

# The Evolution of Legalized Gambling in Wisconsin

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## THE EVOLUTION OF LEGALIZED GAMBLING IN WISCONSIN

The story of gambling in Wisconsin is an evolution from absolute legal prohibition to the present situation in which the state and certain organizations and entities, including Indian tribes, may conduct a wide variety of gaming activities. This narrative summarizes that evolution.

The original Wisconsin Constitution, adopted in 1848, outlawed "lotteries," which has been interpreted to mean any type of gambling. In 1965, the voters approved an amendment to the state constitution to allow participation in sweepstakes and promotional contests. Other amendments followed to permit charitable bingo games (1973), charitable raffles (1977), on-track pari-mutuel wagering on racing (1987), and the state lottery (1987). Pursuant to the Federal Indian Gaming Regulatory Act of 1988, the state and its 11 Indian tribes and bands had by 1992 concluded gaming compacts allowing the conduct on tribal reservations or trust land of various gambling activities including slot machines, Poker, Blackjack, and Craps. In 1993, the voters ratified a constitutional amendment to generally limit gambling on non-Indian lands to only those activities approved by the previous amendments.

### CONSTITUTION PROHIBITED ALL GAMBLING

Gambling had been illegal in Wisconsin since 1839 when the first version of the territorial statutes specifically outlawed "any lottery" games such as faro and roulette, and, more broadly, prohibited "any other gambling device designed to be used in gaming." As with current law, participation in gambling (making a bet) has always been treated less harshly than commercially operating the games or devices. A person

convicted of gambling has typically been subject to a forfeiture, fine, or the penalties associated with a minor misdemeanor. On the other hand, businesses and others who offered gambling have been liable to be convicted of felonies resulting in significant prison time.

The original form of the Wisconsin Constitution, Article IV, Section 24, read: "The legislature shall never authorize any lottery, or grant any divorce." This provision may seem to be narrowly tailored to prohibit only certain activities – specifically, traditional raffle-types of lotteries in which a winning ticket or number is drawn at random. However, this provision has been generally interpreted by the courts, the legislature, and attorneys general as banning all forms of gambling, both public and private, whether conducted for profit or to benefit charitable causes. Any activity involving the three elements of prize, chance (random odds or luck), or consideration (paying money or giving a thing of value to play) has been held to be a lottery, and thus not allowed. Even if skill or knowledge could influence the outcome of a game, as long as chance was the major determining factor in the outcome, the activity was considered to be illegal gambling.

The prohibition on lotteries was considered during the proceedings of the first of the two constitutional conventions that eventually resulted in Article IV, Section 24. On October 19, 1846, a resolution was introduced to the convention providing:

"Resolved, That the Committee on miscellaneous provisions, be instructed to enquire into the expediency of providing, in the Constitution, an article forbidding the existence of any lottery, or the vending of any lottery

tickets within this State..." [*Wisconsin Constitutional Convention, 1846, p. 70.*]

This absolute ban on lotteries was largely a reaction to crooked government-sanctioned lotteries in our nation's early history. According to "Gambling and the Law," *Wisconsin Law Review*, Volume 1980, Number 5:

Following the Revolutionary War, most states had relied heavily on lotteries as a means of financing public works and supporting organizations such as orphanages and hospitals. These states had also authorized various philanthropic organizations such as churches and universities to conduct lotteries. States and organizations had usually relied upon management companies to conduct the lotteries. The companies would then turn over a percentage of the profits to the sponsor... In 1833, Pennsylvania, Massachusetts, and New York had abolished lotteries due in large measure to fraudulent practices by lottery management companies. Many other states followed their lead. Prior to the War Between the States all but three states had barred lotteries. The drafters of Wisconsin's Constitution acted within this historical context in barring lotteries.

The article goes on to assert that in enacting the antilottery laws that appeared in the first version of the state's statutes in 1849, the legislature "almost certainly used the term 'lottery' to mean raffles and not in its generic sense."

However, gambling – usually involving the risking of a small sum for an opportunity to win a prize – is deeply ingrained in our culture and in human nature. Wagering on outcomes uncertain is an activity enjoyed to greater or lesser extent by a large segment of the population. While laws have been passed with the intention of suppress-

ing gambling, and police and prosecutors have with varying zeal attempted to curtail private and particularly commercial gaming, people have continued to find ways to satisfy the desire to try their luck in games of chance. In part due to people's creativity in inventing gambling schemes, the legislature, courts, and attorneys general progressively expanded the scope of activities that came to be considered illegal under the antilottery laws. This expansive perspective was expressed by the attorney general in a 1938 opinion (OAG XXVII 225): "...lottery statutes are to be construed broadly with a view to preventing the mischief aimed at, viz., stimulation of the gambling spirit and the natural desire to get something for nothing."

### **Illegal Gambling Widespread**

Despite the laws, illicit gambling was common. Charitable, fraternal, and religious organizations operated bingo games and raffles to raise money. Taverns offered slot machines, pinball machines with money betting, dice and card games, punchboards, tip jars and various other gambling schemes for the amusement of patrons. Sometimes slot machines were even used by churches, stores, hotels, and other establishments to support good works or to increase profits. 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. Because gambling was perceived by many persons as a relatively harmless and victimless crime, it was widely tolerated, though not necessarily condoned, by law enforcement authorities. To illustrate the general feelings regarding this issue, a January 13, 1937 *Milwaukee Journal* article recounts how "After a North Fond du Lac church picnic where four [slot] machines were operated, the laborer who spent \$12

in them was hailed as a benefactor of the church." An October 2, 1937, editorial in *The Capital Times* recounted how commercial gambling operators were praised by public officials and citizens in Oneida and Bayfield Counties for making contributions to civic improvements and worthy causes, and which reinforced public toleration of gambling.

The entire spectrum of gaming activities was available throughout the state, but it was slot machines that received the most serious attention, owing to their visibility and their profitability. A January 10, 1928 *Milwaukee Journal* article titled "Slot Machine in Wide Use" stated "That slot machines are in operation...in a great majority of the counties of Wisconsin...is evident." Ole A. Stolen, State Humane Agent and a former Madison judge, commenting on the popularity and pervasiveness of slot machines in taverns, said "'The machines will pay all expenses during the summers months' one hears repeatedly [from tavern owners] and in every county in which they operate. 'And most of it comes from tourists, anyway.'" A September 25, 1941 *Chicago Daily Times* article asserted that "Gambling in northern Wisconsin is generally as open as a union station...the slot machines are as numerous as the pines of the forest."

Sometimes the tide of public opinion would at least temporarily turn against gambling, resulting in crackdowns by police and prosecutors. Often, these efforts occurred soon after elections for sheriff and district attorneys who strived to fulfill campaign pledges to curtail slot machines. Well-publicized raids resulted in the confiscation of many illegal gambling machines. For example, a raid in Dane County in 1927 netted 200 machines. A severe "cleanup" in 1941 in Hurley, a city notorious for ready availability of various vice opportunities,

closed almost all gambling activity, even bingo in the churches.

Slot machines became a prime target of law enforcement attention not just because of their pervasiveness, but because the public sometimes became frustrated with players' seeming inability to win back an acceptable percentage of their wagers. A January 13, 1937 *Milwaukee Journal* article stated that "Most machines, when they come from the factory, are set to pay back 40 cents on the dollar... But when put out for the public, the machines are more often screwed down to pay 10 per cent and the winning jackpot combination is plugged out." A January 8, 1928 article in the *Milwaukee Journal* stated "Practically every slot machine operator will admit readily that slot machines, as they are 'set,' leave little to chance - that they cannot be beaten and that no form of gambling is so much of a 'sure thing.'" Thus, proprietors greatly resented any actions to remove this highly profitable venture.

Notwithstanding periodic enforcement actions, the gambling trade continued to flourish, leading to occasional calls to "legalize" slot machines and other gambling. For example, 1939 Assembly Bill 343 proposed that slot machines and pinball machines be decriminalized, and that county boards be authorized to enact ordinances to license and regulate their operation in places of business such as taverns. A few years later, 1943 Assembly Bill 325 (as amended) proposed that cities, towns, and villages be authorized to permit each business establishment to operate up to three licensed slot machines. Under this "home rule" slot machine bill, the licensing fee revenue would be collected by the state, but 25 percent of the funds would go to the county, and 75 percent to the municipality. At the public hearing held by the Assembly's Judiciary Committee, a proponent of the bill asserted that "You cannot legislate morality." He

said that "The attitude toward slot machines has been similar to our attitude on social diseases. Both have been treated in a hush-hush manner, hoping that they somehow would correct themselves...we believe in bringing the slot machine out in the open and making it pay its fair share of the tax burdens so that property taxes may be reduced."

But there remained considerable opposition to legalization, both from moral and practical perspectives. On April 23, 1943, the *Milwaukee Journal* editorialized: "If you cannot legislate morality, then all our laws governing personal behavior are futile. If slot machines should be licensed for their revenue, then perhaps these other immoral things should also be licensed – for even more revenue... It is perhaps true that, people being what they are, it [gambling] can never be completely stopped, but that does not change the fact that it should be attacked and not condoned... The state cannot properly wink at anti-social practices. Even less can it participate in them by sharing in the unworthy gains."

**Thomson Antigambling Law.** The legislature and Governor Walter Goodland responded to rampant tavern gambling with Chapter 374, Laws of 1945, known as the Thomson Antigambling law for its sponsor, Assemblyman Vernon W. Thomson (later attorney general and governor). The Thomson law provided for the seizure and destruction of slot machines or gambling devices found in a tavern and the revocation of the establishment's alcohol beverage license. The state's beverage tax agents were authorized to investigate gambling in establishments serving alcohol beverages. Under the law, any law enforcement official who was aware of illegal gambling and failed to take appropriate action was subject to removal from office by the governor. Well-

publicized raids resulted in the confiscation of many illegal gambling machines. An October 10, 1945, article in the *Appleton Post-Crescent* quoted Deputy Attorney General James Ward Rector as asserting: "The law has operated as we knew it would, and has eliminated the public gambling problem in Wisconsin." "A slot machine today is a real novelty," added D. H. Pritchard, head of the beverage tax division.

That the law did, at least for a time, achieve some of its intended effect was illustrated in an August 20, 1947 *Milwaukee Journal* article, in which a tourist complained to a bartender in a Northern Wisconsin resort about the disappearance of slot machines under the antigambling law. A native of the area explained that, "If they get caught with slot machines they lose their liquor licenses. There aren't any slot machines this year, but I think some places will try putting them in next spring." The constitutionality of the law was upheld by the Wisconsin Supreme Court in *State v. Coubal*, 248 Wis. 247 (1946).

Although the Thomson Antigambling law significantly suppressed illegal commercial gambling for a while, the demand for games of chance always seemed to eventually overcome whatever laws and enforcement activities were attempted. Over the years, tavern operators came under increasing pressure from Indian tribal casino gambling, the higher 21 drinking age, and increased drunk driving enforcement. As a result, illegal gambling machines gradually reappeared in taverns, particularly slot machines in their more modern incarnation – electronic video games.

Video games, controlled by computer microchips and featuring graphics and sound effects, may be programmed to simulate the play of poker and other casino-type games. Although the machines often did not automatically dispense money to winners,

many proprietors awarded money prizes to patrons who accumulated certain numbers of points. There was confusion among law enforcement authorities as to whether mere possession of video gaming machines was prohibited, although it was generally understood that actual payouts based on the results of the games was illegal. Proprietors argued that the devices could legitimately be used for amusement because, unlike traditional slot machines, they are not designed to automatically dispense money. But in a May 26, 1996 *Wisconsin State Journal* article titled "Video Gambling: Illegal But Thriving," an anonymous bartender stated: "Of course they pay. If they didn't, people wouldn't be sticking fives, tens, and twenties in them." Enforcement officers found it to be a very sensitive issue. It was often perceived as unfair if they raided a tavern to seize gaming machines similar to those available at nearby Indian tribal casinos.

In a March 1992 informal opinion requested by Senators Michael Ellis and Robert Cowles, Attorney General James Doyle stated that the mere possession of video gaming machines was generally illegal and that they may be seized. He reiterated this position in a May 1996 formal opinion. Court rulings on the issue were mixed. For example, the Court of Appeals ruled in *State v. Hahn*, 203 Wis. 2d 450 (1996), that a video poker machine is not a gambling machine *per se*. The court said that for a violation to be found, the defendant must have collected proceeds from video poker machines knowing they were being used for gambling and the proceeds were derived from gambling.

**Governor's Blue Ribbon Task Force on Gambling.** In October of 1991, Governor Tommy Thompson, by Executive Order #136, established a Blue Ribbon Task Force on Gambling. Its task was to try to determine public opinion on gaming in Wisconsin, as-

sess the economic benefits and social costs of state and Indian tribal games, and make recommendations regarding the future scope and regulation of gaming. In its January 1992 final report, the task force found that there appeared to be a general acceptance of gambling in the state and a willingness to expand legal gaming opportunities. For example, an article in *The Capital Times* that month quoted an anonymous tavern owner as estimating that up to 75 percent of Dane County taverns had video poker machines and that more than 90 percent ran illegal pull tabs, football pools, dice games, and other similar games of chance. The report suggested creation of a consolidated gaming commission to regulate all gambling activity in the state and proposed certain expansions of legalized gambling within the state lottery.

The task force recommended authorization of four floating casinos. It also suggested legalizing video gambling machines, such as video poker, in establishments possessing liquor licenses, including taverns, restaurants, and racetracks, provided they were approved by local voters in referenda. These games, as with the floating casinos, would be technically operated by the state under the auspices of the Wisconsin State Lottery. Supporters of this controversial proposal asserted the games would generate additional revenue to help taverns compete more effectively against other entertainment options. A November 1991 article in the *Eau Claire Leader Telegram* reported that northern Wisconsin tavern owners generally agreed that a bill to allow video poker in bars may be the only way to keep their businesses operating as they compete with Indian gambling attractions. Opponents argued that making video gaming widely available would not create many new jobs in taverns but would lead to a saturation of the gambling market and harm the newly

established tribal casinos. The governor rejected the floating casino recommendation but included a proposal in 1991 Senate Bill 483 (the 1992 budget adjustment bill) to allow video gaming machines tied to the state lottery in establishments licensed to serve alcohol beverages by the drink (including racetracks). The proposal was eventually deleted from the bill by the Joint Committee on Finance.

Previously in the 1991 Legislative Session, Assembly Amendment 1 to Assembly Substitute Amendment 1 to 1991 Assembly Bill 91 (the biennial budget), included a proposal to create Chapter 567 of the Wisconsin Statutes, titled "Legal gambling boats." Under the proposal, the State Lottery Board would have been authorized to operate casinos on privately-owned excursion vessels. Attorney General Doyle opined that the Lottery Board could legally operate the games as long as the board controlled their use. In addition to video poker and other video gambling machines, other games which would have been allowed included traditional slot machines, roulette, craps and other dice games, bingo, keno, and any card game that is typically available at a casino such as poker and blackjack. Another bill from that session, 1991 Assembly Bill 469, proposed authorizing state-operated gambling on floating casinos. Two constitutional amendment proposals, 1991 Senate Joint Resolution 38 and 1991 Assembly Joint Resolution 18, would have authorized the legislature to allow offshore casino gambling on scheduled passenger vessels on Lake Michigan, Lake Superior, and the Mississippi River. Two other bills from the 1991 Session, both of which failed to pass, proposed permitting electronic video games in taverns. 1991 Senate Bill 188 and 1991 Assembly Bill 361 would have had the machines regulated by the State Lottery Board with 15 percent (later increased to 25

percent) of the profits going toward property tax relief.

While most gambling remained illegal, it continued to be commonly available and enforcement was a low priority issue for police agencies. In January 1992, Portage County Sheriff Thomas Wanta was quoted as saying: "I don't have the manpower to check every tavern. If we get a complaint, then we follow through on it." In the same month, Sauk County Sheriff Virgil Steinhorst commented: "Am I going to bust the tavern owner who has a video poker machine in his bar when the Indians have dozens of them just a few miles down the road?"

Efforts to legalize a minimal number of video gambling machines as part of the state lottery (authorized by a 1987 constitutional amendment) were dampened by a constitutional amendment ratified on April 6, 1993, by a vote of 623,987 to 435,180. The amendment generally limited gambling on non-Indian lands to only those activities previously approved: promotional contests, charitable bingo and raffles, pari-mutuel betting on racing, and the state lottery. It specifically prohibited lottery slot or video gambling machines, blackjack, poker, roulette, craps, and other games of chance from being operated by the state. At the same election, in an advisory referendum put on the ballot by the legislature, over 63 percent of Wisconsin voters rejected the decriminalization of video gambling in taverns.

Tavern owners continued to push for a way to compete with Indian tribal casinos. 1995 Assembly Bill 633 proposed legalizing video amusement devices, including video poker machines, in taverns. The machines, which would have been licensed by the state Gaming Commission, would have to be allowed unless a city, village, or town enacted an ordinance prohibiting them or if the electors, in a referendum called by the local gov-

erning body, voted against the concept. The bill raised serious constitutional issues regarding the extent of gambling that the legislature may authorize. In a formal opinion requested by Senate Leadership, Attorney General Doyle stated that legalizing video gambling in taverns would violate the constitution. Senate Majority Leader Michael Ellis was quoted in a January 24, 1996 *Milwaukee Journal Sentinel* article as accusing the Tavern League of Wisconsin of "trying to run through the (Legislature's) back door and circumvent the Constitution." AB-633 was defeated in the Assembly by a vote of 66-33 in March 1996. 1995 Assembly Bill 744, which failed to pass, proposed legalizing up to five video gambling machines, licensed by the Department of Revenue (DOR), in each tavern, unless precluded by the same ordinance or referendum provisions that were in AB-633. The sponsor of AB-744, Representative Joe Handrick, speaking in support of the bill at a February 1996 public hearing, was quoted by *The Capital Times* as supporting the right of business to effectively compete with tribal gambling, saying: "We want a level playing field. They just want fairness."

**Decriminalization of Video Gambling in Taverns.** 1999 Wisconsin Act 9, the biennial budget act, decriminalized the possession and operation 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. It reduced the penalty from a felony to a \$500 civil forfeiture per machine and also removed the threat that an establishment could have its alcohol beverage license revoked solely because of having five or fewer machines. Mere possession of any gaming machine remains illegal, and the machines are subject to seizure, but tavern video gambling was *de facto* legalized. All enforcement for having five or fewer ma-

chines is now the exclusive responsibility of state revenue agents, and local police or sheriff agencies may not enforce the law if an establishment does not have more than five gambling devices. Because there are relatively few revenue agents throughout the state, and they are responsible for other tasks, enforcement actions have in practice proved to be fairly rare. Act 9 did not change the law that makes it a misdemeanor or crime to make a bet, including gambling using a video gaming machine.

In an October 15, 1999 letter urging that the governor veto this provision, Attorney General Doyle noted that the \$500 forfeiture "would essentially be nothing more than a 'tax' on these machines," that it will allow the unregulated growth of industries "pushing a product many refer to as the 'crack cocaine of the gambling industry,'" and that the National Gambling Impact Study Commission recently recommended against any expansion of this type of "convenience gambling" due to the minimal economic benefits but potentially greater social costs.

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

## PROMOTIONAL CONTESTS

Prior to 1965, all sales promotions that awarded prizes primarily by chance were prohibited as illegal lotteries, and disclaim-

ers such as “void in Wisconsin” appeared in advertisements for national sweepstakes and other contests designed to stimulate sales. Nevertheless, promotions by local retailers were common. An example is cited in a November 13, 1939 article in the *Milwaukee Journal*, which discussed the use of “holiday” punchboards by grocers to “give away” Thanksgiving Turkeys. Some merchants tried to evade the law by various schemes, but the courts consistently ruled that 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 by being required to visit a retailer to participate or to pay postage to mail an entry form. The Wisconsin Supreme Court, in *State ex rel. Cowie v. La Crosse Theaters Co.*, 232 Wis. 153 (1939), prohibited a “Bank Night” promotion held by a theater in which persons who bought tickets for admission to the motion pictures could receive chances to win prizes by tickets drawn at random. The court ruled this a lottery, even though persons who didn’t buy theater tickets could come to the establishment and enter their names into the drawings without having to purchase a ticket to the performance.

In Chapter 463, Laws of 1951, the legislature attempted to authorize certain “give-away” programs by restricting the definition of “consideration” to the payment of money or expenditure of substantial effort or time. However, the Wisconsin Supreme Court invalidated the law, holding in *State v. Laven*, 270 Wis. 524 (1955), that this definition violated the constitutional prohibition against lotteries, and that lottery-type activity could only be legalized by amending the constitution. In the 1963 and 1965 legislative sessions, a joint resolution was approved by both houses regarding a referendum question to be placed on the ballot propos-

ing that the first exception to the constitutional ban on all lotteries and gambling be enacted to allow promotional contests. In a February 1965 editorial, *The Capital Times* warned against adoption of this first breach in the legal wall against games of chance, stating: “We have felt that any attempt to amend or weaken the constitutional barrier would open the floodgates wide to all the gambling bills that are always introduced in the legislature.”

In April of 1965, the voters ratified the constitutional amendment by 454,390 to 194,327 to permit promotional contests, amending Article IV, Section 24. Previously prohibiting the legislature from authorizing any lottery, the amendment added the clause: “Except as the legislature may provide otherwise, to listen to or watch a television or radio program, to fill out a coupon or entry blank, whether or not proof of purchase is required, or to visit a mercantile establishment or other place without being required to make a purchase or pay an admittance fee does not constitute consideration as an element of a lottery.” The legislature enacted Chapter 122, Laws of 1965, to implement the constitutional provisions in June 1965.

**Regulation of Promotional Contests.** Section 945.01 (5), Wisconsin Statutes, governs games, drawings, contests, sweepstakes, prize offers, and other sales promotion activities. Under the law, a “lottery” is defined as “an enterprise wherein for a consideration the participants are given an opportunity to win a prize, the award of which is determined by chance, even though accompanied by some skill.” “Consideration” is defined as meaning “anything which is a commercial or financial advantage to the promoter or a disadvantage to any participant,” but the law specifically exempts from the definition of consideration “any advan-

tage to the promoter or disadvantage to any participant caused when any participant learns from newspapers, magazines and other periodicals, radio or television where to send the participant's name and address to the promoter." The law further provides that none of the following constitutes consideration:

- filling out a coupon or entry form that is received through the mail or published in a newspaper or magazine, if facsimiles of the coupon or entry form or handwritten and other informal entries are acceptable or if no purchase is required;
- furnishing proof of purchase if the proof required does not consist of more than the container of any product as packaged by the manufacturer, or a part of the container, or a facsimile of either;
- sending the coupon or entry form and proof of purchase by mail to a designated address;
- filling out a coupon or entry form obtained and deposited on the premises of a bona fide trade fair or trade show...but if an admission fee is charged to the exhibition all facilities for obtaining and depositing coupons or entry forms shall be outside the area for which an admission fee is required;
- visiting a mercantile establishment or other place without being required to make a purchase or pay an admittance fee; and
- using certain "in-pack" chance promotions such as offers of tokens or game pieces in cereal boxes or prizes under bottle caps.

In addition, 2009 Wisconsin Act 354 amended the law to permit an employee's referral of a potential customer to his or her

employer in exchange for a chance to win a prize.

Promotional contests are regulated by the Wisconsin Department of Administration's (DOA) Division of Gaming, which may be contacted at (608) 270-2555, [www.doa.state.wi.us/gaming/](http://www.doa.state.wi.us/gaming/).

Some were concerned that the promotional contests amendment could be interpreted more broadly than either the legislature or the voting electorate had in mind. Lieutenant Governor Patrick Lucey was quoted at the time saying that the referendum's language was ambiguous: "I would be very fearful that it might lend itself to an interpretation that would be broader than it is assumed the authors intended." A March 7, 1968 article in the *Milwaukee Journal* discussed this outcome, saying that "The amendment, which slipped through the legislature with scarcely a ripple, was billed as a 'contest amendment' making it possible for state residents to participate legally in national contests advertised on TV and in magazines and newspapers. What it actually did was to sanction promotional lotteries, national and local. Most of these games are not 'contests.' They are lotteries in which not a vestige of skill is required." A sponsor of the amendment, former Senator Lynn Stalbaum, confirmed this view: "Frankly, I did not anticipate that there would be this development. What we were mainly trying to do was to allow people to enter national contests."

In response to numerous stores offering bingo games under the promotional contests authorization, the legislature in 1966 enacted Chapter 654, Laws of 1965. This law outlawed the playing of bingo in stores by declaring that a visit to a mercantile establishment did constitute consideration under the lottery laws, even if making a purchase or paying an admittance fee, was not required. The exemption for visiting

stores to participate in promotional contests, drawings, and sweepstakes was restored by Chapter 351, Laws of 1981.

## BINGO

Bingo has long been viewed as a relatively harmless social diversion and has been widely used as a fundraising tool by religious, charitable, service, and fraternal organizations. However, opponents of the promotional contests amendment warned that any liberalization of the antilottery laws would inevitably lead to the legalization of other forms of gambling.

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 stimulate business, then churches and charities should have the same opportunity to raise money for worthy causes.

In 1940, the Wisconsin Supreme Court ruled that bingo is an illegal lottery regardless of whether or not the proceeds are used for public benefit (*State ex rel. Trampe v. Multerer*, 234 Wis. 50 (1940)). However, the widespread popularity of low-stakes charitable bingo led to a sensitive law enforcement situation, with sheriffs and police officers reluctant to intervene in games conducted by community groups. Jefferson County Sheriff Roger Rienel was quoted in a September 29, 1971 article in *The Capital Times* that it was practically impossible to enforce the state ban on bingo in small communities and that legalizing the game would take the law enforcers "out of an awkward situation." Numerous bills were introduced proposing to legalize bingo by statute, despite the court's ruling that a constitutional amendment would be required.

A joint resolution to authorize the legislature to permit charitable bingo games passed both houses in the 1971 Legislative

Session. The debate was spirited when the measure was again considered in the 1973 session. "All this amendment does is allow people to do legally what they are now doing illegally," said Assistant Assembly Minority Leader Tommy Thompson. Representative Frederick Schroeder said legalization would be a boon to fundraising efforts for volunteer fire departments, churches, and other civic organizations. Representative Gervase Hephner commented that "They're playing bingo at every picnic I go to, and I sit down and play along."

On the other hand, opponents claimed there was a logical progression from legalized bingo to other forms of gambling, and control of gambling by organized crime. "I don't want to be a part of opening the door to legalized [horse] race track betting and dog track betting," said Representative George Molinaro. A March 13, 1973 *Racine Journal* editorial warned of the social costs: "Legalized gambling compounds a community's social problems as losses fall heavily on the poor. Money that should be spent on food, clothing, housing and constructive projects is wasted by those who can least afford it." Representative Lewis Mittness said that professional organizations have moved in to operate bingo games for nonprofit groups in other states and end up with the biggest share of the profits. This concern was addressed by a provision in the proposed amendment requiring that all bingo profits must go to the licensed organization, and that no salaries, fees, or profits may be paid to any other organization or person.

A bingo constitutional amendment was ratified in April 1973 by a vote of 645,544 to 391,499. It permitted the legislature to authorize licensed bingo games conducted by religious, charitable, service, fraternal or veterans' organizations or other groups entitled to receive tax-deductible contributions. Chapter 156, Laws of 1973, imple-

mented the amendment by legalizing bingo games in Wisconsin.

**Bingo Regulation and Conduct.** DOA's Division of Gaming administers the laws and rules relating to the licensing and regulation of bingo: (608) 270-2530, [www.doa.state.wi.us/gaming/](http://www.doa.state.wi.us/gaming/). It annually licenses approximately 800 organizations, performs on-site operational inspections of bingo events and conducts compliance audits. Chapter 563, Wisconsin Statutes, and Chapters Game 41 through 43, Wisconsin Administrative Code, apply to bingo.

In order to qualify for a license to conduct bingo, an eligible organization must: have been in existence at least three years before applying, have at least 15 members in good standing, conduct activities in Wisconsin in addition to the conduct of bingo, operate without profit to its members or any other shareholder or individual, and have been actively engaged in making proper and legitimate expenditures of funds derived from sources outside the conduct of bingo. Included in the definition of "service organizations" eligible to conduct bingo are community-based residential facilities, senior citizen community centers, and adult family homes.

In general, there is an annual license fee of \$5 per organization and a license fee of \$10 for each bingo occasion. An organization must also pay an occupational tax to the state on the gross receipts of bingo operations. The tax is one percent of the first \$30,000 in gross receipts received during a licensing year and two percent of the gross receipts received by a licensed organization during a licensing year that exceed \$30,000. In fiscal year 2011-12, about 475 organizations were licensed to conduct bingo. The approximately \$135,000 in licensing fees and \$260,000 in gross receipts taxes were used to fund bingo regulatory operations.

The record high for license fee collections was \$250,992 in 1986, and the highest amount of tax collections was \$648,163 in 1989. The drop-off is largely attributed to the popularity of other forms of gambling or bingo games offered by Indian tribes, which are not regulated by the state and may offer larger prizes.

A bingo license allows an organization to hold an unlimited number of bingo occasions per year. There is no limit on the number of games played at a regular bingo occasion. However, only \$2,500 in prizes may be given at any one bingo occasion sponsored by a licensed organization. In general, bingo cards may be sold for not more than \$1 each, and the purchase of a card serves as admission to the occasion. Organizations may also conduct limited-period bingo for not more than four out of five consecutive days in any one year at a festival, bazaar, picnic, carnival, or similar function. No admission fee may be charged, and cards are sold on a game-by-game basis for not more than \$1 per game. No cards may be given free to players.

Prizes may be cash or merchandise, except that alcoholic beverages or interest in real estate or securities may not be awarded as a prize. The total amount of prizes awarded at a bingo occasion may generally not exceed \$2,500 in cash and/or merchandise retail value. The maximum prize in a single game is \$500, except for progressive jackpot games. 2005 Wisconsin Act 247 permitted progressive jackpot bingo, a form of the game in which prize money rolls over to a game played on a later day if no player wins within a specified number of calls. All profits from bingo operations must be used by the organization for proper and legitimate expenditures to support any purpose for which the group is organized or for the advancement, improvement, or benefit of the organization.

All persons assisting in the conduct of bingo must be at least 18 years of age, and may not play during the occasion. No worker may be compensated in any way. A bingo caller must be a member in good standing of the organization or its auxiliary, or a spouse of a member.

As provided by 2009 Wisconsin Act 328, a minor may play bingo if accompanied by an adult relative or guardian. In general, bingo games may only be played between the hours of 7 a.m. to 12 midnight. All players must have an equal chance to win, and, except for progressive jackpot bingo, all winners must be determined and prizes awarded on the same day on which the bingo occasion is conducted. When there is more than one winner in a game, the prizes are to be generally divided equally among the winners.

## RAFFLES

A raffle is a form of lottery in which participants purchase a ticket for the chance to win a prize in a random drawing. Like bingo, raffles had long been widely and illegally used as fundraisers by nonprofit groups with sponsors sometimes asking for "donations" in an attempt to evade the gambling laws. Because of their association with charitable causes, drawings were routinely tolerated by law enforcement authorities. Milwaukee County District Attorney W.C. Zabel was quoted in a July 12, 1921 *Milwaukee Journal* article: "...we have never stopped such things if they have been for charity, religious or legitimate fraternal purposes. Who would think of going into a church bazaar and stopping a raffle on a ham or a jar of canned fruit."

The 1973 legalization of charitable bingo games led to demands for similar treatment for raffles. Representative Paul Offner said in an October 1, 1975 *Wisconsin State Journal* article: "The fact that everybody is break-

ing the law is a darn strong reason to take a look at it." He also said the present law banning raffles is "making outlaws of three-quarters to 90 percent of the people in this state." Columnist John Wyngaard in the *Green Bay Press Gazette* echoed a common prediction: "...bingo is merely the opening wedge for what will surely be a continuing onslaught by those who favor more serious forms of gambling..." Representative Marjorie Miller commented, "Everybody said bingo was getting the foot in the door. This [raffles] is getting the leg in."

Raffles were authorized by a constitutional amendment ratified on April 5, 1977, by a vote of 483,518 to 300,473. The amendment allowed the legislature to empower 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, which was implemented by Chapter 426, Laws of 1977, requires that all raffle profits go to support the licensed organization.

**Raffles Regulation and Conduct.** DOA's Division of Gaming administers the laws and rules relating to the licensing and regulation of raffles: (608) 270-2552, [www.doa.state.wi.us/gaming/](http://www.doa.state.wi.us/gaming/). It annually licenses approximately 9,000 raffles, and collects about \$235,000 in license fees. There is no gross receipts tax on raffles. Chapter 563, Wisconsin Statutes, and Chapter Game 44, Wisconsin Administrative Code, apply to raffles.

To be qualified to hold a raffle, an organization must have been in existence for at least one year or chartered by a state or national organization that has been in existence for at least three years. 1987 Wisconsin Act 240 added labor organizations and political parties to the list of eligible service organizations. Both the constitutional

amendment and the original implementing legislation restricted eligibility to conduct raffles to “local” organizations, but did not define the term. 1987 Wisconsin Act 147 provided a broad definition, including units that are statewide in nature. Under act 147, a “local organization” means “an organization whose activities are limited to this state or to a specific geographical area within this state.” 2009 Wisconsin Act 316 further broadened the scope by adding: “or to a specific geographical area that is partly within this state and partly within another state.”

The fee for a raffle license is \$25, and is valid for 12 months. A qualified organization could originally hold only two regular raffles and one special raffle during a year, but may now conduct up to 200 raffles and no more than one calendar raffle during a year. A “calendar raffle” is one for which a drawing is held and a prize awarded on each date specified in a calendar. 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. All profits from raffles must be used to further the purpose for which the organization was organized and no salaries, fees, or profit may be paid to any other organization or individual in connection with the operation of a raffle.

Under a Class A license, tickets may be sold in advance and on the day of the drawing. Originally set at \$5, the maximum permissible price of a raffle ticket was raised to \$10 by 1987 Wisconsin Act 399, to \$50 by 1993 Wisconsin Act 152, and to \$100 by 2001 Wisconsin Act 16.

Tickets for Class A raffles must be numbered consecutively and must contain the raffle license number printed on both the organization’s and the purchaser’s portions of the ticket; the name and address of the sponsoring organization; the price of the ticket; a place for the purchaser to enter his

or her name and address; a list of each prize to be awarded that has a retail value of \$500 or more; and the date, time, and place of the drawing. The maximum price for a calendar raffle ticket is \$10 for each month covered by the calendar. If a drawing is canceled, refunds must be issued to purchasers of tickets. A list of prize winners must be provided to any requester who provides a self-addressed stamped envelope.

1995 Wisconsin Act 27 authorized Class B raffles, in which all of the tickets for the raffle are sold on the same day as the drawing. In a Class B raffle, a purchaser of a ticket must generally be present to win a prize, unless he or she has designated another person to claim the prize on behalf of the purchaser. The maximum cost of a Class B raffle ticket is \$10.

#### **RACING: PARI-MUTUEL ON-TRACK WAGERING**

Racing without wagering has always been legal in Wisconsin, and county fairs have 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 betting was common, sometimes under a thinly disguised betting scheme in which track patrons “contributed” money for certain racing 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. A 1963 attorney general’s opinion (52

OAG 188) stated that race wagering would require a constitutional amendment, due to the broad antilottery provision, because chance was the dominant element, despite the involvement of other factors, such as the speed of the animals and the bettor's skill. Bills considered to legalize betting on horse or dog racing were 1905 Senate Bills 399 and 400, 1935 Assembly Bill 766, 1939 Assembly Bill 674, 1963 Assembly Bill 745, and 1965 Assembly Bill 276.

Beginning with 1973 Senate Joint Resolution 25, constitutional amendments were regularly considered to authorize betting on racing. They successfully culminated with 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, contestant's purses, operations, and maintenance. Any money remaining after the payouts constitutes the track's profit.

Thoroughbred horse racing was the driving force behind the referendum, with horse enthusiasts touting the state as an ideal location because of its thriving tourism industry 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, the implementing legislation, authorized betting on horse, dog, and snowmobile races, dog racing has been the only type of live wagering event yet conducted in the state. Betting on horses has been limited to events, such as the Kentucky Derby, held in other states and simulcast at

Wisconsin racetracks. The state may license betting on horse races held at county fairs if approved by the county board of supervisors.

Licenses to conduct greyhound dog racing were issued to five tracks in May 1989. There were more than 3.5 million visitors to the dog tracks in 1991, the first year all five were open, but attendance and revenue declined steadily afterwards. All five of the racetracks have since closed, an outcome attributed mainly to competition from other forms of gambling, particularly Indian tribal casinos. The Wisconsin racetracks were: Wisconsin Dells Greyhound Park in Lake Delton, which opened in April 1990 and closed in September 1996; Geneva Lakes Kennel Club in Delavan, which opened in May 1990 and closed for live racing in November 2005, although betting on simulcasting continued until April 2006; Dairyland Greyhound Park in Kenosha, which opened in June 1990 and closed in December 2009; Fox Valley Greyhound Park in Kaukauna, which opened in August 1990 and closed in August 1993; and St. Croix Meadows in Hudson, which opened in June 1991 and closed in August 2001.

**Racing Regulation.** Wisconsin's racing laws have been recognized as among the strictest in the nation. (Chapter 562, Wisconsin Statutes, and Chapters Game 1 through 24, Wisconsin Administrative Code.) At least 51 percent of the ownership interest in a racetrack must be held by Wisconsin residents or a corporation chartered in the state. The following racing-related occupations are required to have state licenses: horse or dog owners, horse or dog trainers, jockeys, exercise riders, grooms, kennel masters and helpers, veterinarians, and most race officials and personnel. Generally, three stewards supervise the conduct of live races and at least two of

them must be employed by, or under contract with, the state. Stewards are subject to criminal record restrictions. Track employees and owners are not allowed to bet at their own tracks and betting on races at locations other than racetracks is prohibited.

The minimum wager is generally \$2 per ticket with no limit on the number of tickets that may be purchased. Minors may attend a race but may not place a bet. Prizes may be paid for picking the first, second, or third finisher ("win," "place," or "show") in a particular race, and there are a variety of possible combination (exotic) bets such as the "trifecta" (picking the first, second, and third finishers in the same race) and the "daily double" (picking the winners of the first two races held that day).

Final race odds and payoff amounts, which are not announced until after the completion of a race, vary depending on the volume and distribution of bets. Winning ticketholders generally divide 80 percent to 83 percent of the "handle" (the total amount wagered) from straight pool races (bets on single animals to win, place, or show.) They share 75 percent to 77 percent of the handle from multiple pool races (combination bets). A dog track must devote an amount equal to at least 4.5 percent of the total amount wagered on each race day to purses paid to the owners of animals that win, place, or show. If horse racing is conducted, purses must be at least eight percent of the handle.

A pari-mutuel tax is paid to the state, with the percentage varying depending on the total amount wagered in a year. A 50 cent per person admissions tax is collected from each person entering a racetrack, with half of the amount collected going to the county, and the other half to the municipality. The track may keep 50 percent of any unclaimed winnings, with the rest paid to the state.

Racing dogs must be trained and treated humanely. Dogs that were trained using live lures or bait are not allowed, and animals that come from a state that does not prohibit cruel racing or training practices are barred. 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. When dog tracks were in operation in the state, random testing was used to ensure that no medication, performance-enhancing drug, or other foreign substance was administered to an animal within 48 hours prior to a race. Humane euthanasia methods are required, and Wisconsin was the first state to initiate an adoption program for placing retired racing greyhounds as household pets.

**Snowmobile Racing.** In addition to dog and horse racing, 1987 Wisconsin Act 354 authorized the state to license wagering on snowmobile races. A December 1999 proposal to sanction betting at the World Championship Snowmobile Derby in Eagle River was not approved.

**Casinos at Racetracks.** Since 1992, there have been various proposals by certain Wisconsin-based Indian tribes and bands, some singly and some in combination with other tribes or bands, to purchase racetrack properties for the purposes of establishing off-reservation casino gaming facilities. The proposals, which have generally been well-received by the localities involved, have not yet received the required approval from federal authorities, and some proposed ventures have been the subject of litigation.

## STATE LOTTERY

Lotteries date back to early times in America, and were used to raise funds for financing the Jamestown colony, the

Continental Army, and the founding of universities such as Harvard, Dartmouth, Yale, and Columbia. Lotteries were also used by many states and localities to fund public schools, roads, bridges, and other public works. Most states had abolished them by 1890 due to numerous scandals, including the notably corrupt Louisiana Lottery. Religious pressure to abolish them on moral grounds also had an effect. In 1963, New Hampshire authorized the first modern state lottery, intended as a revenue source in a state that lacked a sales or income tax. Since then, 43 states and the District of Columbia have adopted state lotteries, and most states belong to one or more multi-state lottery associations, in which revenues are pooled for certain games, resulting in large prize amounts.

The framers of the Wisconsin Constitution specifically prohibited legislative authorization of lotteries, but eventually attempts were made to loosen this ban. An early attempt to constitutionally legalize lottery games was a 1939 proposal (1939 Assembly Joint Resolution 66) to authorize lotteries to provide financial support to the elderly. 1943 Senate Joint Resolution 69 proposed permitting the legislature to authorize the state to conduct, participate in, or permit state or private lotteries. Following the example of New Hampshire, 1965 Assembly Joint Resolution 41 proposed that the legislature be allowed to create a state lottery, to be called the "Wisconsin Sweepstakes," with the proceeds to be used for public education.

After the Illinois Lottery began operation in 1974, proponents of a Wisconsin lottery asserted that state residents' 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 proposals beginning in the mid-1970s, particularly after the authorization of charitable raffles in 1977. The *Milwaukee Journal Sentinel* stated of the results of the raffle vote: "Advocates of the lottery are likely to interpret the outcome as a clear statement that the electorate does not regard games of chance as necessarily immoral, socially dangerous or contaminating." Representative Lewis Mittness said in an October 1, 1975 *Milwaukee Journal* article that legalizing raffles would be the first step toward open gambling, and Willis Merriman, Executive Director of the Wisconsin Council of Churches, said in a March 23, 1977 *Milwaukee Sentinel* article that "It [raffles] just makes it that much easier for other forms of gambling to come in, the lottery being one of them."

However, many people remained opposed to exploiting people's vices to raise money for public purposes. In an April 1, 1976 editorial in the *Green Bay Press Gazette*, John Wyngaard said of lotteries: "They are convenient instruments for the taxation of the poor, the ignorant, and the credulous." Governor Patrick Lucey was quoted in a January 13, 1977 article in *The Capital Times* as calling a state lottery "one of the most regressive forms of taxation now in use," and Representative Tom Loftus stated in a January 22, 1977 article in *The Capital Times*: "I simply believe that it is wrong for government to raise tax money by urging people to gamble."

In April 1987, the electors ratified, by a vote of 739,181 to 391,942, a constitutional amendment to create an exception to the ban on lotteries in order to authorize a state-run lottery. The amendment stated that net proceeds must be used for property tax relief as provided by law, public funds may not be used for promotional advertising of the lottery, and all informational advertising must indicate the odds of winning each

prize. 1987 Wisconsin Act 119 created the Wisconsin State Lottery, which began operation on September 14, 1988 with "Match 3," an instant win scratch-off game. The first on-line tickets were sold in August 1989.

### **Defining the Scope of the Lottery**

Disagreement arose as to whether the 1987 state lottery amendment was limited to a state-run lottery operating traditional numbers-based drawings, or whether it also permitted the legislature to legalize any form of state-operated lottery it chose, including casino-style games. A third question was whether the lottery amendment also permitted the legislature to legalize private casino-style gaming. The controversy revolved around the definition of the word "lottery." The issue was whether "lottery" should continue to be broadly interpreted as including all types of gambling, or narrowly defined as only the types of drawings games commonly associated with state lotteries.

In a 1990 opinion, Attorney General Donald Hanaway departed from the traditional broad view of "lottery" as encompassing all games of chance and concluded that the term "lottery," as used in the constitution, refers narrowly only to lottery-style games as distinct from casino-style games such as slot machines, Blackjack, and roulette (79 OAG 14). He argued that because the constitution, as amended, prohibited lotteries other than a state-run lottery but did not specifically prohibit casino-type games, the legislature could statutorily authorize state-operated or private casino gambling at any time. In contrast, the next 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 ca-

sino-style games as part of the state lottery, it did not allow the legalization of 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.

In the confusion, various legislation was considered to expand gambling, either through the lottery or by authorizing private gambling. In the 1989 session, constitutional amendment measures were introduced in both houses to allow offshore casino gambling on scheduled passenger vessels operating on Lake Michigan, Lake Superior, and the Mississippi River. Two other resolutions in the 1989 session proposed that the legislature be empowered to allow charitable and nonprofit organizations to operate games of chance up to two days each year ("Las Vegas Nights"). Four more offshore casino gambling proposals were introduced in the 1991 session, as well as another charitable and nonprofit gambling proposal, and three related to authorizing video poker and other video gambling machines in taverns, but regulated by the Lottery Board.

**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 gambling. 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 legalizing video gaming machines 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 while assisting 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 effort to address the confusion about how much gambling may be permitted as part of the state lottery, the governor called a special session of the legislature in April 1992. The resulting legislation, 1991 Wisconsin Act 321, specified 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.” It restricted the state lottery to the scratch-off instant win games, pull-tabs, and on-line numbers drawings games currently offered. It excluded games involving prizes, chance and consideration, including games in which winners are selected based on the results of a race or sporting event, blackjack, baccarat, poker, roulette, craps or any other game that involves using dice, keno, slot machines, and video gaming machines.

Act 321 also provided that five statewide nonbinding advisory referenda regarding the future of gambling in Wisconsin would appear on the April 6, 1993, ballot.

**1993 Constitutional Amendment Limits Gambling.** Governor Thompson called another special session for June 1992 to consider amending the constitution to

permanently exclude casino gambling from inclusion in the state lottery. This would have the effect of considerably strengthening the limits enacted by 1991 Wisconsin Act 321. A number of amendments had been considered in both the 1989 and 1991 sessions to define and restrict the state lottery to the games currently played.

After considerable debate and a series of hearings conducted by legislators around the state, the following question was presented to the electors:

Gambling expansion prohibited. Shall Article IV of the constitution be revised to clarify that all forms of gambling are prohibited except bingo, raffles, parimutuel on-track betting, 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 Indian 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 off-reservation casino in southeastern Wisconsin. The tribes were generally against the amendment primarily because they were concerned that a constitutional provision that specifically outlawed casino-type games might jeopardize renewal of their existing gaming compacts. However, some tribes, notably the Oneida, believed the future of tribal casinos would be unaffected by the amendment and thought it would instead fortify the status of the tribal monopoly on casino-type operations.

Those campaigning against the amendment included the Wisconsin Indian Gaming Association, the Tavern League of Wisconsin, racetrack operators, and boosters of floating casinos in port cities, such

as La Crosse and Superior. Tavern interests and others were opposed because the measure would prohibit video poker and other gambling machines they wanted. Opponents funded an expensive advertising effort against the amendment.

Republican Governor Tommy Thompson and Democratic Attorney General James Doyle stumped for the amendment in joint appearances around the state and expressed a shared desire to restrict the expansion of gambling. The Wisconsin Council 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 and economic security.

On April 6, 1993, the amendment was ratified by a vote of 623,987 to 435,180. As a result, to have state-operated or private casino-style gaming would require subsequent constitutional change. The advisory referendum, which also appeared on the amendment ballot, indicated the voters' preference for maintaining the status quo regarding gambling. The electors 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 (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 rendered 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 April 1995, a constitutional amendment appeared on the ballot proposing to allow proceeds from a special state lottery game

to be earmarked to 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 618,377 to 348,818.

### **Lottery Property Tax Relief**

The constitutional amendment that in 1987 authorized the state lottery required that the net proceeds be used for property tax relief as determined by law. Proponents of the amendment did not promise that the lottery would substantially reduce real estate property taxes, but they did claim that earmarking the profits would serve to moderate tax increases.

#### **Property Tax Credit – Court Challenge**

**I.** From the beginning of the operation of the lottery in 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 qualified as property tax relief as required by the constitution. State Senator Russell Feingold, joined by eight state residents, filed a class action lawsuit on behalf of all Wisconsin property taxpayers alleging, among other things, that lottery profits were being improperly used. In May 1991, the Dane County Circuit Court ruled that using lottery profits to supplement school aids was unconstitutional. The judge 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 dol-

lar-for-dollar reduction of property taxes owed. The court did not order replacement of the funds already used for school aids, and the decision was not appealed by the state. In a companion claim, the court held that it was appropriate to partially fund district attorney salaries from lottery money because this was an expense county taxpayers would otherwise have to finance through the property tax levy.

In response to the court's 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 became eligible for a credit on their local property tax bills, related to the amount of property taxes they owed toward the local school levy. 1991 Wisconsin Act 323 required that beginning in 1993 the amount of lottery credits must equal lottery profits from the previous year.

#### **Property Tax Credit – Court Challenge**

**II.** In October 1996, the Dane County Circuit Court 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, which primarily consisted of persons who own vacation homes in the state, 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 lottery proceeds in 1996. Responding to the court decision, 1997 Wisconsin Act 27 created a

new formula that distributed lottery proceeds to all owners of taxable parcels in the state, including those owned by nonresidents and businesses.

**Constitution Amended to Limit Lottery Credit to State Residents.** A constitutional amendment ratified in April 1999 by a vote of 648,903 to 105,976 created an exception to the uniformity clause by allowing lottery proceeds to be used for property tax relief for state residents only. It also allowed the same distribution for moneys received by the state from bingo games and pari-mutuel on-track betting, after expenses are deducted for regulation of these activities. The amendment provided that the distribution of gaming profits could not vary based on the income or age of the person receiving the property tax relief.

**Lottery Proceeds Limited to Primary Homeowners.** 1999 Wisconsin Act 5 provided that the proceeds from the state lottery, bingo, and pari-mutuel on-track betting be distributed as direct property tax relief, through the Lottery and Gaming Credit, only to the owners of principal dwellings owned by state residents. Qualified property owners must file an application with their county treasurer or City of Milwaukee Treasurer to receive the credit.

DOA, with the concurrence of the Legislature's Joint Committee on Finance, annually determines the amount available for distribution as lottery credits. DOR, which is notified of this amount by November 1, bases the value of the credit on a particular school district's tax rate and estimated fair market values of real estate. The credit is shown on tax bills as a reduction of property taxes due.

1999 Wisconsin Act 9, as passed by the legislature, 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 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 with 1995. Based on advice from Attorney General Doyle and private legal counsel, Governor Thompson vetoed most of the cost assumption 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.** The Wisconsin State Lottery is administered by the DOR’s Division of Lottery, 608-261-8800, <http://www.revenue.wi.gov/contact/lottery.html>, <http://www.wilottery.com/>. The lottery is governed by Chapter 565, Wisconsin Statutes, and Chapters Tax 20, 61, 62, and 63, Wisconsin Administrative Code.

The lottery offers on-line games, instant win scratch-off games, and pull-tab games. Tickets are sold by retailers under contract with the lottery. Tickets may only be sold for cash and at the price established by the lottery. Tickets may not be sold to minors, but children may receive tickets as gifts. Retailers receive a basic commission of 6.25 percent for instant scratch tickets and pull-tab tickets, and 5.5 percent for online products. In addition, nonprofit organizations may apply to sell pull-tab tickets and receive a substantially higher commission rate. Currently there are about 3,800 retail outlets throughout the state, including convenience stores, grocery stores, service stations, restaurants, liquor stores, and nonprofit organizations. Wisconsin belongs to a consortium of states that participate in the Multi-State Lottery Association’s on-line games called “Powerball,” in which very

large jackpots are often awarded (a record \$650 million jackpot was awarded in March, 2012.). In addition, the lottery also holds a weekly Second Chance drawing, which a player may enter by mailing a specified amount of non-winning tickets to the lottery.

Winning online tickets with values of less than \$600 may be redeemed at any online retailer, the Wisconsin Lottery offices, or a Lottery Redemption Center. Prizes of \$600 or more must be redeemed at either the Lottery offices or a redemption center. Lottery prizes exceeding \$2,000 are subject to income tax withholding. Winning tickets must be redeemed within 180 days of the draw, or 180 days from the end of the game. Winners of prizes over a specified amount are identified to state agencies to determine whether some or all of the winnings must be first applied toward debts owed to the state, including delinquent taxes or unpaid child or family support payments. Large jackpots may be paid in the form of long-term annuities, which may be inherited, or, as provided by 1999 Wisconsin Act 9, in a lump sum at the winner’s option. Act 9 also permitted 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.

In order to maintain public confidence in the integrity of the lottery, the drawings are conducted in public. The law requires that at least 50 percent of lottery revenues be paid out in prizes to winners, and also generally limits administrative expenses, excluding retailer commissions, to no more than 10 percent of gross revenues (lowered from 15 percent by 1997 Wisconsin Act 27, which included retailer commissions in the calculation). The remainder of lottery revenues constitutes the net proceeds available for property tax relief, which over the years

has averaged about 31 percent of total revenues.

The Wisconsin Lottery sold over \$547 million in tickets during the fiscal year ending on June 30, 2012, which was the record highest sales in its history. This will provide an estimated \$150 million in property tax relief credits to eligible homeowners. In 2011, the average lottery and gaming tax credit per residence was \$86.

**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 conduct 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. (An example: the famous “dancing cows” television commercial.) 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 legislation to clarify what is legal.

## INDIAN GAMING

**Summary.** Native American tribes and bands are authorized to operate “Las

Vegas” style gambling casinos on reservation and trust lands within the state in accordance with compacts reached with the state that were required by the Federal Indian Regulatory Act of 1988. This law required that the state and tribes negotiate agreements to allow the tribes to operate any games that are either specifically legal or not criminally prohibited within the state. Indian casinos may offer slot and video gaming machines, blackjack, poker, craps, and other games of chance that are illegal in the rest of the state because at the time the initial compacts were concluded, the then-current interpretation of the Wisconsin Constitution’s gambling provisions was that any type of gambling activity could be conducted by the state as part of the state lottery. Although subsequent 1992 legislation and a 1993 constitutional amendment limited the state lottery to traditional lottery-type drawings and clearly banned casino-style games, the compact provisions that allow the tribes to operate a variety of games remain in force.

### Federal Law and Indian Gaming

Indian tribes are considered self-governing, domestic, dependent nations that, under treaties with the federal government, retain many attributes of sovereignty in the regulation of criminal justice and other affairs on tribal lands. State and local governments may not interfere with on-reservation rights granted by federal treaties or laws, including those related to hunting, fishing, gathering and harvesting of natural resources, 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 a reservation. Tribal enterprises located on reservation land, such as casinos or other for-profit businesses, are also exempt from state and local taxes. Tribes, however, may

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 authority. 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 may be limited by certain regulations and conditions, the law is considered “civil-regulatory,” and the state may not regulate the activity on Indian lands.

In 1981, the Oneida Tribe in Wisconsin was threatened with enforcement action by the Brown County Sheriff because it operated unlicensed bingo games that 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 to be conducted by any person or entity, it lost regulatory jurisdiction on the Oneida or any other 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 greatly 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 appeals 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 confirmed the criminal-prohibitory/civil-regulatory test. California law permitted 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 operated 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 law on the reservation, because California permitted card games, bingo, betting on horse races, and the state-operated California Lottery. Because the state permitted this variety of gambling types, 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.**

Congress enacted the Indian Gaming Regulatory Act (IGRA), Public Law 100-497 (25 U.S.C., Sec. 2701, et. seq.), in October 1988. Prompted in part by the decision in *Cabazon*, IGRA was the culmination of years of efforts to forge a workable compromise among the states, federal agencies, and sov-

ereign tribes regarding Indian Gaming. The stated purpose of the law was 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 tribal gaming. IGRA generally provides that tribes may conduct gaming activities on tribal lands or certain lands taken into trust for the tribe after October 17, 1988, if such gaming activities are permitted or not criminally prohibited 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 compacts:

- 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 solely under the control of the tribes and is not regulated by the state or outside agencies.
- Class II games include bingo or bingo-type games, pull-tabs and punchboards, and certain non-banking card games, such as poker. (A non-banking 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 any limits in state statutes.

- Class III games covers all other forms of gambling, including (but not limited to): any house banking game, such as Blackjack ("21") or baccarat, and other casino games such as roulette, craps, and keno; slot machines and electronic or electromechanical facsimiles of any game of chance; any sports betting and pari-mutuel wagering, including betting on horse racing, dog racing, or jai alai; and lotteries, including raffles.

**Tribal Gaming Compacts.** In Wisconsin, controversy arose over the question of whether casino-type games were allowed 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 just those 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-type games.

By late 1989, Attorney General Donald 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 a formal opinion putting the process on hold (79 OAG 14). He said that casino gambling, while not constitutionally prohibited, was illegal un-

der the criminal statutes, thus making such games ineligible for consideration in compact talks. He indicated in his opinion that the legislature had the authority to amend the statutes to legalize casino games for non-Indians and thus make them appropriate for inclusion in state-tribal 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, claiming the state had 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 also held that only federal officers have enforcement authority over illegal Indian casinos.

Hanaway's successor as attorney general took a different view of Wisconsin law. 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" essentially meant "gambling," he reasoned that the 1987 constitutional amendment that authorized the legislature to create the state lottery also removed any constitutional prohibition against the state operating games of chance as part of the state lottery, including casino gambling.

In June 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 any form of casino games under a state-tribal gaming compact. The judge found Wisconsin gaming laws to be regulatory rather than prohibitory in nature because the state permitted raffles and pari-mutuel wagering on races, and conducted a state 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 Court of Appeals in Chicago dismissed the state's appeal of the case in March 1992 on procedural grounds.

The governor was authorized to enter into gaming compacts on behalf of the state by 1989 Wisconsin Act 196, which was enacted in April 1990 (Section 14.035, Wisconsin Statutes). Act 196 contained no provision for legislative review or requirement for approval of negotiated agreements. By June 1992, after receiving the 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. All compacts were renewed in 1998 and 1999 for 5-year terms. The compacts were amended again in 2003 and 2004, generally for indefinite duration. The compacts have since been generally amended to reflect the *Panzer* decision, discussed below, which held that the permanent duration of the compacts was inappropriate.

The Forest County Potawatomi Tribe, which among other facilities operates a large casino in the City of Milwaukee, signed an amended compact with the state in February 2003. The amended compact had no specified renewal date and made a number of other changes, including giving approval to the tribe to conduct additional Class III games such as keno, roulette,

craps, and poker. Instead of a fixed duration period, the amended agreement provided that the compact would remain in effect until terminated by mutual agreement of the parties, or until such time as the tribe decided to no longer engage in Class III gaming. The indefinite term of the compact prompted objections on several grounds by legislative leaders. Senate Majority Leader Mary Panzer and Speaker of the Assembly John Gard wrote in March 2003 to the U.S. Secretary of the Interior, asking that “In light of these concerns, and before the door to reviewing the 2003 amendments is forever closed, we ask that the Bureau of Indian Affairs immediately suspend its consideration of the Potawatomi Compact amendment until these legal issues can be resolved.” The legislative leaders also filed suit in an original action with the Wisconsin Supreme Court challenging, among other things, the governor’s authority to agree to a perpetual term for the gaming compact.

In May 2004, in *Panzer v. Doyle*, 271 Wis. 2d 295 (2004), the court concluded that the governor lacked the authority to enter into compacts of indefinite duration with the Potawatomi or any other Indian tribe or band. It also said that the governor could not on his own waive the state’s sovereign immunity or allow the tribe to offer new casino-style games that were, as reflected in the state’s criminal statutes and reinforced by the constitution, prohibited to everyone else in the state. The court ruled that “the Governor exceeded his authority when he agreed unilaterally to a compact term that permanently removes the subject of Indian gaming from the legislature’s ability to establish policy and make law.”

In response, a subsequent amendment to the Potawatomi Compact, agreed to by the parties in October 2005, provides for a 25-year extension. Thereafter, the compact is extended automatically unless either par-

ty serves notice of nonrenewal. However, the state may serve notice of non renewal only if it first enacts a statute directing the governor to nonrenew and initiate a process of renegotiation. If neither party serves a notice of nonrenewal, either party may propose amendments to the compacts, and the parties must negotiate in good faith to reach agreement, with disagreements resolved through an arbitration process in which the arbitrator must select a last best offer of one of the parties. However, whichever offer is accepted, it must provide that the compact be extended for a term of not less than 15 years, or not more than 25 years. This compact served as the template for agreements with the other tribes and bands.

The operators of the Dairyland Greyhound Park dog track, concerned about the adverse effect on its business posed by the increasing popularity of Indian casinos, filed suit. They alleged that the governor did not have the authority to renew tribal gaming compacts that included most Class III games because the 1993 constitutional amendment and 1991 Wisconsin Act 321 both limited the Wisconsin State Lottery to only drawings-type games, and precluded the state from conducting casino-type games as part of the lottery. The Wisconsin Supreme Court, in *Dairyland Greyhound Park v. Doyle*, 295 Wis. 2d 1 (2006), held in July 2006 that “the 1993 amendment... does not invalidate the Original Compacts. Because the Original Compacts contemplated extending the Compacts and amending the scope of Indian gaming within the Compacts...the parties’ right of renewal is constitutionally protected by the Contract Clauses of the Wisconsin and United States Constitutions, and [ ] amendments to the Original Compacts that expand the scope of gaming are likewise constitutionally protected.” The court withdrew any language to the contrary in *Panzer v. Doyle* that would

limit the state's ability to negotiate for additional Class III games. The court concluded that the law in existence at the time the compacts were entered into controlled, rather than the subsequently-enacted amendment to the constitution prohibiting the legislature from authorizing gambling. The court noted that neither the legislature or the electors, in adopting the amendment, intended the "freeze" on gambling to invalidate compacts previously entered into with the tribes.

**Payments to the State.** The compacts provide that the tribes will make annual payments to the state based on a percentage of net win attributed to gaming operations. While the percentages vary by tribe, a larger percentage is due as the net win crosses specified threshold amounts and higher percentages apply to tribes that run more lucrative casinos, which are typically located closer to larger urban areas. In fiscal year 2011, the tribes made a total of \$50.1 million in payments to the state, from a net win of \$1.19 billion. That equates to an effective state payment rate of about 4.2 percent.

The payments are primarily in recognition of the "exclusivity" status that tribal operations enjoy in most types of gambling. Other than lotteries, raffles, and wagering on racing, tribal casinos are the only legal venue for Class III gaming within Wisconsin. The compacts include clauses stating that if the Wisconsin Constitution and state statutes are changed to affect this virtual monopoly by allowing the state or other persons to conduct additional Class III gaming, then the tribes are relieved of their obligations to make the payments to the state.

In accordance with the IGRA requirement to use gaming profits to promote "community objectives," net proceeds re-

ceived by a tribe 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 eligible enrolled tribal members. Tribal officials also cite sociological benefits from tribal gaming, such as increased optimism and self-esteem and a decline in domestic violence, alcoholism, and welfare dependency. Gaming operations also generate revenues for the state and local governments from income and sales taxes paid by employees (many of whom are not tribal members) and suppliers and increased tourism-related spending.

**Off-Reservation Casino Gaming Expansion.** IGRA generally provides that 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 final approval by the governor, gaming on newly-acquired land that is noncontiguous to a reservation may be authorized by the U.S. 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. The St. Croix Band of Chippewa Indians operates, among other facilities, a casino in the Village of Turtle Lake. The tribe bought the land for this casino prior to October 1988. Thus, while it is technically an "off-reservation" casino, federal approval was not required in order to make the land eligible for a casino through the compacting process. The land on which the casino is located, while not adjacent to any other tribally-owned lands, is within territory that the tribe has traditionally occupied.

Over the years there have been efforts by various tribes, mostly those in the northern part of the state, to seek approval to open off-reservation casinos in the more populated areas of the state. One example is a proposal by a combination of Chippewa bands to establish a casino in Beloit. Another ongoing plan is the proposal by the Menominee tribe to open a casino on the site of the former Dairyland Greyhound Park in Kenosha that could draw business from a large market area ranging from Milwaukee to Chicago. This plan has been opposed on competitive grounds by the Forest County Potawatomi Tribe, which operates a large casino in Milwaukee.

If the Kenosha plan or any other proposed off-reservation casino is approved by the federal government, the governor will then have to decide whether to approve or veto the expansion. In a May 2012 letter written by Michael Huebsch, the Secretary of the Wisconsin Department of Administration, he said Governor Scott Walker will not approve an off-reservation proposal unless there is a “consensus” among the state’s 11 tribes and bands and the new facility does not “lead to a major net expansion” of gaming in the state.

The Potawatomi’s Milwaukee Casino is one of only a handful of federally-approved off-reservation tribal casinos in the nation. It is located within a geographic area that the tribe has historically occupied. The Potawatomi bought the 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 that authorized a limited number of slot/video gaming machines, but not Blackjack, to be operated at the facility. The city sued, con-

tending that its agreement with the tribe, which only permitted opening of the bingo hall, required further city approval prior to instituting casino gaming. In September 1993, the federal district court ruled that the tribe may operate a casino in accordance with the compact reached with the state. Legal appeals by the city were unsuccessful.

### **Tribal Gaming Compacts and Regulation**

The State-Tribal Gaming compacts are administered by the Wisconsin DOA’s Division of Gaming, Office of Indian Gaming and Regulatory Compliance: (608) 270-2555 <http://doa.wi.gov/index.asp?locid=7>. Chapter 569, Wisconsin Statutes, governs state activities with regard to tribal gaming regulation. The compacts and amendments are available at: [http://www.doa.state.wi.us/section\\_detail.asp?linkcatid=694&linkid=117&locid=7&sname=](http://www.doa.state.wi.us/section_detail.asp?linkcatid=694&linkid=117&locid=7&sname=).

The compacts provide that disputes are generally to be resolved by employing a neutral arbitrator using the last, best offer format. Only if the last, best offers of both parties are rejected as not complying with IGRA and the compact, and subsequent last, best offers are both rejected on the same grounds, will the arbitrator be allowed to decide the issues in dispute using his or her best judgment within the context of applicable law.

An example of a recent utilization of the dispute resolution procedure was the July 2012 ruling by an independent arbitrator that the Ho-Chunk Tribe (formerly known as the Winnebago tribe), was conducting Class III games, specifically electronic poker, at its gaming facility in Madison in violation of the compact. Under the terms of the compact, the Tribe is only allowed to conduct Class II bingo-type games at the Madison facility, although the state and tribe may amend the compact to permit slot machines and other Class III gaming in Madison. The

state subsequently asked a federal judge to enforce the ruling, although the tribe is disputing the arbitrator's jurisdiction because it claims that the electronic poker is actually a Class II game.

## GAMBLING LAWS AND PENALTIES

From the beginning of the state, operating a commercial gambling operation has been subject to more serious penalties than has gambling as a customer. The 1839 Statutes of the Territory of Wisconsin specified a penalty of imprisonment of not less than one month nor more than six months in the county jail for setting up or promoting any lottery, dealing cards or keeping any gambling device, or allowing a property to be used for gambling. On the other hand, the penalty was a fine of not less than five dollars or not more than twenty dollars for "Every person who shall bet any money or other property at or upon any gaming table, game or device..." These prohibitions and penalties were retained in the first edition, in 1849, of the statutes of the new State of Wisconsin.

Currently, private gambling (making a "bet") is a Class B misdemeanor [s.945.02], and commercial gambling is generally a Class I felony [s. 945.03]. Section 945.01 (1) , Wisconsin Statutes, defines a "bet" as "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." Excepted from the law are legitimate business transactions such as insurance policies, stocks, bonds, and trading in commodities futures; and participation in sports events at which purses, prizes or premiums are awarded to the actual contestants for the determination of skill, speed, strength, or endurance or to the owners of animals or vehicles entered in contests. It is a Class A misdemeanor for a contest partici-

pant to bet on the outcome of the event [s. 945.07]. "Las Vegas" nights or similar gambling events in which participants pay to play are illegal, even if conducted by or for the benefit of a nonprofit or charitable organization or charity, and even if actual cash is not used during play. Anything of value received by a person participating in illegal gambling may be forfeited to the state in an action brought by the attorney general or any district attorney [s. 945.10].

Permitting a premises to be used as a gambling place is generally a Class A misdemeanor [s. 945.04]. Dealing in gambling devices is generally a Class I felony [s. 945.05]. Section 945.01 (4) (c), Wisconsin Statutes, provides that any gambling place is a public nuisance against which judicial enforcement action may be sought.

Chapter 91, Laws of 1979, exempted certain amusement devices, such as pinball machines, from the laws prohibiting gambling. Exempted machines must reward the player exclusively with one or more free replays for achieving certain scores, and any accumulated points may not be redeemed for cash or prizes. 1987 Wisconsin Act 329 legalized licensed crane games, which are amusement devices that allow the paying player an opportunity to win inexpensive merchandise prizes by operating controls to manipulate a crane within a glass-enclosed cubicle to pick up an object. The law requires that skill must be the major determining element of play and that only those prizes contained inside the machine may be awarded. The wholesale value of a prize may not be more than seven times the cost charged to play or \$5, whichever is less. DOA's Division of Gaming licenses and regulates crane games (Chapter 564, Wisconsin Statutes).

## HISTORY OF GAMBLING REGULATION

The Lottery Board was created by 1987 Wisconsin Act 119 to regulate the Wisconsin State Lottery. The Racing Board was created by 1987 Wisconsin Act 354 to regulate pari-mutuel on-track wagering.

The Gaming Commission was created by 1991 Wisconsin Act 269, which also repealed the Lottery Board and the Racing Board. The Gaming Commission became responsible for the regulation of all gambling in Wisconsin, including charitable bingo and raffles and the state's involvement with Indian gaming.

The Gaming Board was created by 1995 Wisconsin Act 27 to assume the duties of the Gaming Commission, which was repealed. Act 27 also created the Lottery Division in

DOR. The Division became responsible for the day-to-day administration of the state lottery, with the Gaming Board exercising a policy oversight role.

The Gaming Division in DOA was created by 1997 Wisconsin Act 27, which repealed the Gaming Board. The division regulates racing, charitable bingo and raffles, crane games and Indian gaming. With the repeal of the Gaming Board, DOR's Lottery Division assumed complete responsibility for operating the state lottery. The Department of Justice prosecutes violations of the promotional contests/sweepstakes laws and provides legal services required by DOR's Lottery Division.

## Selected Legislative Reference Bureau Publications

These and other LRB publications are available at [www.legis.state.wi.us/lrb/pubs](http://www.legis.state.wi.us/lrb/pubs)

### Research Bulletins

- RB-04-1 Wisconsin Legislative District Almanac. April 2004  
 RB-06-2 Issues in Administering the Death Penalty. October 2006  
 RB-12-1 Summary of the 2011-2012 Wisconsin Legislative Session. May 2012

### Informational Bulletins

- IB-08-1 Fair Employment, Antidiscrimination, and Worker Protection Laws in Wisconsin. February 2008  
 IB-08-4 Ask the LRB. December 2008. Revised November 2010  
 IB-10-1 2011 Legislative Session Fiscal Estimate Manual. November 2010  
 IB-11-1 Guidelines for Adjusting Municipal Wards Following the 2010 Federal Census. March 2011  
 IB-11-1 Study Guide to the 2011-12 Wisconsin Blue Book. October 2011  
 IB-11-2 Inside the 2011-2012 Wisconsin Blue Book. October 2011  
 IB-12-1 Wisconsin's Role in Electing the President. March 2012  
 IB-12-2 The Evolution of Legalized Gambling in Wisconsin. November 2012

### Wisconsin Briefs

- Brief 10-8 Wisconsin State Officers. November 2010  
 Brief 10-9 Salaries of State Elected Officials Effective January 2011. December 2010  
 Brief 11-1 Brief Biographies 2011 Wisconsin Officers. January 2011  
 Brief 11-2 Profile of the 2011 Wisconsin Legislature, January 3, 2011. January 2011  
 Brief 11-3 Wisconsin Women Legislators – A Historical List. January 2011  
 Brief 11-4 Constitutional Amendments Given “First Consideration” Approval by the 2009 Wisconsin Legislature. January 2011  
 Brief 11-5 Recall of Elected Officials. June 2011  
 Brief 11-6 Executive Partial Veto of Assembly Bill 40: Executive Budget Bill Passed by the 2011 Wisconsin Legislature (2011 Wisconsin Act 32). July 2011  
 Brief 11-7 Charter School Expansion. December 2011  
 Brief 11-8 2012 Wisconsin Presidential Preference Primary. December 2011  
 Brief 12-1 Initiative, Referendum, and Recall in Wisconsin. April 2012  
 Brief 12-2 Executive Vetoes of Bills Passed by the 2011 Wisconsin Legislature from January 11, 2011, to April 20, 2012 (Except the 2011 Executive Budget Bill). April 2012  
 Brief 12-3 Concealed Carry and Firearms Laws in Wisconsin. May 2012  
 Brief 12-4 State Agencies, Boards, Commissions, or Councils Created, Repealed, or Revised by the 2011 Legislature – 2011 Wisconsin Acts 1-286. June 2012  
 Brief 12-5 Executive Budget Bills Enacted by the Wisconsin Legislature, 1931-2011. July 2012  
 Brief 12-6 Candidates: Primary Election, August 14, 2012. July 2012  
 Brief 12-7 Candidates: General Election, November 6, 2012. September 2012  
 Brief 12-8 Wisconsin Farm to School. October 2012

### Budget Briefs

- Brief 08-1 Warren Knowles-Gaylord Nelson Stewardship 2000 Program. January 2008  
 Brief 08-2 No Call List and Cell Phones. July 2008  
 Brief 09-1 Early Release and Sentencing Reforms. September 2009  
 Brief 09-2 Domestic Partnership. September 2009  
 Brief 10-1 Mandatory Motor Vehicle Insurance. May 2010

### Legislative Briefs

- Brief 08-1 Emergency Contraception for Rape Victims. March 2008  
 Brief 08-2 State Electrical Code and Electrician Licensing. March 2008  
 Brief 08-3 Terminating Tenancy in Domestic Abuse Cases. April 2008  
 Brief 08-4 Scrap Metal Sales Regulations. April 2008  
 Brief 08-5 Repeat Drunken Driving Penalties Increased. May 2008  
 Brief 08-6 Virtual Charter Schools. May 2008  
 Brief 08-7 Changes in Impact Fees and Development of Public Facilities. July 2008  
 Brief 08-8 Organ Donation. July 2008  
 Brief 09-1 Indoor Smoking Ban in Wisconsin. May 2009  
 Brief 10-1 Human Growth and Development Instruction – 2009 Act 134. March 2010  
 Brief 10-2 Increased Penalties and Ignition Interlock Requirements for Drunk Driving Offenses. April 2010  
 Brief 10-3 Payday Loans – 2009 Wisconsin Act 405. November 2010  
 Brief 11-1 Local Redistricting Readjustment. August 2011  
 Brief 11-2 Earn-a-Buck Repeal and Hunting Season Regulations – 2011 Act 50. December 2011  
 Brief 12-1 Reporting Child Abuse or Neglect. March 2012  
 Brief 12-2 Earmark Transparency – 2011 Wisconsin Act 220. October 2012