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# *Budget Briefs*

*from the Legislative Reference Bureau*

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Budget Brief 04-2

April 2004

## **ENFORCEMENT OF TAVERN VIDEO GAMBLING LAWS**

The biennial state budget act, 2003 Wisconsin Act 33, passed by the legislature and signed by Governor Jim Doyle on July 24, 2003, gave the Department of Revenue sole responsibility for enforcing state laws relating to having five or fewer video gambling machines in licensed alcohol beverage establishments. However, county sheriffs and local police officers may still take action to enforce state criminal laws if an establishment has more than five illegal gambling devices. In addition, city, village, and town police officers may enforce local ordinances relating to gambling. The law took effect on July 26, 2003.

### **1999: LIMITED VIDEO GAMBLING DECRIMINALIZED**

Previously, 1999 Wisconsin Act 9 (the biennial budget act) reduced the penalty for possession and operation of up to five video gambling machines (video poker or video slot machines) by businesses that hold liquor licenses for the serving of alcohol on premises, such as taverns, hotels, and restaurants. Although possession and operation remain illegal, the violation was changed from a felony or a misdemeanor to a civil offense, subject to a forfeiture of up to \$500 per machine per incident. [Sections 945.03 (2m) and 945.04 (2m), Wisconsin Statutes] License holders are no longer at risk of having their alcohol beverage licenses revoked solely for possession of five or fewer machines. [Section 945.041 (11)] Criminal penalties were retained for exceeding the five-machine limit or having any machines in a place other than the specified establishments. Act 9 also did not change the law which makes it a misdemeanor crime for a patron to gamble using a video machine [Sec-

tion 945.02], and machines used for gambling remain subject to seizure [Sections 66.051 and 968.13]. In addition, Section 823.20 permits a gambling place to be shut down as a public nuisance.

In his veto message for Act 9, Governor Thompson presented his reasons for approving the video gambling decriminalization. He cited the inconsistent enforcement of the gambling laws and stated that this change would result in more uniformity. While acknowledging the continued illegality of the machines, he said the penalty for minimal gaming activities would more closely fit the crime, particularly in light of an overcrowded prison system. He stated his belief that gaming machines should be licensed, regulated, and taxed.

### **2003: DEPARTMENT OF REVENUE ENFORCEMENT OF VIDEO GAMBLING LAW**

2003 Wisconsin Act 33 vested in the Department of Revenue (DOR) sole authority to investigate and enforce violations of state laws that make possession or operation of five or fewer video gambling machines in licensed alcohol beverage establishments a civil offense. Only special agents of the DOR certified as law enforcement officers by the law enforcement standards board may make arrests under this particular law. Special agents must deliver persons arrested and any documents and reports relating to the arrest to a sheriff or chief of police in the appropriate jurisdiction, and be available as a witness in any prosecution. [Sections 73.03 (59) and (60) and 73.031]

Act 33 prohibits the Department of Justice from enforcing the laws that relate to having

five or fewer video gambling machines in a licensed alcohol beverage establishment. [Section 165.70 (2m)] It also prohibits other law enforcement officers, including county sheriffs, city or village police officers, or town constables, from investigating or otherwise enforcing these particular violations of state law. [Section 175.38]

**Taxes on Gambling Proceeds.** In addition to enforcing the law which provides for a \$500 forfeiture per machine, DOR agents may investigate whether income from the machines has been reported and taxes have been paid on the profits derived from illegal gambling devices.

### **POLICE MAY ENFORCE LOCAL ANTI-GAMBLING ORDINANCES**

Act 33 pertains only to the enforcement of state laws regarding limited video gambling machines in licensed alcohol beverage establishments, and does not affect the ability of municipalities to enforce existing ordinances, or to enact new ordinances, relating to gambling devices. Section 66.0107 grants cities, villages, and towns the authority to prohibit all forms of gambling and to seize and destroy gambling devices. However, the penalty for violating such ordinances is a forfeiture imposed by a municipal court, even if more than five video gambling machines are present in a tavern or other licensed premises.

### **DE FACTO LEGALIZATION OF VIDEO GAMBLING?**

Supporters of this change in tavern video gambling law cite uneven levels of enforcement in various jurisdictions as the principal reason for that change. A legal note from the League of Wisconsin Municipalities indicates there are fewer than 10 DOR special agents statewide to enforce the law and no additional money budgeted to add more agents. There are about 13,000 licensed taverns in Wisconsin. Special agent duties already include enforcement of tax laws related to the sale and dis-

tribution of alcohol beverages and cigarettes and other tobacco products.

Operating a commercial gambling enterprise remains illegal, as is a patron's act of gambling using an illegal machine. However, with the 1999 decriminalization of five or fewer video gambling machines in taverns and the restriction on enforcement activities in Act 33, some have raised the question as to whether the state has effectively legalized limited tavern video gambling. Recent renewals of gaming compacts with Indian tribes have resulted in about \$100 million in annual revenues for the state treasury. However, the enhanced payments prescribed in the amended compacts are premised on "substantial exclusivity", meaning that the tribes have agreed to share revenues in return for enjoying a monopoly on casino-style gambling in the state. The compacts provide that if the state changes its laws to permit the operation of electronic games of chance by any person or entity (including the state or a political subdivision of the state), then the tribes are relieved of their obligations to make future payments and may receive refunds of some of the money already paid. These issues may eventually be presented to the state or federal courts for resolution.

### **FOR MORE INFORMATION**

For information about enforcement activities and procedures, contact the Wisconsin Department of Revenue's Alcohol and Tobacco Enforcement Section: (608) 266-6757.

For background information about gambling laws in Wisconsin, consult the following Legislative Reference Bureau publications:

- Research Bulletin 00-1, "The Evolution of Legalized Gambling in Wisconsin", online at: <http://www.legis.state.wi.us/lrb/pubs/rb/00rb1.pdf>
- Budget Brief 99-6, "Decriminalization of Video Gambling", online at: <http://www.legis.state.wi.us/lrb/pubs/budbriefs/99bb6.pdf>