

The Evolution of Legalized Gambling in Wisconsin

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THE EVOLUTION OF LEGALIZED GAMBLING IN WISCONSIN

SUMMARY

Legalized gambling in Wisconsin, which began with promotional contests in 1965, has grown to include charitable bingo and raffles, pari-mutuel on-track wagering, and the state lottery. This bulletin provides a detailed discussion of each type of gambling, including gaming operations, regulation, and economic benefits. In addition, it describes the casinos operated by 11 Indian tribes or bands within the state under federal law.

It also focuses on recent developments, such as the 1998-99 renewals of the state-tribal gaming compacts and the significant payments required by the state; the constitutional amendment that limited lottery and gaming property tax credits to state homeowners and farmers; and decriminalization of limited video gambling in taverns.

I. INTRODUCTION

Scope of Legalized Gambling. Legalized gambling in Wisconsin has evolved over more than 150 years from an absolute constitutional prohibition of any gaming activity to the present situation in which the state and certain entities, including charitable organizations and Indian tribes, conduct a variety of gaming activities.

Most of these changes required amendment of the Wisconsin Constitution. In 1965, voters ratified an amendment to allow participation in sweepstakes and other promotional contests. Subsequently, amendments were approved to permit charitable bingo (1973), charitable raffles (1977), pari-mutuel on-track wagering on racing (1987), and the state lottery (1987). In addition, slot machines and Blackjack are offered at 16 major casinos that are operated within the state by 11 Indian tribes or bands under compacts negotiated between the state and the tribes pursuant to federal law. Some tribes also operate slot machines in a number of ancillary locations, and a major tribal bingo hall opened near Madison in July 1999.

Although legal gambling historically undergoes cycles of growth and contraction, there has been sustained growth nationally since New Hampshire initiated the first modern state lottery in 1964, with casino gambling accounting for most of the recent increase. Americans annually legally wager over \$600 billion in 48 states (excepting Hawaii and Utah where all gambling is illegal) and the District of Columbia. Over \$50 billion of that figure represents profits to the game operators.

Gambling draws both strong support and criticism. Proponents view it as harmless recreation if not done to excess. They contend it creates jobs, draws tourists, benefits suppliers and nearby hospitality businesses and, in the case of nonprofit raffles and bingo games, supports worthy causes. Opponents note gambling's association with criminal activity and public corruption, and they oppose government exploitation of people's vices. They emphasize the social costs and family problems that can result from habitual gambling.

History. Wisconsin's constitution, as adopted in 1848, stated in Article IV, Section 24: "The legislature shall never authorize any lottery . . ." This provision was generally interpreted by

the courts, the legislature, and attorneys general as prohibiting all forms of gambling, both public and private. Any game involving the three elements of prize, chance (random odds or luck), and consideration (having to pay money or give something of value to play) was held to be a lottery and thus prohibited. Even if skill or knowledge could influence the outcome of a game, as long as luck was the major factor, the activity was considered to be illegal gambling.

Despite the law, illicit gambling was common. Charitable organizations operated bingo games and raffles. Taverns offered slot machines, pinball machines with money betting, dice and card games, punchboards, tip jars, and various other gambling schemes for patrons. Bookmakers ran numbers games and accepted wagers on races and athletic events. Private social gambling existed in many forms, such as betting on card games like poker. Wagering on horse and dog racing occurred at various times and places. Because gambling was perceived by many persons as a relatively harmless and victimless crime, it was reluctantly tolerated, though not necessarily condoned, by law enforcement authorities.

The following sections discuss the history and status of the forms of legal gambling in Wisconsin: promotional contests, bingo, raffles, racing, the State Lottery, and Indian Casino gaming.

II. PROMOTIONAL CONTESTS

Historical Development. Prior to 1965, all sales promotions that awarded prizes primarily by chance were prohibited as illegal lotteries, and disclaimers, such as “void in Wisconsin”, appeared in advertisements for national contests. Nevertheless, promotions by local retailers were common. The element of consideration was deemed to be involved if the promoter received some commercial advantage from the activity or participants were disadvantaged in some way, such as being required to visit a retailer or pay postage to mail an entry form.

In Chapter 463, Laws of 1951, the legislature attempted to authorize certain “giveaway” programs by restricting the definition of “consideration” to the payment of money or expenditure of substantial effort or time, but the Wisconsin Supreme Court held in *State v. Laven*, 270 Wis. 524 (1955), that this definition violated the constitutional prohibition against lotteries.

In April 1965, the voters ratified a constitutional amendment by 454,390 to 194,327 to permit promotional contests, despite opponents’ fears that any liberalization of the antilottery laws would inevitably lead to more pernicious forms of legalized gambling.

Current Regulations. Currently, retailers may offer promotional contests on condition that: 1) an individual is not required to make a purchase to participate; 2) the sponsor clearly states the method of participation and the promotion end date; 3) contestants have an equal chance of winning; 4) the sponsor does not misrepresent the participant’s chances; and 5) the prizes are randomly awarded. The promoter must accept photocopied or handwritten facsimiles of proofs of purchase, such as a universal product code (UPC). Facsimiles or handwritten entry blanks for contests conducted through the mail or via newspaper or magazine must also be accepted. Contestants may be required to watch or listen to a television or radio program, send in an entry, or visit a particular store or other location, assuming no purchase or admittance fee is required.

Constitutional and Statutory Provisions. The constitutional provisions and laws governing drawings, sweepstakes, and other promotional contests are specified in Article IV, Section 24 (2), Wisconsin Constitution, and Sections 100.16 through 100.171 and 945.01 (5), Wisconsin Statutes.

III. BINGO

Historical Development. Bingo has long been viewed as a relatively harmless social diversion and a fundraising tool for religious, charitable, service, and fraternal organizations. Although the Wisconsin Supreme Court had ruled in 1940 that bingo is an illegal lottery under the constitution regardless of its public benefits (*State ex rel. Trampe v. Multerer*, 234 Wis. 50), the widespread popularity of charitable bingo led to an extremely sensitive law enforcement situation. Sheriffs and police were reluctant to intervene in games conducted by community groups. Numerous bills were introduced to legalize bingo by statute, despite the court's ruling that a constitutional amendment was required.

Pressure to legalize charitable bingo intensified after the authorization of promotional contests in 1965. It was argued that if merchants could use games of chance, many of which resembled bingo, to increase profits, then churches and charities should have the same opportunity to raise money for worthy causes. A constitutional amendment, ratified in April 1973 by a 645,544-to-391,499 vote, permitted the legislature to authorize licensed bingo games conducted by religious, charitable, service, fraternal, or veterans' organizations, as well as other groups entitled to receive tax-deductible contributions. Chapter 156, Laws of 1973, legalized charitable bingo games in Wisconsin.

Bingo Regulation and Operations. Bingo games are regulated by the Office of Charitable Gaming in the Division of Gaming, Department of Administration (DOA), at (608) 270-2555. Bingo previously was regulated by the Bingo Control Board in the Department of Regulation and Licensing and then the Gaming Commission, created by 1991 Wisconsin Act 269. The Gaming Commission was repealed and replaced by the Gaming Board by 1995 Wisconsin Act 27. The Gaming Board was repealed by 1997 Wisconsin Act 27, which created the DOA's Division of Gaming.

The Office of Charitable Gaming issues annual bingo licenses. To be eligible, an organization must: 1) be a nonprofit entity incorporated in Wisconsin; 2) have at least 15 members in good standing; 3) conduct activities within the state in addition to bingo; 4) have been in existence for at least three years; and 5) receive funds from other sources besides bingo. All bingo profits must be used for the founding purposes of the organization or for its advancement, improvement, or benefit. Bingo callers, supervisors, and those handling receipts must be members of the organization, but nonmember adult volunteers may provide assistance. None of these workers may be compensated or allowed to play the games at which they work. All supplies and equipment must be purchased from state-licensed vendors. Games may be advertised and transportation provided to players. Minors may play if accompanied by a parent, legal guardian, or adult spouse.

The purchase of a regular bingo license allows an organization to hold an unlimited number of bingo occasions per year, with a fee paid to the state per occasion. There is no limit on the number of games that may be conducted at a single bingo occasion, but prize money may

not total more than \$1,000 per occasion and no prize in a single game may exceed \$250. Merchandise prizes may be awarded if their retail value does not exceed these limits, but alcohol beverages may not be used as prizes. Purchase of a regular bingo card at a maximum price of \$1 serves as admission to a bingo occasion, and the player has the option of purchasing additional cards for not more than \$1 each.

A limited-period bingo license allows an organization to conduct bingo for no more than four out of five consecutive days in any one year at a festival, bazaar, picnic, carnival, or similar special function. Cards for limited-period bingo occasions are sold on a game-by-game basis for not more than 50 cents each, with no admission fee allowed. (The law does not prohibit concurrent regular bingo games.)

1989 Wisconsin Act 147 allowed community-based residential facilities, senior citizen community centers, and adult family homes to obtain \$5 annual licenses to sponsor social, recreational bingo games for residents, guests, and employees. No admission may be charged, and the total per-player fee for all cards used at an occasion may not exceed \$2. All fees must be paid out as prizes.

In addition to the fees for regular and limited-period bingo licenses, the state collects from any licensed organization an occupational tax of 1% of the first \$30,000 in annual gross receipts and 2% on annual gross receipts that exceed \$30,000. In fiscal year 1998-99, the state received approximately \$205,000 in license fees and \$490,000 in gross receipts taxes from about 740 licensed organizations that reported over \$24 million in gross receipts in that year. As required by the constitutional amendment ratified on April 6, 1999, and 1999 Wisconsin Act 5, bingo revenues received by the state must be devoted to property tax relief for state residents.

Charitable bingo operations have seen reduced success in fundraising in recent years. They cite as a major factor the competition from Indian tribal casinos and bingo halls, which have no statutory limits on prize amounts.

Constitutional and Statutory Provisions. The constitutional provisions and laws governing bingo are specified in Article IV, Section 24 (3), Wisconsin Constitution, and Chapter 563, Subchapters II to VII, Wisconsin Statutes.

IV. RAFFLES

Historical Development. Like bingo, raffles, in which participants purchase tickets for the chance to win a prize in a random drawing, were widely and illegally used as fundraisers by nonprofit groups. Sometimes the raffle payment was called a "donation", or participants were asked to complete a sentence in an attempt to disguise the raffle as a game of skill. Because of their link to charitable causes, the drawings were routinely tolerated by law enforcement authorities. The legalization of charitable bingo games in 1973 led to demands for similar treatment of raffles.

A constitutional amendment, ratified on April 5, 1977, by a vote of 483,518 to 300,473, allowed the legislature to authorize state-licensed raffles conducted by local religious, charitable, service, fraternal, or veterans' organizations, as well as other groups entitled to receive tax-deductible contributions. The amendment also required that all raffle profits go to support the licensed organization.

Raffle Regulation and Operations. Raffles have always been regulated by the state agency that was responsible for supervision of bingo. They are currently administered by the Office of Charitable Gaming at (608) 270-2552.

All raffle drawings must be held in public, and all prizes must be awarded, but there is no legal limit on the value of the prizes. 1995 Wisconsin Act 27 authorized annual licenses for Class A and B raffles. Under a Class A license, tickets may be sold on days other than the day of the drawing within 180 days of the raffle. Tickets for Class A raffles must be numbered individually and consecutively and may not be priced at more than \$50 per ticket. The purchaser of a ticket for a raffle conducted under a Class A license need not be present at the drawing to win a prize. Upon request, the licensee must furnish a list of prize winners to any ticket purchaser.

The Class B license authorizes an organization to conduct a raffle in which all tickets are sold on the day of the drawing. Class B tickets may not cost more than \$10 and need not be numbered. 1995 Wisconsin Act 301 provided that a ticket purchaser or a substitute must be present at the drawing to win, unless the organization opts to allow participants to win even if not in attendance.

Revenues. In 1998-99, the state received \$174,000 in license fees from about 7,000 groups sponsoring raffles. These groups made an estimated profit of \$25 million on gross ticket sales of \$43 million. (There is no gross receipts tax on raffle contests.) Despite competition from the state lotteries, casinos, and other forms of gambling, raffles continue to be a popular fundraising tool, with Wisconsin being the leading state in terms of gross receipts from raffles and total number of raffle sponsors.

Constitutional and Statutory Provisions. The constitutional and statutory provisions governing raffles are specified in Article IV, Section 24 (4), Wisconsin Constitution, and Chapter 563, Subchapter VIII, Wisconsin Statutes.

V. RACING: PARI-MUTUEL ON-TRACK WAGERING

Historical Development. Racing without wagering has always been legal in Wisconsin, and county fairs often held harness, horse, or stock car races for entertainment. Illegal wagering was common, however, particularly in the southeastern part of the state. This led to passage of Chapter 187, Laws of 1897, which explicitly outlawed pool selling, bookmaking, betting, or wagering “upon the result of any trial or contest of skill, speed or power of endurance of man or beast . . . or upon any other uncertain event or occurrence.” Despite the law, illegal on- and off-track race wagering continued, sometimes under a thinly disguised betting scheme in which track patrons “contributed” money for certain dogs but only received “refunds” on winning animals. This system was specifically prohibited by Chapter 218, Laws of 1929.

A number of bills were introduced over the years to statutorily legalize race wagering, although a 1963 attorney general’s opinion (52 OAG 188) stated that race wagering would require a constitutional amendment, because chance was the dominant element, despite other factors, such as the speed of the animals and the bettor’s skill.

Numerous attempts to change the constitution in the 1970s and 1980s culminated in an amendment, ratified on April 7, 1987, by a vote of 580,089 to 529,729. The amendment did not

name the types of racing that would be permitted, but it did specify that only pari-mutuel on-track betting would be allowed. In the pari-mutuel system of betting, gamblers wager against one another, rather than against the track. The track has no direct stake in the outcome of races and receives a fixed amount of every dollar wagered to cover taxes, contestants' purses, operations, and maintenance. Any money remaining after the payouts constitutes the track's profit.

Thoroughbred racing was the driving force in the referendum, with horse enthusiasts touting the state because of its tourism and abundance of farms for growing feed and raising stock. Some racing experts, however, warned that Wisconsin was not populous enough to profitably support both horse and dog racing. Although 1987 Wisconsin Act 354 authorized wagering on horse, dog, and snowmobile races, dog racing has been the only live wagering event to date. Betting on horses has been limited to events held in other states and simulcast at Wisconsin racetracks.

Elements of Greyhound Wagering

A greyhound race usually includes eight dogs. Races are run on dirt tracks typically 1/4 or 5/16s of a mile in length at speeds up to 40 mph. Tracks offer one or two racing performances per day, and each performance consists of 13 to 15 races that begin at 15 minute intervals.

The minimum wager is generally \$2 a ticket with no limit on the number of tickets purchased. Although minors may attend pari-mutuel racing events if accompanied by a parent or guardian, they may not bet. Prizes are paid for picking the first, second, or third finisher ("win", "place", or "show") in a particular race. There are a variety of possible combination (exotic) bets, such as: 1) the perfecta - picking a race's first and second place winners; 2) the trifecta - picking win, place, and show in the same race; and 3) the daily double - picking the winner of the first two races. Final race odds and payoff amounts, which are not announced until after completion of a race, vary depending on the volume and distribution of bets. As is the case with lotteries, a winning bettor must present a valid ticket in order to collect a payout. Tracks withhold state income taxes from winning wagers over \$1,000. Unclaimed winnings are turned over to the state and used for regulatory purposes. A proposal in the 1999-2000 budget bill to allow tracks to keep prizes unclaimed after 90 days passed the legislature but was vetoed by the governor.

Winning ticketholders divide 80% to 83% of the "handle" (the total amount wagered) from *straight pool* races (bets on single animals to win, place, or show). They divide 75% to 77% of the handle from *multiple pool* races (combination bets). A dog track must devote an amount equal to at least 4.5% of the total amount wagered on each race day to purses paid to the owners of the animals that win, place, or show. The percentage that the track may deduct from the total wagers to meet its expenses and compensate its owners is determined by the state.

Racing dogs must be trained and treated humanely. Dogs that were trained using live lures or bait are not allowed to race. Animals trained in a state that does not prohibit cruel racing or training methods are banned from Wisconsin tracks. Individual dogs may not race more than once in a three-day period and cannot compete when ill or injured. Track surfaces must be safely maintained, and animals must receive adequate food, housing, attentive handling, and medical care. Humane euthanasia methods are required. Wisconsin was the first state to initiate an adoption program that annually places hundreds of retired racing greyhounds as household pets.

No medication, performance enhancing drug, or other foreign substance may be administered to an animal within 48 hours prior to a race. After each race, a drug test is performed

on at least one animal selected by the steward. Positive findings can result in license suspension or revocation or fines. Since 1993, the tracks are required to reimburse the state for drug testing costs not covered by legislative appropriations, but the state is currently paying the entire drug testing cost of about \$275,000 per year.

Racing Regulation and Operations

Over the years, racing has undergone several administrative revisions. Originally, it was directed by the Racing Board, created by 1987 Wisconsin Act 354. That board was subsequently replaced by the Gaming Commission (1991 Wisconsin Act 269), the Gaming Board (1995 Wisconsin Act 27), and the present DOA Division of Gaming (1997 Wisconsin Act 27). Questions about racing may be directed to the division's Bureau of Racing at (608) 270-2539.

Greyhound racetracks are operated by private companies, which are licensed, regulated, and taxed by the state. The state is constitutionally prohibited from owning, operating, or leasing state-owned land for a pari-mutuel betting facility or enterprise.

Licenses were issued to five tracks in May 1989, three of which continue to operate. In order of opening dates, they are:

Wisconsin Dells Greyhound Park – Lake Delton, opened April 30, 1990; closed September 8, 1996.

Geneva Lakes Kennel Club – Delavan, opened May 25, 1990.

Dairyland Greyhound Park – Kenosha, opened June 20, 1990.

Fox Valley Greyhound Park – Kaukauna, opened August 2, 1990; closed August 12, 1993.

St. Croix Meadows – Hudson, opened June 20, 1991.

The Division of Gaming determines the types and number of racetracks allowed and annually approves the number of racing performances or schedule of daily races at each track. It also issues operating licenses for the various racing occupations, audits financial reports, and inspects facilities. The division must consider the adverse effects on existing operations before allowing new tracks.

At least 51% of the ownership interest in a racetrack must be held by Wisconsin residents or a corporation chartered in the state, and at least 85% of a track's employees must have been state residents for at least one year prior to being hired. Under the "Wisconsin Whelped" program, established in 1990, at least two kennels at each track must be wholly owned by Wisconsin residents.

Wisconsin's racing regulatory laws are recognized as among the strictest in the nation, with violations of security or animal safety resulting in disciplinary actions, such as fines or suspensions. Generally, three stewards must supervise the conduct of live racing, and at least two of them must be employed by, or under contract with, the state. They are subject to criminal record restrictions and must be approved by the division. Anyone convicted of specified violations of the laws relating to racing, gambling, or animal mistreatment or who is considered a threat to the integrity of racing is ineligible for an occupational racetrack license or a license to own and operate a track. Track employees and owners are not allowed to bet at their own tracks.

Simulcasting. Simulcast betting allows an individual to place a bet on a race that which is viewed live via closed-circuit television as it takes place at another racetrack. Wisconsin law

permits betting on both intrastate and interstate simulcasts. The out-of-state simulcasts may involve any form of pari-mutuel racing conducted in other states, including thoroughbred horse races, such as the Kentucky Derby. Wisconsin racetracks are authorized to take wagers for these races on-site provided simulcasting is an adjunct to and does not supplant live racing at the track. Simulcasts cannot be the primary source of a track's wagering revenue. Tracks wishing to simulcast races from other states must have conducted a minimum number of live races in the preceding year (200 races if less than \$25 million was wagered that year; 250 races if more than that amount was bet). Wisconsin tracks may broadcast their own races to other tracks or betting facilities both within and outside the state and share in the proceeds from the commingled betting pools.

When the legislature originally passed 1987 Wisconsin Act 354, authorizing Wisconsin tracks to simulcast up to nine out-of-state races each year, some feared that Wisconsin tracks might become virtual off-track betting parlors. They argued that the constitutional language specified pari-mutuel *on-track* betting, thereby precluding wagering on races that are run at locations other than the place the bet is accepted. However, in 1988, an opinion by Attorney General Donald Hanaway (77 OAG 299) concluded that simulcasting was constitutional. 1991 Wisconsin Act 39 authorized racetracks to simulcast an unlimited number of in-state races. 1995 Wisconsin Act 27 removed the limit on out-of-state simulcasts.

Financial Performance

The state collects a pari-mutuel tax from each track, which is deducted from the daily handle and calculated as a percentage of the cumulative handle wagered on all race days during that particular racing season. The rates on greyhound racing range from 2% of the first \$25 million wagered to 8-2/3% on bets totalling more than \$250 million. There is no pari-mutuel tax due on horse races unless a track exceeds \$50 million annual revenues from horse racing. As required by the constitutional amendment ratified on April 6, 1999, and 1999 Wisconsin Act 5, racing revenues received by the state are now devoted to property tax relief for state residents.

Since July 1, 1996, tracks have retained 100% of the breakage, which is defined as "the odd cents by which the amount payable on each dollar wagered exceeds a multiple of 10 cents". (For example, the breakage on a \$4.53 payout is 3 cents.) Previously, the state and the tracks split the breakage, with the state's share used for gaming regulatory operations.

If a greyhound racetrack charges an admission fee, each spectator pays an admissions tax of 50 cents, which is divided equally between the county and the municipality in which the track is located. Local governments may not assess any additional fees or taxes on racetracks and must use at least part of the admissions tax receipts to defray the costs of law enforcement, traffic control, road construction and maintenance, snow removal, and other expenditures incidental to racing.

During Wisconsin's 1999 racing season, approximately 960,000 people attended 1,050 live racing performances and viewed 13,650 simulcast dog and horse racing performances. These figures are similar to those of the two previous racing seasons. Approximately \$154 million was wagered in 1999, down about 6% from the \$164 million wagered in 1998. Live racing accounted for 49% of the 1999 wagers, and simulcast betting, most of which was on out-of-state horse races, constituted 51% of the handle. In 1999, the tracks paid the state about \$2.1 million in pari-mutuel taxes and \$1.1 million in special program taxes. The owners of winning

animals received approximately \$5.8 million in purses in 1999, while local governments collected about \$480,000 in admissions tax revenue.

Declining attendance, reduced betting, and heavy debt loads have combined to significantly reduce racing's profitability since 1991 and have resulted in the closure of two racetracks (Kaukauna's Fox Valley Greyhound Park in August 1993 and the Wisconsin Dells Greyhound Park in September 1996). As a result of operating losses, several tracks have received lower property tax assessments, to the concern of local taxpayers. Of the three remaining racetracks, only Dairyland reported a profit in 1999 (about \$840,000, up from \$587,000 in 1998). Geneva Lakes lost about \$4.6 million in 1999 (\$3.3 million loss in 1998). St. Croix Meadows lost approximately \$1.9 million in 1999 (\$1.86 million loss in 1998).

Competition from tribal casinos, both within and outside Wisconsin, and riverboat gambling in Iowa and Illinois have been blamed for the track closings and lack of profitability. (Tribal casinos have the advantage of not being subject to state taxation, but, under the newly negotiated compacts, they will be paying the state about \$24 million in annual fees.) Track operators also complain of burdensome regulations and fees. After the Fox Valley track closed, owners warned more tracks might fail unless the state relaxed its regulations and adjusted the tax structure. Subsequently, the "Pari-Mutuel Reform Act", approved in 1995 Wisconsin Act 27, allowed the tracks unlimited out-of-state simulcasting, retention of 100% of breakage, and reduction in the portion of the handle that must be paid to winning bettors.

Casinos Proposed at Racetracks. In 1992, the St. Croix Band of Chippewa Indians proposed purchasing the St. Croix Meadows track in Hudson, placing it in reservation trust status, and operating it as a combined casino/racetrack complex. The change would be subject to approval by the governor and the U.S. Department of the Interior. Two local advisory referenda on the issue in 1992 showed supporters and opponents about equally split.

The St. Croix band abandoned its effort in March 1993, but a similar arrangement was proposed in September of that year by a consortium of the current track owners and three other Chippewa bands: Lac Courte Oreilles, Red Cliff, and Sokaogon (Mole Lake). The federal government turned down the request by the group to take the 52-acre track site into trust in July 1995. In denying the application, it considered opposition from nearby tribes in both Wisconsin and Minnesota, who feared the competition would harm their existing casinos. The supporters of the project next brought litigation in federal court alleging improper political influence on federal officials, due to questionably timed campaign contributions made to the Democratic National Committee by the opponents. No criminal wrongdoing was proved in the case, but the Department of the Interior agreed to reopen the application process in a settlement of a related civil suit. Although the Hudson track continues to be unprofitable, its owners have stated their intent to remain open as long as there is a chance that a casino could be approved. Interest has also been expressed in casino/racing ventures at the other racetracks.

Horse Races at Fairs and Snowmobile Races

A county fair may be licensed to offer pari-mutuel wagering on its own horse races if the applicant has the concurrence of the county board and takes into account the competitive effects on existing racetracks. 1987 Wisconsin Act 354 also permits the state to authorize pari-mutuel on-track wagering on snowmobile racing. In December 1999, the Division of Gaming initiated an emergency administrative rule to sanction pari-mutuel wagering on snowmobile races at the World Championship Snowmobile Derby, held in Eagle River. Negative reaction by local officials prompted the division to hold a public hearing on the issue, and public

opposition resulted in withdrawal of the application for a betting license. The division subsequently repealed the emergency administrative rule, indicating it may use the normal rule promulgation procedure to lay the groundwork for wagering on snowmobile races in future years.

Constitutional and Statutory Provisions. The constitutional and statutory provisions governing racing are specified in Article IV, Section 24 (5), Wisconsin Constitution, and Chapter 562, Wisconsin Statutes.

VI. STATE LOTTERY

Origins of the Wisconsin Lottery

Lotteries date back to colonial times in America, but almost all states had abolished them by the end of the 19th century. In 1963, New Hampshire authorized the first modern state lottery. It was intended as a revenue-raiser in a state that lacked a sales or income tax and relied primarily on property taxes and “sin” taxes on alcoholic beverages and cigarettes. Since then, 37 states and the District of Columbia have adopted lotteries. Although the lotteries have not been as profitable as hoped, they raise significant amounts of money for public purposes.

The framers of the Wisconsin Constitution specifically prohibited legislative authorization of lotteries. The first attempt to constitutionally legalize lottery games was a 1939 proposal to allow the legislature to authorize lotteries to support assistance to the elderly. Later proposals in the 1940s would have permitted authorization of private lotteries. Inspired by the 1963 creation of the New Hampshire Sweepstakes, a 1965 measure proposed a state-operated Wisconsin Sweepstakes with the proceeds used for public education.

After the Illinois Lottery began operation in July 1974, proponents asserted that Wisconsin gambling dollars spent across the border should be recaptured and used for tax relief. They urged that voters should be given the chance to decide on lottery legalization. Public support was manifested in the legislature with an increasing number of bills beginning in the mid-1970s. However, many remained opposed to exploiting people’s vices to raise money for the treasury.

In April 1987, the voters ratified a constitutional amendment to create an exception to the ban on lotteries for a state-run lottery by a 739,181-to-391,942 vote. 1987 Wisconsin Act 119 created the state lottery, which began operation on September 14, 1988, with “Match 3”, an instant win scratch-off game. Among the notable features of the Wisconsin Lottery are: net proceeds must be used for property tax relief; public funds may not be used for promotional advertising; and all informational advertising must indicate the odds for winning each prize.

Defining the Scope of the Lottery

Disagreement arose as to whether the 1987 amendment was limited to a state-run lottery or permitted the legislature to legalize any form of state-operated gambling it chose, including casino-type games. The controversy revolved around whether the word “lottery” in the Wisconsin Constitution should be broadly interpreted as including all types of gambling or narrowly defined as only the types of games commonly associated with state lotteries.

In a 1990 opinion, Attorney General Donald Hanaway concluded that the term “lottery” as used in the constitution refers narrowly to lottery-style games as distinct from casino-style

games of chance such as roulette, Blackjack, and slot machines (79 OAG 14). He argued that because the constitution, as amended, prohibited lotteries other than a state-run lottery and did not specifically prohibit casino-type games, the legislature could statutorily authorize state or private casino gambling at any time. In contrast, Attorney General James Doyle stated in 1991 the traditional view that “lottery” was a broad term that included all forms of gambling (80 OAG 53). Thus, he asserted, although the 1987 amendment permitted the legislature to authorize the operation of state-run casino games as an integral part of the state lottery, it did not legalize private commercial gambling. In January 1993, the Wisconsin Supreme Court declined to rule on the scope of gambling allowed, saying the question was not yet ripe for adjudication.

Governor’s Blue Ribbon Task Force on Gambling. In October 1991, Governor Tommy Thompson, established a Blue Ribbon Task Force on Gambling to determine public opinion, assess economic benefits and social costs, and make recommendations regarding the scope and regulation of gaming. In its January 1992 final report, the task force found that there appeared to be a general acceptance of and willingness to expand legal gambling in the state.

The task force suggested authorizing four floating casinos and the legalization of video gaming machines, including video poker, at places such as taverns and racetracks, subject to approval by local voters. These games would technically be state-operated and would be linked to the state lottery computer. Supporters of this controversial proposal asserted the games would generate additional state revenue and help financially struggling taverns. The governor rejected the floating casino recommendation but included a proposal in 1991 Senate Bill 483, which was later deleted by the Joint Committee on Finance, to allow video gaming machines in establishments licensed to serve alcohol beverages.

Statutory Definition of the State Lottery. In an April 1992 special session called by the governor, the legislature limited the scope of state-operated gambling. 1991 Wisconsin Act 321 specifically stated what types of games are allowed as part of the state lottery and which are not. According to Section 565.01 (6m), Wisconsin Statutes, the state lottery is “an enterprise, including a multistate lottery in which the state participates, in which the player, by purchasing a ticket, is entitled to participate in a game of chance.” Thus, the lottery is limited to the scratch-off instant win games, pull-tabs and on-line numbers drawing games currently offered. The act also provided that five statewide nonbinding advisory referenda on the future of gambling in Wisconsin would appear on the April 6, 1993, ballot.

1993 Constitutional Amendment Limits Gambling. Governor Thompson called a special session in June 1992 to consider amending the constitution to permanently exclude casino-style gambling from inclusion in the state lottery. After considerable debate and a series of legislative hearings held around the state, the following question was presented to the voters:

Gambling expansion prohibited. Shall article IV of the constitution be revised to clarify that all forms of gambling are prohibited except bingo, raffles, pari-mutuel on-track betting and the current state-run lottery and to assure that the state will not conduct prohibited forms of gambling as part of the state-run lottery?

A coalition of eight of the state’s 11 tribes and bands offered the state a significant share of future casino revenues (up to \$250 million per year) if the amendment was shelved and the gaming compacts were renegotiated to allow a tribal consortium to build a large casino in southeastern Wisconsin. Those campaigning against the amendment included the Wisconsin Indian Gaming Association (WIGA), the Tavern League of Wisconsin, racetrack operators,

and boosters of floating casinos in port cities, such as La Crosse and Superior. Indian tribes were generally against the amendment because they feared that a constitutional provision which specifically outlawed casino-type games might jeopardize renewal of their existing gaming compacts. Taverns and others were opposed because the measure would prohibit video poker and other gambling machines they wanted. (A few of the WIGA's member tribes, notably the Oneida, believed the future of tribal casinos would be unaffected by the amendment and realized it cemented the tribal monopoly on casino-type operations.) Opponents funded an expensive advertising campaign against the amendment.

Republican Governor Thompson and Democratic Attorney General Doyle stumped for the amendment in joint appearances around the state and expressed a shared desire to restrict the expansion of gambling. The Wisconsin Conference of Churches and the Wisconsin Catholic Conference also favored passage, asserting that gambling activity had exceeded the bounds of moderation and was a threat to community values and health.

On April 6, 1993, the amendment was ratified by a vote of 623,987 to 435,180. As things now stand, state-operated or private casino-style gaming in Wisconsin would require subsequent constitutional change. The results of the advisory referenda, which also appeared on the ballot, indicated the voters' preference for maintaining the status quo regarding gambling. They voted against allowing casino gambling on excursion boats (604,289 to 465,432); against video poker and other forms of off-reservation video gambling (702,864 to 358,045); for a continuation of pari-mutuel on-track wagering on racing, such as on horses, dogs, or snowmobiles (548,580 to 507,403); and for the continuation of the state lottery (773,306 to 287,585). A fifth advisory question, asking voters if they favored a constitutional amendment that would restrict gambling casinos in the state, was made moot by the ratification of the amendment, but it passed by a vote of 646,827 to 416,722.

Proposal for a Sports Lottery. In 1996, a constitutional amendment was proposed to allow proceeds from a special state lottery game to be earmarked to help fund construction of a new stadium for the Milwaukee Brewers baseball team. Despite winning solidly in the Milwaukee metropolitan area, the rest of the state overwhelmingly voted against the plan, which was defeated by a vote of 618,000 to 348,818.

Property Tax Relief

The constitutional amendment which authorized the state lottery required that the net proceeds be used for property tax relief, as determined by the legislature. Proponents of the amendment did not promise that the lottery would substantially reduce property taxes, but they did claim that earmarking the profits would serve to moderate tax increases. Typically, about 32% of the total annual lottery proceeds are available for property tax relief.

Property Tax Credit – Court Challenge I. From September 1988 through 1991, approximately \$150 million of the lottery proceeds were applied to general school equalization aids and district attorney salaries. Additional lottery profits were used to fund the Farmland Tax Relief Credits.

Disagreement arose as to whether applying lottery monies to school aids and district attorney salaries were direct property tax relief as required by the constitution. In May 1991, then State Senator Russell Feingold, joined by eight state residents, filed a class action suit against the state on behalf of all Wisconsin property taxpayers, alleging, among other things, that lottery profits were being improperly used. On May 4, 1992, Dane County Circuit Court

Judge Michael Nowakowski ruled that using lottery profits to supplement school aids was unconstitutional. He found that the intent of the voters in ratifying the 1987 lottery amendment was to provide direct property tax relief that was “separate, different and extra” and that adding funds to existing state aid programs might or might not result in an actual dollar-for-dollar reduction of property taxes. (Responding to a companion claim, the court held it was proper to fund district attorney salaries from lottery money because this was an expense county taxpayers would otherwise have to finance through the property tax levy.) The court did not order replacement of the funds used for school aids, and the decision was not appealed by the state.

In response to the court decision, the legislature created “the lottery credit for school property tax relief” as the vehicle for direct distribution of lottery revenues (1991 Wisconsin Act 39). Owners of principal residences were eligible for a credit on their local property tax bills, related to the amount of property taxes they owed toward the local school levy. For property taxes levied in 1991 (payable in 1992), the first year of the lottery credit, about \$173 million was distributed to about 1.2 million homeowners, which included a credit supplement from lottery profits held in escrow from previous years. Credits for owner-occupied residences averaged \$142 statewide, ranging from an average of \$46 in the Niagara School District to a \$242 average in the Mellen School District.

For the 1992 levy, total credits were about \$204 million, with an average credit of \$167. The legislature had boosted the 1992 credit an additional \$21 million by deferring some lottery obligations into the following fiscal year. Disagreement over that shift led to the enactment of 1991 Wisconsin Act 323 which required that beginning in 1993 the amount of lottery credits must equal lottery profits in the previous year.

In the following years, the average total credits were: 1993 – \$105 per parcel and \$129 million in total credits, 1994 – \$110 per parcel and \$137 million total credits, and 1995 – \$125 per parcel and \$156 million in total credits. Then the lottery credit hit a major constitutional snag.

Court Challenge II. On October 29, 1996, Dane County Circuit Court Judge Angela Bartell ruled that the law providing lottery property tax credits only to owners of primary residences in Wisconsin violated the “uniformity clause” of the state constitution. The suit, brought by the Wisconsin Out-of-State Landowners Association, asserted that the clause requires that the method of taxing real property be applied uniformly to all classes of property within a taxation district. The court held that homes owned by out-of-state residents, second homes owned by Wisconsin residents, and commercial property cannot be arbitrarily excluded from the lottery property tax relief program. While appealing the ruling, the state decided not to distribute the 1996 lottery proceeds totaling approximately \$125 million. (It was estimated that the statewide average credit for homeowners would have been about \$100 that year.)

In response to the court decision, 1997 Wisconsin Act 27 created a new formula which distributed lottery proceeds to all owners of taxable parcels in the state, including those owned by nonresidents and businesses. For taxes levied in 1997, the average credit was \$77 with total credits of about \$206 million; in 1998 the average credit was about \$52 with total credits of about \$150 million.

Constitutional Amendment to Limit Credit to State Residents. A constitutional amendment ratified on April 6, 1999, by a vote of 648,903 to 105,976, created an exception to the uniformity clause by allowing lottery proceeds and moneys received by the state from bingo games and pari-mutuel on-track betting be used for property tax relief for state residents only.

The amendment did state, however, that the distribution could not vary based on the income or age of the person receiving the property tax relief. 1999 Wisconsin Act 5 implemented the Lottery and Gaming Credit for state resident homeowners only, beginning with the 1999 property tax levy. The average 1999 credit rose to \$165 with total credits of \$215 million, which reflected both the reduction in the number of eligible recipients due to exclusion of out-of-state residents and the one-time state assumption of administrative costs (described below).

Farmland Tax Relief Credit. The farmland tax relief credit, which is available to resident owners of Wisconsin farmland who meet certain agricultural requirements, is also funded from gaming revenues. Created by 1989 Wisconsin Act 31, the program allows eligible owners to claim a credit on their Wisconsin income tax forms equal to a specified percentage of the property taxes levied on their farmland up to a maximum amount. 1999 Wisconsin Act 5 requires the DOR to set the percentage annually, based on the number of expected claims and the available appropriated funds. The act sets the maximum claim at \$1,500. (Previously, the credit was equal to 10% of net property taxes up to a maximum credit of \$1,000.)

Increasing the Credit Through State Assumption of Administrative Costs. As passed by the legislature, 1999 Wisconsin Act 9 (the biennial budget) contained a provision to pay the administrative costs of the state lottery from general purpose tax dollars for the 1999-2001 biennium, thereby significantly increasing the proceeds available for property tax relief to homeowners. These costs had traditionally been covered by lottery revenues. The bill also proposed transferring general purpose revenue to the lottery fund as a retroactive “buy back” of administrative costs from prior years beginning in 1995. Based on advice of Attorney General Doyle and private legal counsel, Governor Thompson vetoed most of the plan except for a one-time infusion of \$76 million in state tax dollars to pay lottery administrative expenses.

Operation and Administration of the Wisconsin Lottery

State Administration. In order to maintain public confidence in the integrity of the lottery, the drawings are conducted under secure conditions, open to the public, and subject to scrutiny by outside auditors. Some functions of the lottery may be contracted out, but the entire operation of the lottery may not be entrusted to a private party. As with lottery employees, contracted vendors are subject to criminal background restrictions.

Over the years, the state supervision of the lottery has undergone various administrative changes. Originally, it was directed by the Lottery Board, created by 1987 Wisconsin Act 119, which was subsequently replaced by the Gaming Commission (1991 Wisconsin Act 269). 1995 Wisconsin Act 27 transferred the lottery to a new Lottery Division in the Department of Revenue, where it is headed by a division administrator who serves outside the classified service. Questions about the lottery may be directed to the division at (608) 261-8800.

Types of Games. The two categories of lottery games are instant-win games and on-line games. *Instant-win scratch-off games*, which account for 52% of total sales, allow players to scratch off latex coverings to reveal numbers or symbols. Matching a predetermined winning combination results in prizes of \$1 to \$100,000, although the typical top prize is \$5,000 or less. Odds of winning some sort of prize in these games are about 1 in 5. The lottery offers about 30 different scratch-off games at a time, with 10 to 12 new games introduced annually. In addition, if players of certain scratch-off games match three TV symbols on their tickets, they win an extra \$100 and may qualify to appear as a contestant on a weekly television show, The Money Game, where they may win additional prize amounts up to \$50,000.

Another type of instant win game is *pull-tabs*, in which partially perforated tickets are pulled apart to reveal printed numbers that may offer a winning combination. These games are commonly sold at taverns, restaurants, and bowling centers. Nonprofit organizations may also apply to sell pull-tabs at special events for fundraising purposes, receiving commission of approximately 30% of sales. Pull-tabs, which constitute about 2% of total Wisconsin Lottery sales, are inexpensive and offer prizes ranging up to \$100.

The other main category of lottery activity are the *on-line games*, in which a player chooses, or has the computer select the lottery numbers to be played. These games account for about 46% of all Wisconsin Lottery sales. Tickets bearing entry numbers are issued by a terminal electronically connected to a central lottery computer, which records the play and keeps track of all tickets sold. Random drawings are conducted with numbered balls, and prizes are awarded for matching all or some of the numbers selected. The lottery ticket serves as the only evidence of a player's participation and must be presented to collect a prize. Some games have set prize amounts. For example, there is a maximum prize of \$250,000 per ticket each day in "SuperCash". Other games have a guaranteed minimum jackpot (\$5 million for "Powerball", for example). For both of these games, if there is no jackpot winner in a particular drawing, money is rolled over to increase the amount available in subsequent drawings. Simultaneous winners divide the jackpot. On-line games that are, or have been, sold exclusively in Wisconsin include "SuperCash", "Wisconsin's Very Own Megabucks", "Daily Pick 3", and "Daily Pick 4".

Wisconsin belongs to a consortium of about 20 states and the District of Columbia that participate in the Multi-State Lottery Association's on-line lottery games of "Powerball" and "Cash 4 Life". The odds of winning the Powerball prize are approximately 80 million to one. Although the state constitution does not specifically mention multistate lotteries, Wisconsin's participation has not been challenged in court.

Sales and Payout Procedures. State law requires that at least 50% of lottery revenues be paid out in prizes to winners, and 54% was paid out in 1998-99. The law also limits administrative expenses, including retailer commissions, to no more than 10% of gross revenues (lowered from 15% by 1997 Wisconsin Act 27). The remainder of lottery revenues constitute the net proceeds designated for property tax relief. In 1998-99, a total of 33% of all lottery revenues were available to taxpayers.

Wisconsin Lottery tickets, which generally cost \$1 to \$2, are exempt from state or county sales tax. Private businesses sell the tickets under contract, but lottery sales generally may not be the outlet's exclusive business. Persons convicted of a felony or gambling-related offense cannot be lottery retailers. Retailers receive a basic commission of 5.5% on sales of on-line lottery tickets and 6.25% on the sale of instant, scratch-off, and pull-tab tickets. (Both of the basic commissions were increased from 5% in 1995 at the urging of grocers, who sell about 70% of all tickets.) Nonprofit organizations may apply to sell tickets on a temporary basis and can receive a higher rate of return. 1999 Wisconsin Act 9 authorized the Lottery Division to establish a program to provide additional compensation for retailers who meet certain sales performance goals. Bonuses are awarded for selling winning tickets with jackpots of \$600 or more (with a maximum of \$100,000 bonus per winning ticket) and meeting sales growth incentive goals. The legislature designated 1% of the State Lottery's annual gross ticket revenues as the bonus pool.

As of March 1, 2000, the state had licensed 4,274 retailers to sell lottery tickets, with the greatest number (about 700) located in Milwaukee County. (See Appendix I) Nearly 82% of the outlets are convenience stores, grocery stores, service stations, taverns, or liquor stores. Another 558 are nonprofit groups, and the remainder are restaurants, pharmacies, bowling centers, or other businesses. Of the 3,728 for-profit retailers, 83% sell both instant tickets (scratch-off and pull-tabs) and on-line games. Temporary mobile outlets may be established at special events, such as the Wisconsin State Fair and Summerfest in Milwaukee, provided the unit will not harm sales at regular retail outlets.

All Wisconsin Lottery tickets must be sold for cash at the established price, unless discounts are authorized by the state. A ticket purchaser must be 18 years of age or older, but minors can receive tickets as gifts. Winning tickets must be redeemed within 180 days of the end of a particular game. Tickets with payout values under \$600 may be redeemed at the Wisconsin Lottery offices or any on-line retailer. Prizes of \$600 and over must be redeemed by bringing the tickets or sending claim forms to the Wisconsin Lottery offices. Unclaimed prize money is ultimately used for property tax relief.

In the case of prizes exceeding \$2,000, a portion is withheld for federal and state income taxes. Winners of \$1,000 or more are identified to the Wisconsin Department of Revenue and the Department of Workforce Development to determine whether some or all of the winnings must be applied toward debts owed to the state, including delinquent taxes or unpaid child or family support payments. Large jackpots typically are paid in the form of 20- or 25-year annuities, which may be inherited, but the \$1-million jackpot for "Daily Millions" is distributed in a lump cash sum.

For the first time since the start of the lottery 1999 Wisconsin Act 9 authorizes winners of prizes that would ordinarily be paid over 10 years or more to choose a lump sum option. Those who took an annuity on or before October 21, 1998, are also given a chance to take a lump sum payment on the remainder of the prize. (A person who chooses an immediate lump sum, rather than an annuity, receives about half of the announced prize amount.) Act 9 also permits winners to petition the circuit court to use lottery prizes as security for loans or to voluntarily assign lottery prizes to other individuals or organizations. Lottery prizes may be paid to the estate of a deceased prize winner.

Revenues. From its inception in September 1988, the Wisconsin Lottery has grossed over \$5 billion in sales. The following figures show total sales by fiscal year:

1988-89	.....	\$230.4 million	1994-95	.....	\$518.9 million
1989-90	.....	\$309.6 million	1995-96	.....	\$482.1 million
1990-91	.....	\$391.4 million	1996-97	.....	\$431.1 million
1991-92	.....	\$449.1 million	1997-98	.....	\$418.5 million
1992-93	.....	\$495.1 million	1998-99	.....	\$428.3 million
1993-94	.....	\$495.5 million	1999-2000	....	\$406.3 million*

*Estimated

Appendix I contains a listing of ticket sales, by county for calendar year 1999.

Who Plays the Lottery? Studies indicate that over 60% of Wisconsin residents play the lottery, with about half playing less than once a month. About 10% of the state's population accounts for nearly 75% of ticket sales. According to an April 1995 survey by the University of Wisconsin-Madison's Institute for Research on Poverty, minorities and the poor spend a

higher proportion of their income on tickets, but about 95% of all lottery players said their lottery spending caused them no personal or family problems.

Advertising Restrictions. The Wisconsin Constitution prohibits spending state funds on promotional advertising of the state lottery. (Lottery retailers may, however, conduct promotional advertising themselves if their ads clearly indicate private sponsorship.) The state may offer informational advertising that describes the lottery; ticket prices and sales locations; prize structures; game types and playing procedures; the time, date, and place of drawings; and the identity of winners and amounts won. Creative presentation of these topics is not prohibited, but there has been controversy over the line between informational and promotional advertising. A panel, commissioned by Governor Thompson, stated in May 1991 that almost any approach used to attract consumers is bound to be both informational and promotional. In July 1991, Attorney General Doyle stated that lottery advertising sometimes violates the spirit, but not necessarily the letter, of the law. He noted that “the distinction between promotional and informational advertising can become so blurred as to be improperly vague”, and he recommended that the legislature clarify what is legal.

Constitutional and Statutory Provisions. The constitutional and statutory provisions governing the lottery are specified in Article IV, Section 24 (6), Wisconsin Constitution, and Chapter 565, Wisconsin Statutes.

VII. REGULATION OF PRIVATE AND COMMERCIAL GAMING AND LAW ENFORCEMENT

Private Gambling

“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” (Section 945.01, Wisconsin Statutes). State law provides that a person who makes a bet or participates in gambling activity, other than commercial gambling, has committed a Class B misdemeanor punishable by a fine not to exceed \$1,000 or imprisonment not to exceed 90 days, or both. (Commercial gambling penalties are described below.) Any illegal winnings are subject to forfeiture. Because private wagers are common and generally perceived to cause little harm, local law enforcement authorities rarely prosecute noncommercial betting activities, such as low-stakes poker games or office betting pools on sporting events.

Laws in effect since 1858 (Section 895.056, Wisconsin Statutes) make most gambling contracts and debts legally uncollectible (Section 895.055). Losers may also sue to recover money lost in gambling. In December 1992, the Wisconsin Court of Appeals ruled in *State v. Gonnely* (173 Wis. 2d 503) that the law still barred prosecution for insufficient funds checks at dog tracks. 1993 Wisconsin Act 174 amended the law to permit enforcement of wagering debts related to legal gambling, such as the state lottery, racing, and Indian gaming.

Penalties for Commercial Gambling

Law enforcement authorities typically raid establishments conducting for-profit gaming only in response to specific citizen complaints. Sections 945.03 and 945.05, Wisconsin Statutes, provide that participating in the earnings of or permitting the operation of a gambling place for gain, setting up machines for gambling purposes or collecting the proceeds therefrom, or

manufacturing or dealing in illegal gambling devices are Class E felonies punishable by a fine not to exceed \$10,000 or imprisonment not to exceed two years, or both. Permitting a premises to be used as a gambling place is a Class A misdemeanor under Section 945.04, with a penalty of a fine not to exceed \$10,000 or imprisonment not to exceed nine months, or both. In addition, Section 823.20 permits a gambling place to be shut down as a public nuisance.

Tavern Video Gambling Machines

The legislative response to widespread tavern gambling in the 1940s was Chapter 374, Laws of 1945. Also known as the Thomson Antigambling Law, for its sponsor, Assemblyman Vernon W. Thomson (later attorney general and governor), the law provided for the seizure and destruction of any slot machine or gambling device found in a tavern and the revocation of the establishment's alcohol beverage license. Any law enforcement official aware of illegal gambling who 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. 247 (1946), and the key elements of the law remain (Sections 945.041, 968.10, and 968.13).

The profitability of the tavern industry has been hard hit in recent years by several factors, including the raising of the drinking age from 18 to 21 and the increasing popularity of Indian tribal casinos. In an attempt to compete, many taverns have chosen to offer patrons electronic slot machines and video poker. Law enforcement officers encounter a very sensitive issue when they try to confiscate machines or prosecute tavern owners for operating games similar to those legally available at nearby tribal casinos. Efforts to legalize video gambling in taverns as part of the state lottery were precluded by the April 1993 constitutional amendment.

Prior to passage of 1999 Wisconsin Act 9, the proprietor of the video gambling machines could be charged with a felony. The new law decriminalized possession of five or fewer video gambling machines in an establishment licensed to serve alcohol beverages for consumption on the premises, such as a tavern or restaurant, by reducing the penalty to a civil offense, subject to a forfeiture of up to \$500 per machine. It also removed the threat that a tavern could have its alcohol beverage license revoked solely because of the machines. Criminal penalties are retained for exceeding the 5-machine threshold in a tavern or restaurant or having any such machine in a place other than those establishments. Act 9 did not change the law which makes it a misdemeanor crime for a patron to gamble using a video machine, and the machines remain subject to seizure.

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 only". 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, unless they are used for gambling. However, Attorney General Doyle and other opponents of the machines contend that gambling is their principal purpose, thus making them inherently against the law. Periodic raids around the state have netted many video games but have resulted in few prosecutions because authorities did not wish to overload the courts. Some district attorneys have expressed the opinion that confiscation of the expensive machines is an adequate punishment and deterrent.

VIII. OTHER GAMBLING ISSUES

Internet Gambling

An area of growing concern for state and federal law enforcement authorities is wagering via computer over the Internet. Operators, who often are based in foreign countries where the activities are legal, have set up “virtual casinos” that take bets on sporting events, conduct lotteries, and permit on-line customers to play simulated casino-type games. There is no guarantee that the sites are being managed honestly. Officials warn of increased social problems if every computer potentially can serve as a mini-casino, especially if children have access to gambling opportunities. The National Association of Attorneys General has urged the federal government to ban all on-line gambling because regulation is impractical. Wisconsin Attorney General Doyle has filed lawsuits against Internet gambling operators.

Crane Games and Other Activities Exempt from Gambling Laws

Certain activities involving chance or risk have been exempted from the gambling laws. For example, Wisconsin’s law specifically recognizes exceptions for participation in sports events and legitimate business transactions, including insurance policies, stocks, bonds, and commodities futures.

Some games involving chance have been permitted due to the amount of skill involved in playing them. Pinball machines were permitted, but a 1935 attorney general’s opinion held that they could be considered illegal gambling devices if players were awarded anything of value based on points accumulated (24 OAG 536). Chapter 91, Laws of 1979, specified, however, that the awarding of immediate free replays would be considered legal.

Crane games are coin-operated amusement devices that allow the player an opportunity to win inexpensive merchandise prizes, such as stuffed animal toys. By operating controls to manipulate a steel-clawed crane within a glass-enclosed cubicle, the player tries to pick up and win the object. 1987 Wisconsin Act 329 legalized the devices but required that skill must be the major determining element of play and only those prizes contained inside the machine could be awarded. The wholesale value of a prize may be not more than seven times the cost charged to play or \$5, whichever is less. Operators installing the games in their establishments must pay a one-time licensing fee to the state. As of August 1, 1999, about 2,100 crane games were registered in Wisconsin.

Antique Slot Machines Permitted

1999 Wisconsin Act 9 generally permits the possession or transfer of antique slot machines, defined as machines manufactured before December 31, 1974, if they are kept solely for display, restoration, and preservation purposes. These devices may not be used for gambling and may not be kept in a tavern or other place with an alcohol beverage license.

Compulsive Gambling Programs

A report published in July 1996 by the Wisconsin Policy Research Institute conservatively estimated that about 1% of adults in the state were serious problem gamblers, resulting in over \$300 million in social costs each year. Some experts estimate that as many as 5% of people who gamble become addicted.

1987 Wisconsin Act 354 created grant programs for research on, or treatment of, compulsive gambling. These were to be funded through a percentage of pari-mutuel racing revenues,

but between 1988 and 1991 the revenues were insufficient to award any grants. Funding for treatment and research was repealed by 1991 Wisconsin Act 269.

1997 Wisconsin Act 27 appropriated \$100,000 annually from tribal gaming payments, pari-mutuel racing revenues, and lottery revenues to the Department of Health and Family Services for grants to individuals or organizations in the private sector to conduct compulsive gambling awareness campaigns. 1999 Wisconsin Act 9 increased the annual appropriation to \$186,000 in the 1999-2001 biennium, with the entire amount financed from Indian casino profits.

IX. INDIAN GAMING

Federal Law and Indian Gaming

The Indian gaming casinos provide significant revenues for historically impoverished Native Americans. Under federal statutory law and compacts negotiated between the state and the tribes, Wisconsin's 11 Indian tribes or bands currently operate 16 major casinos throughout the state, which offer Blackjack, electronic gambling machines, and pull-tabs.

Indian tribes are considered self-governing, domestic, dependent nations that retain many attributes of sovereignty in the regulation of internal affairs on tribal lands. State and local governments cannot interfere with on-reservation rights granted by federal treaties or laws, including those related to hunting, fishing, and gambling. Tribal members hold dual tribal-U.S. citizenship and are exempt from state income taxes and local property taxes if they live and work on the reservation. Tribal enterprises located on reservation land, such as casinos or other for-profit businesses, are also exempt from state and local taxes. Some tribes, however, voluntarily enter into agreements to reimburse municipalities for government services, such as police and fire protection and road construction and maintenance.

The U.S. Constitution gives Congress the power to regulate commerce with the Indian tribes. Historically, this has generally precluded states from exercising jurisdiction over Indian matters unless federal law specifically grants the state such jurisdiction. Federal law (Public Law 83-280) currently grants some states, including Wisconsin, broad jurisdiction over criminal offenses committed by or against Indians on tribal lands. Under P.L. 280, if a state generally outlaws an activity and makes violations punishable with criminal penalties, then the state law is "criminal-prohibitory" and enforceable on the reservation. However, if the state permits an activity, even though it is limited by certain regulations or conditions, the law is considered "civil-regulatory", and the state may not prevent the tribe from conducting similar activity on Indian lands.

In 1981, the Oneida Tribe in Wisconsin was threatened with enforcement action by the Brown County Sheriff because it conducted unlicensed games which exceeded the prize limits set by the state's charitable bingo statutes. Federal Judge Barbara Crabb ruled in *Oneida Tribe of Indians of Wisconsin v. State of Wisconsin*, 518 F. Supp. 712 (W.D. Wis. 1981), that, once the state legalized bingo, it lost its regulatory jurisdiction under P.L. 280 on the Oneida Reservation. She observed that:

[T]he Wisconsin legislature and the general populace, as evidenced by the constitutional amendment of 1973, have determined that bingo playing is generally beneficial and have "chosen to regulate rather than prohibit." Thus, it appears that Wisconsin's bingo laws are civil-regulatory and . . . not enforceable by the state in Indian country.

Bingo games on tribal land began to proliferate across the country in states that had bingo after 1982, when the U.S. Supreme Court let stand a federal appellate court decision in *Seminole Tribe of Florida v. Butterworth*, 658 F.2d 310 (5th Cir. 1981); cert. denied, 455 U.S. 1021 (1982). The appellate court held that Florida had no jurisdiction under its P.L. 280 powers to regulate bingo games on reservations if the game was legal elsewhere in the state.

In a pivotal 1987 case, *California v. Cabazon Band of Mission Indians*, 480 U.S. 202 (1987), the U.S. Supreme Court explicitly affirmed the criminal-prohibitory/civil-regulatory test. California law allowed gambling at card clubs and permitted charitable organizations to conduct bingo games. The state sought to apply restrictive regulations, including jackpot limits, to card and bingo games conducted by the Cabazon Band on their Riverside County reservation. The Court agreed with the lower court that the state and county lacked authority to enforce gambling laws on the reservation, because California permitted card games, bingo, betting on horse races, and the state-operated California Lottery. Because the state permitted these types of gambling, the Court reasoned that the gambling laws were regulatory rather than prohibitory. The Court did not, however, specifically define what amount or types of gambling was sufficient to characterize a state's public policy as regulatory, rather than prohibitive.

Indian Gaming Regulatory Act. Partly in response to the decision in *Cabazon*, Congress enacted Public Law 100-497, titled the "Indian Gaming Regulatory Act" (IGRA), on October 17, 1988. IGRA was the culmination of years of efforts to forge a workable compromise among the states, federal agencies, and the sovereign tribes regarding Indian gaming. The stated purpose of the law is to promote tribal economic development and employment, tribal self-sufficiency, and strong sovereign tribal governments. Employment and revenue from tribal gaming enterprises was seen as an effective way to raise the standards of living on historically poverty-stricken reservations. IGRA established the National Indian Gaming Commission to regulate and oversee Indian gaming operations, maintain the fairness and honesty of tribal gaming, and keep gaming free of the influence of criminal elements. Congress intended that existing state gaming regulatory systems be used to the extent possible in order to satisfy the law enforcement concerns of all parties. The key component of the law was the requirement that states and tribes enter into compacts to regulate reservation gaming.

IGRA generally provides that tribes may conduct gambling activities on Indian lands or certain lands taken into trust for the tribe after October 17, 1988, if such activities are permitted by the laws of the state in which the Indian lands are located. The act divides gambling into three classes, but only Class III games are regulated by compact:

Class I games are social games played solely for prizes of minimal value or traditional forms of Indian gaming played in connection with tribal ceremonies or celebrations. Class I gaming is totally under the control of the tribes and is not regulated by outside agencies.

Class II includes bingo or bingo-type games, pull-tabs and punch-boards, and certain non-banking card games, such as poker. (A nonbanking game is one in which players compete against one another as opposed to playing against the house.) If bingo or any other Class II game is permitted by a state's law, then tribes within a state may conduct similar games and may set prize amounts above those specified in state statutes.

Class III covers all other forms of gaming, including (but not limited to): 1) any house banking game, such as Blackjack (also known as "21"), or baccarat, and other casino games, such as roulette, craps, and keno; 2) slot machines and electronic or electromechanical facsimi-

les of any game of chance; 3) any sports betting and pari-mutuel wagering, including (but not limited to) wagering on horse racing, dog racing, or jai alai; and 4) lotteries, including raffles.

Regulation of Wisconsin Casino Gaming Through Tribal Compacts

In Wisconsin, controversy arose over the question of whether casino-type games were permitted by state law and whether the games should be included in state-tribal gaming compact negotiations. Federal courts have tended to be permissive, generally ruling that tribes located in a state that allows one or more forms of Class III gaming may conduct *any* type of Class III gaming and are not limited to the exact games played in that state. The issue was further complicated in Wisconsin because some interpreted the 1987 state lottery amendment as permitting statutory authorization of state-operated casino games.

By late 1989, Attorney General Hanaway, who had been designated as the state's negotiator by Governor Thompson, reached tentative agreements with several tribes that would have allowed certain casino games. The compacts were awaiting gubernatorial and tribal approval in 1990 when Hanaway issued an opinion putting the process on hold (79 OAG 14). He said that casino gambling, while not constitutionally prohibited, was illegal under criminal statutes, thus making such games ineligible for consideration in compact talks. He indicated in his opinion that the legislature could amend the statutes to legalize casino games for non-Indians and thus make them appropriate for inclusion in tribal-state gaming compacts.

Some Wisconsin tribes had already opened casinos in anticipation of completing the compacts. The Lac du Flambeau and Sokaogon (Mole Lake) Chippewa bands filed suit in federal court, alleging the state failed to bargain in good faith. Judge Crabb held in *Lac du Flambeau Band of Lake Superior Chippewa Indians v. Wisconsin*, 743 F. Supp. 645 (W.D. Wis. 1990), that tribes could not operate casinos without signed agreements. However, she held, only federal officers have enforcement authority over illegal Indian casinos.

Hanaway's successor took a different view. Attorney General Doyle concluded in a 1991 opinion that "lottery", as used in the original constitution, must be broadly interpreted to include all games in which a person pays for a chance to win a prize (80 OAG 53). Because "lottery" meant "gambling", he reasoned that the 1987 constitutional amendment that authorized the legislature to create a state "lottery" also removed any constitutional prohibition against state-operated games of chance, including casino gambling.

On June 18, 1991, in a second case, *Lac du Flambeau Band v. Wisconsin*, 770 F. Supp. 480 (W.D. Wis. 1991), Judge Crabb, citing Attorney General Doyle's broad interpretation of the word "lottery", ruled that since the state constitution did not prohibit the legislature from authorizing state-operated casino games and since Wisconsin permitted a substantial level of Class III gambling, Indian tribes in Wisconsin could conduct casino games under a state-tribal gaming compact. Judge Crabb found Wisconsin gaming laws to be regulatory rather than prohibitory in nature because the state permitted bingo and pari-mutuel racing and also conducted a lottery. She ordered the state to consider casino games "on the table" in compact negotiations and directed it to reach agreement with the tribes within the 60-day period required under IGRA. Judge Frank Easterbrook of the Seventh Circuit Federal Court of Appeals in Chicago dismissed the state's appeal of the case in March 1992 on procedural grounds.

A March 1996 decision by the U.S. Supreme Court introduced uncertainty into the process for initiating or renewing gaming compacts by invalidating the provisions of IGRA that allowed a tribe to sue in federal court if a state failed to negotiate in good faith. In *Seminole*

Tribe v. Florida (116 S. Ct. 1114), the court ruled that the Eleventh Amendment to the U.S. Constitution prevents Congress from authorizing tribes to bring suit in federal court against sovereign states for violation of IGRA's good faith negotiation requirement.

The governor is authorized to enter into gaming compacts on behalf of the state by 1989 Wisconsin Act 196, which contained no provision for legislative review or approval of negotiated agreements. By June 1992, after receiving required approval by the U.S. Secretary of the Interior, Wisconsin had concluded 7-year gaming compacts with all 11 of the state's Indian tribes and bands. Under IGRA, compacts are extended automatically for 5-year periods unless either party gives formal notice of intention to nonrenew at least six months prior to expiration. All compacts were renewed in 1998 and 1999 for 5-year terms.

The first of the compacts, the August 1991 agreement with the Lac Courte Oreilles Chippewa, set the basic pattern for those that followed. Tribes are authorized to conduct the following Class III games: 1) Blackjack; 2) electronic games of chance with video facsimile displays (video poker and other video slot machines); 3) electronic games of chance with mechanical displays (i.e., electronic slot machines); and 4) pull-tabs when not played at the same location where bingo is being played. If any tribe is subsequently permitted to operate additional types of games, the others may also request the right to operate those games.

Elements of State-Tribal Gaming Compacts. Each tribe is generally limited to two full-scale casinos, offering Blackjack along with electronic games and pulltabs. It is also common for bingo (a Class II game that the state cannot regulate) to be offered at casino locations. With certain exceptions, tribes are not limited as to the number of additional locations on the reservation at which they may offer electronic games. Establishment of casinos on off-reservation lands requires the consent of the governor and the U.S. Secretary of the Interior, as well as approval from the affected counties and municipalities and nearby tribes.

The minimum age for casino patrons was raised from 18 to 21 years-of-age when the compacts were renewed in 1998-99. All play must be on a cash basis. The maximum wager on a Blackjack hand is \$200 before any double-downs or splits, and Blackjack may not be played for more than 18 hours per day at any location. No more than \$5 may be wagered at a time on any slot/video gaming machine. Over a period of time, the payout on a machine that is not affected by player skill must fall between a minimum of 80% and a maximum of 100% of the amounts wagered. Electronic games of chance in which outcomes may be affected by player skill, such as video poker, must have average payout rate of at least 83%.

Tribes are required to withhold certain amounts from winnings for federal and state income taxes, but out-of-state residents or tribal members who live on reservation land are exempt from Wisconsin state income tax withholding.

Payments to the State. Although federal law does not permit a state or municipal government to tax sovereign tribes, the Bureau of Indian Affairs has approved certain payments to the state by the Wisconsin tribes as reasonable compensation to preserve the exclusive right of the tribes to conduct Class III gaming within the state. In the original compacts, the tribes agreed to pay the state a combined annual licensing fee of \$350,000, prorated among the tribes. This payment, which is used to cover regulatory costs, remains in effect. In addition under the amended 5-year agreements, the tribes will pay in excess of \$120 million over the life of the compacts for the exclusive right to operate Blackjack and gambling machines in the state. If state law is subsequently changed to permit the operation of Blackjack or gambling machines by the State Lottery or any other person, the tribes are relieved of their obligation to make these

payments. The newly added payments figure out to approximately 7.9% of the casino's net profits, the current rate at which the state taxes corporate income.

It is projected the state will receive payments averaging \$23.7 million annually in the five fiscal years, beginning on July 1, 1999, although there will be some variance in the schedule due to the timing of compact renewals. Confidentiality provisions in the compacts stipulate that the state may not publicly disclose the tribal financial information it receives, but it has been estimated that statewide the tribes realize total casino profits of about \$300 million per year.

Use of Tribal Gaming Payments. All but two of the 11 renewed compacts (the exceptions being Lac du Flambeau Chippewa and Ho-Chunk) contain a memorandum of understanding stating that the governor will "undertake reasonable action to assure" that the tribal gaming payments are spent on: 1) economic development initiatives to benefit tribes and/or American Indians within Wisconsin; 2) economic development initiatives in regions around casinos; and 3) promotion of tourism within the State of Wisconsin. Other objectives included in some of the memoranda are support of programs and services of the county in which the tribe is located and law enforcement or public safety initiatives on the reservation.

Although most of the gaming payments are deposited in the state's general fund, 1999 Wisconsin Act 9 approved an expenditure from the gaming revenues of about \$4 million annually in 1999-2001 for tourism marketing. A biennial appropriation of \$6.4 million will be designated for economic development grants and loans aimed at assisting businesses negatively affected by the existence of a casino. An additional \$2.5 million was designated in 2000-01 for a grants and loans program to promote gaming economic diversification through business projects that retain or increase jobs, provide significant capital investment, and contribute to a community's economic diversity. Both grant and loan programs require at least 25% in matching funds from the business that receives the aid.

Casino Regulation. The Bureau of Indian Gaming in DOA's Division of Gaming regulates and audits tribal gaming activities; certifies contractors that provide gaming machinery and supplies; conducts background investigations of certain employees; and recommends prosecution of criminal violations of state gambling laws that occur on tribal lands. It also assists the governor in negotiating tribal-state gaming compacts. In addition to the compacts, its regulatory responsibilities are specified in Chapter 569, Wisconsin Statutes. Regulatory costs are covered by the annual licensing fee. For questions about Indian Gaming, call the bureau at (608) 270-2555.

While compliance is voluntary, tribal casinos generally operate in conformance with state and federal worker protection laws, including unemployment insurance, worker's compensation, overtime pay, minimum wages, harassment and discrimination, and collective bargaining. Tribes must retain full ownership of their gaming facilities, but may hire outsiders to finance, construct, and manage them. Management fees are limited by federal law. Most Wisconsin tribes now manage their own gaming operations. As sovereign entities, tribes may not be sued against their will under the doctrine of "sovereign immunity".

Municipal Service Agreements. All of the compacts, as renewed in 1998 and 1999, require tribes to enter into agreements with counties and municipalities to reimburse local governments for services provided to the Class III gaming facilities. Federal law does not allow counties, cities, villages, or towns to impose property taxes on tribes, but the U.S. Department of the Interior permits tribes to make payments to localities for services, such as

police, fire, and emergency medical protection; street construction and maintenance; and sanitation.

Tribal Revenue Sharing and Intergovernmental Cooperation. All tribes, except the Ho-Chunk, agreed to work toward the development of an intertribal revenue-sharing plan that would direct money from tribes with the highest gaming revenues to those with less profitable casino operations (particularly those in the less-populated northern part of the state). The revenue-sharing arrangement, which was supposed to have been in place by February 1999, has not yet been implemented. However, since July 1998, the Potawatomi Tribe has been voluntarily making contributions of over \$50,000 per month to the Red Cliff Band of Chippewa. The Ho-Chunk agreed to try to establish a revolving loan fund for tribal economic development to aid less-fortunate tribes.

All renewed compacts, except the Ho-Chunk's, contained a memorandum of understanding that expressed a desire for the tribes and the state to meet on a regular basis to address government-to-government issues of mutual concern.

Expansion of Gaming to Other Tribal Lands

Generally, Class III gaming may not be conducted on trust lands acquired after October 17, 1988, unless the land was adjacent to the boundaries of the reservation as they existed on that date. However, subject to approval by the governor, gaming on newly acquired land that is noncontiguous to a reservation may be authorized by the Secretary of the Interior, provided it is deemed in the best interest of the tribe and not detrimental to the surrounding community or nearby tribal gaming operations. There is no appeals procedure if the governor withholds consent, and Governor Thompson has stated that he will not consider off-reservation locations without the approval of the affected county and municipalities. He has also said that an existing on-reservation casino must be closed in order for an off-reservation casino to be opened. Numerous proposals for off-reservation casinos have been floated in recent years, particularly by the Lac du Flambeau band of Chippewa, which is seeking a gambling enterprise in the heavily populated southeastern portion of the state. Other tribes have proposed establishing casinos at greyhound racetracks.

Gaming Benefits for Tribes

According to the Wisconsin Indian Gaming Association (WIGA), an organization representing the 11 Wisconsin tribes and bands, tribal gaming enterprises in Wisconsin directly provide over 10,000 jobs with an annual payroll of more than \$160 million. In accordance with the IGRA requirement to use gaming profits to promote "community objectives", proceeds are used to fund social welfare programs, tribal government, schools, higher education scholarships, medical facilities, day-care centers, housing, business development, roads and other infrastructure improvements, and direct payments to members. Tribal officials also cite sociological benefits, such as increased optimism and self-esteem and a decline in domestic violence, alcoholism, and welfare dependency. Gaming operations generate millions of dollars in revenues for state and local government from income and sales taxes paid by employees (many of whom are nontribal members) and suppliers and increased tourist spending at nearby businesses.

Individual Tribal Gaming Compacts

Lac Courte Oreilles Band of Lake Superior Chippewa. LCO Casino – Hayward (Sawyer County). Original 7-year compact was signed August 16, 1991. It was renewed for five years,

beginning August 16, 1998. Annual payment to the state is \$420,000, supplemented by \$4,200 for every percentage-point increase in net winnings above the prior base year.

Sokaogon (Mole Lake) Chippewa Community. Regency Casino – Crandon (Forest County). Original 7-year compact was signed August 22, 1991. It was renewed for five years, beginning August 22, 1998. Annual payment to the state is \$258,000, supplemented by \$2,580 for every percentage-point increase in net winnings above prior base year.

Oneida Tribe. Oneida Bingo and Casino – Green Bay (Brown County). Original 7-year compact was signed November 8, 1991. It was renewed for five years, beginning November 8, 1998. Annual payment to the state is \$5,400,000, reduced by \$550,000 in recognition of existing municipal service agreements, for a net payment of \$4,850,000. Electronic games, installed at the tribe's One Stop Convenience Stores, are limited to not more than four locations on tribal land.

Red Cliff Band of Lake Superior Chippewa. Isle Vista Casino – Red Cliff (Bayfield County). Original 7-year compact was signed December 12, 1991. It was renewed for five years, beginning January 15, 1999. Annual payment to the state is \$64,685. However, if the tribe's net win is less than \$3 million in any year, the tribe may petition the state to reduce the payment. Prolonged negotiations over the terms of the amended compact regarding types of games to be played and the amounts to be paid to the state delayed renewal of the agreement. The impasse prompted the state to threaten federal court action to shut down gambling conducted without the existence of a compact.

Bad River Band of Lake Superior Chippewa. Bad River Casino – Odanah (Ashland County). Original compact was signed December 12, 1991. It was renewed for five years, beginning December 12, 1998. Annual payment to the state is \$230,000.

St. Croix Band of Lake Superior Chippewa. St. Croix Casino and Hotel – Turtle Lake (Baron County) and Hole in the Wall Casino – Danbury (Burnett County). Original compact was signed December 19, 1991. It was renewed for five years, beginning December 19, 1998. Annual payment to the state is \$2,191,000. In addition to its major casinos, the tribe is limited to operating electronic games at no more than one other location, currently the Little Turtle Hertel Express store.

Stockbridge-Munsee Community. Mohican North Star Casino – Bowler (Shawano County). Original compact was signed February 13, 1992. It was renewed for five years, beginning February 13, 1999. Annual payment to the state is \$650,000.

Lac du Flambeau Band of Lake Superior Chippewa. Lake of the Torches Casino – Lac du Flambeau (Vilas County). Original compact was selected by court-appointed mediator from state and tribal final proposals on March 23, 1992. It was renewed for five years, beginning July 1, 1999. Negotiations leading to the initial compact reached an impasse chiefly over the tribe's desire to offer additional casino-style games and its contention that criminal jurisdiction over gaming operations should be in federal rather than state hands. The state's proposal, similar to other compacts previously agreed to, was selected.

The amended compact restricts the tribe to offering electronic games at only one other location on the reservation in addition to the current facility. However, the renewed compact contained specific language regarding the possible establishment of an off-reservation casino. It requires the tribe to first obtain approval from the county and, if applicable, the city in which a proposed casino would be located. Second, it would need to gain the approval of the Secre-

tary of the Interior. Then, the state would enter into negotiations regarding whether to approve Class III gaming at the site, which must be tribally-owned and placed into trust status. If the off-reservation location is approved, compact negotiations would begin.

Forest County Potawatomi Community. Northern Lights Casino – near Carter (Forest County) and Potawatomi Bingo Casino – City of Milwaukee (Milwaukee County). Original compact was signed June 3, 1992. It was renewed for five years, beginning June 2, 1999. Annual payment to the state is \$6,375,000. In addition to the major casinos, the tribe is limited to offering electronic games, with a maximum of 50 machines, at one other reservation location, currently the Potawatomi Convenience Store Smokeshop in Carter. Annual payment to the City of Milwaukee is 1.5% of net win or \$3.38 million, whichever is greater. Annual payment to Milwaukee County is 1.5% of net win or \$3.24 million, whichever is greater.

The tribe bought land which was formerly a college in Milwaukee's Menomonee Valley, placed it in trust status, and, pursuant to a 1990 agreement with the city, established a high-stakes bingo operation. In June 1992, with the encouragement of the U.S. Department of the Interior, the state approved a gaming compact which authorized 200 slot/video gaming machines on the site but excluded Blackjack. City officials contended that its agreement with the tribe, which only permitted the opening of the bingo hall, required further city approval prior to instituting casino gaming. In September 1993, Federal District Judge Crabb ruled that the tribe may operate a casino in accordance with the compact reached with the state. Legal appeals by the city were unsuccessful.

The amended compact raised the limit to 1,000 gaming machines at the Milwaukee casino and authorizes 25 Blackjack tables, both contingent upon approval from the City of Milwaukee and Milwaukee County. Resolutions of support from the city council and county board were received in March 1999. In addition to the payments to the local governments, the agreement included: 1) an annual payment of \$26.8 million to support the Indian Community School in Milwaukee, which is open to all Indian children; 2) a tribal pledge to make an annual voluntary charitable contribution of \$3 million, distributed through the tribe's foundation to promote job training and youth development, business development and charitable activities, with a minimum of \$2 million earmarked for neighborhoods with very low and low-income residents; 3) a tribal commitment to efforts to hire low-income Milwaukee residents for employment at the casino; and 4) a 25% goal for use of disadvantaged business enterprises for construction, service, and supply contracts related to the expansion of the casino.

Menominee Tribe. Menominee Nation and Crystal Palace Casinos – Keshena (Menominee County). Original compact was signed June 3, 1992. It was renewed for five years, beginning September 3, 1999. Annual payment to the state is \$747,371, supplemented by \$7,437 for every percentage-point increase in net winnings above the prior base year. The tribe is limited to operating electronic games to one other location in addition to its two facilities in Keshena.

Ho-Chunk (formerly Winnebago) Tribe. Ho-Chunk Casino – Lake Delton (Sauk County); Majestic Pines Casino – Black River Falls (Jackson County); and Rainbow Casino – Nekoosa (Wood County). Original 7-year compact was signed June 11, 1992. It was renewed for five years, beginning June 11, 1999. Annual payments to the state are \$6,500,000 in the first year, \$7,500,000 in the second and third years, and \$8,000,000 in the fourth and fifth years of the compact. The tribe is authorized to operate major casinos on its land in Sauk, Jackson, and Wood Counties. In addition, it may operate two ancillary facilities in Jackson County, with 15 electronic games each, at establishments whose primary business purpose is not gaming. One

similar ancillary facility is permitted in Sauk County. The amended compact also contained a memorandum of understanding whereby the parties agreed to cooperate and consult regarding the ultimate disposition of the Badger Army Ammunition Plant, an inactive federal facility located within the traditional Ho-Chunk tribal homeland.

The compact allows the tribe to operate a fourth major casino if it reaches agreement with the state on a location. The tribe has long expressed a desire to operate a full-fledged casino on its trust land on Madison's southeast side in Dane County, where it opened the De Jope Bingo Hall in July 1999. Thus far, the governor has been reluctant to give approval due to opposition from local elected officials who have expressed concern over the potential for increased crime and social problems. In June 1993, Federal Judge Crabb ruled the tribe is bound by the compact's gambling location restrictions, meaning that the governor must approve amendment of the state-tribal agreement before casino gambling could occur at the De Jope facility. In November 1999, the National Indian Gaming Commission concurred with the state's contention that certain electronic video games being operated at De Jope were actually Class III casino-type machines, rather than acceptable Class II bingo games. (State regulators had threatened federal court action in order to stop the use of the illegal machines and to withhold approval of the tribe's proposed purchase of the Geneva Lakes Greyhound Track in Delavan.) Since then, the state and federal governments have approved the modifications the tribe made to the machines to bring them into conformity with the requirements of the compact.

X. APPENDIX I

**Wisconsin Lottery Retailers and Estimated 1999 Sales, by County
March 1, 2000**

County	No. of Retailers	Instant Sales	On-line Sales	Pull-Tab Sales	Total Sales
Adams	18	\$861,600	\$472,778	\$26,846	\$1,361,224
Ashland	19	597,500	393,900	17,306	1,008,706
Barron	40	1,790,000	881,044	24,560	2,695,604
Bayfield	16	361,700	244,809	16,290	622,799
Brown	132	4,420,600	3,479,045	46,256	7,945,901
Buffalo	22	516,700	302,655	69,572	888,927
Burnett	16	347,000	290,395	20,472	657,867
Calumet	30	1,350,100	866,713	51,712	2,268,525
Chippewa	52	2,592,300	1,098,746	50,640	3,741,686
Clark	24	1,098,700	428,503	2,332	1,529,535
Columbia	51	2,134,400	1,325,693	20,600	3,480,693
Crawford	20	1,093,600	382,210	---	1,475,810
Dane	197	10,432,900	8,338,070	133,596	18,904,566
Dodge	75	4,103,700	2,160,777	115,782	6,380,259
Door	33	1,229,400	764,577	24,346	2,018,323
Douglas	57	1,856,900	1,164,529	176,782	3,198,211
Dunn	29	1,179,300	560,735	9,772	1,749,807
Eau Claire	80	3,384,300	1,836,010	229,564	5,449,874
Florence	8	191,900	90,205	1,552	283,657
Fond du Lac	93	5,626,300	3,354,152	110,658	9,091,110
Forest	12	308,800	179,582	---	488,382
Grant	43	1,716,600	810,215	9,856	2,536,671
Green	24	1,777,500	838,097	32,328	2,647,925
Green Lake	27	1,040,900	593,107	7,022	1,641,029
Iowa	25	786,300	354,406	6,020	1,146,726
Iron	15	418,500	313,358	1,940	733,798
Jackson	27	1,023,500	421,721	4,268	1,449,489
Jefferson	50	2,854,500	2,047,262	35,680	4,937,442
Juneau	29	1,270,700	739,031	12,880	2,022,611
Kenosha	119	7,509,900	7,689,435	120,260	15,319,595
Kewaunee	19	592,000	259,553	12,044	863,597
La Crosse	68	5,228,600	2,474,452	21,092	7,724,144
Lafayette	19	692,000	309,860	3,854	1,005,714
Langlade	25	961,800	570,819	9,424	1,542,043
Lincoln	29	1,578,800	768,181	20,636	2,367,617
Manitowoc	81	5,125,500	2,092,316	188,818	7,406,634
Marathon	102	4,245,300	2,626,588	85,672	6,957,560
Marinette	50	2,677,900	1,238,449	57,380	3,973,729
Marquette	23	749,500	389,840	13,628	1,152,968
Menomonee	1	16,800	9,567	---	26,367
Milwaukee	699	44,297,400	40,821,228	402,612	85,521,240
Monroe	40	1,840,500	974,025	19,272	2,833,797
Oconto	33	1,341,300	629,541	392	1,971,233
Oneida	50	1,456,000	1,169,742	48,656	2,674,398
Outagamie	98	4,309,100	3,010,196	33,102	7,352,398
Ozaukee	48	2,539,500	2,104,455	15,580	4,659,535

**Wisconsin Lottery Retailers and Estimated 1999 Sales, by County
March 1, 2000-Continued**

County	No. of Retailers	Instant Sales	On-line Sales	Pull-Tab Sales	Total Sales
Pepin	7	205,300	126,061	33,780	365,141
Pierce	25	525,800	551,717	5,768	1,083,285
Polk	38	1,139,900	787,255	44,324	1,971,479
Portage	56	1,996,300	2,100,018	84,206	4,180,524
Price	19	675,000	415,442	1,168	1,091,610
Racine	161	11,361,400	7,879,634	134,472	19,375,506
Richland	17	884,900	295,316	38,638	1,218,854
Rock	111	8,631,100	5,366,266	82,802	14,080,168
Rusk	22	1,017,000	339,891	6,688	1,363,579
St. Croix	60	1,682,300	1,895,130	56,920	3,634,350
Sauk	51	2,640,900	1,409,035	26,308	4,076,243
Sawyer	23	503,600	454,624	30,466	988,690
Shawano	42	1,209,100	719,843	31,976	1,960,919
Sheboygan	99	5,317,600	3,083,167	359,552	8,760,319
Taylor	14	878,400	327,304	3,980	1,209,684
Trempealeau ..	40	1,558,800	624,482	13,780	2,197,062
Vernon	19	946,100	488,702	14,748	1,449,550
Vilas	31	590,000	790,001	21,864	1,401,865
Walworth	66	3,286,400	3,078,275	23,092	6,387,767
Washburn	21	569,800	445,226	24,154	1,039,180
Washington ...	82	4,442,000	3,198,044	81,806	7,721,850
Waukesha	231	12,045,900	10,723,598	108,328	22,877,826
Waupaca	50	2,237,500	1,029,442	14,100	3,281,042
Waushara	30	1,347,000	682,711	8,536	2,038,247
Winnebago	133	6,533,800	3,390,128	263,964	10,187,892
Wood	58	3,126,700	2,196,215	46,444	5,369,359
TOTALS	4,274	\$216,880,700	\$154,268,082	\$3,872,918	\$375,021,700

Source: Wisconsin Department of Revenue, Division of Lottery.

XI. APPENDIX II

Gaming Sites in Wisconsin



Key

Casinos ♠:

1. Isle Vista Casino
2. Bad River Casino
3. Hole in the Wall Casino
4. LCO Casino
5. Lake of the Torches Casino
6. St. Croix Casino and Hotel
7. Regency Casino
8. Northern Lights Casino
9. Mohican North Star Casino
10. Menominee Nation Casino
11. Crystal Palace Casino
12. Majestic Pines Casino
13. Rainbow Casino
14. Oneida Bingo and Casino
15. Ho-Chunk Casino
16. Potawatomi Bingo Casino

Bingo Facility ●:

17. De Jope Bingo and Entertainment

Greyhound Racetracks ♠:

18. St. Croix Meadows
19. Geneva Lakes Kennel Club
20. Dairyland Greyhound Park