

## **Gambling in Alabama: A Report from the Governor's Study Group on Gambling Policy**

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On February 14, 2020, Alabama Governor Kay Ivey signed Executive Order No. 719, establishing the Governor's Study Group on Gambling Policy. The Study Group's mission was to produce detailed and accurate factual findings to allow the Legislature and the People of Alabama to make informed decisions about the future of gambling in the State.

In addition to establishing the Study Group, Executive Order No. 719 outlined several specific questions to be answered by the Study Group. Those questions, and their corresponding pages within this report, are as follows:

1. What is the current status of gambling operations in Alabama? [Pages 2-6]
2. What are the possible forms of gambling that could be allowed in Alabama (e.g., casino-style slot machines, casino-style table games, a lottery, a compact, sports betting, etc.)? [Pages 6-10]
3. What are the benefits of allowing gambling – whether economic, fiscal, social, political, or otherwise? For each possible form of gambling identified by the Study Group, how much revenue can the State reasonably expect to receive? In particular, what has been the experience of other States with respect to revenue derived from gambling? Are there factors unique to Alabama that could positively or negatively affect the amount of revenue Alabama could expect to receive from gambling? How do other States spend the revenue they derive from gambling? [Pages 11-21]
4. What are the costs of allowing gambling – whether economic, fiscal, social, political, or otherwise? For each possible form of gambling identified by the Study Group, what costs are unique to that particular form of gambling? What harms, if any, have other States experienced as a result of allowing gambling? What factors unique to Alabama could make these costs more or less severe? [Pages 21-26]
5. What regulatory structures and practices have other States adopted to maximize the benefits of gambling and minimize the costs of gambling? Taking into account the possible forms of gambling identified by the Study Group, are there other regulatory options uniquely available to Alabama to accomplish this purpose? [Pages 26-29]

### **METHOD OF STUDY & RESEARCH**

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In order to make the task more manageable, the Study Group divided itself into four Subject-matter Subcommittees, each with three members, to study specific components laid out by the Executive Order. The four subcommittees were: (1) Possible Gaming Venues & Applicable Federal Law; (2) Benefits of Legalized Gambling; (3) Cost of Legalized Gambling; and (4) Regulatory Structures & Best Practices.

Through the four subcommittees, the Study Group conducted independent research, in which it examined the current status of gambling in Alabama. It also explored practices and policies in other states, including those with mature gambling operations, newly permitted gambling operations, and various forms of permitted gambling; it took into account federal statutes and case law; it considered a variety of studies relating to gambling and commissioned its own studies provided by industry sources, economists, and

state agencies; and it compared and contrasted regulatory structures and other governance practices associated with gambling in other states.

In addition to conducting its own research, the Study Group held a series of public meetings, during which industry experts and advocacy groups presented cases both for and against gambling. The presenters provided local, statewide, and national perspectives on gambling. The Study Group also welcomed public comments.

Ideas and opinions about gambling are seemingly endless, and research on the topic could continue in perpetuity. However, the Study Group thoroughly but succinctly addressed the questions posed by Executive Order No. 719, and through this report, the People of Alabama will be equipped with the facts to make a well-informed decision about the future of gambling in Alabama.

## **HISTORY & CURRENT STATUS OF GAMBLING UNDER ALABAMA LAW**

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Gambling currently exists in Alabama in various forms, but much of it is unregulated and untaxed by the State. The development of Alabama's gambling laws over time has resulted in a patchwork system that allows only limited forms of gambling in limited locations, and often reflects a tension between the intent of Alabama's current gambling laws and the extent to which those laws are capable of being enforced.

### Development of Alabama Gambling Law

To understand gambling law in Alabama, it is first important to reinforce the concepts of how laws are made or changed in Alabama. Some laws are part of the State Constitution, the Alabama Constitution of 1901; other laws are part of the Code of Alabama. To change the Constitution, the Alabama Legislature must approve and propose a constitutional amendment, which must then be ratified by a vote of the people. Changing the Code, on the other hand, requires only legislative approval and does not require a vote of the people.

Alabama's current gambling law is rooted in the Constitution, which specifically prohibits most forms of gambling in Article IV, Section 65:

The legislature shall have no power to authorize lotteries or gift enterprises for any purposes, and shall pass laws to prohibit the sale in this state of lottery or gift enterprise tickets, or tickets in any scheme in the nature of a lottery; and all acts, or parts of acts heretofore passed by the legislature of this state, authorizing a lottery or lotteries, and all acts amendatory thereof, or supplemental thereto, are hereby avoided.

In addition to the lotteries most Alabamians think of today – like Powerball or instant scratch-off games – the term “lottery” in the Constitution includes *any* game where someone buys the right to win a prize awarded primarily based on chance.<sup>1</sup>

Despite this general prohibition against most forms of gambling in the Constitution, limited forms of gambling have been legally allowed in Alabama over the years. Some forms of gambling, which involve more skill than chance and are therefore not constitutionally prohibited, have been legalized in the Alabama Code by statute. Similarly, other forms of gambling predominately based on chance – primarily bingo – have been legalized by constitutional amendment.

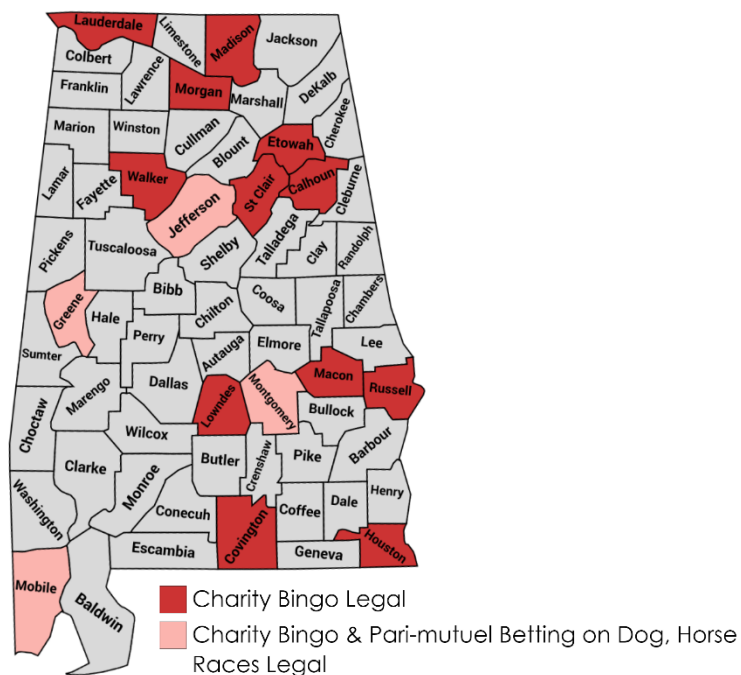
For example, during the 1970s and 1980s, the Alabama Legislature allowed several counties—Greene, Jefferson, Macon, and Mobile—to create “Racing Commissions” to regulate pari-mutuel betting on horse races and dog races, both live and simulcast. “Pari-mutuel” betting is a form of gambling in which the operator takes a commission on all wagered bets and the winnings are paid from the remainder of the pooled bets.

In 1986, the Legislature enacted the statewide “Chuck-E-Cheese law” to authorize “skill-based” games with winnings limited to “noncash merchandise, prizes, toys, gift certificates or novelties, each of which has wholesale value of not more than five dollars (\$5).”<sup>2</sup>

In 2019, the Legislature further expanded legalized “skill-based” games to allow betting on fantasy sports and daily fantasy sports. Of note is the distinction between wagering on fantasy sports, which is legal under the 2019 law, and traditional sports betting, which generally remains illegal. Like the “Chuck-E-Cheese law,” this 2019 law applies statewide.

From 1980 to 2004, voters approved several local constitutional amendments to legalize bingo in 16 Alabama counties, usually to support local nonprofits, religious groups, or educational institutions.

FIGURE 1: ALABAMA COUNTIES WITH LEGALIZED CHARITY BINGO



While these amendments make bingo legal in certain counties, the definition of “bingo” has been a source of litigation for years. In fact, since 2009, the Alabama Supreme Court has issued at least 15 decisions concerning the definition of “bingo.”<sup>3</sup>

Ultimately, the courts ruled that only the game “commonly or traditionally” known as bingo, involving player participation and interaction and, usually, paper cards, is legally permissible.<sup>4</sup> The Alabama Supreme Court even developed a six-part test to determine the legality of bingo in *Barber v. Cornerstone Community Outreach Inc.* In the *Cornerstone* case, which is perhaps the most well-known case in this area,

the Supreme Court said that, to be considered bingo, a game must, at a minimum, include the following six characteristics:

1. Each player must use one or more cards with spaces arranged in five columns and five rows, with an alphanumeric or similar designation assigned to each space;
2. Alphanumeric designations must be randomly drawn and announced one by one;
3. Each player must pay attention to the announced values—and if a match occurs, the player must physically act to mark it on his or her card;
4. A player must be able to lose by not paying attention or not properly marking his or her card;
5. To win, a player must recognize that he or she has a bingo and announce that fact before any other player does so; and
6. The game must be played in a group with multiple players competing against one another.<sup>5</sup>

In sum, gambling in Alabama has evolved over the years to allow fantasy sports betting statewide and pari-mutuel dog and horse race betting as well as bingo in certain counties, but most forms of gambling remain illegal in Alabama. Ultimately, Alabama law on gambling may best be described as a patchwork system in which some forms of gambling are authorized in some locations even though most forms of gambling are constitutionally prohibited statewide.

#### Enforcement Challenges

Despite the legal forms of gambling in Alabama, several constitutional and statutory prohibitions against gambling remain intact. However, there is no statewide regulatory entity dedicated to overseeing gambling in Alabama as there is in most other states. The resulting system makes statewide enforcement of gambling law challenging for the State.

Over the years, several attempts have been made by the State to exert some degree of uniform enforcement of Alabama's gambling laws. Indeed, many Alabamians will recall high-profile news stories relating to these efforts. Again, with no statewide regulatory entity, most of the State's efforts to enforce its gambling laws have proven largely ineffective, and many remain pending in the courts after years of litigation.

#### Attempts to Change Alabama Gambling Law

As previously mentioned, meaningful change to Alabama's gambling law would require a vote of the people on a proposed constitutional amendment. In 1999, the people of Alabama indeed had the opportunity to vote on a proposed education lottery, which was defeated by a vote of 54 to 46 percent.

Since that vote, gambling has remained a subject of debate in Alabama – both among the general public and within all three branches of government. Numerous lawsuits have been filed; at least eight gubernatorial executive orders have been issued; and more than 180 bills have been introduced in the Legislature – including at least five bills during the 2020 Regular Session – all in an attempt address gambling in some way.

Until an efficient and effective statewide remedy is approved, it can reasonably be concluded that the State of Alabama will continue to expend considerable time and money attempting to address the issue of gambling. This remedy – if agreed upon – will likely result in a fairly regulated and fairly taxed system of gambling, bringing Alabama on par with most other states.

## INDIAN GAMING UNDER FEDERAL LAW

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The issue of Indian gaming introduces another important legal facet of gambling in Alabama. The regulation of Indian gaming involves concepts federal law, not just state law.

### The Indian Gaming Regulatory Act

The Indian Gaming Regulatory Act (IGRA), which was enacted in 1988, is the federal law that governs gambling on “Indian lands,” which generally refers to Indian reservations or lands held in trust by the federal government. In addition to providing a statutory authorization for Indian tribes to conduct gaming on Indian lands, IGRA outlines a framework for regulating Indian gaming. IGRA was intended to balance the interests of the tribes, the states, and the federal government in regard to Indian gaming.<sup>6</sup>

To achieve this careful balance, IGRA divides gaming on Indian lands into three classes – class I, class II, and class III – and provides a different regulatory procedure for each class. Therefore, according to IGRA, the class of gambling determines the extent to which a state or the federal government may regulate that type of gambling. Below is a brief description of each gaming class and its corresponding regulatory procedure:

- **Class I gaming.** Class I gaming, which consists primarily of traditional Indian games played as part of tribal ceremonies, may be played on Indian lands subject to regulation only by the tribe.<sup>7</sup> Neither the federal government nor a state may interfere with the regulation of class I gaming.
- **Class II gaming.** Class II gaming, which consists of bingo and certain card games, may be played on Indian lands only if the state also allows “such gaming.”<sup>8</sup> In that event, the class II gaming activity is subject to federal regulation by the National Indian Gaming Commission, and the state may not interfere.<sup>9</sup>
- **Class III gaming.** Class III gaming, which is defined as all forms of gaming that are *not* class I or class II gaming, is similar to class II gaming in that it may be played on Indian lands only if the state also allows “such gaming.”<sup>10</sup> In that event, the class III gaming activity is subject to regulation through a federally approved agreement between a tribe and a state known as a tribal-state compact.<sup>11</sup>

The combined effect is that states have no regulatory control over class I gaming on Indian lands; states have only indirect control over class II gaming on Indian lands; and class III gaming may occur on Indian lands, but only if the state allows “such gaming” *and* agrees to a compact with the tribe regarding the terms of regulation of that gaming on Indian lands.

In addition to establishing terms under which the class III gaming activities on Indian lands would be regulated, a tribal-state compact could contain other provisions, such as, providing for the reimbursement of costs associated with that regulation.<sup>12</sup> Furthermore, a compact could allow the state to share in the tribe’s gambling revenues if a provision in the compact gives the tribe an “economically valuable concession” as determined by the federal government.

Should Alabama decide to enter a compact to allow, and thus regulate, class III gaming on Indian lands, the State must first determine which forms of class III gaming to allow under its own state laws. Only after “such gaming” is allowed under Alabama law, may the State proceed with compact negotiations.

In sum, federal law establishes a hierarchy of Indian gaming and Indian gaming regulation. This federal regulatory structure creates legal interaction between state and federal law that can become complex and legally technical but which must be given full consideration.

## **POSSIBLE FORMS OF GAMBLING IN ALABAMA**

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Should Alabama expand the legal forms of gambling, a variety of gambling options are available. Essentially, lotteries and all forms of traditional “casino-style” games are not currently permissible in Alabama, although these types of games could be permitted upon approval of a constitutional amendment. With the limited exception for betting on fantasy sports and daily fantasy sports, sports betting is also prohibited in Alabama. These types of gambling could be legally permitted within the State, or the State could move to allow specific forms of these types of gambling, while explicitly prohibiting others.

Forms of gambling allowed in other states, which Alabama could consider legalizing include:

- **Banked card games:** Any game of chance that is played with the house as a participant where the house takes on all players, collects from all losers and pays all winners, and the house can win.
- **Card rooms:** A facility where the public is invited to play authorized card games, usually poker, for money or anything of value. The operator charges a fee for participation and is not a participant in the games.
- **Full service commercial or tribal casinos:** Privately operated gaming facilities that generally offer a wide range of gambling options including slot machines and other electronic gaming machines, banked card games, ball games (such as roulette) and dice games. Some states limit the operations to slot machines and/or other electronic gaming machines, but they allow the businesses to advertise as “casinos.”
- **Jai alai:** Wagering on a court game somewhat like handball played usually by two or four players with a ball and a long-curved wicker basket strapped to the wrist.<sup>13</sup>
- **Single-game sports betting:** Existing gambling operations and, in some states, online sports betting operators accept wagers on the outcome of individual sports events, both professional and college.
- **State lottery:** A game of chance operated by a state government, with customers paying a small amount for the chance to win a large sum. A lottery’s winning number or numbers are chosen in a drawing. Lotteries come in different types. Instant lotteries offer immediate prizes and consist of scratch-off tickets and pull tabs. Other lottery games may last a few days or a week. Not all games have winners because the winning numbers may not be held by any customer. If no customer wins, the cash prize rolls over to the next drawing. Some states allow only paper lottery tickets purchased at retailers, and others allow online sales.
- **Multi-jurisdiction lottery:** Lottery games that are offered in more than one jurisdiction, allowing lotteries to generate larger jackpots than they could individually. Jackpots may be paid in lump sums or annuities. The prize pool is shared by all participating lotteries. Examples include Powerball, Mega Millions, Hot Lotto, Tri-State Megabucks, Cash4Life and Lucky for Life.<sup>14</sup>

Each of the aforementioned gambling venues or forms of gambling are legal in the United States, within certain states. For comparison, a breakdown of gambling offered in states neighboring Alabama is below.

#### Florida

- Jai alai
- Pari-mutuel betting on horse races and dog races (with live greyhound racing being phased out by the end of 2020)
- Card Rooms
- Commercial casinos (essentially electronic gambling facilities at jai alai and pari-mutuel facilities, with house-banked card games and ball and dice games prohibited)
- Tribal casinos (house-banked card games allowed, but ball and dice games, such as roulette and craps, prohibited.)
- State lottery without online sales
- Multi-jurisdiction lottery

#### Georgia

- State lottery with online sales
- Multi-jurisdiction lottery

#### Mississippi

- Commercial casinos with a full range of gambling options
- Tribal casinos with a full range of gambling options
- State lottery without online sales
- Multi-jurisdiction lottery
- Sports betting at tribal and commercial casinos

#### Tennessee

- State lottery without online sales
- Multi-jurisdiction lottery
- Sports betting online only

#### Gambling During the 2020 Election Cycle

Gambling was a featured ballot initiative in six states during the November 3, 2020 elections, and voters in all six states approved measures to expand gambling.

Sports betting was approved statewide by voters in Maryland and South Dakota. Louisiana voters were also presented with the opportunity to approve sports betting on a parish-by-parish basis – 56 of the State's 64 parishes approved the measure. It is now up to lawmakers in each of these states to establish regulatory procedures before sports betting will become active.

Casino gambling was on ballots in Virginia after the State's General Assembly passed a measure earlier in the year to allow casinos to be built in five cities. Voters in four of those cities approved their ballot initiatives, while the fifth local referendum will appear on a future ballot.

Voters in Colorado, which previously allowed casinos in only three cities, approved an initiative to expand its legal casino gambling activities. A cap limiting wagers to \$100 was removed, and additional types of gambling were approved.

Finally, voters in Nebraska approved three statewide gambling measures – one constitutional and two statutory. The constitutional amendment legalizes casino gambling at racetracks in five Nebraska cities, while the two statutory referendums address the regulation and taxation of casino gambling.

Comparisons of State Gambling Venues

The following table and maps depict the state of legal gambling venues and operations across the United States, Alabama excluded, according to the American Gaming Association.

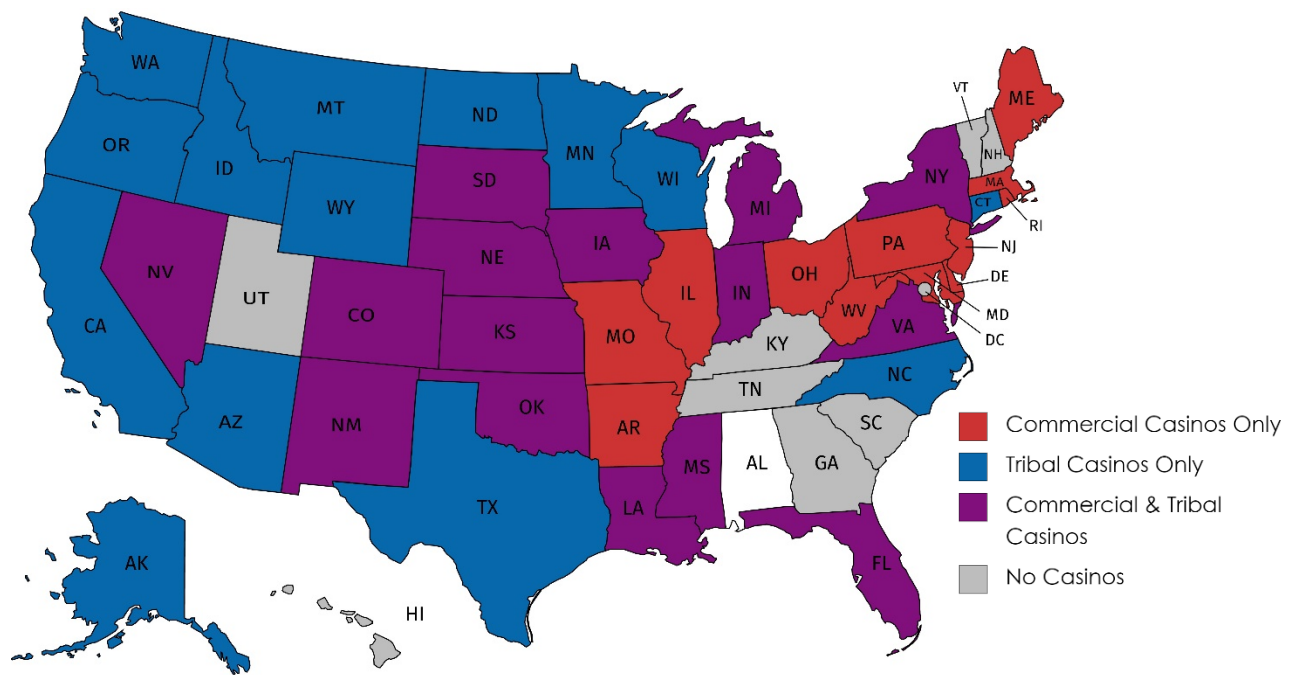
*TABLE 1. LEGALIZED GAMBLING BY STATE*

	<b>Commercial and/or Tribal Casinos<sup>15</sup></b>	<b>Commercial Casinos<sup>16</sup></b>	<b>Tribal Casinos<sup>17</sup></b>	<b>Lottery<sup>18</sup></b>	<b>Sports Betting<sup>19</sup></b>
Alaska	✓		✓		
Arizona	✓		✓	✓	
Arkansas	✓	✓		✓	✓
California	✓		✓	✓	
Colorado	✓	✓	✓	✓	✓
Connecticut	✓		✓	✓	
Delaware	✓	✓		✓	✓
Florida	✓	✓	✓	✓	
Georgia				✓	
Hawaii					
Idaho	✓		✓	✓	
Illinois	✓	✓		✓	✓
Indiana	✓	✓	✓	✓	✓
Iowa	✓	✓	✓	✓	✓
Kansas	✓	✓	✓	✓	
Kentucky				✓	
Louisiana	✓	✓	✓	✓	✓
Maine	✓	✓		✓	
Maryland	✓	✓		✓	✓
Massachusetts	✓	✓		✓	
Michigan	✓	✓	✓	✓	✓
Minnesota	✓		✓	✓	
Mississippi	✓	✓	✓	✓	✓
Missouri	✓	✓		✓	
Montana	✓		✓	✓	✓
Nebraska	✓	✓	✓	✓	
Nevada	✓	✓	✓		✓
New Hampshire				✓	✓
New Jersey	✓	✓		✓	✓
New Mexico	✓	✓	✓	✓	✓



New York	✓	✓	✓	✓	✓
North Carolina	✓		✓	✓	✓
North Dakota	✓		✓	✓	
Ohio	✓	✓		✓	
Oklahoma	✓	✓	✓	✓	
Oregon	✓		✓	✓	✓
Pennsylvania	✓	✓		✓	✓
Rhode Island	✓	✓		✓	✓
South Carolina				✓	
South Dakota	✓	✓	✓	✓	✓
Tennessee				✓	✓
Texas	✓		✓	✓	
Utah					
Vermont				✓	
Virginia	✓	✓	✓	✓	✓
Washington	✓		✓	✓	✓
West Virginia	✓	✓		✓	✓
Wisconsin	✓		✓	✓	
Wyoming	✓		✓	✓	
<b>TOTAL</b>	<b>41</b>	<b>27</b>	<b>29</b>	<b>45</b>	<b>25</b>

FIGURE 2: CASINOS MAP<sup>20</sup>





## **BENEFITS OF LEGALIZED GAMBLING IN ALABAMA**

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In addition to providing an entertainment value, the benefits of expanded legalized gambling in Alabama are almost purely economic in the form of job creation and potential economic development opportunities – and fiscal in the form of revenue generation for the State. While the prospect of future economic development opportunities is nearly certain, it is also somewhat speculative. On the other hand, the fiscal benefits and revenue generation can be estimated with a higher degree of certainty using state comparison data, modelling, and projection methods. Three forms of gambling – lottery, casino-style gambling, and sports betting – were studied to estimate their potential benefit to the State of Alabama in terms of revenue generated to the State should Alabama decide to expand legalized gambling to include one or more of these gambling options.

### Lottery

Alabama is one of five states – along with Alaska, Hawaii, Nevada, and Utah – that does not allow operation of a state lottery. The other 45 states allow and currently operate lotteries. States develop and administer their own form of lottery games – including various scratch-off, draw, or instant games – that are unique to that state. Each of the 45 states that offer lottery games also allow play of multi-state lotteries, including Mega Millions and Powerball, and some states participate in smaller, regional multi-state lotteries. Additional variations of lottery play options offered by different states can be found according to those that allow online or electronic lotteries.

A primary methodology used to compare lottery efficiencies and project lottery revenue generation is the per capita method. The per capita method is considered the industry standard for lottery analysis as population is considered the best predictor of total lottery sales. States, vendors, associations, and researchers typically use per capita data analysis to evaluate future operations of existing lotteries, new lottery launches, and how various factors, components, or changes may influence lotteries.

Two key elements to be considered regarding a lottery are revenues and expenses. Specifically, the following questions should be answered:

- What percentage of sales will be designated for prizes?
- What percentage of sales will be paid to the state?
- What percentage of sales will be used for lottery operation costs?

A state should have confident revenue estimates to best answer these questions. To project potential lottery revenue in Alabama, the Study Group examined a variety of reports, data, and presentations, including:

- *Analysis of Potential Gaming Revenue*, Public Affairs Research Council of Alabama (PARCA), May 2020<sup>23</sup>
- *Summary of Potential Alabama Gaming Revenues*, Alabama Department of Revenue, April 2020<sup>24</sup>
- *An Economic Analysis of a Lottery in Mississippi*, Mississippi Institutions of Higher Learning University Research Center, November 2017<sup>25</sup>
- *Alabama Lottery Launch*, Scientific Games Corporation, 2020<sup>26</sup>

- *Common Questions When Considering a State Lottery*, New Mexico Lottery Authority, May 2020<sup>27</sup>

In addition to reviewing revenue projection reports submitted to the Study Group, the Group developed its own revenue projections based on the per capita model. Estimated lottery revenues (in millions) to the State of Alabama according to the various aforementioned sources are below in Table 2.

TABLE 2. ANNUAL STATE REVENUE ESTIMATES FROM LOTTERY

Source	Revenue Estimate (in millions)
PARCA	\$270 - \$386
Alabama Department of Revenue	\$286 - \$407
Mississippi University Research Center	\$161 - \$186
Scientific Games Corporation	\$277
New Mexico Lottery Authority	\$280
Governor’s Study Group on Gambling Policy	\$200 - \$300

In addition to examining other states to help project potential state revenues, the Study Group gathered information on how other states allocate the total lottery sales revenue. As a percentage of total lottery sales, most lottery revenues can be divided into the following ranges:

- 55%-65% of lottery sales are designated for prize payments
- 20%-30% of lottery sales are paid to the state
- 10%-15% of lottery sales are used for lottery operations costs

For comparison of Alabama border states, Table 3 below illustrates the percentage of total lottery sales allocated to prizes, beneficiary transfers, and operations as stated within their annual reports for Fiscal Year 2019.

TABLE 3. PERCENT ALLOCATION OF TOTAL LOTTERY SALES

	Prizes	State Beneficiaries	Operations
Florida	65%	27%	8%
Georgia	63%	27%	10%
Mississippi	Data Not Available		
Tennessee	64%	26%	10%

Given the data collected from other states, it can be reasonably concluded that the lottery business model works to the fiscal benefit of states. In all instances, states with lotteries – and their designated causes, initiatives, and programs – benefit from lottery activity.

In Alabama, it is a reasonable expectation that a lottery – properly structured and operated like a business – could generate approximately \$200 million to the State annually during its early years and grow to approximately \$300 million or more as it matures. One observed characteristic of state lotteries is that revenues typically grow quickly, plateau, and then grow long-term at the rate of growth of the state.

Another characteristic of lotteries is that they are competitive in nature – a state must make its lottery attractive to the consumer in comparison to lotteries in other states. It has been observed that a lower percentage of prize payouts results in lower lottery participation.

For example, Louisiana Lottery President & Chief Executive Officer Rose J. Hudson recently stated that the 1991 legislation creating the Louisiana lottery mandated 35 percent of sales revenue be transferred to the State. Louisiana was one of only two states with a transfer mandate, and its mandate was the highest in the United States. According to Hudson, the transfer mandate prevented the Louisiana Lottery from offering more popular games and higher payout games, which are successful in other states. Hudson argued that with more flexibility, the Louisiana Lottery could increase its revenue generated to the State through increased sales despite paying the State a smaller percentage of total lottery sales. During a 2020 legislative session, the Louisiana legislature lowered the minimum percentage of revenue required to be transferred from the Lottery to the State from 35 percent to 25 percent, with the expectation of increasing state revenue.

Oklahoma's lottery history depicts a similar situation. Since its inception in 2004, the Oklahoma lottery routinely and significantly underperformed its projections of \$150-\$300 million per year to help fund education, never surpassing \$72 million. Lottery officials noted multiple reasons for the lack of sales. Primarily, 35 percent of sales went to education, while only 52 percent of sales went to prize payouts. During 2017, the Oklahoma Legislature reformed the lottery payout system and removed the state percentage requirement.<sup>28</sup> Following the passage of the legislation, Oklahoma's total lottery ticket sales revenue increased from roughly \$151 million during 2017 to \$221 million during 2018; its total sales increased by more than \$69.5 million, its prize payouts increased by more than \$56.2 million, and its education contribution increased by more than \$10.9 million.<sup>29</sup>

With this in mind, best practices suggest that flexibility and adaptability are key elements to the success and competitiveness of state lotteries. To maximize revenue, state lotteries require the freedom to operate like a professional business but must still maintain governmental oversight. Other observed characteristics essential to a successful lottery are initial leadership and management, integrity and transparency, and a worthy beneficiary or beneficiaries.

### Casino-style Gambling

Casino-style gaming is the second component of this gambling analysis. Casino-style games are those offered by full-service casinos, including slot machines, table games, dice games, and card games. Generally, there are two types of casino operations, commercial casinos and tribal casinos. One important distinction to keep in mind when considering gambling is that lotteries are often operated or administered by a state, while casinos are operated privately, but regulated by the state in which they operate.

Alabama is one of nine states that does not allow class III tribal or commercial full-service casino-style games. Of the 41 states that allow class III tribal or commercial full-service casino-style games, 29 states have tribal casinos, and 27 states have commercial casinos. Fifteen states have both tribal and commercial casinos.

Another aspect of casino-style gambling operations is the type of gambling options available to the consumer. For example, either by statute, regulation, or operator choice, a casino may only operate electronic games like slot machines and video card games, or a casino may operate card, dice, and table

games, or it may offer a combination of all casino-style gaming. According to the Alabama Department of Revenue, about 74 percent<sup>30</sup> of casino revenue is derived from slot machines, meaning only about 26 percent of casino revenue is derived from other casino games.

When considering gambling expansion policies and the potential benefit to a state, it is important to first determine confident gambling tax revenue estimates. The Study Group developed its own projections and also considered the following three estimates:

- *Analysis of Potential Gaming Revenue*, Public Affairs Research Council of Alabama (PARCA), May 2020
- *Summary of Potential Alabama Gaming Revenues*, Alabama Department of Revenue, April 2020
- *Winning for Alabama*, Porch Band of Creek Indians<sup>31</sup>

Estimated annual gambling tax revenues (in millions) to the State of Alabama from the various aforementioned sources are seen in Table 4 below.

TABLE 4. ANNUAL STATE REVENUE ESTIMATES FROM CASINOS

Source	Revenue Estimate (in millions)
PARCA	\$398 - \$423
Alabama Department of Revenue	\$311 - \$388
Porch Band of Creek Indians	\$350
Governor’s Study Group on Gambling Policy	\$300 - \$400

In conclusion, it can be reasonably assumed that expanded casino-style gambling offerings in Alabama would provide a positive fiscal impact to the State in the form of annual casino gambling taxes. However, revenue may vary depending on the number and location of casinos permitted and the presence of casinos will add an element of consumer competition to a state lottery.

### Sports Betting

Sports betting is the final component of gambling studied by the Study Group. Generally, sports betting is considered a relatively small segment of the gambling industry, but it is growing rapidly, especially with the introduction and popularity of online and mobile access to sports wagering. As previously mentioned, it is important to distinguish between traditional sports betting, which remains illegal in Alabama, and betting on fantasy sports and daily fantasy sports, which the Alabama Legislature authorized in 2019.

Until 2018, a federal statute prohibited most states from legalizing sports betting. In 2018, however, the Supreme Court of the United States decided the landmark case *Murphy v. National Collegiate Athletic Association*<sup>32</sup> in which it struck down that federal statute. Now, 25 states and the District of Columbia have legalized sports betting.

Even among states that actively allow sports betting, consumer delivery options vary. Some states offer sports betting only in physical sportsbook facilities, while others offer full or partial mobile or online sports

betting; still others require consumer registration at a physical sportsbook facility before permitting mobile sports betting.

Sports betting bears an inherent risk of loss assumed by the operator, and legal sports betting operations are conducted by vendors or contractors. In exchange for market access within a state, sports betting operators may pay a license fee to the state and/or remit taxes on sales. Like lottery prize payments, it is important that a state maintain competitiveness with other states – and even illegal sports betting outlets – regarding fee and tax schedules. For comparison, Mississippi’s sports betting tax rate is 11 to 12 percent (eight percent state tax and three to four percent local tax).<sup>33</sup>

To better understand what positive fiscal impact legalized sports betting may have on the State of Alabama, the Study Group developed its own revenue estimates and studied estimates from the following sources:

- *Analysis of Potential Gaming Revenue*, Public Affairs Research Council of Alabama (PARCA), May 2020
- *Summary of Potential Alabama Gaming Revenues*, Alabama Department of Revenue, April 2020
- *Economic Impact of Legalized Sports Betting*, Oxford Economics, May 2017<sup>34</sup>

Estimated annual revenues (in millions) to the State of Alabama from the aforementioned sources are seen in Table 5 below.

TABLE 5. ANNUAL STATE REVENUE ESTIMATES FROM SPORTS BETTING

Source	Revenue Estimate (in millions)
PARCA	\$6
Alabama Department of Revenue	\$10
Oxford Economics	\$17 - \$35
Governor’s Study Group on Gambling Policy	\$10

It should be noted here that the PARCA and Department of Revenue projections are very conservative. By comparison, the Oxford Economics projection is much higher, with a very broad range. This is reflective of the ongoing evolution of online and mobile sports betting and its anticipated increased revenue generation.

In conclusion, sports betting could be an important component of gambling in Alabama, should the State approve expanded gambling offerings, as it should generate significant fiscal benefit. Anecdotally, Alabama is said to have one of the highest rates of illegal sports betting, and it is believed that the introduction of legal, regulated sports betting will curb illegal activity, which could be an added social benefit of legalized gambling.

Summary of Fiscal Benefits of Legalized Gambling in Alabama

The Study Group studied three components of gambling – lottery, casino-style gaming, and sports betting – and estimated their potential benefit to the State of Alabama in terms of annually generated state

revenue. The annual revenue estimates as depicted below (in millions) reflect potential ranges of full, competitive, and mature gambling operations.

TABLE 6. TOTAL ANNUAL STATE REVENUE ESTIMATES FROM GAMBLING

Revenue Source	Revenue Estimate (in millions)
Lottery	\$200 - \$300
Casino Gaming	\$300 - \$400
Sports Betting	\$10
<b>POTENTIAL TOTAL</b>	<b>\$510 - \$710</b>

### OTHER BENEFITS OF LEGALIZED GAMBLING

In addition to actual gambling revenue generated by lottery sales, casino play, and wagering, the introduction of legalized gambling would produce other benefits as well. These secondary benefits are likely to include job creation; the curbing of illegal gambling activities; and new economic development opportunities, which would lead to increased state and local revenue in the form of taxes from employment, lodging, food, entertainment, and capital projects.

#### Job Creation

The introduction of legalized gambling in Alabama would create new jobs, both through direct and indirect employment. According to a cost-benefit economic analysis,<sup>35</sup> Alabama could realize more than 19,000 newly created jobs with the introduction of a lottery and casino gambling. In fact, the same report estimated that each new casino would employ 766 people with an average annual salary of \$50,015. It should be noted that the average annual income earned by casino employment represents a significant income premium compared to Alabama's current average annual income of \$26,846.<sup>36</sup>

Perhaps most quantifiable is the projection of jobs created by a gambling regulatory entity and state lottery staff. By using a per capita method of examining comparable southeastern states, it can be reasonably estimated that Alabama would realize an additional direct 114 jobs by way of state lottery staff. A comparison table of similar states illustrates this conclusion.

TABLE 7. LOTTERY ADMINISTRATION STAFF

	Population <sup>37</sup>	Staff <sup>38</sup>
Tennessee	6,829,174	175
Missouri	6,137,428	153
South Carolina	5,148,714	121
Alabama	4,903,185	114*
Louisiana	4,648,794	107
Kentucky	4,467,673	158
Arkansas	3,017,804	63
Mississippi	2,976,149	data not available

\*Estimate based on per capita analysis



Impact on Illegal Gambling

Another secondary benefit of legalized gambling is its potential impact on illegal gambling activities. As mentioned earlier, Alabama’s current patchwork gambling system does not include a statewide regulatory entity dedicated to enforcing gambling law. Research indicates that the presence of legal gambling – especially when coupled with clear laws, regulations, and explicit jurisdictional enforcement authority – diminishes the prevalence of illegal gambling activities. In fact, a recent study found that during 2019, sports bettors reduced their wagering with illegal bookies by 25 percent in states with legal sports betting.<sup>39</sup> Furthermore, in contrast to unregulated illegal gambling, legal gambling with well-enforced regulations ensures fair play for consumers and generally creates greater access to treatment for disordered gamblers.

**REVENUE DERIVED FROM GAMBLING**

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The generation of state revenue is a primary motivator for states to legalize gambling activities. According to one report, “the factors that have the strongest impact on gambling legalization are efforts to raise revenue in response to poor state fiscal conditions, efforts to stimulate economic development, an alignment of political interests in support of gambling, and efforts to counteract interstate competition for gambling revenue.”<sup>40</sup>

With this in mind, it is important to know how much money states actually derive from gambling operations. Furthermore, a state considering gambling expansion may benefit by understanding how other states allocate or spend their gambling revenues. As previously reviewed, three primary sources of gambling monies are derived from lotteries, casinos, and sports betting. This analysis will focus on lotteries and casinos as they are the most significant generators of state funds.

The table below depicts the portion of Fiscal Year 2019 lottery sales transferred to state beneficiaries<sup>41</sup> and the designated lottery beneficiaries which received the transfers during fiscal year 2016,<sup>42</sup> as specified by the North American Association of State and Provincial Lotteries. Of the 45 states, 20 designated just one beneficiary, while the remaining 25 states designated two or more lottery proceed beneficiaries. Also notable, at least 28 of the states dedicated some or all lottery proceeds to education initiatives.

*TABLE 8. STATE LOTTERY TRANSFERS TO BENEFICIARIES*

	<b>Total Transfer to Beneficiaries</b>	<b>Beneficiaries</b>
Arizona	\$230,361,078	Heritage Fund Commerce Authority Arizona Competes Fund Mass Transit Healthy Arizona General Fund (by Category) Court Appointed Special Advocate Fund (Unclaimed prizes) Homeless Shelters Department of Gaming University Bond Fund Internet Crimes Against Children Victims

		Tribal College Dual Enrollment Program
Arkansas	\$98,411,747	Educational Trust Fund
California	\$1,847,063,359	Education
		Division of Parks and Wildlife
Colorado	\$166,461,160	Conservation Trust Fund
		Great Outdoors Colorado Trust Fund
		School Fund
Connecticut	\$372,300,000	General Fund
Delaware*	\$215,555,482	General Fund
		Health & Social Services-Problem Gambler Programs
Florida	\$1,927,000,000	Education Enhancement Trust Fund
Georgia	\$1,207,768,766	Lottery for Education Account
Idaho	\$60,000,000	Public Schools (K-12)
		Public Buildings
		Illinois Common School Fund (K-12)
		Illinois Veterans Assistance Fund
Illinois	\$735,513,905	Ticket For The Cure Fund
		Quality of Life Endowment Fund
		Multiple Sclerosis Research Fund
		Special Olympics Fund
Indiana	\$312,223,309	Build Indiana Fund
		Teachers Pension Fund
		Police & Firefighters Pension Fund
Iowa	\$92,864,965	General Fund
		Veterans Trust Fund
Kansas	\$74,909,328	Transfers to the State
Kentucky	\$283,611,000	Post-Secondary & College Scholarships
		Literacy Programs & Early Childhood Reading
Louisiana	\$184,318,132	Transfers to State
		Problem Gambling
Maine	\$63,201,732	General Fund
		Maine Outdoor Heritage Fund
Maryland*	\$1,201,675,757	Maryland General Fund - Lottery Profit
		Baltimore City Schools - Lottery Profit
		Maryland Stadium Authority - Lottery Profit
		Education Trust Fund - VLT and Table Game Proceeds
		Local Impact Grants - VLT Proceeds
		Horse Racing Industry - VLT Proceeds
		Small, Minority, and Women-Owned Businesses - VLT Proceeds
		Responsible Gaming - VLT and Table Game Assessments
Massachusetts	\$1,104,220,000	Cities and Towns
		Arts Council

		General Fund
		Compulsive Gamblers
Michigan	\$1,071,639,555	Education (K-12)
		Health and Human Services
		General Fund
		General Fund
Minnesota	\$153,194,906	Environmental and Natural Resources Trust Fund
		Game & Fish Fund
		Natural Resources Fund
		Compulsive Gambling
Mississippi	Data not available	Infrastructure
		Education
Missouri	\$346,717,413	Public Education in Missouri
Montana	\$12,200,000	State of Montana General Fund
		Compulsive Gamblers Assistance Fund
		Education Innovation Fund
Nebraska	\$46,567,592	Environmental Trust Fund
		State Fair Support & Improvement Fund
		Nebraska Opportunity Grant Fund
New Hampshire	\$105,605,565	Education
New Jersey	\$1,105,000,000	Education and Institutions
New Mexico	\$43,110,000	Lottery Tuition Fund
New York*	\$3,474,041,000	Education
		Education
North Carolina	\$710,195,000	Alcohol Law Enforcement
		NC Problem Gambling
		Compulsive Gambling Fund
North Dakota	\$9,342,500	State General Fund
		Drug Task Force
Ohio*	\$1,153,932,000	Education
		Education
Oklahoma	\$67,554,285	Mental Health
		Economic Development
		Public Education
Oregon*	\$730,143,179	Parks and Natural Resource Programs
		Gambling Addiction Prevention & Treatment Programs
Pennsylvania	\$1,143,225,749	Older Pennsylvanians
Rhode Island*	\$397,320,920	General Fund
South Carolina	\$488,091,540	Education Lottery Fund
		General Fund
South Dakota*	\$129,754,207	Capital Construction Fund
		Grant to Human Services
Tennessee	\$447,185,000	Lottery for Education Account

		After School Program
Texas	\$1,636,590,465	Foundation School Fund Multicategorical Teaching Hospital Texas Veterans Commission (Veterans Assistance Fund)
Vermont	\$29,095,062	Education Fund
Virginia	\$649,703,969	Public Education K-12
Washington	\$215,782,133	Washington Opportunity Pathways Account King County Stadium and Exhibition Center (Qwest Field) Economic Development Strategic Reserve Problem Gambling General Fund
West Virginia*	\$495,141,920	Education Senior Citizens Tourism Other
Wisconsin*	\$235,275,988	Public Benefit - Total Available for Property Tax Relief
Wyoming	\$6,619,646	Cities, Town, and Counties
<i>*Transfer to beneficiaries may include other revenue in addition to traditional lottery sales</i>		

Casino taxes and fees are another significant source of revenue for many states in which that type of gambling is permitted. The tax and fee structure from which states derive casino revenue is typically more complex than the lottery revenue, and it tends to vary dramatically from state to state. Many states, for example, have graduated tax schedules with rates ranging from 0.25 percent to 40 percent, while other states have a flat tax rate, in some instances, as low as 9 percent or as high as 67 percent.<sup>43</sup> Additional variations can be found as some states tax individual casino facilities at different rates, while others assess or allow assessment of local taxes.

In addition to taxing casino revenue, some states also impose various fees. Like tax rates and structures, casino fees also vary from state to state. Examples of fees collected by different states include fees on individual gambling machines, admission fees, and various local fees.

Like lottery revenue, state gambling revenue is typically dedicated to specific beneficiaries within state government.

## **COSTS OF GAMBLING IN ALABAMA**

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Unlike some benefits of legalized gambling – which can be reasonably quantified and estimated – the complete costs of legalized gambling are difficult to identify and even more difficult to accurately project. It can be determined, however, that three primary costs are likely to be realized:

1. Services costs (government-sponsored treatment, prevention, and education)
2. Social costs (society and family, economic, and judicial)
3. Lost revenue costs (taxes)

When considering potential costs of legalized gambling, it is important to understand that these are primarily a result of individuals with a gambling disorder, otherwise known as problem gamblers, pathological gamblers, or compulsive gamblers. According to the American Psychiatric Association (APA), which publishes the *Diagnostic and Statistical Manual of Mental Disorders*, a gambling disorder involves repeated problematic gambling behavior that causes significant problems or distress. The latest version of this manual, *DSM-5*, replaces previously-used diagnoses, including problem gambling, pathological gambling, and compulsive gambling, with the term “gambling disorder” and suggests diagnosis of this disorder on a spectrum from mild to severe.<sup>44</sup>

Furthermore, gambling disorder was reclassified under Substance-Related and Addictive Disorders as a Non-Substance Related Disorder. This reclassification coincides with research indicating a strong correlation between gambling addiction and other addictions, including drugs and alcohol. In fact, a 2010 comorbidity study revealed that roughly 50 percent of individuals with a gambling disorder receive treatment for another mental health or substance abuse problem.<sup>45</sup>

#### Potential Problem Gamblers in Alabama

When identifying the number of potential disordered gamblers Alabama can reasonably expect, it is important to note that the majority of the adult population gambles responsibly. In fact, it is estimated only 2.3 percent of gamblers in the United States will be problem gamblers, and fewer than 1 percent (0.6 percent) will be pathological gamblers.<sup>46</sup> Although Alabama does not legally permit a full range of gambling options, gambling has always and currently does exist. Therefore problem gambling is not and will not be new to the State, as it has always and currently does exist in Alabama.

To identify the number of potential disordered gamblers Alabama can reasonably expect – and thus estimate a potential cost of legalized gambling in Alabama – national statistics can easily be applied to Alabama’s population.

Legal gambling ages across the United States vary, with most states setting the minimum age at either 18 or 21 years old. Though not absolute, generally, most states restrict casino play to individuals 21 years or older, while bingo, pari-mutuel wagering, and lottery participation is often allowed to individuals 18 years or older. In Alabama, there is no consistent statewide age restriction on gambling. Depending on the specific county (of the 16 counties that allow bingo), bingo in Alabama is limited to individuals 19 years or older, 19 years or older unless accompanied by a parent or guardian, or 18 years or older. Meanwhile, dog and horse race wagering is limited to individuals 19 years or older in Jefferson<sup>47</sup> and Macon<sup>48</sup> Counties and 18 years or older in Greene County.<sup>49</sup> There is no statutory age restriction on dog and horse race wagering in Mobile County.

Of Alabama’s current population of roughly 4,903,185 people, 77.8 percent of Alabamians are 18 years or older, meaning Alabama’s total potential age-eligible gambling population is approximately 3,814,678.<sup>50</sup> Nationally, 60 percent of Americans are estimated to have gambled during the past year,<sup>51</sup> so applying this national incidence rate to Alabama’s population, it can be projected that 2,288,807 Alabamians would regularly engage in some form of gambling if expanded gambling options were to be readily accessible. Considering the aforementioned statistics, a breakdown of potential Alabama gamblers by population follows in Table 9.

TABLE 9. POTENTIAL ALABAMA GAMBLERS BY POPULATION

Alabama Population	4,903,185
Eligible Gambling Population, 18+ (77.8%)	3,814,678
Likely Gambling Population (60%)	2,288,807
Potential Problem Gamblers (2.9%)	66,375
Potential Compulsive Gamblers (0.6%)	13,733

While statistics suggest up to 66,375 Alabamians could exhibit a gambling disorder, the National Council on Problem Gambling estimates that only 8 percent of problem gamblers – or 5,310 individuals in this instance – would seek treatment.<sup>52</sup>

#### Gambling Disorder Services Costs

Some argue that a state has an obligation to provide gambling treatment, prevention, and education programs or services. In fact, many states require advertisement of gambling disorder treatment programs and dedicate funds to gambling disorder treatment services. As of 2016, 40 states reported to have publicly funded problem gambling services.<sup>53</sup> According to the same study, of the 40 states publicly funding problem gambling services, per capita funding ranged from \$0.01 to \$1.46, with an average per capita funding \$0.37 dedicated to problem gambling services. If that statistic were applied to Alabama’s population, the State would dedicate roughly \$1,814,000 to problem gambling or gambling disorder services per year to be consistent with the national average.

The question remains: How much does it cost to treat a problem gambler?

Like many medical conditions, there exists a spectrum of gambling disorders with a continuum of treatment possibilities, each with varying costs. For example, one counselling session may be sufficient for some gamblers, while others may require a lifetime of treatment. With this in mind, it is nearly impossible to estimate the true cost of gambling disorder treatment.

#### Social Costs

Perhaps the most difficult costs of gambling to identify and quantify are the interpersonal and social costs. This is partially true because disordered gamblers put others at risk, in addition to themselves. Examples of social cost categories identified by researchers include:<sup>54</sup>

- Crime, including law enforcement, corrections, and judicial costs;
- Business and employment, including displaced workers, lost productivity, and unemployment costs;
- Bankruptcy;
- Illness and suicide;
- Social services and regulatory costs;
- Family costs, including divorce, domestic violence, and child abuse and neglect;
- Abused dollars, which is often a cost associated with unreported theft;
- Political costs, which could be manifested in the form actual or perceived undue political influence.

It can be concluded that in addition to harming themselves, a disordered gambler’s family, employer, and creditors may also be impacted, as well as potential victims of crime. In short, the costs created by one disordered gambler can be borne by other individuals and/or by society as a whole.

Displaced Revenue

Displaced revenue is another cost of expanded legalized gambling. It is not feasible to assume that money spent on legal gambling activities is sourced strictly from individual or household “entertainment budgets.” Therefore, not only might families potentially be negatively impacted, but so might businesses and local governments as consumer funds are spent on gambling rather than on routine living expenses and savings.

Types of Gambling and Associated Costs

Given that Alabama currently offers only limited legalized gambling, it should be contemplated how different types of gambling activities impact potential costs. For instance, research shows a positive correlation between proximity to a casino and the prevalence of gambling disorders. In fact, one study notes that the number of problem gamblers doubles when a casino is located within 50 miles.<sup>55</sup>

Lottery purchases, on the other hand, are typically accessible by virtually all citizens. This level of access and exposure leads many to argue that lotteries present a regressive system of “taxation.” A regressive tax is a fixed tax applicable at all income levels, which therefore, taxes low-income earners at a higher rate. For example, the median household income in Alabama is \$48,468.<sup>56</sup> If individuals in a median-income household choose to purchase \$1,000 in lottery tickets, that equates to 2 percent of their income, which some may describe as a 2 percent tax. By comparison, a household earning \$150,000 may choose to spend the same amount on lottery tickets and only be “taxed” at a 0.7 percent rate.

With far more people having easy access to lottery participation, lotteries are inherently more regressive in terms of socioeconomic impacts as lotteries have a broader participation rate than any other form of commercial gambling.

While lotteries are often considered regressive in nature, lottery participation is shown to be rather evenly distributed and lowest among low-income earners in the United States. Table 10 and Table 11 illustrate the results from a 2016 poll identifying lottery participants.<sup>57</sup>

*TABLE 10. LOTTERY PARTICIPTION BY INCOME*

<b>Annual Household Income</b>	<b>Lottery Participation Rate</b>
Less than \$36,000	40%
\$36,000 to \$89,999	56%
\$90,000+	53%

*TABLE 11. LOTTERY PARTICIPTION BY EDUCATION*

<b>Annual Household Income</b>	<b>Lottery Participation Rate</b>
High school or less	47%
Technical degree or some college	53%
College degree	53%
Postgraduate education	45%

## Summary of Costs of Legalized Gambling

There are certainly costs associated with gambling, which, as research suggests, primarily include services costs, social costs, and revenue displacement costs. While these costs are real, they are not new, as some limited forms of legal gambling and illegal gambling already exist in Alabama. It is important to note, however, that while there are costs associated with gambling, the taxation of regulated gambling activities creates an opportunity to dedicate public funds to gambling treatment, prevention, or education services.

### **TREATMENT, PREVENTION & EDUCATION**

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States that choose to support gambling disorder treatment services have options on how to deliver such services. Many states provide services through non-profit organizations, while others choose to provide services through state agencies. As previously mentioned, as of 2016, at least 40 states use public funds to support gambling disorder services.

Currently, in Alabama, the primary sources for gambling treatment are non-profit organizations, including the Alabama Council on Compulsive Gambling (ACCG), the National Council on Problem Gambling (NCPG), and Gamblers Anonymous. The ACCG is one of 35 state affiliate organizations of the NCPG.

An additional option for Alabama to expand gambling disorder services is through a state agency. The Alabama Department of Mental Health or the Alabama Department of Public Health are two existing Alabama state agencies that are most similar to gambling disorder service provider agencies in other states. Still, another possible option is the Alabama Medicaid Agency. In fact, Medicaid currently recognizes pathological gambling as a covered condition.

State-funded gambling treatment services to be provided by the Alabama Medicaid Agency may be an attractive option to some because the State's investment would be magnified by the federal government. For every dollar a state spends on Medicaid, the federal government will match it at a rate that varies year to year according to the Federal Medical Assistance Percentages (FMAPs), which is used to determine the amount of federal matching funds for state expenditures on assistance payments for certain services and medical expenditures.<sup>58</sup> Because Alabama's poverty level is 16.8 percent compared to the national average of 13.1 percent,<sup>59</sup> the State's federal match is relatively high. For Fiscal Year 2020, the rate for Alabama is 1:2.65, or 72.5 percent. So, for each state dollar dedicated to Medicaid, the Federal Government will contribute \$2.65, which could substantially increase treatment funding.

### Prevention & Education

As with other disorders, prevention is often the best way to avoid or mitigate treatment. In the case of legalized gambling, perhaps the most effective prevention measures are education and awareness.

According to a *Journal of Gambling Studies* publication, "Any responsible gambling program rests upon two fundamental principles: (1) the ultimate decision to gamble resides with the individual and represents a choice, and (2) to properly make this decision, individuals must have the opportunity to be informed."<sup>60</sup> The National Center for Responsible Gaming reinforces this notion, stating, "The industry and government regulators are responsible for providing information to consumers, while the ultimate decision to gamble always resides with the consumer."<sup>61</sup>

Advertising regulations and prevention campaigns may be a significant component of gambling disorder prevention and odds awareness. The North American Association of State and Provincial Lotteries (NASPL)



has approved advertising guidelines, to which it encourages its members to adhere.<sup>62</sup> In part, the guidelines state that “advertising should not encourage people to play excessively nor beyond their means.” The guidelines also encourage clear, public, and readily available odds of winning, while also dissuading the misrepresentation of a player’s chance of winning. The targeting of minors through advertising is also discouraged.

Industry and advocacy groups also participate in public awareness campaigns. For example, the month of March is Problem Gambling Awareness Month, during which the North American Association of State and Provincial Lotteries (NASPL) partners with the National Council on Problem Gambling (NCPG) to provide educational resources and training to those engaged in gambling, including lottery administrators, retailers and players.

Research suggests that odds awareness through advertising may not be enough to adequately prepare individuals to fully understand concepts like random chance and probability as problem gamblers typically do not understand these key concepts as well as responsible gamblers. While studies show that targeted education efforts decrease gambling frequency and gambling problems among those study participants, research is inconclusive on the long-term effects of reducing problem gambling in society.<sup>63</sup>

While a variety of gambling disorder prevention practices – including awareness, risk factor reduction, protections, and screening and intervention – will likely reduce the incidence of gambling disorder and mitigate social costs, it is widely agreed upon by the members of this Study Group that financial literacy, including odds awareness, are the greatest keys to problem gambling prevention. As one study indicated, “Problem gamblers identified financial illiteracy as a serious problem affecting their ability to identify and manage the problem. Almost all the problem gamblers with debt reported being unable to manage their money....”<sup>64</sup>

With this in mind, consideration should be made as to a state’s role in ensuring an informed and educated gambling consumer base. If Alabama decides to permit more legalized gambling opportunities, should it also dedicate public funds to prevention and education programs in an effort to reduce the likelihood of gambling disorder development?

## **REGULATORY STRUCTURE**

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A diverse cross-section of states – including states with mature gambling operations, states with newly permitted gambling operations, and states with different types and combinations of gambling offerings – was examined to determine the characteristics associated with successful gambling regulations and operations. Ultimately, the potential variations of governance, administration, and oversight range widely and are somewhat dependent on factors unique to each state.

Broad and basic components of gambling oversight and regulation may include issuance of operator licenses, regulation of gambling machines, and administration of a state lottery. Investigation and enforcement of ethics and tax provisions may also be included in regulatory duties. Generally, gambling regulation and oversight is an important function of government to ensure gambling activities maintain operational integrity and are fair to the consumer.

Before considering governance variations, it is important to first review and understand Alabama’s current structure and its limitations and deficiencies. Alabama currently has no statewide regulatory entity dedicated to administering or overseeing a lottery or other gambling operations, to make and enforce

gambling rules, or to otherwise regulate much of the gambling that occurs in the State. The result is inconsistent and varying levels of enforcement. In fact, Alabama's recent history of legal battles supports the fact that Alabama lacks a legal and regulatory framework to adequately accommodate gambling. The result has been years of litigation over laws the State cannot effectively enforce.

Therefore, the governing, administering, and overseeing of gambling would be a new function of Alabama state government should the State decide to expand legal gambling opportunities – or should the State decide to better regulate its existing gambling.

Alabama is unique compared to other states for a variety of reasons. First, Alabama's prohibition against most forms of gambling is constitutional – thus it cannot simply be changed by legislative act. Moreover, should Alabama decide to expand legal gambling, it would be one of the last states to do so – thus it has the benefit of learning from other states. Finally, Alabama has an existing patchwork of legalized gambling that must be taken into consideration.

With this context in mind, Alabama has a great deal of lessons-learned from other states' experiences when considering best practices of regulatory structures.

#### Regulatory Observations & Conclusions

Having studied other states around the country, there are some basic observations and conclusions made by the Study Group. At the highest level, a state must identify some sort of regulatory structure and will likely select an entity that is either:

- 1) corporate in nature;
- 2) an independent state agency; or
- 3) a division of a state agency or public office.

Furthermore, if a state chooses to do so, there are several configurations – with varying degrees of responsibilities, jurisdictions, and powers – of boards or commissions to govern or oversee a state's gambling operations. Some states, for instance, enact statutes to govern gambling, while others authorize more discretion to a regulator.

In addition to the structure of the regulatory entity, a state should consider requiring rules or enacting laws regarding ethical standards, participation eligibility, prize collection and taxation, budget requirements, operator reporting requirements, contracts and competitive bidding, and countless other aspects concerning the state and gambling. The laws and rules governing lotteries and gambling within any given state may be very precise or very general and depend on the types of gambling that state permits.

Several pros and cons can be identified when studying and comparing and contrasting different states' regulatory structures. However, the desired characteristics of the regulator must be considered when making these determinations. Having studied regulatory entities throughout the United States, it can be reasonably concluded that the most effective regulatory structure should foster the following principal characteristics:

- Adaptive to serve as regulator of all forms of gambling in Alabama
- Responsive to changing technologies and delivery methods and consumer trends
- Protective of consumer interests and fair gambling operation

- Competitiveness with other states
- Authority to regulate and ability to enforce statewide
- Highest standard of ethical conduct

### Regulatory Best Practices

Without making specific recommendations, the Study Group has identified regulatory best practices that should be considered in order to achieve the aforementioned principal characteristics for an effective regulatory structure.

Best practices suggest a singular, statewide regulatory entity is best suited to most efficiently and effectively regulate – and administer when applicable – all potential state-approved gambling, including but not limited to paper lotteries, electronic lotteries, casino gaming, sports betting and other electronic betting and gaming. To maximize flexibility, responsiveness, and competitiveness, consideration should be given to the best form for this entity. For example, the entity could be structured as public corporation.

Management and control of the regulatory entity by a Board of Trustees is seen in many states with successful gambling operations. This system of governance also aligns with some of Alabama’s historically successful models like the Alabama State Port Authority. Characteristics include:

- Governor-appointed and Senate-confirmed members;
- Members who reflect the geographic, racial, gender and economic diversity of the State;
- Election of board members to serve as chair and vice-chair.

Lessons learned from Alabama’s past experiences and from other states with quality gaming operations, suggest other board structure provisions should be considered, including the specification of terms, appointments, vacancies, and removals of the trustees. Best practices suggest:

- Staggered terms of service ensure transitional stability and continuity of Board operations.
- Two term limits of four-year terms diminish the likelihood of political influence and favoritism.
- Predetermined processes for initial appointments and terms and provisions addressing trustees’ transition and separation to mitigate unforeseen future challenges.
- A predetermined process for removal of a trustee for neglect of duty, misfeasance, or nonfeasance in office will ensure accountability and high standards of service.

It is not uncommon for states to require its board to appoint and provide for the compensation of a Chief Executive Officer (CEO) to carry out all management aspects of that state’s gambling operations. The CEO should serve at the pleasure of the Board. This type of selection process enhances transparency and protects against political favoritism.

General powers of the Board of Trustees are another common provision that are considered to enhance the accountability of a state’s gambling operations. Examples of such powers include:

- Employment of an individual or firm to provide professional services, including but not limited to legal counsel, financial services and marketing;
- Solicitation of reports pertaining to gaming information from state agencies;
- Investigative powers.

Additional Board- or Trustee-related practices that may be addressed include:

- The frequency of board meetings;
- Rules for establishing quorums, transacting business, and voting procedures;
- Compensation of Trustees. It is not uncommon for Trustees serve without salary but may receive a per diem or reimbursement for reasonable expenses.

As previously mentioned in this report, mature state gambling operations are typically self-funded. In fact, some states strictly prohibit the transfer of state revenue from non-gambling sources to gambling operations. Regardless of legislative specificity, clear budget requirements for both the regulatory entity and its governance fall within the scope of observed best practices. While these funding characteristics are true in most states, a state like Alabama must consider initial start-up costs to be incurred before gambling revenue streams are established. It should be noted, however, that these financing needs could be rapidly repaid by initial gambling-generated state revenue.

Another practice commonly found in other states is inclusion of a forum for stakeholder input. One example is that of a retailer advisory board. Considering that successful retailers are integral to successful lotteries, inclusion of this structure may be important if Alabama approves a lottery.

Lastly, many states enact procedures for vendors and competitive bidding. These types of practices are commonplace when public money is involved but seem to be heightened in regard to gambling regulations and operations.

#### Ethics

As with all Alabama government or quasi-government entities, the strictest of ethics standards should be applied to any and all persons and entities involved with the regulation and administration of gambling in the State. Creating a system independent of political favoritism and outside influence is paramount to ensuring fair practices and maintaining public trust. Best practices ensure measures are taken to minimize or eliminate impropriety. In addition to Alabama's existing ethics laws, the following practices have been identified in peer states:

- Prohibition of Trustee or Employee contributions to the campaigns of a candidate for the Legislature, constitutional officer or other publicly elected official;
- No Trustee or Employee should employ a lobbyist or act as a lobbyist;
- No Trustee or Employee or any spouse, sibling, ascendant or descendant of a Trustee or Employee should have a financial interest in any vendor doing business or proposing to do business with the regulatory entity;
- No former Trustee or Employee should represent any vendor or lottery retailer before the regulator for a period of at least 2 years following separation;
- Trustees and Employees; vendors; retailers; or spouse, child, brother, sister, or parent residing in the same home of the previously listed should not play and participation in any game or activity under the jurisdiction of the regulator and no prize should be paid to any of the previously listed persons;
- Trustees and Employees should be required to file a completed statement of economic interests for the previous calendar year with the State Ethics Commission;
- Each Trustee and Employee should be subject to a background check before service to or employment, and no person who has been convicted of a felony or bookmaking or other forms of illegal gambling or of a crime involving moral turpitude should be granted employment or service;

- No lottery system vendor, any applicant for a procurement contract, lottery retailer, nor applicant to be a lottery retailer should give a thing of value or service, excluding food and beverages having an aggregate value not exceeding \$100 in any calendar year, to any Trustee or Employee, or member of the immediate family residing in the same household as any such person;
- Prohibition of political campaign contributions by any gambling operators or license-holders within the State.

## **PUBLIC OPINION OF GAMBLING IN ALABAMA**

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As with many public policy issues, it is important for policymakers to understand the opinions held by the public. With this in mind, the Study Group commissioned a public opinion research survey<sup>65</sup> on various issues related to gambling, and it sought input from Alabama's religious community.

### Public Opinion Survey

The Study Group commissioned a survey of 500 randomly selected likely general election voters in Alabama. The survey, which was administered via telephone by professional interviewers from November 17 to 19, 2020, has an accuracy of +/- 4.5 percent at a 95 percent confidence interval. It was paid for with public funds provided by the Governor's Office in accordance with section 5 of Executive Order No. 719. McLaughlin & Associates, the firm who conducted the survey, is well-experienced in Alabama and does not have connections to the gambling industry.

At the highest level, 67 percent of survey participants said they favor legalizing gambling, while 25 percent said they oppose gambling.

When asked about legalizing specific types of gambling:

- 71 percent favored a statewide lottery, while 25 percent opposed a statewide lottery;
- 63 percent favored casino-style slot machines, while 32 percent opposed;
- 61 percent favored casino-style table games, while 35 percent opposed; and
- 52 percent favored online sports betting, while 41 percent opposed.

The survey also proposed three opinions and asked respondents to choose which option most closely corresponded with their own opinion regarding legalizing gambling:

- 51 percent of respondents said they support legalizing gambling;
- 22 percent said they personally oppose gambling but believe others should legally be allowed to gamble; and
- 24 percent of the respondents said they opposed gambling and believe it should remain illegal for everyone.

Survey respondents were also asked if, in general, legalized gambling improve things in Alabama, make things worse, or have no impact:

- 54 percent of the respondents said legalized gambling would improve things in Alabama,
- 19 percent said it would make things worse, and
- 19 percent said it would have no impact.

### Religious Perspective on Gambling

Considering the prevalence of churches and other faith-based groups in Alabama and given the perceived correlation between religious principles and moral objections to gambling, the Study Group specifically solicited input from the religious community. Commentary and written statements from representatives of the religious community indicate that many religions and denominations do not have an official position on gambling, and there is certainly no consensus position on gambling from the religious community. However, while there is no consensus opinion, many organized religions and denominations oppose gambling. For example, the Alabama Baptist State Convention unanimously passed a 2016 resolution, which stated in part that it, “oppose any and all attempts by the Governor and/or State Legislators to expand any form of state-sponsored, state-sanctioned and predatory gambling in Alabama....”

### **CONCLUSION**

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Having concluded research and examination into other states, the Governor’s Study Group on Gambling Policy recognizes the following options to be available to the Governor, the Legislature, and the People of Alabama:

#### Option 1: Maintain Status Quo

Alabama could choose to maintain its status quo in regard to gambling. Under its current system, Alabama realizes few, if any, benefits of gambling, as there is currently no system for taxing gambling revenue, nor is the State able to designate beneficiaries of gambling proceeds. Furthermore, the current system of segmented gambling laws and regulatory jurisdictions affords the State limited enforcement mechanisms to oversee gambling operations, which has cost the State of Alabama considerable time and money over the years and which will inevitably persist into the future. In addition to these detracting factors, it is known that Alabamians do purchase lottery tickets and gamble in other states, which means dollars are leaving Alabama’s economy that could otherwise support beneficiaries in the State.

This is a default option if no action is taken by the Legislature.

#### Option 2: Prohibit Gambling & Provide Enforcement

Alabama could choose to prohibit and criminalize all forms of gambling and introduce the enforcement mechanism that it has historically not had. In doing so, the State would realize certain benefits. The State would have a defined enforcer of gambling prohibitions, which would allow it to effectively and efficiently enforce its restrictions on gambling. This would essentially end the time-consuming and costly litigation in which the State has been involved over the years.

To achieve “Option 2,” the Legislature would have to statutorily repeal the pari-mutuel and fantasy sports betting provisions from the Alabama Code, and it would have to approve a constitutional amendment – which would then require approval by the voters of Alabama – to repeal the existing “bingo amendments.” Legislation to enhance the State’s enforcement capabilities would also be necessary.

#### Option 3: Prohibit All Gambling Except Lottery

Alabama could choose to approve a lottery but prohibit all other forms of gambling. Doing so would provide two distinct benefits to the State. It would generate revenue for beneficiaries, and it would

provide an enforcement mechanism for all other illegal forms of gambling. It would also introduce widespread access to gambling, which could result an increase in social costs.

To achieve this option, the Legislature would have to approve a constitutional amendment, which would then require approval by the voters of Alabama. The constitutional amendment would repeal the existing “bingo amendments” and authorize a lottery.

#### Option 4: Allow Limited Gambling

As described within this report, there are numerous gambling activities Alabama could choose to legally permit. Alabama could choose to approve various gambling activities while prohibiting others. Any combination of lottery, casino-style gaming, pari-mutuel wagering, and sports betting could be allowed, while restricting others. As another limited gambling consideration, the State could permit some or all forms of these gambling activities but limit the availability in terms of geographical locations – for instance, the 16 counties that have already approved local constitutional amendments to permit some forms of gambling. This option would provide the benefits of revenue and enforcement, but it would also increase the likelihood of incurred costs associated with gambling disorders.

Constitutional amendments proposed by the Legislature and approved by a vote of the people would be required to achieve this option. If approved by the voters, the State might then subsequently enter a tribal-state compact regarding the operation of such gaming by a federally recognized Indian tribe.

#### Option 5: Full Gaming

Alabama could choose to approve all the gambling activities mentioned in this report with no limitations on forms or locations. This option would provide the benefits of revenue and enforcement, but it would result in the highest social costs incurred by the State.

Constitutional amendments proposed by the Legislature and approved by a vote of the people would be required to achieve this option. If approved by the voters, the State might then subsequently enter a tribal-state compact regarding the operation of such gaming by a federally recognized Indian tribe.

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<sup>2</sup> AL Code § 13A-12-76 (2019).

<sup>3</sup> See *State vs. \$223,405.86*, 203 So. 3d 816, 826 & n.5 (Ala. 2016). The Court in *State v. \$223,405.86* listed 12 decisions over eight years resulting from the “bingo” wars; that list did not include *State v. \$223,405.86* itself or *State v. 825 Electronic Gambling Devices*, which was decided later in 2016, or *State v. Epic Tech LLC*, Nos. 1180675 & 1180974, 2020 WL 5742683 (Ala. Sept. 25, 2020), decided in 2020.

<sup>4</sup> See *State vs. \$213,405.86*, 203 So. 3d at 834-42; *State v. 825 Electronic Gambling Devices*, 226 So. 3d 660 (Ala. 2016).

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- <sup>9</sup> See 25 U.S.C. § 2710(b) (regulation of class II gaming).
- <sup>10</sup> See 25 U.S.C. § 2703(8) (definition of “class III gaming”); *id.* § 2710(d) (class III gaming pursuant to Tribal-State compacts).
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