

CHAPTER 945

GAMBLING

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945.01 Definitions relating to gambling. (1)

BEI. A bet is a bargain in which the parties agree that, dependent upon chance even though accompanied by some skill, one stands to win or lose something of value specified in the agreement. But a bet does not include:

(a) Bona fide business transactions which are valid under the law of contracts including without limitation:

1. Contracts for the purchase or sale at a future date of securities or other commodities, and

2. Agreements to compensate for loss caused by the happening of the chance including without limitation contracts of indemnity or guaranty and life or health and accident insurance;

(b) Offers of purses, prizes or premiums to the actual contestants in any bona fide contest or endurance or to the bona fide owners of animals or vehicles entered in such contest;

(c) A lottery as defined in this section.

(2) BOOKMAKING. "Bookmaking" means the receiving, recording or forwarding of a bet or offer to bet on any contest of skill, speed, strength or endurance of persons or animals.

(3) GAMBLING MACHINE. A gambling machine is a contrivance which for a consideration affords the player an opportunity to obtain something of value, the award of which is determined by chance, even though accompanied by some skill and whether or not the prize is automatically paid by the machine. "Gambling machine" does not include any device used in conducting a bingo occasion or raffle event under ch 163 or any amusement device if it rewards the player exclusively with one or more nonredeemable free replays for achieving certain scores and does not change the ratio or record the number of the free replays so awarded.

(4) GAMBLING PLACE. (a) A gambling place is any building or tent, any vehicle (whether self-propelled or not) or any room within any of

them, one of whose principal uses is any of the following: making and settling bets; receiving, holding, recording or forwarding bets or offers to bet; conducting lotteries; or playing gambling machines.

(am) "Gambling place" does not include a place where bingo or raffle is conducted under ch. 163.

(b) Evidence that the place has a general reputation as a gambling place or that, at or about the time in question, it was frequently visited by persons known to be professional gamblers or known as frequenters of gambling places is admissible on the issue of whether it is a gambling place.

(c) Any gambling place is a public nuisance and may be proceeded against under ch. 823.

(5) LOTTERY. (a) A lottery is an enterprise wherein for a consideration the participants are given an opportunity to win a prize, the award of which is determined by chance, even though accompanied by some skill.

(am) "Lottery" does not include bingo or a raffle as defined in s. 163.03 if conducted under ch. 163.

(b) 1. "Consideration" in this subsection means anything which is a commercial or financial advantage to the promoter or a disadvantage to any participant, but does not include any advantage to the promoter or disadvantage to any participant caused when any participant learns from newspapers, magazines and other periodicals, radio or television where to send his name and address to the promoter.

2. In any game, drawing, contest, sweepstakes or other promotion, none of the following shall constitute consideration under this subsection:

a. To listen to or watch a television or radio program.

b. To fill out a coupon or entry blank which is received through the mail or published in a newspaper or magazine, if facsimiles thereof or

handwritten and other informal entries are acceptable or if no purchase is required.

c. To furnish proof of purchase if the proof required does not consist of more than the container of any product as packaged by the manufacturer, or a part thereof, or a facsimile of either.

d. To send the coupon or entry blank and proof of purchase by mail to a designated address.

e. To fill out a coupon or entry blank obtained and deposited on the premises of a bona fide trade fair or trade show defined as an exhibition by 5 or more competitors of goods, wares or merchandise at a location other than a retail establishment or shopping center or other place where goods and services are customarily sold; but if an admission fee is charged to such exhibition all facilities for obtaining and depositing coupons or entry blanks shall be outside the area for which an admission fee is required.

f. To visit a mercantile establishment or other place without being required to make a purchase or pay an admittance fee.

g. To use a chance promotion exempt under s. 100.16 (2).

(6) **WIRE COMMUNICATION FACILITY.** "Wire communication facility" means any and all instrumentalities, personnel and services, and among other things the receipt, forwarding or delivery of communications used or useful in the transmission of writings, signs, pictures and sounds of all kinds by means of wire, cable, microwave or other like connection between the points of origin and reception of such transmission.

History: 1973 c. 156; Sup Ct Order, 67 W (2d) 784; 1975 c. 94; 1977 c. 90, 426; 1979 c. 40, 91; 1981 c. 351; 1983 a. 189.

Defendant's use of warehouse to conduct pyramid club meetings was "principal use" under (4) (a) State v. Dahlk, 111 W (2d) 287, 330 NW (2d) 611 (Ct App 1983).

Monies paid by individuals to subscribe to CATV could be consideration which would make a bingo game offered over CATV gambling. 60 Atty Gen 382.

The silent auction is not a lottery because the element of prize is not present. 62 Atty Gen 122.

Illegality of Michigan lottery activities in Wisconsin discussed. 62 Atty Gen 186.

945.02 Gambling. Whoever does any of the following is guilty of a Class B misdemeanor:

(1) Makes a bet; or

(2) Enters or remains in a gambling place with intent to make a bet, to participate in a lottery, or to play a gambling machine; or

(3) Conducts a lottery, or with intent to conduct a lottery, possesses facilities to do so.

History: 1977 c. 173.

Games such as "Las Vegas nights" constitute illegal lotteries; law does not exempt benevolent and nonprofit organizations. 70 Atty Gen 59.

945.03 Commercial gambling. Whoever intentionally does any of the following is engaged

in commercial gambling and is guilty of a Class E felony:

(1) Participates in the earnings of or for gain operates or permits the operation of a gambling place; or

(2) For gain, receives, records or forwards a bet or offer to bet or, with intent to receive, record or forward a bet or offer to bet, possesses facilities to do so; or

(3) For gain, becomes a custodian of anything of value bet or offered to be bet; or

(4) Conducts a lottery where both the consideration and the prize are money, or with intent to conduct such a lottery, possesses facilities to do so; or

(5) Sets up for use for the purpose of gambling or collects the proceeds of any gambling machine; or

(6) For gain, maintains in this state any record, paraphernalia, tickets, certificates, bills, slip, token, paper, writing or other device used, or to be used, or adapted, devised or designed for use in gambling; or

(7) For gain, uses a wire communication facility for the transmission or receipt of information assisting in the placing of a bet or offer to bet on any sporting event or contest, or for the transmission of a wire communication which entitles the recipient to receive money or credit as a result of a bet or offer to bet.

History: 1977 c. 173

The offense of commercial gambling is distinguishable from the offense of making a bet and the statute is not unconstitutionally vague. State v. Vlahos, 50 W (2d) 609, 184 NW (2d) 817.

A complaint charging one defendant with 30 counts of commercial gambling, one of which identified the date and subject of a bet allegedly taken by defendant, and 29 of which charged the regular receipt of bets from 8 bettors—all but one named in 2 or more counts—on unspecified athletic events from periods of one to several months between September, 1971, and January, 1974, was multiplicitous and defective as to the 29, because the counts divided a single charge (continuous commercial gambling) into several counts. State v. George, 69 W (2d) 92, 230 NW (2d) 253.

Although indictment failed to state which of 7 subsections defendants' alleged gambling business violated, more specificity was not required to enable defendants successfully to plead bar of double jeopardy and to inform them of what they would have to meet to formulate a defense; thus the indictment was not subject to dismissal. U.S. v. Halmo, 386 F Supp. 593.

945.04 Permitting premises to be used for commercial gambling. Whoever intentionally does any of the following is guilty of a Class A misdemeanor:

(1) Permits any real estate owned or occupied by him or under his control to be used as a gambling place; or

(2) Permits a gambling machine to be set up for use for the purpose of gambling in a place under his control.

History: 1977 c. 173.

See note to 945.01, citing State v. Dahlk, 111 W (2d) 287, 330 NW (2d) 611 (Ct App 1983).

945.041 Revocation of license and injunction against gambling devices. (1) A license or permit issued under ch. 125 to any person who knowingly permits any slot machine, roulette wheel, other similar mechanical gambling device, or number jar or other device designed for like form of gambling, or any horse race betting or other bookmaking as defined in s. 945.01, or solicitation of drinks from customers under s. 944.36 to be set up, kept, managed, used or conducted upon the licensed premises or in connection therewith upon premises controlled directly or indirectly by the person, shall be revoked by the circuit courts by a special proceeding as provided in this section. If a license or permit has been revoked no other license or permit of any character provided for by ch. 125 may be issued to the person who held the license or permit, prior to the expiration of one year from the effective date of the revocation. If any appeal is taken from the revocation, any period during which the order is stayed shall be added to the one year.

(2) Any sheriff, undersheriff, deputy sheriff, constable or other municipal police officer or any person authorized to enforce the gambling laws under s. 165.60 shall within 10 days after acquiring such information report to the district attorney of the county the name and address of any licensee or permittee under ch. 125 who to his or her knowledge has knowingly suffered or permitted any device in sub. (1) or any horse race betting to be set up, kept, managed, used or conducted upon the licensed premises or in connection therewith upon premises controlled directly or indirectly by such licensee or permittee. Such officer or person shall also report to the district attorney knowledge of the circumstances and the name of the municipality or officer by whom the license or permit has been issued. Any other person may in writing and signed by that person report any such name, address and other information to the district attorney. Within 10 days after any report the district attorney shall institute a proceeding as hereinafter provided before the circuit court of the county or shall within such time report to the attorney general the reasons why such a proceeding has not been instituted. The attorney general may direct the department of justice or the district attorney to institute such proceeding within a reasonable time.

(3) Such proceeding shall be in the name of the state and the issues may be determined by a jury. It shall be instituted by the filing of a petition and service of a notice as herein provided. The petition shall be directed to the circuit court and shall set forth a clear and concise statement of the grounds that are al-

leged to exist justifying a revocation of the license or permit under sub. (1), and shall request an order revoking such license or permit. It shall also request an injunction restraining the defendant from thereafter knowingly suffering or permitting any such devices or any horse race betting to be set up, kept, managed, used or conducted upon premises directly or indirectly controlled by the defendant. Upon the filing of such petition the court shall fix a time for hearing not to exceed 30 days from the date of filing at a place within the judicial circuit, and a copy of the petition and a notice of the time and place of hearing shall be served upon the defendant not less than 20 days prior to the date of hearing. Such service shall be made in the same manner as a summons is served in a civil action, except that it may also be made by leaving a copy of said petition and notice with any person charged with the operation of the licensed premises under s. 125.68 (2). The allegations of the petition shall be deemed controverted and shall be at issue without further pleading by the defendant. No hearing shall be adjourned except for cause. If upon such hearing the court finds that the allegations of the petition are true, it shall issue a written order revoking the license or permit and shall likewise enjoin the defendant from thereafter knowingly suffering or permitting any gambling devices referred to in sub. (1) or any horse race betting to be set up, kept, managed, used or conducted upon premises directly or indirectly controlled by the defendant. The district attorney shall forthwith cause a copy of the order to be filed with the issuing authority of the license or permit and shall cause a copy to be served upon the defendant as above provided or the defendant's attorney. The revocation and injunction shall become effective upon such service. In cases where a license is issued by a town, city or village, a copy of the order shall also be filed with the department of revenue.

(4) The law enforcement officials referred to in sub. (2) shall also report to the district attorney the names and addresses of persons other than licensees under ch. 125 who permit devices referred to in sub. (1) or any horse race betting to be set up, kept, managed, used or conducted upon premises controlled directly or indirectly by such persons. They shall also report their knowledge of the circumstances and the location of such premises. Thereupon the district attorney shall proceed as in the case of licensees or permittees, except that the only request of the petition shall be for the issuance of the injunction referred to in sub. (3) and the other required allegations shall be correspondingly changed. Such proceeding shall be had

and such injunctive orders entered and served as under sub. (3).

(5) Violations of injunctive orders under this section are punishable by the court as contempts of court under ch. 785.

(6) Appeals may be taken from orders issued by the circuit court hereunder as in the case of special proceedings.

(7) Any proceeding instituted by a district attorney shall not be dismissed with his consent except upon the written approval of the circuit court.

(8) Any officer or employe referred to in sub. (2) or any district attorney who shall without proper excuse neglect or refuse to perform the duties required of him herein within such times as may be specified shall be subject to removal. The governor may remove any such sheriff or district attorney under s. 17.16 by filing a complaint on his own motion.

(9) A written record shall be kept by every officer and district attorney of reports made by or to him under sub. (2). On the first day of January, April, July and October in each year each district attorney shall report in writing to the governor the name, address and office, if any, of each person who has reported to him knowledge of gambling devices or any horse race betting under sub. (2). He shall also set out the disposition of such reports, the status of all cases instituted thereon and the status of cases not shown by any prior report to be finally determined.

(10) No proceeding under this section may be commenced for violations of ch. 163.

History: 1973 c. 156; 1975 c. 39, 199; 1977 c. 26, 173; 1977 c. 187 s. 135; 1979 c. 257; 1981 c. 79 s. 18

945.05 Dealing in gambling devices. (1)

Whoever manufactures, transfers commercially or possesses with intent to transfer commercially either of the following is guilty of a Class E felony:

(a) Anything which he knows evidences, purports to evidence or is designed to evidence participation in a lottery or the making of a bet; or

(b) Any device which he knows is designed exclusively for gambling purposes or anything which he knows is designed exclusively as a subassembly or essential part of such device. This includes without limitation gambling machines, numbers jars, punch boards and roulette wheels. Playing cards, dice and permanently disabled gambling machines shall not be considered devices primarily for gambling purposes.

(2) Proof of possession of any device designed exclusively for gambling purposes, which is less than 25 years old, is not in a

gambling place and is not set up for use, is prima facie evidence of possession with intent to transfer.

(3) Any motor vehicle or aircraft, used or employed to aid in or to facilitate the unlawful manufacture or commercial transfer of those gambling devices enumerated in sub. (1), may be seized by any peace officer and shall be forfeited to the state in an action brought by the attorney general or the district attorney of the county where the vehicle or aircraft is subject to forfeiture and such action shall be in the name of and on behalf of the state in accordance with ch. 778. Lienholders and owners shall have the same rights as provided in s. 139.40.

History: 1977 c. 173, 297; 1979 c. 32 s. 92 (8).

945.06 Public utilities to cease service.

When any public utility, common carrier, contract carrier, or railroad, subject to the jurisdiction of the public service commission, office of the commissioner of transportation or department of transportation of this state, is notified in writing by a federal, state or local law enforcement agency, acting within its jurisdiction, that any facility furnished by it is being used or will be used for the purpose of transmitting or receiving gambling information in violation of the laws of this state it shall discontinue or refuse the leasing, furnishing or maintaining of such facility, after reasonable notice to the subscriber, but no damages, penalty or forfeiture, civil or criminal, shall be found against any such public utility, common carrier, contract carrier or railroad, for any act done in compliance with any notice received from a law enforcement agency under this section. Nothing in this section shall be deemed to prejudice the right of any person affected thereby to secure an appropriate determination as otherwise provided by law in any court or tribunal or agency, that such facility should not be discontinued or removed, or should be restored.

History: 1977 c. 29 s. 1654 (9) (i); 1981 c. 347 s. 80 (2).

945.07 Gambling by participants in contest.

(1) Any participant in, or any owner, employer, coach or trainer of a participant in, any contest of skill, speed, strength or endurance of persons, machines or animals at which admission is charged, who makes a bet upon any opponent in such contest is guilty of a Class A misdemeanor.

(2) In this section, "participant" includes any person who is selected or who expects to take part in any such contest.

History: 1975 c. 94; 1977 c. 173

945.08 Bribery of participant in contest. (1)

Any person who, with intent to influence any

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participant to refrain from exerting full skill, speed, strength or endurance, transfers or promises any property or any personal advantage to or on behalf of any participant in a contest of skill, speed, strength or endurance is guilty of a Class D felony.

(2) Any participant in any such contest who agrees or offers to refrain from exerting full skill, speed, strength or endurance in return for any property or any personal advantage transferred or promised to the participant or another is guilty of a Class A misdemeanor.

(3) In this section "participant" includes any person who is selected to or who expects to take part in any such contest.

History: 1977 c. 173.

945.09 Commercial printing. Sections 945.02, 945.03 and 945.05 do not apply to any person who operates a commercial printing business and without consideration other than for regular and customary printing charges, prints and sells tickets in the ordinary course of business which have been ordered by a customer in another state to be sold in that state, if the lottery is lawful in the state from which the order is placed and the order is shipped to such customer in that state.

History: 1977 c. 66.

945.10 Prizes forfeited. Anything of value received by any person as a prize in any lottery conducted in violation of this chapter shall be forfeited to the state and may be recovered in any proper action brought by the attorney general or any district attorney in the name and on behalf of the state.

945.12 Endless sales chains. Whoever sets up, promotes or aids in the promotion of a plan by which motor vehicles are sold to a person for a consideration and upon the further consideration that the purchaser agrees to secure one or more persons to participate in the plan by respectively making a similar purchase and in turn agreeing to secure one or more persons likewise to join in said plan, each purchaser being given the right to secure money, credits, goods or something of value, depending upon the number of persons joining in the plan, shall be held to have set up and promoted a lottery and shall be punished as provided in s. 945.02. The further prosecution of any such plan may be enjoined.

Cross Reference: As to endless chain sales, see also 218.01 (3) (a) 20.