



## 1999 SENATE BILL 100

March 25, 1999 - Introduced by Senators GEORGE, BRESKE and HUELSMAN, cosponsored by Representatives PLALE, MUSSER, KAUFERT, ALBERS, STASKUNAS, RILEY and GROTHMAN. Referred to Committee on Judiciary and Consumer Affairs.

1     **AN ACT** *to amend* 945.03 (intro.); and *to create* 945.01 (5m) and 945.035 of the  
2             statutes; **relating to:** an affirmative defense that mitigates certain commercial  
3             gambling offenses.

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### *Analysis by the Legislative Reference Bureau*

Under current law, a lottery is defined as a type of gambling in which persons are given an opportunity to win a prize and the award of the prize is determined by chance, even though the winning of the award may be accompanied by some skill. A person may participate in the chance to win a lottery prize only by first giving some sort of consideration, which is generally anything of commercial or financial advantage to the promoter of the lottery or a disadvantage to any participant in the lottery. Current law excludes from the definition of lottery an authorized bingo game or raffle, authorized pari-mutuel wagering, the state lottery or any authorized multijurisdictional lottery.

Current law prohibits a person from conducting a lottery. Generally, a person who violates this prohibition is guilty of simple gambling and may be fined not more than \$1,000 or imprisoned for not more than 90 days or both. However, current law provides greater penalties for a person who conducts a lottery where both the consideration and the prize are money. A person who conducts one of these lotteries is guilty of commercial gambling and may be fined not more than \$10,000 or imprisoned for not more than two years or both, if the offense occurs before December 31, 1999, or may be fined not more than \$10,000 or imprisoned for not more than five years or both, if the offense occurs on or after December 31, 1999.

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This bill creates a defense for a person who is charged with commercial gambling because he or she was conducting a lottery where both the prize and the consideration are money. Under the defense created by the bill, if the lottery being conducted by the person was an office pool and the person had conducted five or fewer office pools during the preceding 12-month period, the person is guilty of simple gambling rather than commercial gambling and is thus subject to the penalties for simple gambling instead of commercial gambling.

For a lottery to be considered an office pool under the bill, all of the following must apply to the lottery: 1) the participants must all be employed by the same employer; 2) the amount of consideration that a person gives to participate cannot exceed \$10; 3) the prize must consist only of the money collected as consideration by other participants; 4) the prize must be awarded based on the results of a sporting event or a series of sporting events; and 5) the person conducting the lottery must be a participant and may not conduct the lottery for gain (apart from the opportunity to win the prize himself or herself).

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***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

1           **SECTION 1.** 945.01 (5m) of the statutes is created to read:

2           **945.01 (5m) OFFICE POOL.** An office pool is a lottery to which all of the following  
3 apply:

4           (a) All of the participants of the lottery are employed by the same employer.

5           (b) For an opportunity to win a prize, a participant of the lottery provides  
6 consideration of an amount of money not exceeding \$10.

7           (c) The prize awarded to a winning participant is all or any portion of the money  
8 provided by the participants as consideration.

9           (d) A prize is awarded based on the results of a sporting event or a series of  
10 related sporting events.

11           (e) The person conducting the lottery is a participant in the lottery and does not  
12 conduct the lottery for gain. For purposes of this paragraph, a person does not  
13 conduct a lottery for gain if he or she is awarded a prize as a result of being a  
14 participant in the lottery.

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1           **SECTION 2.** 945.03 (intro.) of the statutes is amended to read:

2           **945.03 Commercial gambling.** (intro.) ~~Whoever~~ Except as provided in s.  
3           945.035, whoever intentionally does any of the following is engaged in commercial  
4           gambling and is guilty of a Class E felony:

5           **SECTION 3.** 945.035 of the statutes is created to read:

6           **945.035 Commercial gambling; mitigating affirmative defense. (1)** It  
7           is an affirmative defense to a prosecution for a violation of s. 945.03 (4) if the lottery  
8           being conducted was an office pool and if the defendant conducted 5 or fewer office  
9           pools during the 12-month period immediately preceding the date of the violation  
10          for which the defendant is being prosecuted. For purposes of calculating the time  
11          period under this subsection, the date on which a lottery is conducted is the date on  
12          which the prize is awarded or, if a prize is not actually awarded, the date on which  
13          the prize was to be awarded.

14          **(2)** An affirmative defense under sub. (1) mitigates the offense to gambling  
15          under s. 945.02 (3).

16          **(3)** When the existence of an affirmative defense under sub. (1) has been placed  
17          in issue by the trial evidence, the state must prove beyond a reasonable doubt that  
18          the facts constituting the defense did not exist in order to sustain a finding of guilt  
19          under s. 945.03 (4).

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**(END)**