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DECRIMINALIZATION OF VIDEO GAMBLING

The biennial state budget act (1999 Wisconsin Act 9), passed by the legislature and signed by Governor Tommy Thompson on October 27, 1999, reduces the penalty for possession and operation of up to five video gambling machines by businesses that hold liquor licenses for the serving of alcohol on premises, such as taverns, hotels and restaurants. Although possession and operation are still illegal, the violation is changed from a misdemeanor crime to a civil offense, subject to a forfeiture of up to \$500 per machine per incident. License holders will no longer risk having their alcohol beverage licenses revoked solely for possession of five or fewer machines. Criminal penalties are 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 to gamble using a video machine, and machines used for gambling remain subject to seizure.

BACKGROUND

Wisconsin's constitution, as adopted in 1848, stated in Article IV, Section 24: "The legislature shall never authorize any lottery . . ." This was generally interpreted as prohibiting all forms of gambling, both public and private, whether conducted for profit or to benefit charitable causes. Yet, despite the criminal prohibitions that were written into state law, private gambling was widespread and generally not actively prosecuted.

The legislative response to rampant tavern gambling in the 1940s was Chapter 374, Laws of 1945, known as the Thomson Antigambling Law for its sponsor, Assemblyman Vernon W. Thomson (later attorney general and governor). The Thomson Law provided for the seizure and destruction of slot machines or gambling devices found in a tavern and the revocation of the establishment's alcohol beverage license. Any law enforcement official who was aware of illegal gambling and failed to take appropriate action was subject to removal from office by the governor. Well-publicized raids resulted in the confiscation of many illegal gambling machines. The constitutionality of the Thomson Law was upheld by the Wisconsin Supreme Court in *State v. Coubal*, 248 Wis. 2d 47 (1946), and the key elements of the law remain.

Many video gambling machines do not automatically dispense coins to winners, and there has been confusion about their legal status. While it is clearly illegal for a bartender to pay out winnings based on the number of points accumulated by a patron, the question remained whether the machines could legally be used for amusement purposes. In July 1996, the Court of Appeals ruled in *State v. Hahn* (203 Wis. 2d 450) that machines that do not directly pay winnings to the player are not illegal devices per se. However, Attorney General James Doyle and those opposed to the machines contend that gambling is their principal purpose.

By constitutional amendment Wisconsin voters have legalized gambling in sweepstakes and other promotional contests (1965), charitable bingo (1973), charitable raffles (1977), on-track pari-mutuel wagering on racing (1987), and a state lottery (1987). Based on the 1988 federal Indian Gaming Regulatory Act and a 1991 federal court decision, Wisconsin was required to negotiate state-tribal gaming compacts, which currently allow slot machines and Blackjack on tribal trust lands. At present, 11 state Indian tribes or bands operate 17 major casinos and offer limited numbers of slot machines at ancillary locations.

Efforts to legalize a minimal number of video gambling machines in taverns as part of the state lottery were precluded by a constitutional amendment ratified on April 6, 1993, by a vote of 623,987 to 435,180. Also on that ballot were a number of advisory referenda, including one in which the electors voted against allowing video poker and other forms of off-reservation video gambling by a 702,864-to-358,045 vote.

Gaming experts claim the increasing popularity of tribal casinos in Wisconsin has adversely affected the profitability of other forms of legal gambling, such as charitable bingo, and has drawn business from other forms of entertainment. Taverns seem to have been particularly hard hit after suffering the loss of business due to increasing the drinking age to 21. In an attempt to compete for revenues, many taverns have resorted to offering patrons illegal gambling opportunities, such as electronic slot machines and video poker. Law officers who tried to enforce the laws encountered negative reactions from their communities when they prosecuted the tavern owners for operating games similar to those legally available at nearby Indian tribal casinos.

In his veto message for Act 9, Governor Thompson presented his reasons for approving the video gambling decriminalization. He cited the current 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.

PENALTIES FOR COMMERCIAL GAMBLING

Although Act 9 creates the exceptions for five or fewer video gambling machines, current laws (Sections 945.03 and 945.05) make it a Class E felony to: participate in the earnings of or permit the operation of a gambling place for gain; set up machines for gambling purposes or collect the proceeds from them; or manufacture or sell machines designed exclusively for gambling purposes. The penalty in these instances is a fine not to exceed \$10,000 or imprisonment not to exceed two years, or both. Section 945.04 prohibits knowingly permitting a premises owned, occupied or controlled by a person to be used as a gambling place, subject to a Class A misdemeanor penalty of a fine not to exceed \$10,000 or imprisonment not to exceed nine months, or both. Each incident can be defined as a separate violation.

Additional penalties may also apply. Sections 66.051 and 968.13 allow illegal machines to be confiscated; Section 823.20, permits a gambling place to be shut down as a public nuisance; and Section 945.041 authorizes certain liquor license revocations.

PENALTIES FOR PRIVATE GAMBLING

Playing a slot machine or video gambling machine remains illegal. Section 945.02, Wisconsin Statutes, provides that making a bet, as defined in Section 945.01 (1), is a Class B misdemeanor, resulting in a fine not to exceed \$1,000 or imprisonment not to exceed 90 days, or both. The same penalties also apply to wagering activities, such as participating in low-stakes poker games or on sports betting pools. Section 945.10 also makes any illegal winnings subject to forfeiture.