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# Indian Gaming Regulatory Act: Gaming on "Indian Lands"

## Overview

In the 1970s, some federally recognized Tribes (hereinafter "Tribes") established bingo gaming to raise funding for tribal government operations. At that time, there was no statutory framework specifically governing tribal gaming. State governments sought to regulate tribal gaming under state gaming laws, but courts were divided over whether tribal gaming was within state or federal jurisdiction. In 1987, the Supreme Court held that once a state has legalized any form of gambling, Tribes within that state can offer the same game on tribal land without state regulation (*see California v. Cabazon Band of Mission Indians*).

In 1988, Congress enacted the Indian Gaming Regulatory Act (IGRA) to regulate gaming on tribal land without disrupting the Supreme Court's holding in *Cabazon*. Section 3 of IGRA states that the act's purpose is "to provide a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments." As of September 2024, 243 Tribes owned, operated, or licensed 532 gaming establishments in 29 states, grossing a total of $43.9 billion in gaming revenue.

## Gaming Activities Under IGRA

IGRA outlines three classes of gaming: (1) *Class I gaming* (social gaming with minimal prizes and traditional Indian gaming); (2) *Class II gaming* (bingo and "non-banking card games"); and (3) *Class III gaming* (all other games, including casino games). IGRA created the National Indian Gaming Commission (NIGC) within the Department of the Interior (DOI) to regulate Class II gaming and some aspects of Class III gaming. IGRA requires Class III gaming to be regulated through compacts between Tribes and states with DOI approval.

## "Indian Lands" Under IGRA

Under IGRA, Tribes may only conduct gaming on "Indian lands," which are defined as (1) all lands within the limits of a tribal reservation and (2) restricted fee or trust lands where the Tribe has jurisdiction and "exercises governmental power." *Restricted fee lands* are lands owned by a Tribe or tribal citizen that may not be alienated (sold, gifted, leased), without DOI approval. *Trust lands* are lands held in trust by DOI for Tribes or tribal citizens, which cannot be alienated without DOI approval. Congress can require DOI to accept a specific parcel of land into trust (*mandatory acquisition*) or permit DOI to use its discretion (*discretionary acquisition*). For the latter, a Tribe requests that land be taken into trust for itself or a tribal citizen through acquisition by, or transfer to, DOI.

Whether NIGC or another DOI entity makes gaming determinations depends on the status of the land. For example, if a proposed trust land acquisition's stated purpose is gaming, DOI's Bureau of Indian Affairs (BIA) processes the application concurrently with DOI's Office of Indian Gaming. When the proposed gaming would be on lands already in trust, the applicant may contact NIGC.

## IGRA Exceptions That Allow Gaming on Newly Acquired Trust Lands

While gaming activities may occur on all "Indian lands" in existence before October 17, 1988, IGRA generally prohibits gaming activities on lands taken into trust after that date. Tribes may conduct gaming activities on these *newly acquired trust lands* only if the proposed lands meet one of IGRA's statutory exceptions as outlined below.

To be eligible for gaming, newly acquired trust land must first meet one of the location requirements:

(1) if the Tribe had a reservation on October 17, 1988, the newly acquired trust land is located within or contiguous to that reservation, or

(2) if the Tribe did not have a reservation on October 17, 1988, then (a) if the newly acquired trust land is in Oklahoma, the land is contiguous to other land held in trust or restricted fee, or is within the Tribe's last reservation; or (b) if the newly acquired trust land is not in Oklahoma, the land is within the Tribe's last reservation in the state or states in which the Tribe is now located.

Second, the newly acquired trust land must meet one of the three IGRA exceptions:

**"Settlement of a Land Claim" Exception.** Gaming is allowed on newly acquired trust land if it is acquired as part of a tribal land claim settlement. These settlements can be (1) enacted in legislation, (2) ordered by a court, or (3) part of agreements where the United States is a party.

**Restored Lands Exception.** Gaming is allowed if a Tribe is a *restored Tribe* and the newly acquired trust lands are *restored lands*. In the mid-1900s, Congress terminated the federal recognition of some Tribes, and some of these Tribes later had their recognition restored. To qualify for this exception, a restored Tribe must generally show geographic, historical, and temporal connections to the newly acquired trust land, among other criteria.

**Initial Reservation Exception.** Gaming is allowed on newly acquired trust land that was acquired as part of an initial reservation for a newly recognized Tribe. The Tribe must meet the following conditions: (1) the Tribe must have been federally recognized through DOI's Federal Acknowledgment Process; (2) the Tribe must have no

gaming facility on lands under the IGRA restored lands exception; and (3) the newly acquired trust land must be the first-proclaimed reservation after DOI's federal recognition.

If the Tribe did not have a proclaimed reservation as of June 19, 2008, the newly acquired trust land must meet specified criteria to be proclaimed an initial reservation.

If a Tribe does not meet the criteria for any of these IGRA exceptions, it may file an application for a **Secretarial Determination.** In this case, gaming is allowed on newly acquired trust land if the Secretary of the Interior (Secretary) determines, and the state governor concurs, that the acquisition for gaming is (1) in the best interest of the Tribe and (2) not detrimental to the local community.

## Sports Betting

In *Murphy v. National Collegiate Athletic Association* (2018), the Supreme Court struck down the Professional Sports Protection Act of 1992, which prohibited states from authorizing sports gambling. Based on 2025 data, this decision spurred the District of Columbia and 39 states to authorize sports betting, including more than 20 states that have tribal gaming. In a white paper published in 2022, researchers at the University of Nevada, Las Vegas, described three frameworks for how tribal sports betting is regulated in these states post-*Murphy*:

1. **The Compact Model.** "Tribal sports betting is conducted and regulated according to IGRA and the tribal-state compact, and is confined to Indian lands."

2. **The Commercial Model.** "Tribes may operate sports betting under state license and in direct competition with commercial operators;" and

3. **The Combined Model.** "Tribal sports betting is conducted and regulated through a combination of IGRA and the tribal-state compact (for tribal sports betting conducted on Indian lands), and state law (for tribal sports betting conducted outside of Indian lands but within the state's borders)."

Thus, a state's regulatory framework determines the extent to which Tribes compete with nontribal operators.

In *West Flagler Associates., Ltd. v. Haaland*, nontribal gambling operators asserted that a 2021 compact between the State of Florida and the Seminole Tribe of Florida violated IGRA by authorizing off-reservation mobile sports betting using servers located on tribal lands within Florida. In June 2023, the U.S. Court of Appeals for the D.C. Circuit concluded that the challenged provisions did not violate IGRA because they merely discussed, but did not authorize, gaming off tribal lands, and that offsite gambling was instead authorized by state laws that were not challenged. The Supreme Court declined to hear the case.

## Issues for Congress

**Jurisdiction.** Congress continues to show interest in ensuring that all Tribes are subject to IGRA. In *Ysleta del Sur v. Texas* (2022), the Supreme Court addressed whether IGRA applied to Tribes covered by the pre-IGRA Ysleta del Sur and Alabama and Coushatta Indian Tribes of Texas Restoration Act (Restoration Act). Texas argued that the Restoration Act displaced IGRA and allowed the state to regulate gaming on Ysleta del Sur Pueblo tribal lands. The Court rejected Texas's interpretation, holding instead that the Restoration Act grants Texas jurisdiction over gaming *prohibitions*, not gaming *regulations*. Therefore, the court held that the Restoration Act was subject to *Cabazon*'s holding that gaming not prohibited in the state is regulated by IGRA. After *Ysleta*, bills were introduced in the 119th Congress to ensure that all Tribes are subject to IGRA. H.R. 3723 was referred to the House Committee on Natural Resources in June 2025. S. 2564 was referred to the Senate Committee on Indian Affairs in July 2025.

**Gaming "Off-Reservation."** Whether gaming should be allowed "off-reservation" (i.e., on trust or restricted fee lands outside of a tribal reservation) has been a source of controversy. S. 477 in the 113th Congress, the Tribal Gaming Eligibility Act, would have only allowed gaming on land where the Secretary determines that the Tribe has "a substantial, direct, modern connection." Some nontribal entities have supported limiting off-reservation gaming.

**Alaska Native Allotments.** Another outstanding question is whether "Indian lands" covered by IGRA include tribal lands in Alaska (which only has one tribal reservation). A 2024 DOI Solicitor's Opinion found that Tribes in Alaska are generally presumed to have jurisdiction over Alaska Native allotments (restricted-fee or trust lands held by tribal citizens). Basing its reasoning partially on that Opinion, the NIGC determined that an allotment associated with the Native Village of Eklutna met IGRA's "Indian lands" definition, and approved it for gaming. The State of Alaska sued DOI and NIGC, alleging that the approval was arbitrary and capricious in violation of the Administrative Procedure Act. The suit, which is ongoing, seeks to vacate the approval and enjoin NIGC and DOI from granting gaming ordinances on Alaska Native allotments.

**Federal Regulation of Sports Betting.** Congress could further regulate sports betting in the tribal context. Sports betting is a Class III game and is therefore permitted by IGRA if included in a tribal-state compact. H.R. 2087/S. 1033 in the 119th Congress would establish minimum federal standards for sports betting. Under those bills, mobile sports bets accepted through servers located on tribal lands would be considered to have occurred on Indian lands for the purpose of IGRA. One policy consideration for Congress is how much to limit or promote competition among and between tribal and nontribal sports betting operators. Competition may benefit sports betting consumers. However, competition from nontribal sports betting operators might weaken the ability of Tribes to self-fund their operations with gaming revenues.

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