhere to this code of conduct. The casino industry itself self-regulates with regard to underage gambling in an attempt to ensure that its patrons and employees understand that only those 21 and older are permitted to gamble. Some casinos perform this function more effectively than others; those that do not tend to be the recipients of fines and sanctions. In addition, many states have gambling statutes requiring casinos to address pathological gambling.

There is considerable variability across the states regarding the scope of the individuals and entities subject to licensure to work in casinos.

¹⁷ Bellefleur document.

Some jurisdictions license only persons engaged in gambling-related duties. In other states, all employees, regardless of work duties or work location (i.e. hotel rooms) are subject to licensing. In most jurisdictions, licensure for rank-and-file gambling personnel entails a standardized criminal background check. Upper management casino personnel and other key persons of a licensed operation are subjected to more extensive background examinations. Most jurisdictions have statutory provisions specifying disqualifying criteria for persons seeking to work in casinos. Typically, any felony conviction disqualifies an individual. In some cases a misdemeanor conviction, or the denial or revocation of licensure in another gambling jurisdiction, are also cited as disqualifying factors.

The depth of regulatory investigations and oversight of suppliers also varies across the states. The licensure of gambling industry suppliers is primarily concentrated on the business entities that provide gambling devices and equipment. Most regulatory bodies are also granted the statutory authority to license entities that provide non-gambling-related goods or services to casinos. Such authority is not routinely utilized. Only the State of New Jersey currently requires licensure of certain non-gambling casino contractors.

At the Commission's request, a guide to model regulation was developed by Michael Belletire, the former Administrator of the Illinois Gaming Board (see Attachment A at the end of this chapter).¹⁸

PARI-MUTUEL GAMBLING

The pari-mutuel industry, which includes greyhound racing and jai alai, has a long history in the United States, but horse-racing remains by far the largest and most financially healthy segment.

¹⁸This regulatory model relies heavily on the paper submitted by Michael A. Belletire entitled "Legislating and Regulating Casino Gaming: A View from State Regulators."

Administrative Structure

While the exact form varies, all states with legal pari-mutuel operations regulate the activity through a racing commission or other state gambling regulatory body. The purposes of regulation include maintaining the integrity of the races or events, ensuring the state receives its tax revenues, overseeing the licensing of tracks and operators, and preventing an infiltration by criminal elements.¹⁹

To obtain a license to operate, state racing commissions perform background checks on track owners, horse owners, trainers, jockeys, drivers, kennel operators, stewards, judges, and backstretch personnel. Once the license is extended, racing commissioners retain the authority to suspend or revoke licenses. Reasons for denying, suspending, or revoking a license include criminal infractions, false representations, failure to disclose ownership of a horse or greyhound, inadequate training, or a history of concerns pertaining to an individual's integrity.²⁰

Underage gambling also is a concern. In most states, children under 18 years of age must be accompanied by an adult in order to enter a pari-mutuel facility, and the minimum age requirement for betting varies from 17 to 21 years of age. Most states have set the minimum at 18.²¹

The Kentucky Racing Commission provides a prominent example of the comprehensiveness of state regulation of the pari-mutuel industry. Laws that fall under the enforcement authority of this commission pertain to virtually every aspect of races and include the presence and placement of specific race officials such as timers, placing judges, starters, and patrol judges. There also are laws governing owners, trainers, jockeys, horses, and ticket sellers. Individuals must meet standards set by the commission for each

¹⁹R. Anthony Chamblin, Testimony for the National Gambling Impact Study Commission, Del Mar, California (July 29, 1998) (on file with the Commission).

²⁰Ibid.

²¹Ibid.

position and be licensed in order to be eligible to participate in pari-mutuel betting events. The commission itself has the power to deny, suspend, revoke, or declare void the license of any person involved in a violation of an administrative regulation. The commission also approves three stewards who make determinations regarding all questions, disputes, protests, complaints, or objections that arise during a race meeting. They are granted extensive disciplinary powers: For example, the stewards can declare a horse ineligible or a race void.

One of the key controversies in pari-mutuel gambling are proposals to introduce electronic gambling devices (EGD's), such as slot machines, at racetracks. Some track owners maintain that increased competition from state lotteries, nearby casinos, and other forms of gambling have hurt their business and that EGD's are needed in order to allow their businesses to survive. Opponents within and outside of the industry counter that by introducing such games, racetracks in effect become mini-casinos. Four states—Delaware, South Carolina, Rhode Island, and West Virginia—have legalized the operation of EGD's at racetrack facilities. Several other states are currently considering similar provisions.

Federal involvement in pari-mutuel regulation focuses on issues of interstate and foreign commerce. Specifically, the federal government provides regulation through two federal statutes that address or exempt interstate wagering within the pari-mutuel industry. According to the Interstate Horse Wagering Act of 1978²² and in compliance with the "Wire Act" of 1961,²³ racetracks can broadcast events to other licensed establishments and provide for a commingling of wagers on races. The industry broadcasts these races through satellite technology to other racetracks and off track betting parlors (OTBs). Bettors can then place wagers on a particular race hosted at a participating track that may be located outside

the state. This system has enabled the industry to create larger wagering pools and therefore larger purses. Under the authority provided by the federal government within these two statutes, several states have permitted the pari-mutuel industry to broadcast races in the home and have also provided for account wagering. Further discussion on account wagering and at-home devices is included in the chapter on the "Gambling in the United States."

Several organizations set industry standards and codes of conduct. As early as 1934, racing commissioners from a number of states formed the National Association of State Racing Commissioners (NASRC) to provide a more coordinated approach to regulatory efforts. Out of this body grew the Association of Racing Commissioners International, Inc. (RCI). Today, RCI's membership includes commissioners from 24 states and 5 neighboring territories or countries.²⁴ Other industry organizations include the National Thoroughbred Racing Association, the Thoroughbred Racing Associations of North America, The American Quarter Horse Association and the American Horse Council. These organizations address issues including integrity of racing, underage concerns, and concerns regarding problem and pathological gambling.

SPORTS WAGERING²⁵

The Professional and Amateur Sports Protection Act (Pub.L. 102-559) is the primary regulatory document for sports wagering activity. The law was passed to ensure the integrity of athletic events. At the time of the passage, Sen. Bill Bradley (D-NJ) said:

"Based on what I know about the dangers of sports betting, I am not prepared to risk the

²⁴ *Supra* note 1.

²⁵ Sports wagering refers to betting on the outcome of a contest. People bet on the outcome of many events, whether the outcome of the Academy Awards, individual athletic performances, or team play. For the purposes of this section on sports wagering regulation, the term does not cover pari-mutuel activity, which is legal in many states.

²² 15 U.S.C. § 3001-3007.

²³ 18 U.S.C. § 1084.

values that sports instill in youth just to add a few more dollars to state coffers.... State-sanctioned sports betting conveys the message that sports are more about money than personal achievement and sportsmanship. In these days of scandal and disillusionment, it is important that our youngsters not receive this message...sports betting threatens the integrity of and public confidence in professional and amateur team sports, converting sports from wholesome athletic entertainment into a vehicle for gambling...sports gambling raises people's suspicions about point-shaving and game-fixing.... All of this puts undue pressure on players, coaches, and officials."²⁶

The Act was signed by the President on October 28, 1992. Section 3702 of the Act makes it illegal for a government entity or a person to operate or authorize any wagering scheme based on "competitive games in which amateur or professional athletes participate."²⁷

Federal legislation also addresses the use of wire communications for sports wagering. The "Wire Act" of 1961 prohibits gambling businesses from using wire communications to transmit bets or wagers or information that assists in the placing of bets or wagers either interstate or across U.S. national borders. By specifying bets or wagers on "sporting events or contests," the statute expressly determines the illegality of the use of wire communications for the purposes of interstate or international sports wagering. Penalties for breaking this law include fines and imprisonment for not more than two years or both.

While these federal Acts imply federal jurisdiction over sports wagering, states retained the right to determine the scope of legalized sports wagering until 1992. Currently, sports wagering is legal in four states but offered only in Nevada and

Oregon. Nevada offers sports wagering through casino sports books and Oregon runs a state lottery game based on games played in the National Football League. Nevada prohibits the placing of wagers on teams from within the state in an attempt to avoid any hint of impropriety when Nevada teams are included and to protect the integrity of contests involving such teams. Delaware and Montana are allowed to have sports books by statute, but currently neither state offers legalized sports wagering. Because these four states had pre-existing statutes providing for sports gambling, they were unaffected by enactment in 1992 of the federal legislation prohibiting sports betting in all other states.²⁸

Despite Being Widespread, Most Sports Wagering Is Illegal

The popularity of sports wagering in most states, both legal and illegal, makes it a regulatory challenge. Legal sports wagering—especially the publication in the media of Las Vegas and offshore-generated point spreads—fuels a much larger amount of illegal sports wagering.²⁹ Although illegal in 48 states, office betting is flourishing. This type of informal or small-scale betting, which is often considered innocuous and not worth prosecuting from a law enforcement standpoint, is often ignored and goes largely unregulated.

²⁸ The Professional and Amateur Sports Protection Act, (Pub.L. 102-559), signed by the President on October 28, 1992. Section 3702 of the Act stipulates the following:

"It shall be unlawful for 1) a government entity to sponsor, operate, advertise, promote, license, or authorize by law or compact, or 2) a person to sponsor, operate, advertise, or promote, pursuant to the law or compact of a governmental entity, a lottery, sweepstakes, or other betting, gambling, or wagering scheme based, directly or indirectly (through the use of geographical references or otherwise), on one or more competitive games in which amateur or professional athletes participate, or are intended to participate, or on one or more performances of such athletes in such games."

See Linda S. Calvert Hansen, Sports, Athletics, and the Law: A Selected Topical Bibliography of Legal Resources Published During the 1990s, 4 Seton Hall Law and Sports Journal 763 (1994).

²⁹ James H. Frey, "Gambling on Sports: Policy Issues," Journal of Gambling Studies, Winter 1992, p. 355, as cited in the testimony of Nancy Price before the NGISC in Las Vegas, NV, November 10, 1998.

²⁶ Submitted with the testimony of Nancy Price to the NGISC in Las Vegas, NV, November 10, 1998.

²⁷ Pub.L. 102-559, Sec. 3702.

In addition to being largely informal, widespread and illegal, sports wagering is difficult to regulate since anyone in any state can access legal sports books via telephone or Internet. Because sports wagering is illegal in most states, reliable figures on the scope of sports gambling are difficult to find.

This Commission heard testimony that sports gambling is a serious problem which has devastated families and careers.³⁰ Many Americans do not know that the majority of sports wagering in America is illegal. In addition, many do not know about the risks and impacts of sports wagering and about the possible legal consequences. Even when Americans understand the illegality of sports wagering, it is easy to participate in, widely accepted, very popular, and, at present, not likely to be prosecuted.

One reason Americans may not be aware of the illegality of sports wagering is that the Las Vegas "line," or point spread, is published in most of the 48 states where sports wagering is illegal.³¹ Some have argued that the point spread is nothing more than a device that appeals to those who make or solicit bets. Critics claim that the point spread does not contribute to the popularity of sports, only to the popularity of sports wagering.

Because sports wagering is illegal in most states, it does not provide many of the positive impacts of other forms of gambling. In particular, sports wagering does not contribute to local economies or produce many jobs. Unlike casinos or other destination resorts, sports wagering does not create other economic sectors.

However, sports wagering does have social costs. Sports wagering threatens the integrity of sports, it puts student athletes in a vulnerable position, it can serve as gateway behavior for adolescent gamblers, and it can devastate individuals and careers.

It is important that the regulation of sports wagering be strengthened and enforced. Illegal sports betting should be contained in order to keep the remaining 48 states free from this form of gambling. Government and law enforcement agencies in particular could increase their efforts to deal with this area of illegal gambling.

One argument for strengthening sports wagering regulation is that athletes themselves are often tempted to bet on contests in which they participate, undermining the integrity of sporting contests. According to the findings of a University of Michigan survey on collegiate sports gambling, more than 45 percent of male collegiate football and basketball athletes admit to betting on sporting events, despite NCAA regulations prohibiting such activities. More than 5 percent of male student-athletes provided inside information for gambling purposes, bet on a game in which they participated, or accepted money for performing poorly in a game.³²

There is considerable evidence that sports wagering is widespread on America's college campuses. Cedric Dempsey, executive director of the NCAA, asserts that "every campus has student bookies. We are also seeing an increase in the involvement of organized crime on sports wagering."³³

Students who gamble on sports can be at risk for gambling problems later in life. There is evidence that sports wagering can act as a gateway to other forms of gambling. Therefore, it is important to understand the scope of the problem and educate students to the dangers of sports wagering. The Commission needs to know how widespread the phenomenon of underage sports gambling is now, the relationship between sports wagering and other forms of gambling, and the ways to prevent its spread. Those who attempt to draw adolescents into illegal sports wagering schemes deserve the full attention of law enforcement efforts.

³⁰ Testimony of Mitzi Schlichter before the NGISC, Las Vegas, NV, November 10, 1998.

³¹ Define the point spread and Vegas "line" here.

³² The Extent and Nature of Gambling Among College Student Athletes. Michael E. Cross and Ann G. Vollano, University of Michigan Athletic Department, 1999.

³³ Cited in Gary Lundy, NCAA Says Lady Vols Not Safe from Gamblers, Knoxville News-Sentinel, August 6, 1998, p. C1.

What Is Being Done and What Can Be Done

The importance of regulating legal sports wagering and stifling illegal sports wagering has been acknowledged by professional and amateur sports organizations, which have strict regulations regarding sports wagering. For example, the National Football League, Major League Baseball, and the National Basketball Association have all issued rules stating that betting on your own sport is grounds for dismissal for any athlete or coach. Each league also offers referral services for treatment of problem or pathological gambling and other addictions.³⁴

The National Collegiate Athletic Association has adopted legislation prohibiting university athletics department members, athletics conference office staff, and student athletes from engaging in wagering activities related to intercollegiate or professional sporting events. Violations of NCAA gambling regulations carry stringent penalties. The NCAA also has created a full-time staff position devoted to agent and gambling issues.³⁵

Current NCAA initiatives recognize the importance of raising awareness of the problems associated with sports wagering and problem and pathological gambling. Television broadcast has proven to be a powerful tool for educating the public about the problems associated with sports wagering. The NCAA contracts with CBS and ESPN to run public service announcements (PSA's) during the broadcast of popular sporting events, such as the Division I men's basketball tournament.³⁶ In 1998, CBS, in conjunction with the NCAA, developed a lengthy segment on sports wagering that aired between the Division I men's basketball semifinal games. These

announcements are only a part of the larger gambling education programs that the NCAA plans to develop.³⁷

CONVENIENCE GAMBLING³⁸ AND STAND-ALONE ELECTRONIC GAMBLING DEVICES

Stand-alone EGD's are seldom well regulated outside Nevada. Because EGD's can be placed in a wide variety of locations, they can be difficult to monitor. State regulation of convenience gambling includes licensing, regulation of the placement of machines within an establishment, age restrictions, regulation of operations, and taxation of revenues. States that permit convenience gambling have various methods of regulating the operation, distribution, and allocation of machines. Licensure is usually processed in state gambling commissions. An exception is South Carolina, where the Department of Revenue administers the machines. Applicants' character, past criminal records, business competence, and experience is evaluated during the licensing process. In addition, the operation and number of machines is regulated, since many states allow only a limited number of convenience gambling machines in certain locations. For example, in Nevada, locations with non-casino gambling licenses may operate a maximum of 15 devices. South Carolina machine operators are limited to only five machines per "single place or premise."

State regulations also dictate the qualifications and specifications of convenience gambling machines that are permitted. Some states also limit the amount of money played and the value of prizes. In Montana, each video draw poker or keno machine is not allowed to credit more than \$800. In Oregon, to ensure age-controlled access

³⁴ See Jeff Pash, Executive Vice president of the NFL, Testimony before the Senate Subcommittee on Technology, Terrorism and Governmental Information, Washington, DC, July 28, 1997.

³⁵ See letter from Cedric Dempsey, Executive Director of the NCAA to Commissioner McCarthy, NGISC, October 16, 1997, on file with the NGISC.

³⁶ See letter from Cedric Dempsey, Executive Director of the NCAA, to Kay James, NGISC, April 28, 1999, on file with the NGISC.

³⁷ Ibid.

³⁸ Most commonly, "convenience gambling" is defined as any gambling activity that encompasses various electronic versions of bingo, keno, blackjack, lottery, video poker, or any other electronic, electromechanical, or mechanical games that operate by chance and that award the player with game award credits or free games. It is legal in Nevada, South Carolina, Montana, Louisiana, Oregon, and South Dakota.

to video lottery, locations are off-limits to minors.

The fees that convenience gambling operators have to pay to the state government vary state by state. For example, Oregon collects excise taxes from retailers who operate the video lottery games and since 1992, the EGD's excise taxes have provided \$8.5 million to the state.³⁹ In Louisiana, license fees paid to the state and local governments for the period of July 1998 through March 1999 were \$148,848,000.⁴⁰

Attempts to regulate legal convenience gambling in South Carolina have been marginally successful. In an attempt to curb the growth of gambling, state officials decreed that no business could have more than five EGD's and limited daily payouts to \$125. However, these attempts at regulation are easily circumvented by establishments that partition their outlets into separate rooms, each containing five machines and an attendant.⁴¹ Video poker outlets often advertise and offer jackpots much greater than the \$125 limit allowed by law. In addition to being difficult to regulate, convenience gambling revenues are not evenly distributed. One quarter of South Carolina's machines are owned by just three operators: Collins, McDonald's Amusements of Little River, and Tim's Amusement of Greenville.⁴²

Illegal and quasi-legal EGD's (or so-called gray machines) are often considered a challenging yet low-priority law enforcement problem. Some states report bribery of police and other law enforcement officers. Confiscation is one method of enforcement but has proven ineffective since the confiscated machines are easily replaced. Moreover, penalty fees are usually low in comparison to the profit or "payoff."

In Illinois, with an estimated 65,000 illegal or quasi-legal EGD's,⁴³ video slot machines are classified as games of chance and are banned throughout the state. Supporters of video poker machines, however, claim that since poker requires some skill and does not rely on chance alone, the machines are therefore not illegal under existing law. The distinction is clear to the many bar and club owners who earn significant, largely untaxed profits from video poker machines. Owners of competing establishments contend that illegal gambling devices give some businesses an unfair advantage because the profits can be used to subsidize prices on food, drinks, or even gasoline.⁴⁴

Some states have considered replacing the EGD's with state-approved machines provided by commercial distributors. This would allow the regulation and taxation of the machines. In South Dakota, the state government gets 49.5 percent of the profits from the machines, while local bar owners and machine operators split the other 50.5 percent.⁴⁵ In Oregon, a 1992 law gives the state, which owns the machines outright, 67 percent of the profit. Local proprietors get 33 percent.⁴⁶ Some recommendations in improving the regulation of illegal convenience gambling include that of improving the local licensing, numbering and tracking of machines. Also targeting the manufacturers and distributors as well as organized crime and shop-owners could improve the regulation of convenience gambling.

ADVERTISING

Current restrictions limit the scope of advertising allowed by gambling facilities, but do not completely ban it. For example, casinos are allowed to advertise their restaurant and

³⁹ Source: Response from Governor Kitzhaber on April 26, 1999.

⁴⁰ Source: Response from Governor Foster on April 28, 1999.

⁴¹ "Industry Stirs Money, Controversy: South Carolina Illustrates How Video Gambling Can Impact a State," *Sarasota Herald-Trib.*, February 22, 1999, p. 1A.

⁴² "Video Poker generates millions for some South Carolina entrepreneurs," *The State*, March 21, 1999.

⁴³ Cam Simpson, "Gambling raid in west suburbs," *Chicago Sun-Times*, November 17, 1997.

⁴⁴ "Bars warily consider return of video poker: Court has struck down ban on the machines." *St. Louis Post-Dispatch*, February 10, 1999.

⁴⁵ "Video Poker: Why reward vendors." *The Charleston Gazette*, March 5, 1999, P. 4A.

⁴⁶ *Ibid.*

entertainment venues but not their gambling activities. Native American tribes, church bingo nights, and state-run lotteries are permitted to advertise gambling.

Supporting a Restriction on Advertising

The reason for the uneven restrictions on gambling advertising stems from differing interpretations of First Amendment protections, as well as exemptions granted in regulatory statutes. The rationale for existing prohibitions is complex, but rests on two assumptions: first, the federal prohibition on commercial gambling advertising assumes that casino gambling has a causal relationship with social ills; and ⁴⁷ second, that advertising increases gambling behavior both by enticing people to do more gambling than they otherwise would do and by recruiting people to gamble who otherwise might not.

The Foundation for the Ban: The Federal Communications Act

The Federal Communications Act of 1934 was the first attempt to provide a statutory basis for restrictions on gambling advertising. Although the Act has been significantly changed and a number of exceptions added, there continue to be federal restrictions on many forms of gambling advertising. The Federal Communications Act prohibited lottery advertisements, extending an earlier prohibition on the use of the U.S. Postal Service to radio.⁴⁸ As a result, Title 18 of the United States Code §1304 provides:

Whoever broadcasts by means of any radio or television station for which a license is required by any law of the United States, or whoever, operating any such station, knowingly permits the broadcast of, any advertisement of or information concerning any lottery, gift enterprise, or similar scheme, offering prizes dependent in whole or in part upon lot or chance, or any list of the prizes

drawn or awarded by means of any such lottery, gift enterprise, or scheme, whether said list contains any part or all of such prize, shall be fined under this title or imprisoned not more than one year, or both.

The Federal Communications Commission (FCC) is the agency authorized to enforce Title 18.⁴⁹ In that capacity, the FCC implemented regulation 47 C.F.R. §73.121 prohibiting broadcasting advertising of any "lottery, gift enterprise, or similar scheme." Title 18 states, in part:

- (a) No license of an AM, FM, or television broadcast station...shall broadcast any advertisement of or information concerning any lottery, gift enterprise, or similar scheme, offering prizes dependent in whole or in part upon lot or chance, or any list of the prizes drawn or awarded by means of any such lottery, gift enterprise, or scheme, whether said list contains any part or all of such prizes.

A number of exceptions undercut the original sweeping scope of the Act. The exceptions include state lotteries,⁵⁰ fishing contests,⁵¹ gambling conducted by an Indian Tribe pursuant to the Indian Gaming Regulatory Act,⁵² a lottery, gift enterprise or similar scheme by a not-for-profit organization or a governmental organization⁵³ or conducted as a promotional activity by a commercial organization.⁵⁴ Additional exceptions include horse racing and off-track betting.⁵⁵

⁴⁷ 988 F. Supp 497 (D.N.J. 1997).

⁴⁸ See Anthony N. Cabot, et al., supra note 2 at 51-80.

⁴⁹ FCC rule 73.1211. See 47 C.F.R. §76.213

⁵⁰ (18 U.S.C. 1307 (a); 102 Stat. 3205).

⁵¹ 18 U.S.C. 1395.

⁵² 25 U.S.C. 2701 et seq.

⁵³ (18 U.S.C. 1307 (a); 102 Stat. 3205).

⁵⁴ Ibid.

⁵⁵ 41 F.C.C 2d 172 (1973) and 47 U.S.C. §307.

Federal Appeals courts are split on the constitutionality of the Act. Therefore, the ban is currently in effect in only some parts of the United States. Some jurisdictions have struck down the ban outright. For example, in *Valley Broadcasting Co. v. United States*,⁵⁶ the 9th U.S. Circuit Court of Appeals struck down the ban in 1998, blocking enforcement in nine Western states: Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, and Washington. As a result of the Valley case, the FCC stated it would not enforce the ban in Nevada.⁵⁷ In *Players International Inc. v. United States*,⁵⁸ the U.S. District Court in New Jersey ruled that the federal ban violates the First Amendment rights of casinos and broadcasters. As a result of the *Players* case, the FCC stated it would not enforce the advertising ban in New Jersey, where the case had jurisdiction.⁵⁹

Other jurisdictions have upheld the ban. In *Posadas de Puerto Rico Associates v. Tourism Co.*,⁶⁰ the U.S. Supreme Court in 1986 upheld the constitutionality of a Puerto Rico law that prohibited the advertising of casino gambling aimed at residents of Puerto Rico, but permitted such advertising aimed at tourists. In *United States v. Edge Broadcasting Co.*,⁶¹ the U.S. Supreme Court also upheld a federal statute that prohibited the airing of lottery advertising by broadcasters licensed in states that prohibit lotteries, while allowing such advertising by broadcasters in states where lotteries were permitted.

Is the Ban an Indirect Gambling Regulation?

Given these assumptions, the ban on gambling advertising can be interpreted as an indirect

attempt to regulate people's gambling behavior and, in turn, minimize gambling's social costs. The interpretation of the ban as an indirect gambling regulation has led to differing arguments for and against the ban, all challenging or supporting the two underlying assumptions outlined above.

In *United States v. Players International*, the plaintiffs argued that a ban on gambling advertising can be interpreted as an indirect attempt to regulate people's gambling behavior by regulating commercial speech about gambling. The main thrust of the plaintiff's argument in *Players* revolved around the contention that there exist non-speech regulating "alternatives" to the broadcast ban on gambling casinos. They argued that because people's gambling behavior can be regulated through non-speech means, then non-speech regulating policy alternatives should be considered. In short, the *Players* case encourages the direct regulation of people's conduct rather than a ban on speech about that conduct, particularly when it is legal conduct. This case also questions the primary assumption that the federal government can show "any causal connection between casino gambling and the social ills that the federal government seeks to prevent."⁶²

The argument supporting the ban makes similar assumptions with one major difference. Supporters of the ban assume that gambling advertising does influence (or induce) gambling behavior and that there is a causal relationship between gambling behavior and social ills. Therefore, states, in their role of protector of their citizens, need "legislative flexibility" in order to allow them to protect their citizens from the advertisement of the private gambling industry, which recruits new players and encourages new ones, thereby contributing to social ills through advertising.

⁵⁶ 107 F.3D 1328 (9th Cir. 1997), cert. denied, 118 S.Ct. 1050 (1998).

⁵⁷ Nora FitzGerald, "Gambling Fever," *Adweek* (Eastern Edition), January 26, 1998.

⁵⁸ 988 f. supp 497 (D.N.J. 1997).

⁵⁹ FitzGerald, supra, note 52.

⁶⁰ 478 U.S. 328 (1986).

⁶¹ 409 U.S. 418 (1993).

⁶² *Ibid.*

The New Orleans Case

Recently, in the much-discussed case of *Greater New Orleans Broadcasting v. United States*,⁶³ the 5th U.S. Circuit Court of Appeals has upheld the ban.⁶⁴ In this case, the Greater New Orleans Broadcasters Association challenged federal restrictions barring gambling advertising from crossing state lines and FCC regulations providing additional sanctions. The Federal District Court had earlier found in summary judgment that governmental interests were sufficient to override free speech concerns. The Appellate Court agreed in 1995.⁶⁵ In a 1996 ruling, the Supreme Court sent the case back to the lower courts. However, on remand, the 5th Circuit again upheld the advertising ban, precipitating the upcoming review by the Supreme Court.⁶⁶ As a result of these exceptions and contradictory decisions, "what remains of that prohibition is a vague regulatory scheme propped up by obscure, often unpublished rulings and undermined by a hodgepodge of congressionally approved exceptions."⁶⁷ The Supreme Court recently heard the *Greater New Orleans Broadcasting* case and is expected to offer a decision shortly.⁶⁸

Interpretations of New Orleans

There are at least two sides to the argument about the ban on gambling advertising expressed in the *New Orleans* case. The American Association of Advertising Agencies argues that gambling advertising is commercial speech, protected under the First Amendment, and

should not be banned or restricted. Relying on the *44 Liquormart v. Rhode Island* decision,⁶⁹ in which the Supreme Court struck down a state ban on advertising the price of alcoholic beverages, they believe that the Court will find the restriction on gambling to be analogous and, therefore, unconstitutional.

The Clinton Administration continues to support the ban, arguing that there is a compelling state interest in banning gambling advertising. In an appeal of the *Players* case, the government attorney argued that broadcast advertising of casino gambling "would directly contribute to compulsive gambling by reaching into the homes of current and potential compulsive gamblers".⁷⁰

Lottery Advertising

While gambling advertising is generally a controversial topic, it is even more controversial when state governments themselves actively promote gambling through advertising. Running a lottery places states in a new business. Many states "have adopted the tools of commercial marketing, including product design, promotions, and advertising" to promote their lotteries.⁷¹ In 1997 state lotteries spent a total of \$400 million to advertise, about one percent of total sales.⁷² Unlike many governmental promotions, which are straightforward, low-tech, and serious, lottery advertising can be characterized as persuasive, glitzy, and humorous. This attempt to make gambling attractive is sanctioned by the state, promoted by the state, and paid for by the state. (See Table 3-1.)

One particularly troublesome component of lottery advertising is that much of it is misleading, even deceptive. State lotteries are

⁶³ 149 F.3d 334 (5th Cir. 1998).

⁶⁴ Richard Carelli, Law Banning Casino Ads Reviewed, AP Online, January 15, 1999.

⁶⁵ *Greater New Orleans Broadcasting Association v. United States*, 69 F.3d 1296 (5th Cir. 1995).

⁶⁶ See Alicia Mundy, "Court Rules on Vice Ads; Supreme Court May Rule on Casino Advertising," Adweek, August 10, 1998.

⁶⁷ Argument of New Orleans Broadcasters, cited in Scott Ritter, Supreme Court Refuses to Review Ban on Casino Gaming Ads, Dow Jones Newswires, January 11, 1999.

⁶⁸ *Greater New Orleans Broadcasting v. United States*, Supreme Court of the United States, 98-387, writ of certiorari granted, January 15, 1999. See Associated Press, Supreme Court to Consider Advertising Ban on Casinos, wire copy, January 18, 1999.

⁶⁹ 517 U.S. 484 (1996).

⁷⁰ Richard Carelli, "Gambling Ad Ban Full of Exceptions," AP Online, December 28, 1998.

⁷¹ Clotfelter and Cook, supra note xx at 9.

⁷² Patricia A. McQueen, Investing in Tomorrow, International Gaming and Wagering Business at 48 (January 1998), cited in Clotfelter and Cook, supra note xx at 11.

Table 3-1

Advertising Themes Used in Marketing Plans of State Lottery Agencies, 1998

	Plans using theme (%)
Size of the prize or the jackpot	56
Fun and excitement of playing the lottery	56
Winner Awareness	46
Benefits to state of lottery dollars	28
Sports themes	28
Product Awareness	24
How to Play	20
Playing responsibly	16
Odds of winning	16
Tie-in with fairs and festivals	12
Play more often	12
Emotions of Winning	12
Answer to your Dream	12
Benefits of Winning	8
Instant gratification	8
Social interaction of playing	4
Low Price	4

Source: Charles T. Clotfelter, Philip J. Cook, Julie A. Edell, and Marian Moore, "State Lotteries at the Turn of the Century: Report to the National Gambling Impact Study Commission." Duke University, 1999. Table 13.

exempt from the Federal Trade Commissions' truth-in-advertising standards because they are state entities and, in terms of their advertising, can in fact operate in a manner that true commercial businesses cannot.⁷³ While the Federal Trade Commission requires statements about probability of winning in commercial sweepstakes games, there is no such federal requirement for lotteries. Lottery advertising rarely explains the poor odds of winning. Many advertisements imply that the odds of winning are even "better than you might think." For example, one video presented to the Commission stated that "chances are good you can be \$10,000 richer". An ad aired in Texas compared the odds of winning the lottery to the odds of some everyday events, implying that winning the lottery is possible, perhaps even probable.⁷⁴

In addition to being misleading, lottery advertising messages often exploit themes that conflict with the state's role as protector of the public good. For example, many advertisements emphasize luck over hard work, instant gratification over prudent investment, and entertainment over savings. New York's "All you need is a dollar and a dream" ad campaign was particularly emblematic of the theme that lotteries provide an avenue to financial success. The idea that the lottery is an investment in your future is particularly troublesome when targeted toward populations that are least able to afford to play.

Lottery advertising is also manipulative when it encourages players to play the lottery in order to contribute to state programs. Because lottery revenues are often earmarked for specific purposes, such as education, lottery advertising sometimes exploits the idea that playing the lottery can make you "feel good." This message implies that buying a lottery ticket is akin to supporting social programs, with the added benefit that you could become a millionaire

⁷³ Ellen Perlman, "Lotto's Little Luxuries," *Governing*, December 1996, p. 18.

⁷⁴ Testimony of Philip Cook, before the NGISC, March 18, 1999, Washington, DC.

yourself in the process. One video clip presented to the Commission emphasized that lottery dollars provide education and job training, encouraging the idea that by playing the lottery, a gambler can help other people improve their lives.⁷⁵

There is also concern that lottery ads target particularly vulnerable populations, specifically youth and the poor. Some lottery ads presented to the Commission showed young people playing the lottery.⁷⁶ The appeal of such images, and the illegality of underage lottery purchases in most states, raises justifiable concerns about the role of state governments as a promoter and participant in this type of gambling promotion.

The concern over lottery marketing themes and messages prompted several states to place restriction on what kind of advertising its lottery agency could do. In particular, Virginia, Minnesota, and Wisconsin ban ads designed to induce people to play. A few other states require odds of winning to be displayed or ads to be accurate and not misleading.⁷⁷

Time for an Advertising 'Pause'

Underlying the legal arguments for and against the ban on gambling advertising are larger questions about the relationship between commercial speech and legalized behavior. While many states have legalized gambling activity, some states continue to support the ban on advertising for that very activity. In addition, some states actively promote their lotteries while continuing to support the ban on gambling advertising for commercial casinos. Although contradictory on the surface, conflicting policies are often the product of incremental decisionmaking rather than uncertainty. It is important that states ensure that their gambling policies and regulations match their objectives

while simultaneously protecting the public interest.

This Commission is aware that the legal landscape may change with the Supreme Court's decision in the Greater New Orleans case. This Commission is preparing for the possibility of the Supreme Court lifting the advertising ban. If the ban is lifted, there could be a proliferation of gambling advertising across the United States. Given this rare advertising "pause" prior to the Court's decision, this Commission has an opportunity and responsibility to address the issue of gambling advertising. One suggestion is the adoption of a "best practices" paradigm for gambling advertising, possibly modeled after the guidelines created by both the North American Association of State and Provincial Lotteries and the American Gaming Association (see Attachments A, B, and C at the end of this chapter).

RECOMMENDATIONS

3.1 The Commission recommends to state governments and the federal government that states are best equipped to regulate gambling within their own borders with two exceptions—tribal and Internet gambling. (See separate recommendations on tribal and Internet gambling in their respective chapters.)

3.2 The Commission recommends that all legal gambling should be restricted to those who are at least 21 years of age and that those who are under 21 years of age should not be allowed to loiter in areas where gambling activity occurs.

3.3 The Commission recommends that gambling "cruises to nowhere" should be prohibited unless the state from which the cruise originates adopts legislation specifically legalizing such cruises consistent with existing law.

3.4 The Commission recommends that warnings regarding the dangers and risks of gambling, as well as the odds where feasible, should be posted in prominent locations in all gambling facilities.

⁷⁵ Ibid.

⁷⁶ Ibid.

⁷⁷ State Lotteries at the Turn of the Century: Report to the National Gambling Impact Study Commission. Charles T. Clotfelter, Philip J. Cook, Julie A. Edell and Marion Moore, April 1, 1999.

3.5 The Commission recognizes the difficulty of campaign finance reform in general and an industry-specific contribution restriction in particular. Nonetheless the Commission believes that there are sound reasons to recommend that states adopt tight restrictions on contributions to state and local campaigns by entities—corporate, private, or tribal—that have applied for or have been granted the privilege of operating gambling facilities.

3.6 The Commission received testimony that convenience gambling, such as electronic devices in neighborhood outlets, provides fewer economic benefits and creates potentially greater social costs by making gambling more available and accessible. Therefore, the Commission recommends that states should not authorize any further convenience gambling operations and should cease and roll back existing operations.

3.7 The Commission recommends that the betting on collegiate and amateur athletic events that is currently legal be banned altogether.

3.8 The Commission recommends that in states where there is little regulatory oversight for organizations contracted to help manage or supply the lottery, states should put all individuals, entities, and organizations involved with managing or supplying the lottery through a rigorous background check and licensing process.

3.9 The Commission recommends to states with lotteries that the states should publicly develop and review model regulations for their lottery in the form of “best practices,” designed to be adopted legislatively.

3.10 The Commission urges states with lotteries to disallow instant games that are simulations of live card and other casino-type games. Generally, the outcome of an instant game is determined at the point of sale by the lottery terminal that issues the ticket.

3.11 The Commission recommends that all relevant governmental gambling regulatory

agencies should ban aggressive advertising strategies, especially those that target people in impoverished neighborhoods or youth anywhere.

3.12 The Commission recommends that states should refuse to allow the introduction of casino-style gambling into pari-mutuel facilities for the primary purpose of saving a pari-mutuel facility that the market has determined no longer serves the community or for the purpose of competing with other forms of gambling.

3.13 The Commission recommends to state and tribal governments, the NCAA, and other youth, school, and collegiate athletic organizations that, because sports gambling is popular among adolescents and may act as a gateway to other forms of gambling, such organizations and governments should fund educational and prevention programs to help the public recognize that almost all sports gambling is illegal and can have serious consequences. The Commission recommends that this effort should include public service announcements, especially during tournament and bowl game coverage. The Commission recommends that the NCAA and other amateur sports governing bodies adopt mandatory codes of conduct regarding sports gambling education and prevention. The Commission also calls upon the NCAA to organize U.S. research universities to apply their resources to develop scientific research on adolescent gambling, sports gambling, and related research.

3.14 The Commission recommends that each gambling operation, state lottery, tribal government, and associations of gambling organizations voluntarily adopt and then follow enforceable advertising guidelines. These guidelines should avoid explicit or implicit appeals to vulnerable populations, including youth and low-income neighborhoods. Enforcement should include a mechanism for recognizing and addressing any citizen complaints that might arise regarding advertisements. Additionally, the Commission recommends that Congress amend the federal truth-in-advertising laws to include Native

American gambling and state-sponsored lotteries.

3.15 The Commission recommends that the Congress should delegate to the appropriate federal agency the task of annually gathering data concerning lottery operations in the United States, including: volume of purchase; demographics of lottery players and patterns of play by demographics; nature, content, accuracy, and type of advertising spending regarding problem and pathological gamblers; spending on regulation; and other relevant matters.

3.16 The Commission recommends that states and tribal governments should conduct periodic reassessments of the various forms of gambling permitted within their borders for the purpose of determining whether the public interest would be better served by limiting, eliminating, or expanding one or more of those forms.

3.17 The Commission recommends that federal, state, and tribal gambling regulators should be subject to a cooling-off period that prevents them from working for any gambling operation subject to their jurisdiction for a period of 1 year. Federal, state, or tribal lottery employees should be subject to a cooling-off period that prevents them from working for any supplier of lottery services for a period of 1 year.

3.18 The Commission recommends that jurisdictions considering the introduction of new forms of gambling or the significant expansion of existing gambling operations should sponsor comprehensive gambling impact statements. Such analyses should be conducted by qualified independent research organizations and should encompass, in so far as possible, the economic, social, and regional effects of the proposed action.

3.19 The Commission recommends that states with lotteries reduce their sales dependence on low-income neighborhoods and heavy players in a variety of ways, including limiting advertising and number of sales outlets in low-income areas.

3.20 The Commission recommends that states with lotteries create a private citizen oversight board. The board would make data-based policy decisions on types of games to offer, marketing strategies to follow, etc.

3.21 The Commission recognizes that lotteries and convenience gambling may play a significant role in the development of youthful gamblers. Further, with respect to all forms of legal and illegal gambling, the Commission recommends that all relevant governmental gambling regulatory agencies enact and enforce harsh penalties for abuse in this area involving underage gamblers. Penalties and enforcement efforts regarding underage gambling should be greatly increased.

3.22 Heavy governmental promotion of lotteries, largely located in neighborhoods, may contribute disproportionately to the culture of casual gambling in the United States. The Commission therefore recommends that states curtail the growth of new lottery games, reduce lottery advertising, and limit locations for lottery machines.

ATTACHMENT A

A “BEST PRACTICES” MODEL FOR CASINOS

At the Commission’s request, a guide to model regulation was developed by Michael Belletire, the former Chairman of the Illinois Gaming Board. His major points include:

LEGISLATIVE CLARITY OF PURPOSE

In crafting gambling statutes, a clear articulation of public purpose or legislative intent is essential. A statement of intent serves to clarify the standards by which the long-term acceptability of authorizing gambling activity may be measured. This type of statement may also serve to reconcile the adoption of statutory provisions that face potential constitutional challenges. Even more importantly, clarity of purpose provides the grounding against which to test regulatory and administrative decisions at the time of initial decisionmaking, as well as upon review or appeal. Integral with a statement of public purpose should be an explicitly stated commitment to the overarching principle of integrity.

Constitutional Considerations

Each state’s elected officials must carefully weigh constitutional history and language and contemporary public sentiment before enacting gambling legislation.

Organization of Regulation

The principle of integrity demands that administrative decisionmaking be placed in the hands of an appointed independent body, rather than a single individual subject to political influence. The decisionmaking body itself should exercise operating and administrative authority and must be further subject to appeal or oversight of its decisions.

Extent of Gambling Authorized

According to Belletire, “Perhaps the single most significant factor in shaping the dynamics of the regulatory process is the scope of legislatively authorized casino gambling.” However, by restricting the market and putting decisions in the hands of regulators and others, a statute intended to “limit the spread” of casino gambling could increase the potential for inappropriate influence in the awarding of licenses. Therefore, statutory safeguards should include consideration of the following:

- Independence in licensure decisionmaking.
- Placing the burden to prove suitability for licensure upon the applicant.
- An explicit requirement for competitive proposals for limited availability licenses.
- Carefully articulated policy standards for deciding among competing applications.

- Comprehensive disclosure of financial and political relationships.
- Explicit powers to review, investigate, and approve contractual relationships entered into by applicants and licensed operators.
- Requirements that ensure confidentiality in the treatment of sensitive personal and financial information balanced by appropriate public meeting requirements.
- In-depth and independent investigative practices and personnel.

Suitability and Investigations

A foundation of contemporary casino gambling regulation is the presumption that those involved in the ownership or control of casino operations must be deemed “suitable” for licensure or involvement in gambling. Appointed boards or commissions should be given broad powers to assess the background and integrity of owners and others deemed “key persons” of a gambling company.⁷⁸ The chief regulatory body should be empowered to establish which individuals or entities are deemed key persons. In order to be effective, regulators must be authorized to conduct in-depth background investigations. Legislation should mandate “full cooperation” from applicants, wherein the failure to provide information is grounds for determining unsuitability. It is advisable that persons with a felony conviction be statutorily prohibited from serving as a key person. It is also advisable for gambling statutes to explicitly authorize the gambling regulatory authority to compel the “disassociation” of persons found “unsuitable” for involvement, in addition to the authority to deny licensure to an entity. Personnel assigned to conduct investigations should be law enforcement officers of the state, as they have wide-ranging access to criminal and background information.

Enforcement

On-site agents enhance the ability of a regulatory body to identify operating irregularities. One of the most powerful tools in overseeing the conduct of gambling operations is the video camera surveillance system. Typically, surveillance requirements are imposed by rules and regulation rather than by statute.

Conformance with Anti-Gambling Statutes

Every state has statutory provisions that criminalize various forms of gambling activity. In enacting legislation authorizing gambling, proper attention should be paid to crafting appropriate exemptions to existing gambling prohibitions. Enforcing the honesty and integrity of legalized casino gambling requires an ability to prosecute those who engage in cheating at otherwise legal games. Attention must be paid to ensuring that appropriate and clearly enforceable criminal statutes exist to prosecute casino gambling cheaters.

Non-Gambling Business Relationships

A casino, like any large business, engages in a diverse set of outside business relationships in order to conduct operations. For this reason, it is important that casino jurisdictions—by statute, by rule, or both—exert a measure of oversight over all procurement decisions made by operators. This oversight might

⁷⁸ A key person may be an individual or an entity that, by position, office, ownership, or relationship can exercise control or significant influence over, the broad policies, management or operations of a licensed entity. (Belletire)

entail licensure of (non-gambling) provider entities or other regulatory measures. It is preferable that casino gambling enabling legislation expressly require that financing for casino operations be approved by the regulatory authority as being "appropriate and from a suitable source."

Problem and Underage Gambling

States acting to authorize legalized casinos should consider statutory and regulatory policies that acknowledge problem gambling and seek to offset its impact. Measures to draw awareness to problem gambling should be initiated by the regulatory agency.

Statutes dealing with the age for legalized casino gambling should take a two-pronged direction. First, those licensed to operate casinos should be subject to strict regulatory oversight and held accountable for failing to consistently and diligently deter and detect attempts by underage persons to enter casinos or engage in gambling. Secondly, statutes should place responsibility upon young persons seeking to intentionally frustrate the law by gaining access to casino gambling. Specifically, states should consider promulgating petty or misdemeanor offense provisions that can be applied to persons gambling or facilitating entry by intent or deception.

ATTACHMENT B

NASPL ADVERTISING STANDARDS

The North American Association of State and Provincial Lotteries (NASPL) approved a list of advertising standards for their members on March 19, 1999.⁷⁹ These standards address the content and tone of lottery advertising, including the use of minors in ads, the inclusion of game information and a clear listing of lottery revenue beneficiaries. According to the NASPL, signatory NASPL members “will conduct their advertising and marketing practices in accordance with the provisions of these standards.”⁸⁰ These advertising standards are outlined below:

Content:

- Advertising should be consistent with principles of dignity, integrity, mission, and values of the industry and jurisdictions.
- Advertising should neither contain nor imply lewd or indecent language, images or actions.
- Advertising should not portray product abuse, excessive play, nor a preoccupation with gambling.
- Advertising should not imply nor portray any illegal activity.
- Advertising should not degrade the image or status of persons of any ethnic, minority, religious group nor protected class.
- Advertising by lotteries should appropriately recognize diversity in both audience and media, consistent with these standards.
- Advertising should not encourage people to play excessively nor beyond their means.
- Advertising and marketing materials should include a responsible play message when appropriate.
- Responsible play public service or purchased media messages are appropriate, especially during large jackpot periods.
- Support for compulsive gambling programs, including publications, referrals and employee training is a necessary adjunct to lottery advertising.
- Advertising should not present, directly nor indirectly, any lottery game as a potential means of relieving any person’s financial or personal difficulties.
- Advertising should not exhort play as a means of recovering past gambling nor other financial losses.
- Advertising should not knowingly be placed in or adjacent to other media that dramatize or glamorize inappropriate use of the product.

⁷⁹ In addition to the national standards provided by NASPL, many state lotteries have created their own guidelines for advertising. The advertising codes for 24 lottery states were forwarded to the NGISC on April 20, 1999.

⁸⁰ See NASPL Advertising Standards, sent to NGISC by George Anderson, April 1999.

Tone:

- The lottery should not be promoted in derogation of nor as an alternative to employment, nor as a financial investment, nor a way to achieve financial security.
- Lottery advertisements should not be designed so as to imply urgency, should not make false promises, and should not present winning as the probable outcome.
- Advertising should not denigrate a person who does not buy a lottery ticket nor unduly praise a person who does buy a ticket.
- Advertising should emphasize the fun and entertainment aspect of playing lottery games and not imply a promise of winning.
- Advertising should not exhort the public to wager by directly or indirectly misrepresenting a person's chance of winning a prize.
- Advertising should not imply that lottery games are games of skill.

Minors:

- Persons depicted as lottery players in lottery advertising should not be, nor appear to be, under the legal purchase age.
- Age restriction should, at a minimum, be posted at the point of sale.
- Advertising should not appear in media directed primarily to those under the legal age.
- Lotteries should not be advertised at venues where the audience is reasonably and primarily expected to be below the legal purchase age.
- Advertising should not contain symbols nor language that are primarily intended to appeal to minors or those under the legal purchase age.
- The use of animation should be monitored to ensure that characters are not associated with animated characters on children's programs.
- Celebrity or other testimonials should not be used that would primarily appeal to persons under the legal purchase age.

Game information:

- Odds of winning must be readily available to the public and be clearly stated.
- Advertising should state alternative case and annuity values where reasonable and appropriate.

Beneficiaries:

- Lotteries should provide information regarding the use of lottery proceeds.
- Advertising should clearly denote where lottery proceeds go, avoiding statements that could be confusing or misinterpreted.

ATTACHMENT C

“BEST PRACTICES” PARADIGM FOR ADVERTISING AND MARKETING

In January 1999, the Board of Directors of the American Gaming Association approved Voluntary Guidelines for Casinos Marketing and Advertising. These voluntary guidelines apply to the advertising and marketing of gambling in casinos. While they are intended for casino gambling, these guidelines can serve as a model for all forms of gambling advertising.

The purpose of these voluntary guidelines is two-fold:

- 1) To ensure responsible and appropriate advertising and marketing of casinos to adults that reflects generally accepted contemporary standards; and
- 2) To avoid casino advertising and marketing materials⁸¹ that specifically appeal to children and minors.

GENERAL GUIDELINES

- All casino advertising and marketing will contain a responsible gambling slogan and the toll-free telephone number for those individuals in need of assistance.
- Casino advertising and marketing materials are intended for adults who are of legal age to gamble in casinos.
- Casinos advertising and marketing materials should reflect generally accepted contemporary standards of good taste.
- Casino advertising and marketing materials should not imply or suggest any illegal activity of any kind.
- Casino advertising and marketing materials shall strictly comply with all state and federal standards to not make false or misleading claims or exaggerated representations about gambling activity.
- Casino advertising and marketing materials should not contain claims or representations that individuals are guaranteed social, financial, or personal success.
- Casino advertising and marketing materials should not feature current collegiate athletes.

UNDERAGE GUIDELINES

- Casino advertising and marketing materials directed to or intended to appeal to persons below the legal age are prohibited.

⁸¹ For the purposes of the AGA guidelines, the terms “advertising” and “marketing” are defined to include, but are not limited to, radio and television broadcast off the premises, print, direct mail, billboard, and Internet promotions.