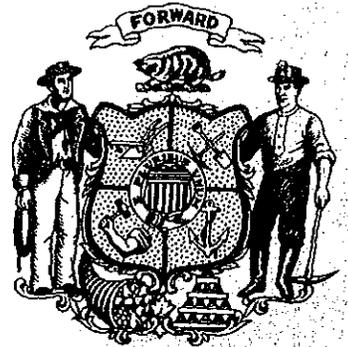


# The Evolution of Legalized Gambling in Wisconsin

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# THE EVOLUTION OF LEGALIZED GAMBLING IN WISCONSIN

## I. INTRODUCTION

The evolution of legal gambling in Wisconsin is a progression from the absolute prohibition of all types of gambling to the present situation in which the state and certain private organizations may conduct a variety of gaming activities.

Gambling has engendered a continuing debate over its benefits versus its dangers to individuals and society. The arguments both for and against gambling have not changed much over time with opinions ranging from outright moral opposition to fervent support of unlimited betting opportunities. What has changed is the amount and types of activities permitted and the shifting economic status of the gaming industry as competition for players has increased and profits have exploded in some areas, chiefly Indian gaming, while dwindling in other areas. The Wisconsin Legislature continues to respond to the changing situation with proposals to restrict, regulate and expand various aspects of gambling.

Wisconsin's constitution, as adopted in 1848, stated in Article IV, Section 24: "The legislature shall never authorize any lottery...." This provision was generally interpreted by the courts, the legislature and attorneys general as prohibiting all forms of gambling, both public and private, whether conducted for profit or to benefit charitable causes. Any game involving the 3 elements of prize, chance (random odds or luck) and consideration (paying to play) was held to be a lottery, and thus illegal, even if skill or knowledge could influence the outcome.

Despite the law, illicit gambling occurred. Charitable organizations operated bingo games and raffles. Taverns offered slot machines, pinball machines with money betting, dice and card games, punchboards, tip jars and various other gambling schemes for the amusement of patrons. Bookmakers ran numbers games and accepted wagers on races and athletic events. Private social gambling existed in the form of sports pools and betting on card games like poker. Horse and dog racing, with attendant wagering, occurred at various times and places.

Because gambling was perceived by many persons as a relatively harmless and victimless crime, it was frequently tolerated, though not necessarily condoned, by law enforcement authorities. Officials were particularly reluctant to intervene when churches and civic organizations conducted low-stakes games with charitable fundraising motives.

Since 1965, a combination of amendments to the Wisconsin Constitution, court decisions, and changes in the Wisconsin Statutes and federal Indian law have resulted in the legalization of the state lottery, on-track pari-mutuel wagering, charitable bingo and raffles, promotional contests, and Indian gaming which includes certain casino-type games not conducted elsewhere in the state.

This bulletin discusses the forms of gambling currently permitted in Wisconsin, outlines the history and development of legalized gambling in the state, and summarizes principal arguments relating to this issue. The types of gambling currently authorized by law are summarized below and discussed in detail in Section II.

**Promotional Contests.** The first easing of the lottery prohibition occurred when a 1965 constitutional amendment authorized the legislature to permit Wisconsin residents to participate in promotional games, contests, drawings or sweepstakes. Chapter 122, Laws of 1965, legalized sales promotions by stating that certain activities, such as filling out a free sweepstakes entry blank or coupon, listening to radio or watching television, or visiting a mercantile establishment, did not constitute consideration as an element of a lottery. Contestants, however, could not be required to make a purchase or pay an admission fee to participate.

**Charitable Bingo.** A 1973 constitutional amendment authorized the legislature to legalize bingo games operated by nonprofit religious, charitable, service, fraternal or veterans groups or those organizations to which contributions are deductible for income tax purposes. Chapter 156, Laws of 1973, legalized state-licensed charitable bingo games. The state set limits on the prize amounts and stipulated that all profits go to the sponsoring organization.

**Raffles.** A 1977 constitutional amendment authorized the legislature to permit raffles operated by nonprofit religious, charitable, service, fraternal or veterans groups or those organizations to which contributions are tax deductible. Chapter 426, Laws of 1977, passed in 1978, legalized state-licensed charitable raffle drawings. The legislature set limits on the price of tickets and the number of raffles which may be conducted, but

placed no limit on the value of prizes which may be awarded. All profits must be used to further the purposes of the licensed organization.

**Racing: On-Track Pari-Mutuel Wagering.** A 1987 constitutional amendment authorized the legislature to permit on-track pari-mutuel wagering on races. 1987 Wisconsin Act 354 legalized on-track pari-mutuel wagering on dog, horse, or snowmobile races, although only greyhound dog racing has been conducted thus far. Wagering is permitted on a limited number of out-of-state simulcasts (races viewed live via television) and may be authorized on an unlimited number of simulcasts of races run at racetracks within the state. Although racing and wagering facilities are licensed and regulated by the state, they are owned and operated by private businesses.

**State Lottery.** A 1987 constitutional amendment authorized the legislature to create a state-operated lottery. 1987 Wisconsin Act 119 created the State Lottery which began operation in September 1988. Lottery tickets are sold by licensed retail vendors and drawings are conducted by the state. No public funds may be used for promotional advertising, and any informational advertising of the state lottery must indicate the odds of winning each prize amount offered. All profits from the state lottery must be applied to property tax relief.

**Indian Gaming.** The Federal Indian Gaming Regulatory Act of 1988 requires states that allow gambling to negotiate agreements with Indian tribes specifying what types of games tribes may conduct and how they will be regulated. In general, tribes may offer any form of gambling if the games are permitted or not criminally prohibited by the laws of the state within which the Indian lands are located. Tribal-state gaming compacts have been completed with all 11 Indian tribes and bands in Wisconsin, and each now operates one or more casinos offering games, such as blackjack, pull-tabs, slot machines and video gaming machines, in addition to bingo.

**Exempted Nongambling Activities (pinball, crane games).** Certain activities which appear to involve consideration, chance and a prize have been specifically exempted from the antilottery laws by statute, primarily because of the skill they require. Legitimate business activity exceptions include investment in securities and financial instruments such as stocks, corporate and government bonds, and commodities futures. Guaranty and indemnity contracts such as life, health and accident insurance policies, that by nature entail the management of risk, are also permitted. In addition, athletic

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contests and races are allowed, even if an entry fee is required and prizes are awarded to the winners, provided the outcome is primarily dependent on skill or endurance. (However, betting on the outcome of a sports event or race, other than authorized, on-track pari-mutuel wagering, is illegal.)

In addition, some games of chance have been permitted due to the amount of skill involved in playing them. Pinball machines, which became popular in the 1930s, are electromechanical games ostensibly designed for amusement. However, because they are coin-operated and points are accumulated, it is possible for them to be used for gambling purposes. Attorney General James Finnegan decided in 24 Op. Atty. Gen. 536 (1935) that pinball games in alcohol beverage establishments were gambling devices, even though skill may influence the outcome of the game. Because of this, possession was illegal. After a number of unsuccessful attempts over the years, Chapter 91, Laws of 1979, legalized the awarding of immediate free replays for players achieving specified point totals.

Crane games are coin-operated amusement devices which allow the player an opportunity to win inexpensive merchandise prizes, such as stuffed animal toys. By operating controls to manipulate a steel-clawed crane within a glass-enclosed cubicle, the player tries to pick up and move the prize object, thus winning it. Some people characterized crane games as harmless, inexpensive sources of amusement with skill being the primary determinant for success. Opponents countered that the machines could be fixed so that relatively few players won and that chance, not manual dexterity, was the critical factor of success. An intensive public relations and lobbying effort by the amusement games industry resulted in the passage of 1987 Wisconsin Act 329, which required that skill must be the determining factor in crane games and only prizes contained within the machine may be won. The wholesale value of the prizes may be not more than 7 times the cost charged to play or \$5, whichever is less. Operators installing the games in their establishments must pay a one-time \$120 licensing fee to the Wisconsin Gaming Commission.

## II. TYPES OF LEGALIZED GAMBLING IN WISCONSIN

### A. PROMOTIONAL CONTESTS

Prior to 1965, all sales promotions which awarded prizes primarily by chance were prohibited as illegal lotteries, and disclaimers, e.g., "void in Wisconsin", appeared in national advertisements.

In 1937, Attorney General Orland Loomis delivered an opinion critical of theater "bank night" drawings that awarded cash to people selected by lot from movie ticket-buyers. He also opposed a revised scheme that allowed those not attending to register, reasoning that "a lottery does not cease to be a lottery merely because some of the participants have failed to give a consideration."

Promotions on radio and television were the frequent target of crackdowns by district attorneys, especially those involving little skill or requiring a purchase to enter. A Madison television contest called "Banko" was ruled an illegal lottery by Attorney General Vernon W. Thomson in 1954 because it was based on bingo. In addition to chance, the element of consideration was considered present because cards for playing the game could be obtained only by contacting the sponsor.

The supreme court in *State v. Laven*, 270 Wis. 524 (1955), ruled that lottery-type activity could be legalized only by constitutional amendment. In this decision, it overturned Chapter 463, Laws of 1951, designed to permit "giveaway" programs by restricting the definition of "consideration" to the payment of money or expenditure of substantial effort or time.

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

Soon after the amendment passed, Lt. Governor Patrick Lucey cautioned that the constitutional language was ambiguous and might lead to a broader interpretation than the authors intended. Some of the games subsequently offered at supermarkets and taverns, with names such as "Lucky Bingo", "Super Bingo" and "Crazy Tavern Bingo", stretched the limits of the law and made little pretense about being anything other than bingo, except no purchase was required to play. Senator Ernest Keppler, one of the main sponsors of the amendment, commented "we did not intend that this change should make bingo, as such, legal".

The language added to the constitution in the 1965 referendum (with some subsequent amendment) now reads: "Except as otherwise provided by law, the following activities do not constitute consideration as an element of a lottery: (a) To listen to or watch a television or radio program. (b) To fill out a coupon or entry blank, whether or not proof of purchase is required. (c) To visit a mercantile establishment or other place without being required to make a purchase or pay an admittance fee."

Chapter 122, Laws of 1965, which took effect June 30, 1965, and subsequent laws have refined the allowable forms of "consideration" by requiring that contests or drawings must be open to anyone essentially free of charge and all entrants must enjoy an equal chance of winning all prizes. A 1982 Wisconsin Department of Justice informational memorandum stated "...it is clear that in order for a contest to ... be considered not a lottery, prospective participants must be allowed a method of entry which entails the expenditure of no money whatsoever" with the exception of minimal postage, copying, telephone or transportation costs.

Chapter 654, Laws of 1965, provided that if proof of purchase is required to enter, it could consist of all or part of the product container as packaged by the manufacturer, such as the boxtop, or a photocopied or handwritten facsimile. If the contest involved sending entry blanks through the mail or publishing them in a newspaper or magazine, anyone must be permitted to enter by requesting a free official entry blank or by sending a facsimile, such as a photocopy. Chapter 40, Laws of 1979, specifically required the acceptance of handwritten and other informal entries. Chapter 654, Laws of 1965, prohibited businesses from requiring on-site registration, because some felt that the time, effort and transportation expenses involved in traveling to a place of business constituted substantial consideration. The permissibility of on-site entry was restored by Chapter 90, Laws of 1977.

Some promotional contests, especially national sweepstakes drawings, have been criticized because the odds of winning are very poor and are alleged to be further diminished if one fails to purchase a product. This type of complaint has resulted in warnings from the State of Wisconsin to sponsors that they risk being prosecuted for conducting illegal lotteries.

## **B. BINGO**

Bingo was the first true form of gambling to be legalized in Wisconsin, based on the 3 elements of prize, chance, and consideration. (There was some question about the

consideration involved in promotional contests.) Those bingo games that required players to pay to participate were considered gambling.

### **History of Bingo**

Bingo has been used traditionally as a fundraising tool by religious, charitable, service or fraternal organizations. It is widely viewed as a relatively harmless social diversion.

In 1940, the Wisconsin Supreme Court ruled (*State ex rel. Trampe v. Multerer*, 234 Wis. 50) that bingo is an illegal lottery even when sponsored by a religious or service organization for charitable purposes. However, the popularity of low-stakes charitable bingo led to an extremely sensitive law enforcement situation. Jefferson County Sheriff Roger Rienel described the problem in 1965, saying it was practically impossible to uphold the law in small communities, and legalizing the game would take officials "out of an awkward situation".

From the 1940s through early 1970s, numerous bills were introduced to legalize bingo by statute notwithstanding the Wisconsin Supreme Court's ruling that only a constitutional amendment would suffice. Pressure to legalize charitable bingo intensified after the authorization of promotional contests in 1965. It was argued that if merchants could use games of chance, many of which resembled bingo, to increase profits, then churches and charities should have the same opportunity to raise money for good causes.

A 1971 constitutional amendment ratified in April 1973 by a vote of 645,544 to 391,499 permitted the legislature to authorize licensed bingo games, conducted by religious, charitable, service, fraternal or veterans organizations or other groups to which contributions are tax deductible. To block infiltration by commercial gambling elements and organized crime, the conference committee specified in the amendment language that all profits must go to the sponsor and no salaries or fees could be paid to outside entities.

Chapter 156, Laws of 1973, effective December 30, 1973, created a 5-member Bingo Control Board within the Department of Regulation and Licensing to issue licenses; inspect games; ensure that proceeds were lawfully used; and regulate the format, printing and distribution of bingo cards. It could suspend or revoke licenses for bingo law violations and refer criminal matters to district attorneys for investigation and prosecution. The Gaming Commission's Office of Charitable Gaming assumed these duties on October 1, 1992.

### Licensing and Operation of Bingo

Bingo is statutorily defined as "a game of chance in which players pay a consideration in order to participate". The format of bingo cards, the process of play, and the determination of winners are specified by law.

To be eligible for a bingo license, an organization must be incorporated in Wisconsin as a nonprofit entity, have at least 15 members in good standing, conduct activities within the state in addition to bingo, and have been in existence for 3 years immediately preceding its application for a bingo license. All bingo profits must be used for "the advancement, improvement or benefit of the organization". Bingo callers, supervisors and those handling receipts must be members of the organization, and they may not be compensated or allowed to play the games at which they work. Nonmember volunteers over age 18 may assist. All supplies and equipment used for bingo must be purchased from approved vendors. Bingo occasions may be advertised, and the licensed organization may provide player transportation to the events. People under age 18 may play if accompanied by a parent, legal guardian or spouse.

There is no limit on the number of games that may be played at a single bingo occasion, but a total of no more than \$1,000 may be awarded per occasion and no prize in a single game may exceed \$250.

The state requires an occupational tax of 2% of gross receipts to cover regulatory and administrative expenses. In fiscal year 1993 the state collected about \$231,000 in bingo license fees and about \$605,000 in gross receipts taxes from about 1,300 organizations.

A regular bingo license allows an organization to hold an unlimited number of bingo occasions per year, with a fee of \$10 per occasion. Purchase of a regular bingo card, at a maximum price of \$1, serves as admission to a bingo occasion and authorizes the patron to play all games during the session. Additional cards may be bought for not more than \$1 each. At each regular bingo occasion, up to 3 special games, costing not more than 25 cents each, may be played.

A limited-period bingo license, costing \$10, allows an organization to conduct bingo on 4 out of 5 consecutive days. Organizations may obtain an unlimited number of limited period bingo licenses, and the law does not prohibit concurrent regular bingo games. Cards for limited-period bingo occasions are sold on a game-by-game basis for not more than 50 cents each.

1989 Wisconsin Act 147 allowed community-based residential facilities, senior citizen residential facilities or community centers, and adult family homes to obtain \$5 annual licenses to sponsor social, recreational games for residents, guests and employees.

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No admission may be charged and the total per player fee for all cards used at an occasion may not exceed \$2. All fees must be awarded as prizes.

### **Decreased Profitability**

The proliferation of legal gambling in recent years has resulted in reduced fundraising by charitable bingo operations. Gross revenues (receipts to organizations) decreased from \$32.3 million in FY 1990 to \$30.2 million in FY 1993. Particularly hard hit have been games played in close proximity to Indian tribal casinos and bingo halls which are not bound by statutory prize limits. For example, numerous charitable organizations in the Milwaukee area have ceased bingo operations since the Potawatomi tribal casino and bingo hall opened in Milwaukee in March 1991, although the tribe initiated a fund to reimburse some of the losses of non-Indian organizations.

## **C. RAFFLES**

Raffles are a form of lottery in which participants purchase tickets for the chance to win a prize in a random drawing. Like bingo, raffles have been widely used as fundraisers by nonprofit groups. (Ticket purchases were sometimes called "donations", but the 3 elements of prize, chance and consideration were legally present.) Because of their connection with charitable causes, drawings were routinely tolerated by law enforcement authorities who shied away from upholding a law against a popular activity.

### **History of Raffles**

The legalization of bingo by a wide margin of votes led to increased calls for similar treatment of raffles. However, as with bingo, opponents warned that further expansion of gambling would result in increased social problems, encourage organized crime and lead to pressure for more gaming.

A constitutional amendment, ratified on April 5, 1977, by a vote of 483,518 to 300,473 allowed the legislature to authorize state-licensed raffles conducted by local religious, charitable, service, fraternal or veterans organizations or other groups to which contributions are tax deductible. It required that all profits go to support the licensed organization. Chapter 426, Laws of 1977, effective June 7, 1978, placed the responsibility for the regulation of raffles with the Bingo Control Board (superseded by the Gaming Commission's Office of Charitable Gaming on October 1, 1992).

### Local Organization Defined

In 1985 a statewide raffle created controversy over what constituted a "local organization" eligible to conduct a raffle. The "Great Badger Sports Raffle" was sponsored by Butch's Badger Bologna Benefit, Inc., led by Butch Strickland to raise funds for the UW-Madison athletic program. The drawing was held at the halftime of the Wisconsin vs. Michigan football game on October 5, 1985. Preliminary advice from authorities said that the drawing was legal under an interpretation that "local organization" was one "organized in this state".

On May 7, 1986, at the request of the Secretary of the Department of Regulation and Licensing, Attorney General Bronson La Follette issued a formal opinion (75 Op. Atty. Gen. 273) that "the term 'local organization' refers to a status that is less than statewide .... the essential feature of a local matter is that it concerns and affects only a specific geographic area within the state." He noted that the word "local" was added to the amendment resolution by its author, State Representative Steven Gunderson, who did not want "statewide or national organizations to be able to hold raffles or receive profits from them." 1989 Wisconsin Act 147 permitted statewide raffles by defining "local organization" to mean one "...whose activities are limited to this state or to a specific geographic area within this state."

### Licensing and Operation of Raffles

The number of raffles a licensee may conduct has increased over the years. 1989 Wisconsin Act 147 currently permits up to 200 regular raffles and one calendar raffle using a single \$25 license. In a "calendar raffle", a drawing is held on each date specified in a calendar which may encompass between one and 12 months. A single ticket makes one eligible to win a prize on any of the specified dates.

The maximum price that may be charged for a raffle ticket is \$10 (formerly \$5), but there is no limit on the value of raffle prizes. Grouping ticket sales may not be legal. The Hillsboro Fire Department sponsored the raffle of a 212-acre farm in September 1993, and the legality of the raffle was questioned because it was "suggested" that the tickets, priced at the statutory maximum of \$10 a piece, be bought in blocks of 10. The Gaming Commission concluded that a violation of the raffle ticket price limit had occurred.

Raffle prizes must be awarded in public drawings, and ticket buyers need not be present to win. Upon request, the organization must furnish a list of prize winners to any purchaser of a ticket.

***Post-Publication Update: 1993 Wisconsin Act 152 increased the maximum amount that may be charged for a raffle ticket from \$10 to \$50, effective April 1, 1994.***

The state receives approximately \$150,000 per year in license fees from about 6,000 groups sponsoring raffles. These groups make an annual profit of about \$18 million on gross ticket sales of about \$42 million. Despite the increasing availability of other, more lucrative, forms of gambling, raffles continue to serve as a popular way of raising money for charitable and service organizations.

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

##### **History of Racing in Wisconsin**

Racing without wagering has always been legal. County fairs sponsored harness, horse or stock car races for the enjoyment of spectators, many of whom paid admission fees. However, according to newspaper accounts, illegal horse race wagering existed in 19th century Wisconsin. Prior to 1900, special trains ran daily from Chicago to horsetracks in Milwaukee and Kenosha Counties. The protests of local residents against the scandal-tainted tracks eventually resulted in a statewide antibetting pool statute. Chapter 187, Laws of 1897, 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, racing and illegal on- and off-track wagering continued to be available, particularly in southeastern Wisconsin. In the late 1920s, the Blue Mound Kennel Club's dog track in the Town of Brookfield (Waukesha County) was allegedly linked to Chicago gangster Al Capone. It used a thinly disguised betting scheme in which track patrons donated or "contributed" money for certain dogs but only received "refunds" on winning animals. This and similarly operated tracks were shut down after the so-called "contribution and refund" system was specifically prohibited by Chapter 218, Laws of 1929. Reporters in the 1940s noted tolerance of "bookie joints, which featured telephone reports that simulated the running of the races and offered off-track betting, slot machines and card games."

A number of bills were introduced over the years to statutorily legalize race wagering. In May 1963, the legislature asked Attorney General George Thompson to evaluate the constitutionality of a bill permitting pari-mutuel betting on dog racing. His opinion (52 Op. Atty. Gen. 188), consistent with *State v. Laven*, was that race wagering would require a constitutional amendment. He acknowledged that some see speed, endurance, and the bettor's skill as greater factors than chance in racing, but he concluded the element of chance is not removed.

Proposals to amend the constitution to permit race wagering appeared with increasing frequency in the 1970s and 1980s. The successful amendment, ratified on April 7, 1987, by a vote of 580,089 to 529,729, was introduced on first consideration as 1985 Assembly Joint Resolution 45. It proposed to authorize the legislature to legalize pari-mutuel betting on horse racing. The committee of conference version of the proposal prohibited the state from being involved in the ownership or operation of racing enterprises but did not specify what types of racing would be permitted. Unsuccessful amendments to the measure would have required that betting be allowed only on horse races conducted within the state and that the state's share of the proceeds be used for property tax relief, promotion of tourism and counseling services for compulsive gamblers.

At the time of the referendum, the prospect of thoroughbred or harness racing was the driving force behind the adoption of the on-track pari-mutuel race wagering amendment. Wisconsin was touted by horse racing enthusiasts as a natural location because of its tourist trade and abundance of farms for growing feed and raising stock. However, some racing experts warned that Wisconsin was not populous enough to profitably support both horse and dog racing. Competition from tracks in neighboring Minnesota and Illinois has also been a factor in deterring horse racing in the state.

The Senate Select Committee on the Regulation of Gambling, cochaired by Senators Jerome Van Sistine and Marvin Roshell, was created on February 5, 1987, to craft legislation to implement on-track pari-mutuel race wagering and the State Lottery. Its bill, which became 1987 Wisconsin Act 354 effective April 3, 1987, authorized wagering on horse, dog and snowmobile racing. It created a 5-member Wisconsin Racing Board to regulate on-track pari-mutuel race betting. (The board's duties were assumed on October 1, 1992, by the Gaming Commission's Racing Division.)

#### **Licensing of Racetracks**

Racetracks are operated by private companies licensed, regulated and taxed by the state. They are automatically eligible for alcohol beverage licenses. Minors may not place wagers and may not be admitted to racetracks unless accompanied by their parents or under other specified conditions.

The Wisconsin Racing Board received 11 applications for ownership and operation of greyhound dog tracks in January 1989 and granted 5 racing licenses in May 1989:

Wisconsin Dells Greyhound Park — Village of Lake Delton, Sauk County; opened April 30, 1990.

Geneva Lakes Kennel Club — City of Delavan, Walworth County; opened May 25, 1990.

Dairyland Greyhound Park — City of Kenosha, Kenosha County; opened June 20, 1990.

St. Croix Meadows — City of Hudson (site annexed from Town of Troy), St. Croix County; opened June 20, 1991.

Fox Valley Greyhound Park — City of Kaukauna, Outagamie County; opened August 2, 1990, and closed by federal bankruptcy court on August 12, 1993.

Each prospective track operator must pay a nonrefundable \$25,000 application fee and between \$10,000 and \$15,000 to cover background checks for possible criminal records. Approved applicants are then assessed \$300,000 for an initial 5-year operator's license with \$100,000 payable in the first year and \$50,000 due in each of the subsequent 4 years. A \$50,000 annual fee is charged for licenses extended beyond the initial 5-year period.

Currently, the Gaming Commission determines the types and number of racetracks allowed and annually decides the number of racing performances at each track. The commission issues operating licenses, audits financial reports, and inspects racing facilities. It also considers adverse effects on existing operations before establishing new tracks. Under the "Wisconsin Whelped" program, established in 1990, at least 2 kennels at each track must be wholly owned by Wisconsin residents.

Following fingerprint checks and background investigations of applicants, the Gaming Commission issues occupational licenses to racing officials, security officers and other track personnel as well as workers in other fields related to racing. At least 85% of a track's employees must have been state residents for at least one year prior to their employment. Anyone who has been convicted of violating racing or gambling laws or mistreatment of animals or who is considered a threat to the integrity of racing is denied a license.

### **Operation of Racing**

A greyhound race usually consists of 8 dogs. The dogs are identified by colored blankets and wear plastic muzzles for protection and as an aid in determining the

outcome of a photo finish race. They run on a dirt track typically about 1/4 or 5/16s of a mile in length at speeds up to 40 mph.

A racing performance consists of a card of 13 to 15 races with a race starting about every 15 minutes. Racetracks offer one or 2 performances per racing day, usually a matinee session and an evening session. Minors may not bet at racetracks and may attend as spectators only if accompanied by a parent or guardian. Track employes and owners are not allowed to bet at their own tracks.

In the pari-mutuel system of betting, participating gamblers wager against one another, rather than against the track. The track has no direct stake in the outcome of races and receives a fixed amount of every dollar wagered to cover taxes, contestants' purses, operations and maintenance. Any money remaining after the payouts constitutes the track's profit.

The minimum wager is generally \$2 with no limit on the number or cost of tickets purchased. Prize money is paid for picking the first, second or third place winner in a particular race (known as "win", "place" or "show"). Winnings are also calculated on the basis of a variety of combination (exotic) bets such as: perfecta — picking a race's first and second place winners; trifecta — picking win, place and show in the same race; daily double — picking the winner of the first and second race; and quiniela — picking either the first and second finishers regardless of order.

Winning ticketholders divide 83% of the "handle" (the total amount wagered) from *straight pool* races (bets on single animals to win, place or show). They divide 77% from *multiple pool* races (combination bets). Final odds and payoff amounts vary because they depend on the volume and distribution of bets, so they are not announced until after completion of a race. Odds and payout computations are accomplished by a totalizator machine, a computer which adds bets over and over during the course of betting. The "tote board" displays the continuously recalculated betting totals and odds for each animal, which may change drastically during betting intervals. As is the case with lotteries, a winning bettor must present a valid ticket in order to collect a payout.

**Pari-mutuel Tax.** The state collects a pari-mutuel tax, which is deducted from the daily handle and calculated as a percentage of the cumulative handle wagered on all race days during that particular racing season. 1991 Wisconsin Act 39 increased the rates and number of brackets for the pari-mutuel tax for the racing season beginning January 1, 1993: 2% on the first \$25,000,000, 2-2/3% on more than \$25,000,000 but not more than \$100,000,000; 4-2/3% on more than \$100,000,000 but not more than \$150,000,000; 6-2/3% on more than \$150,000,000 but not more than \$200,000,000; 7-2/3%

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on more than \$200,000,000 but not more than \$250,000,000; and 8-2/3% on more than \$250,000,000. In addition to the pari-mutuel tax, 1991 Wisconsin Act 39 required tracks to pay a \$125 fee for each day a racing performance takes place. All revenues are deposited in the general fund.

**Breakage.** Under current law the state and the track share equally in the breakage, which is defined as "the odd cents by which the amount payable on each dollar wagered exceeds a multiple of 10 cents". (The breakage on a \$4.53 payout is 3 cents.) The state's share is used principally to support the Gaming Commission and fund gaming law enforcement.

**Admissions Tax.** Each spectator at a greyhound racetrack pays an admissions tax of 50 cents, which is split equally between the county and the municipality in which the track is located. Governmental units must use at least part of this money to defray the costs of law enforcement, traffic control, road construction and maintenance, snow removal and other expenditures incidental to racing. Tracks generally charge and retain an additional admission fee which varies with the type of seating the spectator selects.

**Special Grant Programs (including Compulsive Gambling Treatment).** The gaming implementing legislation directed the Racing Board to establish grant programs for 6 specific purposes including research on or treatment of compulsive gambling. The grants were to be funded through a deduction of 0.75% from the daily handle at each track and a 50% share of breakage and unclaimed prizes, after racing board start-up costs, county fair premiums and other racing board expenses were covered. According to the Gaming Commission, the revenues between 1988 and 1991 were insufficient to award any grants, and the special programs fund was repealed by 1991 Wisconsin Act 269.

As passed by the legislature, 1991 Assembly Bill 91 (enacted as 1991 Wisconsin Act 39) included one-time funding for: the University of Wisconsin School of Veterinary Medicine — \$75,000; state affiliates of Gamblers Anonymous — \$75,000; and humane societies — \$50,000. Governor Tommy Thompson vetoed the distribution of funds to Gamblers Anonymous and humane societies but left the UW veterinary school appropriation intact to be used for greyhound research. Two bills under consideration by the 1993 Legislature (AB-200 and AB-562) would allocate funds derived from lottery and racing revenues for the prevention and treatment of compulsive gambling.

**Humane Treatment.** Wisconsin law requires humane treatment of racing animals. Dogs trained using live lures or bait or those trained in a state which does not prohibit cruel training or racing methods may not race in Wisconsin. Dogs may not race more frequently than once every 3 days and cannot compete when ill or injured. Track surfaces must be safely maintained and animals must receive adequate food, housing, attentive handling and medical care. Humane euthanasia methods are required. Wisconsin was the first state to initiate an adoption program which annually places hundreds of retired racing greyhounds as household pets.

**Drug Testing.** No medication, performance enhancing drug or other foreign substance may be administered to an animal within 48 hours prior to a race. After each race, drug tests are performed on the winning dog and on at least one other selected at random. Positive drug findings can lead to a fine or license suspension or revocation. In Wisconsin, only about 0.2% of approximately 70,000 annual samples have tested positive, and most of these resulted from legitimate medications not deemed to be threats to the integrity of racing.

The Gaming Commission is required to establish and charge fees for drug testing of racing animals. The Racing Division received criticism in November 1992 when it was revealed that the state had paid approximately \$1.8 million in FY 1992 toward the costs of drug testing, despite an administrative rule which appeared to require tracks to pay the full costs. The state's share came from general racing appropriations. As a result of a March 1993 change to the rule [RACE 14.11 (8)], racetracks are required to reimburse the state for costs of drug testing not covered by legislative appropriations. (The legislature approved \$1.4 million for drug testing in FY 1994.)

**Simulcasting.** Simulcasting involves wagering on a race which takes place at a different site but is viewed simultaneously via closed-circuit television. 1987 Wisconsin Act 354 authorized Wisconsin tracks to simulcast up to 9 out-of-state races each year. These simulcasts may include any form of pari-mutuel racing conducted in other states, such as thoroughbred horse races. Wisconsin greyhound tracks have featured simulcasts of well-known horse races (such as the Kentucky Derby, the Preakness and the Belmont Stakes) or important dog races (such as the Greyhound Race of Champions held at Orange Park in Jacksonville, Florida). During the 1993 racing season, a total of 26 out-of-state simulcasts were held in Wisconsin, compared to 41 in 1992. In 1993, the Dairyland and St. Croix tracks offered their full complements of 9 races, while Fox Valley held 5, and Geneva Lakes 3. Wisconsin Dells held no simulcasts that year.

Some, fearful that Wisconsin tracks might become virtual off-track betting parlors, argued that the constitutional language specifying on-track pari-mutuel betting precludes wagering on races which are run at places other than where the bet was accepted. In a formal opinion requested by the Senate Organization Committee, Attorney General Donald Hanaway said in 77 Op. Atty. Gen. 299 (1988) that simulcasting was constitutional.

1991 Wisconsin Act 39 authorized the Racing Board to permit Wisconsin tracks to offer pari-mutuel wagering on an unlimited number of simulcasts of races taking place at other tracks within Wisconsin. To be eligible, a track must have a minimum of 250 live racing performances per year and simulcasts may not occur concurrently with the track's live racing. As of March 1993, the Gaming Commission had not received any requests to conduct intertrack wagering.

A proposal to allow Wisconsin racetracks to offer an unlimited number of out-of-state simulcasts was passed by the 1991 Legislature in 1991 Wisconsin Act 269 but was vetoed by Governor Thompson.

**Horse Races at Fairs and Snowmobile Racing.** The Gaming Commission may license pari-mutuel wagering on horse races conducted at a local fair if the applicant has the concurrence of the county board and takes into account the competitive effects on existing racetracks. At least one race on each fair day is supposed to be reserved for horses foaled in Wisconsin. As of February 1993, no applications had been received for pari-mutuel wagering on horse races at fairs. The Gaming Commission may authorize on-track pari-mutuel wagering on snowmobile racing but only at times and places that do not conflict with dog or horse races. It must consult with the U.S. Snowmobile Association in developing rules for the sport. To date the Gaming Commission has not sanctioned any snowmobile wagering.

### **Operational and Ownership Problems**

The state has encountered regulatory, operational and ownership problems with some dog tracks. Employees have been disciplined for theft and rule violations, such as training dogs with live rabbits or failure to report animal mistreatment. Other allegations include stock fraud, kickbacks, coercion and intimidation, profit skimming, and illegal campaign contributions. Settlement of a lawsuit involving operational disputes with the Alabama residents who are part-owners of Kenosha's Dairyland track resulted in large fines and other corrective measures. The Dairyland track was also

criticized in September 1993 for its high number of dog injuries attributed to poor track conditions, but the injury rate dropped after the track was resurfaced that fall.

A significant ownership question was addressed by the Gaming Commission in December 1993 when Dairyland's Alabama investors challenged the administrative rule that a majority of a track's stock had to be owned by Wisconsin residents. Citing Wisconsin law which recognizes a corporation as a person, the commission reinterpreted the regulation to permit a corporation chartered in Wisconsin to own 51% or more of a track's stock. This opened the door for out-of-state shareholders to effectively control Wisconsin racetracks. A bill to tighten the racetrack ownership law so as to require majority ownership by actual residents of Wisconsin was introduced in early February 1994 (1993 Senate Bill 679).

### **Financial Problems**

Lower than expected attendance, reduced betting, and heavy debt loads have combined to significantly reduce profitability since 1991. The tracks' fiscal woes have been blamed on a variety of factors including: competition from tribal casinos, both within and outside Wisconsin; riverboat gambling in Iowa and Illinois; a poor economy; and bad weather. Track operators also complain of burdensome regulations and fees and cite the fact the state lottery is not required to pay out to bettors as high of a percentage of wagers as the tracks are. In addition, tribal casinos have the advantage of not being subject to state taxation.

During the 1993 racing season, a combined total of 1,658 live racing performances took place at the Wisconsin dog tracks, down from 1,806 in 1992 and less than the 1,783 in 1991. (1992 was the Hudson track's first full year of operation and the Fox Valley track closed in 1993.) In 1993 total attendance was 2,357,043, down about 23% from 3,065,338 in 1992 and about a third less than the 1991 attendance of 3,532,274. Total wagers were approximately \$251.7 million in 1993, a decline of about 17% from the \$303.7 million wagered in 1992 and 27% from the 1991 total handle of \$345.4 million. The average attendance per racing performance at all tracks in 1993 was 1,393 persons, each of whom bet an average of \$107. The average handle per racing performance at all the tracks was \$148,730. Total state revenue from racetracks in 1993 was about \$10.2 million, which included about \$6.7 million in pari-mutuel taxes (down from about \$7.6 million in 1992).

With the exception of Dairyland, which earned approximately \$4 million, the state's dog tracks lost money in 1992. Wisconsin Dells Greyhound Park had a relatively small net loss of about \$36,000. Losses for the other 3 were substantial: Geneva Lakes

Kennel Club — \$3.1 million; Fox Valley Greyhound Park — \$3.4 million; and St. Croix Meadows — \$7 million.

In January 1993, Fox Valley Greyhound Park, Inc., filed for federal Chapter 11 bankruptcy reorganization and protection from creditors when confronted with mortgage foreclosure. Operation of the track was also jeopardized when the owners missed the deadline for the \$50,000 annual license fee required by the state. At the request of Delaware North, the mortgage holder, the case was converted to a Chapter 7 bankruptcy which led to the track being closed on August 12, 1993, and its assets were sold to Delaware North at a sheriff's sale on November 30, 1993. Delaware North assumed the track's obligation for \$866,000 in back property taxes.

For the remaining tracks, the 1993 season profits and losses were similar to 1992. Although Dairyland again posted a profit of about \$2.5 million, Geneva Lakes lost \$2.8 million, St. Croix Meadows \$5.6 million, and Wisconsin Dells nearly \$800,000.

Several of the tracks which are operating at a deficit have appealed for and received lower property tax assessments based on the theory that a business that fails to make money is worth less on the open market. In December 1993, the assessed value of the Wisconsin Dells track was cut by more than half, from \$5.251 million to \$2.651 million, leading to a reduction of about \$100,000 in property taxes paid by the track to various local governments. A number of residents and businesses expressed anger at the resulting increase in their tax burden.

### **Relief Legislation**

After the Fox Valley track closed, the remaining owners claimed more tracks would fail unless the state relaxed its regulations and adjusted the tax structure. They asserted these closings would result in reduced tax revenues, the loss of hundreds of jobs, and damage to the local and state economies.

In response, the Assembly Special Committee on Gambling Oversight introduced 1993 Assembly Bill 561 on June 4, 1993. This bill, referred to as the "Pari-Mutuel Reform Act" would reduce the tax on the first \$25 million wagered in a year from 2% to 1% and cut the tax for all simulcast races to 1% regardless of the amount wagered. In addition AB-561 proposed to: allow unlimited out-of-state simulcasting; reduce the admission tax from 50 cents to 25 cents for the first 1,000 customers in any day with the entire amount going to the municipality in which the track is located rather than being split with the county; permit the track to keep a 75% share of "breakage" rather than half; require that tracks use all money from unclaimed winning tickets to augment wagering pools and for customer promotions instead of giving the money to the state; and reduce the

proportion of the handle that must be paid to winners from 83% of the amount wagered in straight pool races and 77% of the total in combination races to 80% and 75%, respectively.

Although 1993 AB-561 has not been reported out of committee, the proposal to reduce the lowest bracket of the pari-mutuel tax from 2% to 1% was considered for inclusion in the 1993-95 executive budget (1993 Senate Bill 44) by the Joint Committee on Finance but rejected. Racetrack operators have vowed to continue efforts to get some type of tax and regulatory relief.

### **Casinos Proposed at Racetracks**

In 1991, owners of the St. Croix Meadows Racetrack warned that, unless additional gambling was approved at the site, they might have to close. The St. Croix band of Chippewa Indians proposed purchasing the track placing it in "reservation trust" status, and operating it as a combined Las Vegas-style casino and greyhound racetrack complex. This would have relieved the current track owners of a \$39 million mortgage and protected hundreds of track-related jobs. Putting the land into a reservation trust would require approval by the U.S. Department of the Interior and the Governor of Wisconsin.

On December 3, 1991, voters in the City of Hudson, in an advisory referendum, endorsed the transfer by a vote of 1,351 to 1,288, provided the tribe was required to meet its existing financial commitments to the city. Despite this, Governor Thompson and the Gaming Commission opposed setting up a tribal casino at the track. The governor observed that the narrow vote in favor of the proposal was not a clear mandate, especially because on December 8, voters in the Town of Troy, which surrounds the track on 3 sides, voted 535 to 218 against the proposed casino/racetrack.

Lack of progress on the St. Croix Meadows plan prompted the St. Croix tribe to drop its proposal, but proposals for casino/racetracks continue to surface. A preliminary agreement for a partnership between the Hudson track owners and the Lac Courte Oreilles, Red Cliff, and Mole Lake Chippewa bands was announced in August 1993, and the owner of the Geneva Lakes track has expressed interest in collaborating with any tribe interested in a casino/track venture. These proposals also would require approval by the U.S. Department of the Interior and the governor.

### **Outlook For Racing**

The greyhound racing industry has directly created over 3,200 jobs in Wisconsin. Purchases of racing-related services and increased spending at tourism facilities, such as

motels, gas stations, and restaurants, have a significant multiplier effect on the economy and results in income, sales and pari-mutuel taxes. Wisconsin's dog racing industry is second in size to Florida's, and its regulatory laws are recognized as among the strictest in the nation. Efforts to reduce pari-mutuel and admissions taxes, relax racing regulations or allow struggling racetracks to become multipurpose "gambling entertainment centers" are opposed by those who believe that the state should not be responsible for guaranteeing profitability of private businesses. Despite warnings of additional track failures, supporters believe there is a large enough core of racing fans to sustain profitability over the long haul.

## **E. STATE LOTTERY**

The Wisconsin State Lottery, which began operation in September 1988, is both popular and profitable and has generated hundreds of millions of dollars in net profits for property tax relief. The lottery has not been without controversy, however. Recent issues include whether casino games may be conducted by the Wisconsin State Lottery; claims that lottery advertising does not conform with the ban on promotional advertising; mismanagement of funds; and whether net proceeds have been properly applied toward property tax relief.

### **Historical Background of Lotteries**

Lotteries, which involve the awarding of prizes based on random drawings, have a long history. They were used to raise public revenue for cities and nations beginning in 15th century Italy, France and the Netherlands. The view of lotteries as a socially useful form of voluntary taxation was carried to America by European immigrants. In fact the settlement of Jamestown, Virginia, in 1607 was largely financed by lotteries in England.

Some groups, such as the Quakers, opposed gambling, including lotteries, on moral grounds. However, most colonists, even the New England Puritans, accepted gaming, because profits were usually designated for worthy causes. Commenting on the revenue-raising potential of lotteries, Alexander Hamilton, first U.S. Secretary of the Treasury, wrote that many will "hazard a trifling sum for the chance of considerable gain".

Lotteries were employed to meet emergency expenses of government and finance infrastructure and government buildings. Examples include a 1780 New York City

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lottery to purchase fire buckets; a 1748 Philadelphia lottery to fund street paving; and a Boston lottery to rebuild Faneuil Hall after a 1761 fire. Out of economic necessity, lotteries performed the capital-raising functions borne today by taxation and bond offerings. They were often promoted by leading citizens to benefit specific civic projects, e.g., Benjamin Franklin helped sponsor a lottery to buy cannons for the defense of Philadelphia. Lotteries helped finance coastal fortifications and an invasion of Canada during the French and Indian wars and, in 1776, bought arms and ammunition for Revolutionary War soldiers. Many prestigious institutions of higher learning, including Yale and Harvard Colleges, were originally established with the aid of lotteries.

After the United States achieved independence, only legislatively sanctioned drawings deemed in the public interest were permitted. State-chartered lotteries were managed by professional promoters who used mass marketing techniques to sell tickets throughout the country. Later, however, public support for lotteries gradually eroded as charges of fraud, theft, mismanagement, bribery of public officials and adverse social effects multiplied. Improved financial markets and more efficient tax systems lessened the need for lotteries.

The Louisiana lottery scandal illustrates the problems. A hugely popular and financially successful drawing, the lottery flourished after the Civil War. Most of its revenue came from out-of-state gamblers who bought 25-cent tickets by mail for the chance to win cash prizes of up to \$600,000. Monthly drawings, many featuring famous former Confederate generals, were held in the New Orleans opera house. Over half of the proceeds, amounting to millions of dollars, were pocketed by the promoters, a New York gambling syndicate which had received an exclusive franchise from the liberally-bribed legislature. The state did receive as its share a \$40,000 annual licensing fee. The fraud and corruption associated with this and other state lotteries resulted in an 1890 federal law barring all lottery material from interstate mails, which, in turn, led to the demise of the Louisiana lottery in 1895. Although postal regulations did not prevent a state from operating a lottery within its own borders, almost all states had banned lotteries by the end of the 19th century.

In 1963, New Hampshire authorized the first modern legal lottery. The New Hampshire Sweepstakes involved selling \$3 tickets for drawings linked to the results of 2 horse races. It was intended as a revenue-raiser in a state that lacked a sales or income tax and which relied primarily on property tax levies and "sin" taxes on alcohol beverages and cigarettes. In 1967, New York entered the lottery field with a game featuring \$1 tickets for a monthly drawing. Since then, over 30 states have jumped on the lottery bandwagon with a wide variety of drawings. While revenue performance in

most states has not been as profitable as hoped, lotteries do raise significant amounts of money for public purposes.

### **History of the Wisconsin State Lottery**

In 1848, drawing on the negative experiences of other states in the 19th century, the framers of the Wisconsin Constitution specifically prohibited legislative authorization of lotteries. The first attempt to legalize lottery-type games in Wisconsin was 1939 Assembly Joint Resolution 66. It would have allowed the legislature to authorize lotteries for purposes of raising revenue for old age assistance. Later proposals in the 1940s would have permitted authorization of private lotteries.

The first measure to specifically embody the concept of a state lottery was 1965 Assembly Joint Resolution 41. It proposed a Wisconsin Sweepstakes (apparently inspired by 1963 creation of the New Hampshire Sweepstakes) to be operated by the state with the proceeds to be used for public education. Interest grew after the Illinois Lottery began operation in July 1974. Lottery proponents asserted that Wisconsin gambling dollars spent across the border should be recaptured and used for tax relief. Public opinion polls and a 1974 City of Milwaukee advisory referendum indicated widespread popular support for lotteries. Proponents argued that voters statewide should be given the chance to decide the lottery question for themselves.

Not all favored lotteries, however. Many newspapers perceived a threat to Wisconsin's reputation as a state relatively free of corruption. They opposed exploiting people's vices to raise money for the treasury. *The Capital Times* editorial on March 27, 1982, condemned the regressive nature of state-sponsored gambling: "(It) preys most heavily on the people who can least afford the luxury. If lawmakers are truly concerned about helping poor people and public schools, they ought to do so openly and honestly, with progressive tax reforms and other legitimate measures — not with gimmicks and get-rich-quick schemes that leave a trail of sleaze."

Lottery proposals appeared with increasing frequency, starting in the 1975 Legislature. One amendment attempt to allow the legislature to authorize state-operated lotteries passed both houses of the legislature on first consideration (1975 Senate Joint Resolution 15), but it failed to win approval in the 1977 session.

The measure which ultimately resulted in the state lottery was 1985 Senate Joint Resolution 1. It originally directed that lottery proceeds be deposited in the state treasury but did not state how the money was to be used. The resolution was amended before passage to provide that net profits must be used for property tax relief as determined by the legislature. Other amendments to 1985 SJR-1 prohibited expenditure

of public funds for promotional advertising and required that the odds for winning each prize be indicated in any advertising. Failed amendments called for automatic termination of the lottery if it failed to raise \$40 million in 3 consecutive years; sought to appropriate money for treatment of compulsive gamblers; and would have required legislative approval of the content of advertisements, including stating the number of losing tickets in subsequent advertisements.

The lottery amendment was ratified in the April 1987 election by a vote of 739,181 to 391,942, and a Select Committee on the Regulation of Gaming was named in each house to design the lottery legislation. 1987 Wisconsin Act 119, effective December 8, 1987, created the Wisconsin State Lottery operated by the Lottery Board (superseded on October 1, 1992, by the Lottery Division of the Gaming Commission). The lottery began on September 14, 1988, with the sale of the first ticket for "Match 3", an instant win scratch-off game.

### **What is a Lottery?**

There were varying legal opinions as to whether the 1987 state lottery amendment permitted the legislature to legalize any form of state-operated gambling it chose, including casino-type operations, such as floating casinos or video gaming machines located in taverns or at racetracks. 1991 Wisconsin Act 321, effective December 1, 1992, removed any possible authority of the Lottery Board (now the Gaming Commission) to initiate state-operated casino-style games by administrative rule. However, some believed the legislature retained the power to authorize state-operated casino gambling by statute. A constitutional amendment ratified by the voters on April 6, 1993, by a vote of 1,075,386 to 435,180, clearly restricted the games that could be conducted as part of the state lottery to traditional lottery-type games and limited private non-Indian gambling in the state to bingo, raffles, and race wagering. (Appendix B discusses what types of lottery games are legal in Wisconsin.)

### **Operation of the Wisconsin Lottery**

The types of lottery games to be offered and the particular features and playing procedures of each game are determined by administrative rules recommended by the Lottery Division and approved by the Gaming Commission.

**Types of Games.** The most popular category of lottery activity in Wisconsin, currently accounting for about 60.5% of sales, are the instant win scratch-off games. Pull-tabs, another type of instant win game, constitute about 3.5% of total state lottery

sales. The other main category of lottery activity are the on-line games, in which a player chooses or has the computer select lottery numbers. Public drawings are held at specified intervals for the 4 on-line games currently sold exclusively in Wisconsin: "Supercash", "Wisconsin's Very Own Megabucks", "Daily Pick 3", and "Money Game 4". A participant may win the jackpot or lesser prizes if the numbers on the ticket match all or some of the numbers drawn. On-line games account for about 36% of all Wisconsin lottery sales.

Wisconsin belongs to a consortium of 14 states and the District of Columbia which participate in the 2 Lotto\*America on-line lottery games, "Megabucks" and "Powerball". This multistate lottery pools prize money quickly. Although the state constitution does not mention multistate lotteries, Wisconsin's participation in this scheme has not been challenged in court. (See Appendix A for more detailed descriptions of the operation of Wisconsin State Lottery Games.)

**Sales and Payout Procedures.** Wisconsin Lottery tickets are sold by private businesses which contract with the Gaming Commission. These retailers receive a basic commission of 5% on total sales. In addition, nonprofit organizations may apply to sell lottery tickets on a temporary basis and receive a higher rate of return.

Over half of the more than 5,000 "retail partners" throughout the state are grocery or convenience store owners and 12% are tavern owners. Other types of establishments selling lottery tickets include service stations, restaurants, bowling centers, liquor stores, and drug stores. All retail outlets sell instant win tickets, and about 2,300 also offer on-line games. A person seeking to contract with the state as a lottery retailer must be 18 years of age, and meet certain restrictions regarding felony convictions and other violations of law.

The Gaming Commission may establish temporary mobile retail outlets at special events, such as the Wisconsin State Fair and Summerfest in Milwaukee, provided the temporary outlet will not cause any harm to sales at regular retail outlets.

All Wisconsin Lottery tickets must be sold for cash and only at the established price unless discounts are authorized by the Gaming Commission. A person purchasing a lottery ticket must be 18 years of age or older, but minors can receive tickets as gifts. Winning tickets must be redeemed within 180 days of the end of a particular game. Tickets with payout values of less than \$600 may be redeemed at the Wisconsin Lottery offices or any on-line retailer (formerly, winners could only collect at the retail outlet from which the ticket was purchased). (The \$100 prizes which make the holder eligible for the TV Money Game show must be collected at the Wisconsin Lottery offices.) Prizes

of \$600 and over must be redeemed by bringing the tickets or sending claim forms to the Wisconsin Lottery offices. Unclaimed prize money is ultimately used to increase the property tax relief dividend.

In the case of larger prizes, the winner does not automatically collect all winnings. A portion of lottery prizes exceeding \$2,000 is withheld for the payment of federal and state income taxes. In addition, winners of \$1,000 or more are identified to the Department of Revenue to determine whether some or all of the winnings must be applied toward debts owed to the state including delinquent taxes or court-ordered child support payments. Some of the large jackpots are paid in the form of 20 or 25-year annuities.

**Player Profile.** According to a report released in June 1992 by the Institute for Research on Poverty at the University of Wisconsin-Madison, about 61% of Wisconsin residents played the lottery in 1990, around the same percentage as in 1989, with about half playing less than once a month. The trend is for fewer players to account for a larger share of total lottery spending. The researchers estimate that just 10% of the state's population accounted for nearly 75% of all lottery spending in 1991. The average monthly spending per player was \$10.50 in 1989 and it rose to \$14.27 in 1991. In 1992, lottery players lost the equivalent of about \$39 for every person in Wisconsin. According to the study, the average lottery player in Wisconsin is male, married, and between the ages of 18 and 50. He is a high school graduate but has not completed a college degree. The very poor, the elderly and those without a high school diploma are least likely to play the lottery. The vast majority (95%) said their lottery spending caused them no personal or family problems.

### **Lottery Concerns**

**Advertising.** Advertising is considered critical to the success of a lottery, but many are uncomfortable with the idea of government encouraging gambling. In order to minimize governmental enticement to gamble, both the Wisconsin Constitution and the Wisconsin Statutes prohibit spending state funds on promotional advertising of the state lottery. However, the retailers, themselves, may conduct promotional advertising if their ads clearly indicate private sponsorship.

Some public announcements are required by law. The constitution stipulates that any informational advertising for lottery games must indicate the estimated odds that a specific lottery ticket will win a prize. The statutes further require that information about on-line games must explain that the size of prizes and odds of winning depend on the number of entrants.

Informational advertising on the following topics is permitted: the fact that the state has a lottery; ticket prices and sales locations; prize structures; game types and how they are played; the time, date and place of drawings; and the identity of winners and amounts won. Creative presentation of these topics is not prohibited, but opinions vary as to the line between informational and promotional advertising. Controversy recently has arisen over whether ads for the "Moola" games, which featured dancing cows, qualified as informational advertising. Giveaways of promotional items such as hats, headbands and car shades have also been questioned. 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 nature.

The Gaming Commission was criticized in July 1993 for failing to run ads prepared by administrators of Lotto\*America which sought to caution ticketbuyers about participating within their means during the runup to the \$111 million drawing. The commission claimed the ads did not meet the state definition of informational advertising. Later, the commission reconsidered and placed such advertisements in 9 state newspapers on December 22, 1993, for the drawing with an estimated \$90 million jackpot. In urging responsible ticketbuying, Lottery Division Administrator Jon Lehman said "It only takes one ticket to win." He noted that the odds do not increase appreciably by purchasing large numbers of tickets.

After an investigation requested by a bipartisan group of 21 legislators, Attorney General James Doyle concluded on July 19, 1991, that the lottery's advertising campaigns sometimes violate the spirit but not necessarily the letter of the law: "...the distinction between promotional and informational advertising can become so blurred as to be improperly vague." He took exception to flashing the odds only briefly at the conclusion of broadcast commercials or publishing them in fine print. He also questioned free giveaways, excessively promotional game titles and saturation ad campaigns. Attorney General James Doyle recommended that the legislature either ban lottery advertising altogether or clearly define what is allowed. He suggested the ban should impose civil fines rather than harder-to-prove criminal violations.

**Property Tax Relief.** The constitutional amendment which authorized a Wisconsin state lottery required that the net proceeds be used for property tax relief as determined by the legislature. Proponents of the amendment did not promise that the lottery would substantially reduce property taxes, but they did claim that earmarking the profits would serve to moderate tax increases. The law requires that at least 50% of gross sales must be returned as prize payments and that no more than 15% can be spent

on administrative and operating costs, including the retailer commissions and informational advertising. The remainder, which averages about 32% of annual sales, is to be applied to property tax relief.

Approximately \$419 million of the lottery proceeds which were earned from the initiation of the lottery on September 14, 1988, through the end of 1992, were applied to general school equalization aids, farmland tax relief credits, district attorney salaries (formerly paid out of property taxes) and the lottery credit for school property tax relief.

Disagreement arose as to whether these expenditures were proper methods of delivering property tax relief. On May 20, 1991, Senator Russell Feingold, joined by 8 state residents, filed a class action suit against the state on behalf of all Wisconsin property taxpayers, alleging that state officials had violated the constitution by using lottery proceeds to fund district attorneys' salaries and the general school equalization aids program. They also questioned partial vetoes by Governor Thompson of 1991 Wisconsin Act 39 that resulted in about \$83 million in lottery profits being transferred to the general fund. On May 4, 1992, Dane County Circuit Court Judge Michael Nowakowski ruled that using lottery profits to supplement school aids was unconstitutional. He declared that the intent of the voters, when ratifying the 1987 lottery amendment, was to provide for direct property tax relief which is "separate, different and extra". He said adding funds to existing state aid programs may or may not result in an actual dollar-for-dollar reduction of property taxes due. Although the previous expenditures of approximately \$190 million in lottery profits were declared inappropriate, the court did not order replacement of the funds, and the decision was not appealed.

The Feingold suit acknowledged that the lottery credit for school property tax relief (as opposed to increased state school aids) was a proper use of lottery proceeds. This credit program continues to be the main recipient of lottery revenues.

In 1991, the first year of the lottery credit, approximately \$180 million was distributed to about 1.2 million homeowners, and the distribution included a credit supplement from lottery profits held in escrow from previous years. Each owner-occupied residence received an average \$149 credit. Specific individual amounts were calculated by multiplying the first \$8,200 of fair market value of the residence by the local school property tax rate. The size of the lottery credit in a particular municipality depends on total school spending, the school tax rate, and the value of all taxable property in the district. In general, wealthier communities tend to receive a lower lottery credit per homeowner than poorer districts. In rounded amounts the 1991 credits ranged from \$46 in the Niagara School District to \$242 in the Mellen School District.

In the second year of the program, the credit totaled \$205 million, distributed to about 1.2 million homeowners. The average 1992 credit was \$168 based on the first \$9,150 of the equalized value of each residence. Credits varied from \$56 in the Gibraltar School District to \$289 in the Mellen School District.

The legislature had boosted the 1992 credit an extra \$21 million by deferring some lottery spending obligations into the following fiscal year. As a result of disagreement over that shift 1991 Wisconsin Act 323 was passed requiring that, beginning in 1993, the amount of lottery credits must equal lottery profits in the previous year.

For taxes levied in 1993 and payable in 1994, the lottery credit was calculated on the first \$5,900 of each home's assessed value. Statewide, the available lottery proceeds of \$131.8 million resulted in an average credit of about \$107 per homeowner, ranging from a low of \$35 per residence in 6 Door County communities (Bailey's Harbor, Gibraltar, Liberty Grove, Egg Harbor, Ephraim, Sister Bay) to a high of \$177 in the towns of Armstrong Creek in Forest County and Goodman in Marinette County.

**Integrity.** Because a perception of absolute honesty and fairness is essential to maintain public confidence in the integrity of the lottery, Wisconsin drawings are conducted under carefully controlled conditions including constant TV monitoring, heavy security and frequent outside audits. Nevertheless, some problems have arisen over lottery operations and security which may require legislative action.

Although lost or stolen tickets represent only a fraction of the hundreds of millions of tickets sold, a November 1991 review by the Legislative Audit Bureau reported several instances of loss or theft of lottery tickets while they were under control of lottery staff. The most significant loss occurred in May 1989 when a lottery sales representative's van, containing 20,000 tickets, was stolen. About 9,000 of the stolen tickets were discovered by police 3 months later during an unrelated arrest, but half of the tickets have not been recovered.

Security procedures require that the serial numbers of lost or stolen lottery tickets be entered in the lottery computer to prevent redemption, and sales agents are trained to spot instances of ticket tampering. However, Legislative Audit Bureau investigators were able to cash several tickets which, in addition to being altered, had also been reported as lost. Lottery staff who redeemed the tickets did not detect the alterations, and the computer system did not identify the voided tickets. Auditors recommended that lottery security staff revise procedures to safeguard ticket sales.

Bulk ticket purchases, while not illegal, are widely seen as unfair. Lotto\*America has instituted procedures to discourage efforts by investors to buy most of the possible

numbers combinations as was accomplished in a February 1992 Virginia Lottery drawing by an Australian syndicate. The syndicate succeeded in covering about 5 million of the 7 million number combinations and won the \$27 million jackpot.

In February 1992, several legislators, concerned about an anticipated decline in the amount of lottery proceeds available for property tax relief, criticized the Lottery Board for setting the payoff rate higher than the 50% of total sales statutorily required. A study by the Legislative Fiscal Bureau concluded that the payout rate on instant games had increased from 56.1% in the 1989-90 fiscal year to 62.8% in fiscal year 1991-92, including a special holiday game that returned 70% of bets to participants. Lottery officials replied that decreases in per-ticket profits are usually more than made up by an overall increase in sales volume.

In January 1993, an audit report released by the Legislative Audit Bureau stated that the Wisconsin Lottery had improperly collected about \$2.6 million in fees without legislative authorization and had manipulated available funds to exceed its advertising budget. The fees were collected for the fiscal years 1989-90 through 1991-92 from retailers who sold on-line tickets. Each retailer paid a \$250 terminal installation fee and \$7 per week in telephone line charges. The audit bureau acknowledged that the fees were applied to the development and operation of the retailer network. However, since the legislature had already appropriated state funds to cover the network, the collections freed a corresponding amount for the board to spend without legislative oversight. The resulting unauthorized transfers by the Lottery Board included \$2.1 million spent for limited-term employes, computers, and security equipment, plus \$507,052 which was lapsed to the Lottery Fund. In addition to the funds raised from the unauthorized retailer fees, the audit concluded that "by manipulating its funds, the Lottery Board was able to exceed its advertising budget by \$1.3 million in FY 1990-91" although the legislature had placed specific limitations on the amount to be spent for this purpose. The Legislative Audit Bureau report did state: "We did not find any evidence that the Board or its staff derived any personal benefit from the expenditures made, and we found no evidence of fraud." In December 1993, the Wisconsin Grocers Association filed a claim with the State Claims Board on behalf of its members seeking recovery of the improperly collected fees. After the Gaming Commission recommended against paying the claim on February 2, 1994, the association promptly filed an appeal with the Claims Board. Grocers Association officials have stated that if the claim is denied, a civil suit would be filed against the state to force a refund of the money plus interest charges.

In June 1993, it was revealed that many of the administrative rules statutorily required since 1987 for lottery operation had not been written. Among the rules that

lottery officials had failed to promulgate was one to specifically define what constitutes acceptable forms of lottery advertising. It was also revealed that lottery officials had failed to disqualify several retailers who should have been barred based on felony convictions or gambling-related offenses.

Another concern is that, due to an August 1993 ruling by a federal judge in Pennsylvania, Wisconsin may no longer be able to prohibit sales of tickets for out-of-state lotteries. Some worry that interstate sales of lottery tickets may cut into the profitability of the Wisconsin Lottery.

### **Financial Performance**

Although sales growth slowed somewhat in 1993, the continued health of the Wisconsin Lottery counters the national trend which has seen many state lotteries experience stagnant or decreasing sales. In fiscal year 1993, the Wisconsin Lottery reported total ticket sales of about \$489.6 million, an increase of about 6.75% over the previous year's sales of approximately \$459 million. Instant-win scratch-off ticket sales in FY 1993 reflected a 2% increase (of \$6 million) from the previous year to \$296 million. On-line ticket sales rose from \$159 million in FY 1992 to about \$176.2 million in FY 1993 (an increase of almost 11%). Pull-tab ticket sales accounted for the remaining \$17.4 million of FY 1993 lottery receipts.

**Sports Lottery Plan.** The application of the State Lottery proceeds to assist property tax relief has spawned other ideas for using the lottery to fund specific functions. 1993 Senate Joint Resolution 49 was introduced February 22, 1994, to amend the Wisconsin Constitution to allow the state to administer a sports lottery. If passed on second consideration by the 1995 Legislature and ratified in a referendum, it would permit the legislature to authorize a sports lottery. Under the proposal, the Gaming Commission could conduct a special lottery game, as part of the State Lottery, with the proceeds exclusively designated to help finance athletic facilities with statewide importance, such as a new stadium for the Milwaukee Brewers or a new basketball fieldhouse for the University of Wisconsin-Madison. Opponents are concerned that a sports lottery would divert players from existing lottery games, thereby reducing the dollars available for property tax relief. Supporters, however, claim that the game may draw from largely untapped markets, such as sports-oriented men between the ages of 25 to 44.

### Future Prospects

Despite controversy regarding the administration of the Wisconsin Lottery, it continues to enjoy widespread popularity as an acceptable form of entertainment and a generally favorable reputation for fairness. Its continuing sales success has enabled it to contribute significant amounts toward property tax relief each year. While the lottery is not immune to adverse economic conditions or competitive pressures from other forms of gambling, it is likely to continue as a viable enterprise with sizeable jackpots and willing entrants.

## III. INDIAN GAMING IN WISCONSIN

Indian tribes are considered to be self-governing domestic, dependent nations which retain many attributes of sovereignty in regulation of internal and social relations on tribal lands. Tribal members hold dual tribal-U.S. citizenship and need not pay state income taxes or local property taxes if they live and work on the reservation. Individual members do, however, pay federal income taxes and state sales taxes on off-reservation purchases. Members are subject to tribal civil and criminal law while on the reservation, and state and local governments cannot interfere with on-reservation rights granted by federal treaties or laws, including those related to gambling. While tribal gaming facilities and businesses are exempt from corporate or property taxes, some tribes make donations to support charitable and community projects and voluntarily offer payments to reimburse municipalities for government services, such as police and fire protection and road construction and maintenance.

### A. INDIAN GAMING REGULATORY ACT

The Federal Indian Gaming Regulatory Act (IGRA) of 1988 [Public Law 100-497, 25 U.S.C. 2701-2721] requires states to negotiate gaming compacts with tribes to specify what types of games will be conducted on tribal lands and how they will be regulated. (Appendix C discusses the history of the act.)

IGRA divided gambling into 3 classes. Class I games are tribal social games played solely for prizes of minimal value. Class II includes bingo or bingo-type games and certain nonbanking card games, such as poker. (A nonbanking card game is one in which players compete against one another as opposed to a house banking game in which players compete against the house.) If a state allows anyone to conduct bingo or

other Class II games for any purpose, then tribes may sponsor the games free from state regulation. Class III covers all other forms of gaming including: casino games such as blackjack, roulette, craps, keno, slot machines and electronic video gaming machines; any sports betting; pari-mutuel race wagering; and lotteries, including raffles.

Federal district courts, relying on higher court decisions, have generally held that if a state permits a certain level of Class III gambling, then tribes are eligible to conduct any and all forms of Class III gaming on tribal lands. Judge Barbara Crabb of the U.S. District Court for the Western District of Wisconsin ruled on June 18, 1991, that because Wisconsin allowed a substantial level of gaming, the state's overall policy toward gambling is regulatory and permissive, rather than criminal and prohibitory, in nature. Citing a May 2, 1991, opinion by Attorney General Doyle that the 1987 state lottery amendment permitted the legislature to authorize state-operated casino-type gaming, she ruled that tribes were also eligible to conduct casino-type games, even though such games had not yet been authorized by statute. (Appendix C describes what types of games may be included in Wisconsin's state-tribal gaming compacts.)

By June 11, 1992, Wisconsin had concluded 7-year gaming compacts with all 11 of the state's Indian tribes and bands, authorizing blackjack, electronic video games, slot machines and pull-tabs in tribal casinos. These compacts continue in effect despite the adoption in April 1993 of the state constitutional amendment which prohibits casino-type games from being conducted as part of the Wisconsin State Lottery. Questions are raised about the effect of this restrictive amendment on negotiations when the current compacts come up for renewal in the late 1990s. Some feel it may result in narrowing the scope of permitted types of reservation gaming.

## **B. TRIBAL-STATE GAMING COMPACTS**

Because both state and tribal governments have legitimate interests regarding the conduct of Class III gaming, Congress provided that these games be regulated by the terms of agreements negotiated between states and the tribes, with the National Indian Gaming Commission (NIGC) assuming a rulemaking and oversight role. When possible, Congress has supported maximum use of existing state gaming regulatory systems in order to satisfy the economic development, public safety, and law enforcement concerns of all parties.

**Compact Negotiation Procedure.** As the first step in compact negotiation, the governing body of a tribe must enact an ordinance or resolution that provides for tribal

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regulation of Class III gaming activities on reservation lands. The ordinance becomes effective upon approval by the chairperson of NIGC. Next, the tribe requests the state within which reservation land is located to begin negotiations for the purpose of entering into a tribal-state compact. The state has 180 days from receipt of the request to commence good faith negotiations. The tribal-state gaming compacts outline the regulations for types and play of Class III games. They may specify the location of gaming facilities, the application of state or tribal criminal and civil laws, and how law enforcement responsibility will be allocated. The compacts also regulate the assessment of fees to defray the costs of any state regulatory activity, taxation of gaming receipts, and standards for the operation and maintenance of gaming facilities. States may not cite protection of other state-operated or state-licensed gaming enterprises from competition as a valid governmental interest. After agreement is reached on the compact, the final step is approval by the U.S. Secretary of the Interior, whose department includes the U.S. Bureau of Indian Affairs.

When a state fails to negotiate in good faith within 180 days of the tribe's request, the tribe may sue the state in federal district court. If the court finds that the state has failed to negotiate, it may order the state to conclude a compact within 60 days. After the 60-day deadline, the court can order the parties to submit their last best offers to a court-appointed mediator who selects the one which best meets the terms of the federal act. If, within a subsequent 60-day period, the state consents to the selected compact proposal by the mediator that version takes effect. If the state does not consent, the Secretary of the Interior, after consultation with the tribe, sets rules which go into effect without state concurrence. These rules must be consistent with the proposal selected by the mediator and must conform with IGRA and state law.

**Casino Management Contracts.** Tribes must retain full ownership of their gaming facilities, but they may hire individuals or firms to finance, construct and manage them. Management contracts have to be approved by the chairperson of NIGC and must provide for adequate accounting procedures, financial reports, access to operations and income figures by tribal officials, and a minimum guaranteed payment to the tribe that takes preference to development and construction costs. Management contract fees may not exceed 30% of net revenues unless NIGC agrees that a larger fee of up to 40% is justified. Companies bidding for management contracts pay fees to NIGC to cover the cost of background investigations of the company's managers and key employes. Employes may not have convictions for gaming-related felonies and must not

have reputations for, or involvement in, activities detrimental to the honesty and integrity of tribal gaming operations.

**Compacts Reached with 11 Tribes.** The governor was authorized to enter into gaming compacts on behalf of the State of Wisconsin by 1989 Wisconsin Act 196, thereby protecting the 7-year agreements from modification or rejection by later legislation. Each compact will be extended automatically for 5-year periods unless one of the parties serves formal notice, at least 180 days prior to the expiration date, of its intention not to renew.

Following are the dates compacts were signed and the 17 casinos operated by the tribes as of January 1, 1994:

Lac Courte Oreilles Band of Lake Superior Chippewa. August 16, 1991. (LCO Casino, Hayward, Sawyer Co.)

Sokaogon (Mole Lake) Chippewa Community. August 22, 1991. (Regency Resort and Grand Royale Casinos, Crandon, Forest Co.)

Oneida Tribe. November 8, 1991. (The Oneida gaming complex, located in Green Bay, Brown Co., consists of the Oneida Bingo and Casino and the new \$20.5 million casino which opened December 1993.)

Red Cliff Band of Lake Superior Chippewa. December 12, 1991. (Isle Vista Casino, Red Cliff, Bayfield Co.)

Bad River Band of Lake Superior Chippewa. December 12, 1991. (Bad River Gaming Complex, Odanah, Ashland Co.)

St. Croix Band of Lake Superior Chippewa. December 19, 1991. (St. Croix Casino, Turtle Lake, Barron Co., and Hole in the Wall Casino, Danbury, Burnett Co.)

Stockbridge-Munsee Community. February 13, 1992. (Mohican North Star Casino, Bowler, Shawano Co.)

Lac du Flambeau Band of Lake Superior Chippewa. Compact selected by court-appointed mediator on March 23, 1992. (Lake of the Torches Casino, Lac du Flambeau, Vilas Co.)

Talks to authorize casino gambling on the Lac du Flambeau reservation stalemated over what games would be played and how they would be regulated. The tribe wished to limit the state's involvement in gaming law enforcement and to offer a more extensive range of games than the state wished to offer. At the tribe's request, Judge Crabb chose a neutral mediator, Howard Bellman, to resolve the impasse. On January 21, 1992, he selected the state's proposal (which was similar to the compacts signed with the other tribes compacts) largely because he

believed the state should play a substantial role in the oversight, investigation and prosecution of tribal gaming law violations.

Forest County Potawatomi Community. June 3, 1992. (Northern Lights Casino near Carter in Forest Co. and Potawatomi Bingo Milwaukee Jackpot Casino in the City of Milwaukee.)

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

Menominee Tribe. June 3, 1992. (Menominee Nation and Crystal Palace Casinos, Keshena, Menominee Co.)

Winnebago Tribe. June 11, 1992. (Majestic Pines Casino, Black River Falls, Jackson Co.; Ho-Chunk Bingo and Golden Nickel Casino, Lake Delton, Sauk Co.; Rainbow Casino, Nekoosa, Wood Co.)

The compact provides that any 2 locations may offer slot/video games and blackjack (currently Rainbow and Ho-Chunk) and one casino may offer all games except blackjack (currently Majestic Pines). The compact provides that a fourth casino may be located in Jackson, Sauk or Wood County by mutual agreement. However, the tribe has expressed a desire to establish a large casino (called De Jope) along Interstate 90 near Madison's east side in the Town of Blooming Grove on land it bought in 1982 and placed in reservation trust status in 1987. For this to occur, the compact would have to be renegotiated, a step opposed by Governor Thompson due to concern by local elected officials over the potential for increased crime and demand on public services such as roads and utilities.

In May 1992, Kevin Potter, U.S. Attorney for the Western District of Wisconsin, warned the tribe to shut down casinos it had been operating without gaming compacts. The casinos were temporarily closed, idling over 300 workers. It has been speculated that the economic pressure due to lost revenues at closed

casinos prompted the tribe to accept the state's proposal despite its desire to open a casino near Madison. The tribe filed a suit in federal court asking that the governor be ordered to renegotiate the compact so as to allow the Madison site as a full casino. On June 7, 1993, Federal District Judge Barbara Crabb agreed with the tribe that site location was a legitimate subject of negotiations, but that the tribe could not unilaterally determine where on their lands Class III gaming may be conducted, and it must conform with the compact which it originally negotiated. The tribe continues its efforts to convince the state to reopen compact negotiations and is considering an appeal of Judge Crabb's decision.

**Terms of Gaming Compacts.** The initial Lac Courte Oreilles Chippewa compact set the basic pattern for those that followed. Under the compacts, tribes are authorized to conduct the following Class III games: (1) Blackjack (also known as "21"); (2) Electronic games of chance with video facsimile displays (video poker, video keno, etc.); (3) Electronic games of chance with mechanical displays (i.e. electronic slot machines); and (4) Pull-tabs when not played at the same location where bingo is being played. If any one tribe is subsequently permitted to operate additional types of games, the other tribes may also request the right to operate those additional games.

Blackjack, the only table game authorized by the compacts, may not be played at more than 2 casino sites per tribe. Generally, there are no restrictions on the number of locations offering slot/video gaming machines or the number of machines at each site, though there are some tighter restrictions in the Potawatomi and Winnebago compacts.

Patrons must be 18 years old to gamble. All play must be on a cash basis and abide by wagering limits and payout requirements. For example, no more than \$5 may be wagered at a time on any slot/video gaming machine. The maximum wager on a blackjack hand is \$200 before any double-downs or splits, and blackjack may not be played for more than 18 hours per day at any location. Slot/video gaming machines that are not affected by player skill must pay out a minimum of 80% of the amount wagered. Electronic games of chance in which outcomes may be affected by player skill, such as video poker, must have average payout rates of at least 83%.

The Wisconsin Gaming Commission and Wisconsin Department of Justice must monitor, inspect and audit all gaming activities, prosecute criminal violations of state gambling laws that occur on tribal lands, and certify contractors that provide gaming machinery and supplies. Tribes reimburse a portion of these oversight costs based on gross profits. The state has agreed to keep financial and other proprietary records secret so as not to make sensitive information available to competing gaming operators.

**Expansion of Gaming to Other Tribal Lands.** Generally, Class III gaming may not be conducted on trust lands acquired after October 17, 1988, unless the land is located within or contiguous to the boundaries of the reservation which existed on that date. The primary exception is that gaming on newly acquired lands may be approved by the U.S. Secretary of the Interior, after the compact is reviewed by the Bureau of Indian Affairs. Development of a gaming establishment must be in the best interest of the tribe and not be detrimental to the surrounding community or nearby tribal gaming operations. In addition to the secretary's approval, the state governor must consent in writing to the use of the land for Class III gaming, but there is no appeals procedure if the governor fails to grant consent.

Governor Thompson has thus far been reluctant to agree to expansion of gaming to newly acquired tribal trust lands. A notable example was the attempt by the St. Croix band of Chippewa to buy the St. Croix Meadows racetrack in Hudson for the purposes of operating it as a combined greyhound track and casino complex. The owners of the track had reached a tentative agreement to sell it to the tribe, but the Hudson City Council passed a resolution in August 1992 urging Governor Thompson and the U.S. Department of the Interior to block the plan. The council conducted an advisory referendum on December 3, 1992, in which the voters narrowly endorsed the transfer by 1,351 to 1,288. On December 8, 1992, voters in the Town of Troy, which surrounds the track on 3 sides, voted against the casino/track plan by a vote of 535 to 218. Opposition to the proposal was expressed by the Gaming Commission, a Minnesota tribe which operates a nearby casino, and Governor Thompson, who stated that the narrow City of Hudson vote failed to constitute a mandate. He was reluctant to consent to the deal because of the precedent it would set for off-reservation casino gambling throughout the state.

Lack of progress on the casino/track plan prompted the St. Croix Chippewa tribe to drop its proposal. However, a preliminary agreement on a similar casino/track partnership with the Lac Courte Oreilles and Red Cliff Chippewa bands was announced in early August 1993. In September 1993, the Sokaogon (Mole Lake) band of Chippewa offered to join in the partnership with the track and the other 2 tribes. This proposal also would require approval by the U.S. Department of the Interior and the governor before the tribes could install a casino at the Hudson track.

Citing fear of unchecked expansion, the governor has thus far given conditional approval to only one off-reservation casino plan. On December 21, 1993, he endorsed in principle the establishment of a casino operated by the Oneida Tribe in downtown Green Bay, provided it meet the approval of the U.S. Secretary of the Interior. The

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proposal stipulates that a local referendum will be required, but no date has been set for a vote.

### C. BENEFITS OF INDIAN GAMING

IGRA requires tribes to use gaming profits to promote "community objectives". According to the Wisconsin Indian Gaming Association, an organization which represents the 11 Wisconsin tribes and bands at the local, state and national levels, tribal gaming enterprises provide about 7,000 jobs. Gaming proceeds are used to fund social welfare programs, tribal government, schools, higher education scholarships, medical facilities, day care centers, housing, roads and infrastructure improvements. Tribal officials also cite personal and sociological benefits, such as increased optimism and self-esteem and a decline in domestic violence and alcoholism. While devoting most gaming proceeds to economic development and tribal welfare projects, the Winnebago tribe allots a portion of its profits to direct per capita payments to tribal members. Wisconsin Secretary of Health and Social Services Gerald Whitburn reported in January 1993 that gaming has resulted in significantly decreased dependence on welfare programs such as Aid to Families With Dependent Children (AFDC) and the Relief of Needy Indian Persons Program.

A study conducted by UW-Green Bay Professor James N. Murray and released by the Wisconsin Indian Gaming Association in November 1993, reported that Indian gaming operations in 1992 helped save the state more than \$2 million in welfare costs and generated more than \$49 million in government revenue due to income and sales taxes paid by employes, suppliers and casino patrons. Other benefits of gaming included increased spending at ancillary businesses such as hotels, restaurants, taverns and gas stations. However, Mark Bugher, secretary of the Department of Revenue, pointed out there are certain social and government costs to be considered such as excessive gambling problems, additional law enforcement, and casino exemptions from state income and local property taxes.

Oneida tribal gaming, which directly employs over 1,200 people, has had a significant economic impact on the entire tribe and the surrounding region. Because the tribe manages its Green Bay casino itself, all of the estimated \$40 to \$50 million in annual profits are available for tribal community projects. Proceeds have been used to support social welfare services and educational programs, fund tribal government operations, finance housing construction, and continue efforts to buy back portions of

the tribe's original reservation sold to non-Indians over the years. Economic diversification is also emphasized. In addition to a luxury hotel adjacent to the airport, profits have funded various tribal business enterprises. The tribe opened a new \$30 million casino in December 1993 that can be converted into a convention center if the gaming compact is not renewed. The tribe agreed to pay the adjoining Village of Ashwaubenon \$880,000 for road and sewer improvements necessary to support the new casino and are in the process of negotiating a separate arrangement for public safety services from the village.

In a different type of arrangement, the St. Croix Band of Chippewa employs a non-Indian management company to operate its Turtle Lake casino. The company has contracted to receive a 40% share of the profits, the maximum allowed by federal law. The tribe opened a new \$10 million casino in May 1992 on the site of the bingo hall it had run since September 1988. Tribal Chairman Donald Saros said of the financial boost from gaming: "It's been a long struggle for us. We have a poor reservation, one of the poorest in the state. Everybody prospers, not only the tribe." While tribal members receive hiring preference, most of the over 800 jobs are held by non-Indians, making the casino one of the largest employers in the region. The tribe voluntarily pays \$150,000 annually to reimburse the village for municipal services. The non-Indian management company has constructed a nearby 150-room motel and, because it is located on non-reservation land, it is subject to applicable taxes.

#### **D. CONCERNS ABOUT INDIAN GAMING**

Competition from high-stakes Indian casinos and bingo halls is blamed by some for the diminished profitability of greyhound racetracks and charitable bingo and raffle activities in the surrounding areas. Some question the fairness of the tribes' current monopoly on casino-type gaming in Wisconsin. Tribal gaming facilities enjoy a number of advantages including tax breaks; around-the-clock operating hours; and using gaming profits to subsidize discounted food and liquor to attract customers. Owners of taverns, racetracks and other hospitality and entertainment businesses have urged legislators to allow them to offer casino games, such as video poker machines, to "level the playing field".

While there has been little evidence of organized crime association with tribal gaming, isolated instances of cheating, theft and other criminal activity by patrons and employes have come to light. Casinos have been criticized for denying continued access

to certain individuals. Although casinos are not required to state a reason for asking a player to leave the premises, it has been speculated that some are not welcome because of their gambling success or their failure to wager. There have been reported increases in compulsive gambling and other social problems as a result of readily available tribal casinos.

A report released by the U.S. Department of the Interior in December 1993 said that tribes could have saved millions of dollars by purchasing, rather than renting, gaming equipment. One reason tribes used leasing arrangements was that they lacked startup capital to buy equipment and banks were reluctant to lend them money without adequate collateral. Now most tribes purchase their equipment.

Some non-Indian casino managers have been accused or convicted of bribery, charging excessive fees and other improper or exploitive practices. Controversy leading to violence has erupted within the tribal community over control of gaming operations. For example, some members of the St. Croix Chippewa tribe have sued the tribal council and disrupted council meetings over allegations that the band has ceded too much control of its gaming operations to non-Indian managers who do not maximize profits for the tribe. The Assembly Committee on Gaming Oversight held 2 hearings in the fall of 1993 to investigate these charges. The tribal council responded in a December 1993 letter to the committee that the state lacked jurisdiction over the gaming activities of a sovereign tribe. On the other hand, the federal government apparently does have such jurisdiction. In December 1993, Federal Judge Barbara Crabb reluctantly voided a contract between the Stockbridge-Munsee band and its Wisconsin-based gaming equipment company. Although no actual harm or overcharges had been proven, the tribe had failed to receive approval of the contract from federal officials.

Tribes assert that, as sovereign entities, they are exempt from basic labor laws which apply to other employers in the state and may not be sued without their permission. While most tribal casinos operate in conformance with state-mandated worker protection laws, compliance is voluntary in the areas of unemployment compensation, worker's compensation injury payments, overtime and minimum wages, harassment and discrimination, and collective bargaining.

## **E. THE FUTURE OF INDIAN GAMING IN WISCONSIN**

Legal authorities generally agree that 1991 Wisconsin Act 321 and the lottery definition amendment, both designed to exclude state-operated casino-type games, will

probably have no adverse effect on Indian gaming during the course of the current initial 7-year tribal-state gaming compacts. However, later effect on tribal gaming is uncertain. Attorney General Doyle has commented that renewal will probably depend upon how the games have been conducted and whether they have contributed to the state's economy without crime and corruption. However, he speculated the amendment may strengthen the state's position if it wishes to end all casino-type gambling. Some tribal leaders have labelled the amendment as a "plot" to close Indian casinos, and warned that restriction of tribal gaming will end in protracted litigation.

Some opt for a narrow interpretation of IGRA saying the act permits tribes to conduct only the specific types of games allowed by state law. They argue that if a state specifically prohibits casino-type games, even while allowing other forms of Class III games, then tribes may not conduct casino-type games. Federal judges, however, have tended to rule more broadly that, if a state allows a threshold level of Class III gaming, tribes must be permitted to conduct the full range of Class III casino-type games. The threshold is not precisely defined, but it may be as little as one type. Some legal experts have speculated that federal judges may continue to rule tribes may conduct casino-type games unless Wisconsin repeals all forms of Class III gaming including the state lottery, pari-mutuel wagering and, possibly, charitable raffles.

Congress is considering legislation which would clear up the IGRA ambiguity by explicitly stating that a tribe can conduct only those games explicitly permitted in a state. Other bills would decrease state involvement in the regulation of tribal gaming, perhaps by providing that tribal compacts be negotiated directly with the federal government within the state's definition of criminal activity. In the meantime, tribal gaming operations in Wisconsin continue to expand with increasing profitability. The market has yet to reach the saturation point in this state and gambling continues to give historically poor tribes the chance to use "the new buffalo", as tribal gaming has been dubbed, to prosper and provide for future generations.

Indian leaders themselves recognize there may be a downturn in gambling profits. Anticipating eventual saturation of the gaming market, and hoping to avoid dependence on an unreliable revenue source, Oneida Tribal Chairman Rick Hill said in 1992, "...we're using that money to diversify — cutting the hay while the sun shines." Oneida Business Council member Lloyd Powless added, "We need gaming to get out of gaming."

## IV. GAMING LAW ENFORCEMENT AND REGULATION

### A. WISCONSIN GAMING COMMISSION

On October 1, 1992, regulation of legalized gambling in Wisconsin was consolidated under the Wisconsin Gaming Commission, which was created by 1991 Wisconsin Act 269. The commission consists of 3 members appointed by the governor with the advice and consent of the senate to 4-year staggered terms. The powers and duties of the commission are specified in Chapter 561, Wisconsin Statutes. It oversees and regulates legal gambling as provided in the following statutory chapters: Chapter 562 — Regulation of Racing and On-Track Pari-Mutuel Wagering; Chapter 563 — Bingo and Raffle Control; Chapter 564 — Crane Games; and Chapter 565 — State Lottery. Chapter 569 directs the Gaming Commission to coordinate the state's regulatory activities related to Indian Gaming as specified in the state-tribal gaming compacts.

The commission operates the State Lottery and issues gaming licenses for racing, bingo, raffles and crane games. It may levy fines and suspend licenses for administrative violations and reports suspected gaming-related criminal activity to the Division of Criminal Investigation in the Department of Justice (DOJ). If DOJ chooses not to investigate, the commission may coordinate prosecution of the suspected criminal activity with local law enforcement officials and district attorneys.

### B. ANTIGAMBLING LAWS AND PENALTIES

**Private Gambling.** Section 945.01, 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...." Because private wagers by participants in or spectators at games and athletic contests are so widespread and are generally perceived to cause little harm, law enforcement authorities rarely devote much effort to cracking down on them. Section 945.02 provides that making a bet or participating in gambling activity is a Class B misdemeanor punishable by a fine not to exceed \$1,000 or imprisonment not to exceed 90 days, or both. Section 945.07 provides a Class A misdemeanor penalty (fine up to \$10,000 or imprisonment up to 9 months, or both) for participants in any contest of skill, speed, strength or endurance of persons, machines or animals who make a bet when an admission fee is charged to spectators of the event. Section 945.08 makes it a Class D felony (fine up to \$10,000 or imprisonment up to 5 years, or both) to try to influence a

participant in a contest to refrain from exerting full skill, speed, strength or endurance in a contest and makes it a Class A misdemeanor for a participant to accept or solicit such a bribe.

**Commercial Gambling.** Although the law has always considered commercial gambling to be a more serious offense than private betting, local law enforcement authorities generally raid establishments conducting for-profit gaming only in response to specific citizen complaints. Section 945.03 provides that commercial gambling, as well as manufacturing or dealing in illegal gambling devices, constitutes a Class E felony punishable by a fine not to exceed \$10,000 or imprisonment not to exceed 2 years, or both.

**The "Thomson Law" — From Slot Machines to Video Games.** A serious attempt to enforce Wisconsin's antigambling laws stemmed from a proliferation of gambling machines in the 1940s. Slot machines and similar devices were openly available in taverns located in resort areas catering to out-of-state tourists. Supporters claimed this limited gambling was necessary to attract business.

The legislature moved to deter gambling in drinking establishments by passing Chapter 374, Laws of 1945, known as the Thomson Antigambling Law for its sponsor Republican Assembly Floor Leader Vernon W. Thomson, who later served as attorney general and governor. The Thomson Law permitted the revocation of a tavern's alcohol beverage license and the seizure of gambling machines incident to a lawful arrest, search or inspection. Prior to its enactment, enforcement of the state's antigambling statutes was left entirely to the discretion of local law enforcement officers. The new law required that law enforcement officers seize any slot machine, payoff pinball machine or other gambling device found on the premises. State alcohol beverage tax collectors were also authorized to seize gambling devices and institute proceedings to revoke liquor or beer licenses.

Under the Thomson Law, local officers were required to report violations to the district attorney within 10 days, and the district attorneys were required to begin court proceedings within 10 days after receiving a complaint. Any public official aware of illegal gambling who failed to take appropriate action was subject to removal from office by the governor.

Well-publicized tavern raids resulted in the confiscation of many illegal gambling machines and were considered a successful tactic in combatting the gambling problem. The constitutionality of the Thomson antigambling law was upheld by the Wisconsin

Supreme Court in *State v. Coubal*, 248 Wis. 247 (1946), and the essential elements of the law are embodied today in Sections 945.041, 968.10 and 968.13, Wisconsin Statutes.

The seizure and license revocation sanctions of the Thomson Law are now being applied to a new invention, video gaming machines. In recent years, thousands of these machines have appeared in Wisconsin taverns after the bar business was hard hit by a combination of competition from Indian tribal casinos, the higher legal drinking age, and stricter enforcement of prohibitions against drinking and driving.

Video games, controlled by computer microchips and featuring high-tech graphics and sound effects, may be programmed to simulate the play of poker and other casino-type games. Although the machines are not designed to automatically dispense coins, many instances are reported of proprietors awarding money prizes to patrons who accumulate certain numbers of points.

There is confusion among law enforcement authorities as to whether mere possession of video gaming machines is prohibited, although there is agreement that payouts based on the results of the games are clearly illegal and punishable as felonies. Proprietors argue that the devices can legitimately be used for amusement because, unlike slot machines, they are not designed to automatically dispense money. Enforcement officers find it is a very sensitive issue when they raid taverns to seize games similar to those legally available at nearby Indian tribal casinos.

Attorney General Doyle stated on March 11, 1992, that possession of video gaming machines is generally illegal. In his informal opinion, requested by Senators Michael Ellis and Robert Cowles, he held the machines to be "contraband" that law enforcement officials may seize and destroy after executing a search warrant. An owner may be charged with either a felony or misdemeanor, depending upon how the machines are used, he stated. Relying on Section 945.01 (3) (a), Wisconsin Statutes, he declared gambling to be the principle purpose of video gaming machines. Nevertheless, he suggested the legislature consider clarifying the law.

After the opinion, district attorneys sent warning letters to taverns, prompting the removal of many machines. Raids around the state have netted many video games but have resulted in few prosecutions because authorities did not wish to overload the courts. Some prosecutors feel that confiscation of the machines is adequate punishment and deterrent for tavern owners.

On December 10, 1992, the District IV Court of Appeals ruled, in a 2-1 decision, that video gambling machines that do not directly pay winnings to the player are not illegal devices *per se*, regardless of whether the proprietor offers a prize. In his dissent, Judge Charles Dykman noted that only slot machines would fit the majority's definition

of a gambling machine, while blackjack tables and other games which require human intervention for prize payoffs would be permissible. This decision was appealed to the Wisconsin Supreme Court which, in a unanimous November 16, 1993, opinion, threw out the court of appeals ruling and returned the case to Dane County Circuit Court for retrial. The court said that neither the circuit nor appellate court had enough evidence on the nature and use of video gaming machines before them to make an adequate decision. This action leaves open the question as to whether mere possession of video gaming machines, absent payouts, is illegal, a question that ultimately may have to be appealed to the Wisconsin Supreme Court.

**Gambling Contracts and Debts Unenforceable.** Statutory Sections 895.055 and 895.056, that have been on the books since 1858, make all promises, agreements, notes, bills, bonds, or other contracts related to gambling void and uncollectible. As stated by the Wisconsin Supreme Court in the case of *Stoddard v. Burt*, 75 Wis. 107 (1889), the purpose of this and other antigambling statutes "...is to make all gambling unlawful and punishable..." and "...to nullify all transactions based thereon..." Losers may also sue to recover money lost in gambling. In November 1990, a Florida resident used \$23,700 of worthless checks to pay for wagers at the Geneva Lakes Kennel Club racetrack. In December 1992, the District II Court of Appeals ruled that the law still barred prosecution for insufficient funds checks at dog tracks and other gambling venues. 1993 Assembly Bill 201, introduced in response to this and other incidents, would permit enforcement of wagering debts related to legal gambling such as the State Lottery, racing, bingo, raffles, crane games and Indian gaming.

## V. GAMBLING AND THE LAW: PROS AND CONS

### A. ARGUMENTS FOR LEGALIZED GAMBLING

**Entertainment.** Gambling is viewed by many as an innocent and relatively harmless social pastime. Supporters classify it as an entertainment similar to theaters and sports events. They enjoy the excitement and anticipation involved in risking a small amount in hopes of winning a large jackpot.

**Economic Development.** Gambling directly creates jobs in casinos and at racetracks and also benefits related industries such as restaurants, gas stations and motels. Gambling's recreational value can enhance an area's attractiveness as a tourist

destination, supplementing existing natural and man-made drawing attractions. Proponents realize, however, that the window of economic opportunity may be closing. National Indian Gaming Commission Chairperson Anthony Hope predicted in June 1992 that tribes have about "five to 10 good years left" to cash in on the gambling explosion before market saturation results in reduced revenue, and he urged tribes to invest their profits wisely with an eye to the future.

**Charitable Fundraising.** Charitable and service organizations sponsor bingo games or raffles to benefit worthwhile community activities. Charitable gaming enables people to support a good cause while having a chance to win a prize. Charitable gaming can also help alleviate the tax burden by financing services otherwise borne by government.

**Tax Revenue.** Gambling operated or licensed by the government is considered a painless form of voluntary taxation, a view expressed by Thomas Jefferson who wrote that lotteries "expose none to risk but the willing, and those wishing to be permitted to take the chance of gain." Since people are going to gamble anyway, so the argument goes, proceeds may as well be used for public benefit.

**Personal Freedom.** Gambling is widely regarded as relatively harmless if not done to excess. Many feel they should have the right to decide whether or not to participate. Recreational players who wager only disposable entertainment dollars question why gambling should be restricted just because some persons are unable or choose not to control their behavior.

**Unenforceable Laws.** It is difficult for public officials to uphold unpopular laws such as those against betting. Keeping widely disregarded statutes on the books tends to breed general disrespect for the legal system.

## **B. ARGUMENTS AGAINST LEGALIZED GAMBLING**

**Crime and Corruption.** Because of a heavy cash flow, gambling operations have a reputation of acting as magnets for criminal elements looking for profits and a means of "laundering" money from illicit enterprises. Illegal activities associated with gambling enterprises include theft, embezzlement, cheating, narcotic drugs, and prostitution. Public officials and law enforcement officers may be tempted by bribes to ignore violations of gambling regulations. Large campaign contributions from gambling interests, even if legal, can create the appearance of unfairly influencing the political process.

**Erodes Work Ethic.** Opponents say gambling's "get rich quick" lure of easy money saps people's incentive to work for a living. Gambling plays on people's weaknesses by appealing to greed and laziness.

**Exploits the Poor.** Gambling is regressive because the poor tend to spend a higher proportion of their income on games of chance than more affluent people which can worsen poverty. It is argued that money "wasted" on gambling would be better spent on food, clothing, shelter and other necessities of life.

**Compulsive Gambling Leads to Social Problems.** Opponents claim the expanded availability of gambling opportunities and the increasing public acceptance and respectability of gambling results in more people becoming addicted. A 1992 study, commissioned by the legislature, estimated there are over 50,000 compulsive gamblers in Wisconsin and another 83,000 are problem gamblers. For the estimated 5% of gamblers who are susceptible to compulsive gambling, the act of playing the games and taking a risk becomes more important than winning or losing. This impulse disorder often requires professional treatment. The time and money spent on obsessive gambling may result in absenteeism from work, lost wages, unemployment, and financial hardship and can lead to spousal and child abuse, family breakdown and suicide. Gamblers may turn to crime to continue betting activity. A national study indicated about 40% of white collar crime can be traced to compulsive gambling and that more than 50% of addicted gamblers resort to crime to finance their habits. Taxpayers bear the burden of increased public expenditures for law enforcement, welfare caseloads and treatment programs. The costs of crimes committed by compulsive gamblers are passed on to consumers in the form of higher prices and insurance premiums. Certain types of gambling, such as slot/video machines, are considered more addictive, and therefore may merit more intensive regulation.

**Economic Problems.** Opponents warn governments that they may become dependent on unreliable gaming revenue. They point out that gambling is not a very productive industry as it often does little more than shuffle money around, creating almost no new wealth. The extent of economic gain to a particular area depends in part on the proportion of gambling dollars that are spent by visitors from outside the area.

**Government Involvement Inappropriate.** Many believe it is improper for the government to appear to encourage formerly illegal and potentially harmful gambling activities. Opponents of government-sanctioned gambling are uncomfortable with the concept of preying on people's weaknesses to raise money. They feel that public programs that are worthwhile should be financed with tax money.

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## VI. CONCLUSION

Although some oppose gambling as immoral, most people like to play games of chance and many will do so regardless of legality. Because of the potentially harmful effects of unregulated gambling, reasonable limits are necessary. Typical restrictions include limiting the types and locations of games, setting betting limits and gaming hours, and specifying who may play. A common control strategy is to locate casinos and racetracks away from population centers in hopes of discouraging casual bettors.

Social scientists theorize that legal gambling goes through lengthy cycles of expansion and toleration followed by contraction and prohibition. The United States is currently in a sustained expansionary phase, and no one is certain when the saturation point will be reached. As with previous boom periods, a decline may occur when gambling becomes a less reliable source of public revenue and when crime, corruption and other potential social problems associated with gambling outweigh the beneficial role it can play as a catalyst for economic development.

## VII. APPENDICES

### APPENDIX A: Operation of Wisconsin State Lottery Games

The types of lottery games to be offered and the particular features and playing procedures of each game are determined by administrative rules recommended by the Lottery Division and approved by the Gaming Commission.

#### **Instant Win Scratch-off Games.**

Instant win scratch-off games use preprinted tickets with a latex covering that is scratched off to reveal numbers or symbols underneath. A player wins when a predetermined winning combination of numbers or symbols is printed on the ticket. The Wisconsin State Lottery tries to introduce 10 to 12 new instant scratch-off games each year with approximately 5 being available at any time. Over 60% of gross sales are paid out to prize winners in amounts ranging from \$1 to \$100,000, although the typical top prize is \$5,000 or less.

Certain scratch-off tickets have one or more television symbols. These pay \$100 instantly and permit the ticketholder to attend the weekly Wisconsin Lottery "Money Game" television show. Those chosen as one of 5 finalists on the TV program have a chance to win \$50,000. In addition, those who purchase nonwinning tickets from the TV scratch-off game may send in 5 of these tickets for a chance to win up to \$3,000 in a secondary drawing.

"Grand Slam", based on a baseball theme, is a typical example of the odds for an instant win scratch-off game. The prize amounts and estimated odds of winning are: a 1-in-10 chance of winning \$1, \$2 — 1:21, \$3 — 1:41, \$6 — 1:96, \$12 — 1:103, \$24 — 1:300, and \$1,000 — 1:15,688. The overall odds of an individual ticket winning a prize in "Grand Slam" are better than 1 in 5.

#### **Pull-tabs.**

Another type of instant win game is pull-tabs, in which the preprinted ticket, made of laminated paper, is partially perforated to allow a strip to be torn off to reveal symbols underneath. Pull-tabs are commonly sold to patrons at taverns, restaurants and bowling centers. Nonprofit organizations may also apply to sell pull-tabs at special events for fundraising purposes, and they can receive a sales commission of approximately 30%. While Wisconsin often leads the nation in pull-tab sales, this type of game actually accounts for a relatively small proportion (about 3.5%) of total state

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lottery sales. The 3 games offered have a prize/odds structure ranging from 50 cents at 1:6.23 odds to \$100 at 1:840 odds.

### **On-line Games.**

In on-line games, a player chooses or may have a computer select a subset of numbers from a number set. Tickets bearing the entry numbers are issued by a terminal electronically connected to a central lottery computer which records the play and keeps track of all tickets sold. Periodic drawings are conducted by random mechanical selection of numbered balls with prizes paid for matching all or some of the numbers drawn. Tickets are the only evidence of a player's participation and must be redeemed to collect a prize. Some games have a guaranteed minimum grand prize while in other games the jackpot size depends upon the number of tickets sold. If there is no jackpot winner in a particular drawing, money is rolled-over to increase the amount available for the next drawing. If there is more than one jackpot winner, the amount must be divided equally among all. On-line games account for about 36% of all Wisconsin lottery sales.

Wisconsin currently operates 4 on-line games sold exclusively within Wisconsin. The first was "Supercash", which began on February 4, 1991. It is a daily drawing which involves picking 6 numbers between 1 and 36. A player has a 1 in 973,896 chance of matching 6 numbers and winning the top prize of \$250,000. Matching 5 numbers (1:5,411 odds) wins \$500 and selecting 4 correct numbers (1:150 odds) wins \$25. Over 53% of total "Supercash" revenue is returned as prizes.

"Wisconsin's Very Own Megabucks" is another large jackpot on-line game available only in Wisconsin which began operation on June 20, 1992. It involves picking 6 numbers between 1 and 49 and has a minimum jackpot of \$1 million. Drawings are held twice a week and lesser prizes are available to players who match 3, 4 or 5 correct numbers. The overall chance of winning some level of prize in Wisconsin's Very Own Megabucks is about 1 in 27, and the odds of winning the jackpot are about 1 in 7 million. About 54% of total sales for this game is returned as prizes.

"Daily Pick 3" began on September 21, 1992. In this game, inspired by a popular Illinois lottery game, players have a 1 in 1,000 chance of picking the 3 winning numbers in the exact order drawn. The top prize is \$500 and about 50% of every dollar played is allocated to prizes. Players may win lesser amounts for picking the correct numbers in any order drawn.

Tickets for the newest on-line game, "Money Game 4", went on sale on September 13, 1993. It is similar in format to the "Daily Pick 3" game, except that 4 numbers must

be chosen in the exact order drawn to win. Players have a 1 in 10,000 chance of picking the 4 correct numbers in exact order and winning the top prize of \$2,500. Lesser amounts are awarded for choosing 3 (\$50 prize at a 1 in 556 chance) or 2 (\$5 prize at a 1 in 39 chance) of the numbers in order drawn.

Wisconsin belongs to a consortium of 14 states and the District of Columbia which participate in the Lotto\*America. By accumulating many entries, this multistate lottery can pool prize money quickly. Although the state constitution does not mention multistate lotteries, Wisconsin's participation in this scheme has not been challenged in court. Several unsuccessful constitutional amendments to authorize Wisconsin's membership have been considered, and 1991 Wisconsin Act 321 specifically created statutory sanction of multistate lotteries.

In "Megabucks", Lotto\*America's original game, prizes were awarded for matching 4, 5, or 6 numbers between 1 and 56. "Powerball" replaced "Megabucks" in April 1992 because the Lotto\*America board felt that sales were hurt by Megabucks' similarity to the "pick six" format used by many state lotteries, including Wisconsin.

The grand prize in Powerball is \$2 million at minimum, but it will often be much higher. In the drawings, which are held twice a week, players choose 5 out of 45 numbers in one section of the play slip and 1 of 45 numbers, the so-called "powerball", in another section. All 6 numbers must be matched to win the grand prize, but it is possible to win lesser amounts by picking some of the numbers. Powerball was designed to offer more prize levels and a greater chance to win a prize. To date, the largest individual lottery payoff in the United States — \$111 million — was won by a Fond du Lac player on July 7, 1993. (Although other jackpots have been larger, they were shared by multiple winners.)

#### **Payouts.**

Most lottery prizes are paid in cash, either by the retailer or through in-person or mail redemption from lottery offices. The large jackpots for "Powerball" and "Wisconsin's Very Own Megabucks" are paid as 20- and 25-year annuities, respectively. In the case of "Wisconsin's Very Own Megabucks", the jackpot payouts are on a sliding scale, with each yearly payment growing progressively larger, until the total payout over the 25 years equals the jackpot amount. Annuities may be inherited. Net gambling winnings are subject to individual income taxes and the Internal Revenue Service is notified of every prize over \$599. State income tax is withheld from lottery prize payouts over \$2,000 and federal income tax is withheld from prizes over \$5,000.

## APPENDIX B: Defining "Lottery"

**Constitutional Interpretations.** Prior to the April 6, 1993, ratification of a constitutional amendment to define the state lottery, there had been considerable disagreement regarding what types of gambling were constitutionally permissible in Wisconsin. The controversy revolved around whether the word "lottery" in the Wisconsin Constitution should be broadly interpreted as including all types of gambling or narrowly defined as only the types of games commonly associated with state lotteries. The key question was whether the 1987 constitutional amendment that authorized the Wisconsin State Lottery also allowed legislative authorization of state-operated casino-type games.

From its ratification in 1848 until 1965, the Wisconsin Constitution stated in Article IV, Section 24 (1) that the "legislature shall never authorize any lottery...." "Lottery" was generally broadly interpreted by the Wisconsin courts and various attorneys general to be essentially synonymous with "gambling". The legislature apparently accepted this broad definition because after 1965 it initiated 5 constitutional exceptions to what was viewed as an absolute prohibition of gambling.

It is difficult to determine what the constitutional writers meant when they used "lottery" in the original Wisconsin Constitution because the record of debate on the issue is sparse. Historically, the definitions of gambling and lottery have often been synonymous, i.e., determining an outcome by chance. However, in recent years lotteries have commonly been understood to be a specific category of games as defined in *Webster's Ninth New Collegiate Dictionary*: "a drawing of lots in which prizes are distributed to the winners among persons buying a chance."

There were 3 different views about the constitutional meaning of "lottery". The *narrow view* interpreted "lottery" as only lottery-style games. In this view casino-type games were not prohibited by the constitution, and the legislature could statutorily authorize state or private casino gambling at any time without constitutional amendment. The *broad view* held that "lottery" included all forms of gambling, so that when the amendment permitting a state-operated lottery was ratified in 1987, it also permitted state-operated casino games. The *intent view* asserted that the intent of the framers of the constitution was to prohibit all types of gambling not specifically excepted and that the 1987 state lottery amendment permitted the legislature to authorize the state to operate only traditional lotteries, not casino-type games.

Narrow Interpretation. In a February 5, 1990, opinion requested by the Lottery Board, Attorney General Donald Hanaway concluded (79 Op. Atty. Gen. 14), that the

constitutional term "lottery" does not include all forms of gambling and is distinct from casino-style games of chance such as roulette, blackjack, craps, baccarat, slot machines and video gaming machines.

Under this narrow view, the constitution prohibited only random drawings involving tickets similar to the scratch-off and on-line games currently conducted by the Wisconsin State Lottery. All other forms of private or state-operated gambling were restricted by statute only. Thus, it appeared that, except in the case of the state lottery, the amendments which specifically authorized the other types of gambling were not strictly necessary. Attorney General Hanaway concluded the legislature had the authority to permit state or private casino gaming simply by making changes in the laws which prohibited games of chance.

Broad Interpretation. In a May 2, 1991, opinion (OAG 10-91) requested by Speaker Walter Kunicki, chairperson of the Assembly Organization Committee, Attorney General James Doyle asserted that "lottery" in the constitution must be consistently interpreted to encompass all types of gambling. He concluded that the 1987 constitutional amendment which authorized a state lottery also permitted the state to operate any form of gambling. In essence, he held that "state-operated lottery" equals "state-operated gambling". Once the legislature authorized the State Lottery Board to determine by administrative rule the types of games conducted by the state, it apparently allowed any type of lottery drawing or casino-type game.

Intent Interpretation. A third interpretation of the term "lottery" reasoned that the word reflected different meanings in 1848 and 1987. According to this view, the original prohibition outlawed all forms of gambling. However, the 1987 constitutional amendment which authorized creation of a state-operated lottery legalized only a distinct and narrow form of lottery, specifically games using tickets and numbers drawings.

Supreme Court Fails to Define Lottery. In the summer of 1992, the Wisconsin Supreme Court received 2 petitions requesting review of whether the 1987 constitutional amendment on the state lottery allowed state-operated casino gambling, but, by a 4-to-3 vote, the court on January 20, 1993, refused to accept original jurisdiction because, it said, the question was not "ripe" for adjudication. It did, however, acknowledge genuine public concern and confusion regarding what types of gambling were legal.

Governor's Blue Ribbon Task Force on Gambling. On October 28, 1991, Governor Thompson, by Executive Order #136, established a Blue Ribbon Task Force on Gambling. Its mission was to try to determine public opinion on gaming in Wisconsin, assess 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 final report, issued in January 1992, the task force found that there appeared to be a general acceptance of gambling in the state and a willingness to expand legal gaming. It 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.

It recommended authorization of 4 floating casinos and suggested legalizing video gaming machines such as video poker in establishments possessing liquor licenses, including taverns, restaurants and racetracks, subject to approval by local voters. These games, like the floating casinos, would technically be state-operated and linked to the state lottery computer. Supporters of this controversial proposal asserted the games would generate additional revenue to help taverns compete more effectively against other entertainment options. 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 tribal casinos.

The governor rejected the floating casino recommendation but included a proposal in 1991 Senate Bill 483 (the budget adjustment bill) to allow video gaming machines in establishments licensed to serve alcohol beverages by the drink. (The proposal was later deleted from SB-483 by the Joint Committee on Finance.)

**State Lottery Definition Legislation — 1991 Wisconsin Act 321.** On April 13, 1992, Governor Thompson called a special legislative session to enact laws limiting the scope of permissible state-operated gambling. 1991 Wisconsin Act 321, effective January 1, 1993, defines the state lottery by specifically stating what types of games are allowed 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..." The section describes the scratch-off instant win games, pull-tabs, and on-line numbers drawing games that may be operated by the lottery. The act specifically described the forms of gambling which would not be defined within the boundaries of "state lottery". These definitions would later determine the content of the 1993 amendment defining the state lottery.

The act also provided that 5 statewide nonbinding advisory referenda on the future of gambling in Wisconsin would appear on the April 6, 1993, ballot. However, because the constitutional amendment prohibiting gaming expansion passed at that same election, they were moot.

**1993 Constitutional Amendment Defines Lottery.** Some opponents of the expansion of state-operated gambling were concerned the legislature could repeal 1991 Wisconsin Act 321 at any time and thus authorize casino-style gambling. They favored a constitutional amendment to make the prohibition of State Lottery-sponsored casino games permanent. A joint resolution to hold a referendum on the amendment was approved by the senate on April 14, 1992, but failed to pass the assembly prior to the end of the floorperiod. Governor Thompson called a special session in which the legislature approved June 1992 Special Session Assembly Joint Resolution 1, which was designed to amend the constitution by restricting the state lottery to the types of games currently played and to specifically prohibit the state from operating casino-type games.

Before an amendment can be presented to state voters for ratification, it must pass 2 successive legislatures in identical wording. On January 26, 1993, the senate passed 1993 Senate Joint Resolution 2, on second consideration by a vote of 26 to 4. It was then referred to the Assembly Special Committee on Gambling Oversight. The committee held a series of hearings around the state with members visiting Indian casinos, Wisconsin greyhound racetracks, and riverboat casinos in neighboring states. Opposition to the amendment came chiefly from racetrack operators, tavern owners and others who favored expanded gambling operated by the state lottery and from a number of Indian officials who feared the stricter definition of "lottery" would strengthen the state's case if it chose to eliminate tribal casinos. A coalition of 8 of the state's 11 tribes and bands offered the state a significant share of future casino revenues if the amendment was defeated or delayed and the gaming compacts between the state and the tribes were renegotiated to allow a tribal consortium to build a large casino in southeastern Wisconsin. The tribal representatives estimated the state's share of profits from this offer might reach \$250 million per year, which could be used for property tax relief.

After debating the tribal offer, the assembly approved SJR-2 by a 68-to-31 vote on February 17, 1993. Following concurrence by the senate on February 18, 1993, the amendment was slated for a statewide referendum vote on April 6, 1993. The question presented to the voters read:

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

The amendment was both opposed and supported by what some observers characterized as unlikely coalitions. Those in opposition included the Wisconsin Indian

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Gaming Association, the Tavern League of Wisconsin, racetrack operators and boosters of floating casinos in port cities, such as La Crosse and Superior.

Indian tribes were generally against the amendment because they feared that a constitutional provision which specifically outlawed casino-type games might jeopardize renewal of their existing gaming compacts. However, a few of the WIGA's member tribes, notably the Oneida, were not as adamant in their opposition because they were less concerned over the legal ramifications of the amendment and believed that it might actually prove beneficial by essentially granting to the tribes a monopoly on casino-type operations. Opponents, led by the tribes, reportedly spent over \$250,000 in a media advertising campaign attempting to persuade voters to defeat the amendment.

Republican Governor Tommy Thompson and Democratic Attorney General James Doyle stumped for amendment passage 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 favored passage, asserting that gambling activity had exceeded the bounds of moderation and was a threat to community values and health.

On April 6, 1993, the electors of Wisconsin approved the amendment by a vote of 623,987 to 435,180. The results of the advisory referenda which also appeared on the ballot seemed to indicate that the people of Wisconsin favored maintaining the amount and types of gambling then legally available in the state. As a result of ratification of the amendment, a subsequent constitutional change would be necessary to authorize state or private casino-style gaming in Wisconsin. The future effect of the amendment on Indian gaming within the state is uncertain, but for the duration of the current gaming compacts the tribes will exercise a monopoly on casino-style gaming within Wisconsin.

#### **APPENDIX C: Legal Basis of Indian Gaming**

**History of the Indian Gaming Regulatory Act.** The Federal Indian Gaming Regulatory Act (IGRA) of 1988 requires states to negotiate gaming compacts with tribes specifying what types of games will be conducted on tribal lands and how they will be regulated. Federal district courts, relying on higher court decisions, have generally held that if a state permits a certain minimum level of gambling, then tribes are eligible to conduct any and all forms of gaming on tribal lands.

Indian tribes are considered to be self-governing domestic, dependent nations which retain many attributes of sovereignty regarding the regulation of internal and social relations on tribal lands. The U.S. Constitution, Article I, Clause 3, gives Congress the power to "...regulate commerce ... with the Indian Tribes...." Historically, this has precluded states from exercising jurisdiction over Indian affairs unless an aspect of tribal sovereignty is specifically withdrawn by federal statute or surrendered by federal-tribal treaty. In *Worcester v. Georgia*, 31 U.S. 515 (1832), Chief Justice John Marshall of the U.S. Supreme Court stated that it is the policy of the United States to "...respect their rights [and] ... consider the several Indian nations as distinct political communities, having territorial boundaries, within which their authority is exclusive...."

Tribal members are subject to tribal civil and criminal law while on the reservation, and state and local governments cannot interfere with on-reservation rights granted by federal treaties or laws, including those related to gambling.

Public Law 83-280 [18 U.S.C. Sec. 1162 and 28 U.S.C. Sec. 1360, August 1953], known as P.L. 280, granted to some states, including Wisconsin, broad jurisdiction over criminal offenses committed by or against Indians on tribal lands, as well as over a limited level of nonregulatory civil litigation.

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 allows an activity in certain circumstances, even if it is subject to extensive regulation, then the law is civil-regulatory and the state may not enforce that law in Indian territory. The shorthand test, as stated in *Barona Group of Capitan Grande Band of Mission Indians, San Diego County, California v. Duffy*, 694 F.2d 1185 (1982), is "...whether the conduct at issue violates the State's public policy." In *Sycuan Band of Mission Indians v. Roache*, 708 F. Supp. 1498 (1992), the U.S. District Court for the Southern District of California explicitly stated that any doubts concerning characterization of a state's gambling laws should be resolved in favor of finding the laws to be civil-regulatory, rather than criminal-prohibitory.

Bingo games on tribal land began to proliferate after 1982, when the U.S. Supreme Court let stand a lower court's decision 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 [*Seminole Tribe of Florida v. Butterworth*, 491 F. Supp. 1015 (S.D. Fla. 1980); 658 F.2d 310 (5th Cir. 1981); cert. denied, 455 U.S. 1021 (1982)]. The court ruled that the state could not restrict bingo games conducted by the tribe on reservation lands because Florida law allowed certain community organizations to conduct low-stakes bingo games on a limited basis.

In 1981, the Oneida Tribe in Wisconsin was threatened with enforcement action by the Brown County sheriff because it conducted unlicensed games which exceeded the prize limits set by the state's charitable bingo statutes. After first granting an injunction, Judge 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 permitted charitable bingo, it lost its jurisdiction under P.L. 280 to regulate such games on the Oneida Reservation. She observed that "the 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...."

In a pivotal 1987 case, *California v. Cabazon Band of Mission Indians*, 480 U.S. 202 (1987), the U.S. Supreme Court explicitly affirmed the criminal-prohibitory/civil-regulatory test and extended it to forms of gambling other than bingo.

California law sanctioned gambling at card clubs and allowed charitable organizations to conduct bingo games. The Cabazon Band of Indians conducted bingo and card games on its Riverside County reservation. The state sought to apply restrictive state laws, including jackpot limits, to the reservation games. The federal district court held that the state and county lacked authority to enforce gambling laws on the reservation, and this decision was eventually upheld by the U.S. Supreme Court. *Amicus curiae* briefs urging reversal were filed by the attorneys generals of several states, including Wisconsin.

The Supreme Court reaffirmed the criminal-prohibitory/civil-regulatory test which relies on an assessment of a state's public policy toward an activity. The Court noted that not only did California not prohibit gambling, it permitted betting on horse races and had approved state-operated gambling in the form of the California Lottery. "In light of the fact that California permits a substantial amount of gambling activity, including bingo, and actually promotes gambling through its state lottery, we must conclude that California regulates rather than prohibits gambling in general and bingo in particular."

Thus, the Cabazon Band of Indians could conduct its gambling activities free from state regulation on tribal lands. The U.S. Supreme Court did not, however, specifically define what amount of gambling was sufficient to characterize a state's public policy as regulatory rather than prohibitive.

In *Cabazon*, the Court indicated that Congress, if it chose, could pass laws to limit the gambling rights of the tribes. On October 17, 1988, Congress enacted Public Law

100-497 (25 U.S.C. 2701-2721), titled the "Indian Gaming Regulatory Act". IGRA was the culmination of efforts to forge a workable compromise between the states and the sovereign tribes. The overall purpose of the law is to promote tribal economic development and employment; tribal self-sufficiency; and strong, sovereign tribal governments. Employment and revenue from tribal gaming enterprises was seen as an effective way to raise the standards of living on historically poverty-stricken reservations. Generally, IGRA provides that on Indian lands Indian tribes have the right to engage in any form of gaming that may be legally conducted by any other person or group in the state. The National Indian Gaming Commission (NIGC) was established to regulate and oversee Indian gaming operations, maintain the fairness and honesty of tribal gaming, and keep gaming free from the influence of criminal elements.

IGRA divided gambling into 3 classes which were subsequently refined by the commission and defined in regulations published in the April 9, 1992, Federal Register.

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

Class II includes bingo or bingo-type games, tip jars, punch boards and certain nonbanking card games such as poker. (A nonbanking card game is one in which players compete against one another as opposed to playing against the house.)

Class III covers all forms of gaming not in Classes I or II, including, but not limited to: (a) any house banking game such as blackjack ("21"), baccarat, chemin de fer, pai gow or casino games such as roulette, craps and keno; (b) slot machines and electronic or electromechanical facsimiles of any game of chance; (c) any sports betting and pari-mutuel wagering including but not limited to wagering on horse racing, dog racing or jai alai; or (d) lotteries, including raffles. (A "house banking game" is defined as any game with the house as a participant in the game, where the house takes on players, collects from losers, and pays winners.)

**Bingo Not Regulated By State.** If a state allows anyone to conduct bingo or other Class II games for any purpose, then tribes may sponsor the games free from state regulation if played on Indian lands. NIGC monitors and regulates Class II games to ensure that they are run fairly and that revenues are used to promote tribal self-government, economic development, health, education and welfare. The Oneida tribe, which has conducted bingo since 1976, has in recent years operated a game called "Oneida TV Bingo" which enables players to participate from off-reservation locations

via mail and telephone with drawings broadcast on commercial television stations around the state. Attorney General Doyle said in an opinion requested by the Senate Committee on Organization, OAG 27-92 (November 5, 1992), that "Oneida TV Bingo" may be illegal in some respects. He concluded that if at least one element of gambling, prize, chance or consideration (purchasing bingo cards) occurs off Indian lands state law could be applied to prosecute what would be considered an illegal activity.

**Casino Games Included in Wisconsin Tribal Compacts.** In Wisconsin, controversy arose over the question of whether casino-type games should be included in state-tribal gaming compact negotiations. According to IGRA: "...tribes have the exclusive right to regulate gaming activity on Indian lands if the gaming activity .... is conducted within a State which does not, as a matter of criminal law and public policy, prohibit such gaming activity." The phrase "gaming activity" is not clearly defined by IGRA. Some believe that it means that a tribe may conduct only the specific games, such as blackjack, roulette or slot machines, which are allowed in that state. Others believe that if a state allows a certain level of Class III gaming activity, then its public policy toward Class III gaming is permissive and tribes are eligible to conduct any form of Class III gaming.

Federal courts have tended to rule that tribes in a state that permits one or more forms of Class III gaming are not limited to the exact games played in that state. The issue is further complicated in Wisconsin because some interpreted the 1987 state lottery amendment as permitting legislative authorization of state-operated casino-type games. Since IGRA makes tribes eligible to conduct any types of gambling not prohibited in the state, and casino games apparently are not prohibited, the courts have ruled that tribes cannot be denied the opportunity to conduct any form of Class III gaming.

On June 13, 1989, Attorney General Hanaway was designated as the lead gaming compact negotiator for the state by Governor Thompson. By late 1989, he had negotiated the terms of gaming compacts with several Indian tribes. The agreements, which would have allowed the tribes to conduct certain casino-type games, were awaiting gubernatorial, legislative and tribal approval when Hanaway issued an opinion, 79 Op. Atty. Gen. 14 (1990), which put negotiations on hold. He said that casino gambling, while not constitutionally prohibited, was illegal under criminal statutes, thus making such games ineligible for consideration in compact talks. In light of the *Cabazon* decision, and the existence of the state lottery, he said it appeared that the state's public policy toward lottery-type games was civil-regulatory in nature. Therefore lotteries could be conducted on tribal lands free from state regulation. On the other hand, he

concluded that since casino-type games were criminally illegal for all, the public policy regarding these games was criminal-prohibitory and they could not be conducted within Indian country. He pointed out that since, in his opinion, casino-type games were prohibited by statute only, the legislature need only repeal or modify the laws to legalize such games for non-Indians in order to make them proper subjects for negotiations for inclusion in tribal-state gaming compacts.

Some Wisconsin tribes had opened casinos in anticipation of concluding the state-tribal gaming compacts when Attorney General Hanaway's opinion halted the process. The Lac du Flambeau and Sokaogon (Mole Lake) Chippewa bands filed suit in federal court alleging the state's failure to bargain in good faith. Judge Crabb held in a preliminary decision, *Lac du Flambeau Band of Lake Superior Chippewa Indians v. Wisconsin*, 743 F. Supp. 645 (W.D. Wis. 1990), that Indian tribes could not operate casinos without reaching agreements with the state. She issued an injunction which prevented state or local prosecution because only federal officers have authority over illegal Indian casinos.

Attorney General Hanaway's successor took a different view. Attorney General Doyle concluded in his May 2, 1991, formal opinion (OAG 10-91) which applied broadly to gambling statewide 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. Essentially in his view "lottery" meant "gambling". He reasoned that the 1987 constitutional amendment which authorized the legislature to create a state "lottery" also removed any remaining constitutional prohibition against state-operated games of chance, including casino-type gambling. Doyle's opinion did not, however, specifically address the issue of casino-type gambling as it related to Indian gaming.

On June 18, 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-style games and since Wisconsin permitted a substantial level of Class III gambling, Indian tribes in Wisconsin could conduct casino-style games, subject to a tribal-state gaming compact. In *Lac Du Flambeau Band of Lake Superior Chippewa Indians, et al., v. State of Wisconsin, et al.*, 770 F. Supp. 480 (W.D. Wis. 1991), Judge Crabb reasoned that Wisconsin gaming laws were regulatory rather than prohibitory in nature within the meaning of IGRA. She ordered the state to consider casino-style games to be "on the table" in compact negotiations and to reach agreement with the tribes within the 60-day period.

Judge Crabb relied on a long-standing principle governing ambiguities in treaties or federal statutes as set forth by the U.S. Supreme Court in *Bryan v. Itasca County*, 426 U.S. 373 at 392 (1976), which holds that when vague laws result in conflicts between

state authority and tribal prerogatives, courts are to decide close questions in favor of Indian sovereignty.

On July 17, 1991, at the request of Governor Thompson, Attorney General Doyle appealed Judge Crabb's decision to the Seventh Circuit Federal Court of Appeals in Chicago, but Judge Frank Easterbrook dismissed the state's appeal on procedural grounds on March 23, 1992. He ruled that the petition should have been filed after Judge Crabb issued her decision rather than while the case was still pending and thus he lacked jurisdiction to hear the case.

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