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Advisory on Video Gambling Enforcement

Legal update and guidance for local law enforcement

Definition of Gambling Machine

Throughout the past several years there have been numerous legal challenges to Wisconsin's gambling laws. These cases involve new styles of games and offerings in an attempt to exclude certain machines from the definition of a "gambling machine" in sec. 945.01(3)(a), Wis. Stats.

A gambling machine is a contrivance which for a consideration affords the player an opportunity to obtain something of value, the award of which is determined by chance, even though accompanied by some skill and whether or not the prize is automatically paid by the machine (sec. 945.01(3)(a), Wis. Stats.).

Some variations of slot machine games such as a combination games/cell phone charging stations and games with preview features have been ruled by Wisconsin courts to be illegal gambling machines. The latest challenge was on preview games which resulted in a December 21, 2021, Wisconsin Court of Appeals ruling that such games were illegal gambling machines. As the Wisconsin Supreme Court declined to review that appeal, the Court of Appeals decision is final.

JD Prime Games Kiosk, LLC vs. Wis. Dept. of Revenue 2022 WI App 6
Quick Charge Kiosk, LLC v. Kaul, 2020 WI 54

Enforcement

- Wisconsin law enforcement agencies can enforce gambling machine violations in their jurisdiction in the following circumstances:
 - The business does not hold an alcohol beverage license.
 - The business holds a retail alcohol beverage license for off premises consumption, commonly gas stations, grocery stores, and convenience stores ("Class A" (liquor) and Class "A" (beer)).
 - The business holds a retail alcohol beverage license for on premises consumption of alcohol, commonly bars and restaurants ("Class B" (liquor) and/or Class "B" (beer)) and the business has 6 or more gambling machines present.

- DOR has the authority to enforce state laws relating to having five or fewer video gambling machines when the business holds a retail alcohol beverage ("Class B" (liquor) and/or Class "B" (beer)) license.
- In addition, city, village and town police officers may enforce local ordinances relating to gambling.

Tips for Law Enforcement

- Locate machines and verify enforcement authority. Check for a retail alcohol beverage license, which is required to be posted in a public area. If the establishment holds a Class "B"/"Class B" retail alcohol beverage license and has five or fewer machines, law enforcement officers other than DOR lack authority to enforce, unless there is an ordinance violation.
- Speak with the owner of the location and determine if the suspected gambling machines are self-owned or owned by a vendor. Generally, the business owner is accountable and will be held as the responsible party.
- Examine the machines and make certain they are "gambling machines"
 - Is consideration or money required to play (cash or credit card)?
 - Does the machine offer electronic slots, blackjack, poker, or other game of chance?
 - Can you cash out and collect winnings through a ticket printer, cash out button, or a prize other than nonredeemable free replays?

IF YOU ANSWER YES TO THESE QUESTIONS, THEN IT IS LIKELY A GAMBLING MACHINE

Other characteristics to identify the machine as a gambling machine include:

- Does the machine record the number of plays or money inserted via electronic or hard meters?
 - Does the machine have adjustable odds?
- Take photos and collect any evidence of your determination from step #3 including payout slips/books/records, owner or player statements, machine photos, etc.
- You may order the gambling machines removed or obtain a search warrant to seize the machines. A gambling machine is "contraband" under sec. 968.13(1)(a), Wis. Stats.
- The business owner can be charged with Commercial Gambling under sec. 945.03, Wis. Stats., through a referral to your District Attorney's Office. You can issue a citation if you have a corresponding municipal ordinance (see secs. 66.0107, 66.0113 and 66.0114, Wis. Stats.).

- If the gambling machine is owned by a third party, follow up with the vendor of the machines and notify them of the enforcement action against the machine operator. A vendor could also face criminal liability under Chapter 945 of the Wisconsin Statutes.

Potential Penalties

- Class I Felony offense for commercial gambling (sec. 945.03(1m), Wis. Stats.)
- Fine of up to \$10,000, imprisonment, or both (secs. 945.03(1m) and 939.50(3)(i), Wis. Stats.)
- Class A Misdemeanor offense for permitting premises to be used for commercial gambling (sec. 945.04(1m), Wis. Stats.)
- Seizure of video gambling machines (sec. 968.13, Wis. Stats.)
- Revocation of alcohol beverage license or permit (sec. 945.041, Wis. Stats.)
- Discontinuation as Lottery retailer (sec. 565.10(3)(a), Wis. Stats.)
- Closure of business as a public nuisance (sec. 823.20, Wis. Stats.)
- Penalties for "Class B" or Class "B" establishments (e.g., taverns, restaurants) are different (sec. 945.03(2m), Wis. Stats.)

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