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SECOND SUBSTITUTE HOUSE BILL 2228

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State of Washington

53rd Legislature

1994 Regular Session

By House Committee on Revenue (originally sponsored by Representatives Heavey, Lisk, Springer, Schmidt, Van Luven and Roland)

Read first time 02/08/94.

1 AN ACT Relating to clarifying the state's public policy on gambling  
2 by restricting the frequency of lottery games, addressing problem and  
3 compulsive gambling, and enhancing the enforcement of the state's  
4 gambling laws; amending RCW 9.46.010, 67.70.010, 67.70.040, 67.70.190,  
5 9.46.0241, 9.46.220, 9.46.221, 9.46.222, 9.46.080, 9.46.235, 9.46.260,  
6 and 10.105.900; reenacting and amending RCW 9A.82.010; adding new  
7 sections to chapter 9.46 RCW; creating new sections; repealing RCW  
8 9.46.230; prescribing penalties; and declaring an emergency.

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

10 NEW SECTION. **Sec. 1.** The legislature intends with this act to  
11 clarify the state's public policy on gambling regarding the frequency  
12 of state lottery drawings, the means of addressing problem and  
13 compulsive gambling, and the enforcement of the state's gambling laws.  
14 This act is intended to clarify the specific types of games prohibited  
15 in chapter 9.46 RCW and is not intended to add to existing law  
16 regarding prohibited activities. The legislature recognizes that slot  
17 machines, video pull-tabs, video poker, and other electronic games of  
18 chance have been considered to be gambling devices before the effective  
19 date of this act.

1       **Sec. 2.** RCW 9.46.010 and 1975 1st ex.s. c 259 s 1 are each amended  
2 to read as follows:

3       The public policy of the state of Washington on gambling is to keep  
4 the criminal element out of gambling and to promote the social welfare  
5 of the people by limiting the nature and scope of gambling activities  
6 and by strict regulation and control.

7       It is hereby declared to be the policy of the legislature,  
8 recognizing the close relationship between professional gambling and  
9 organized crime, to restrain all persons from seeking profit from  
10 professional gambling activities in this state; to restrain all persons  
11 from patronizing such professional gambling activities; to safeguard  
12 the public against the evils induced by common gamblers and common  
13 gambling houses engaged in professional gambling; and at the same time,  
14 both to preserve the freedom of the press and to avoid restricting  
15 participation by individuals in activities and social pastimes, which  
16 activities and social pastimes are more for amusement rather than for  
17 profit, do not maliciously affect the public, and do not breach the  
18 peace.

19       The legislature further declares that the raising of funds for the  
20 promotion of bona fide charitable or nonprofit organizations is in the  
21 public interest as is participation in such activities and social  
22 pastimes as are hereinafter in this chapter authorized.

23       The legislature further declares that the conducting of bingo,  
24 raffles, and amusement games and the operation of punch boards, pull-  
25 tabs, card games and other social pastimes, when conducted pursuant to  
26 the provisions of this chapter and any rules and regulations adopted  
27 pursuant thereto, are hereby authorized, as are only such lotteries for  
28 which no valuable consideration has been paid or agreed to be paid as  
29 hereinafter in this chapter provided.

30       The legislature further declares that fishing derbies shall not  
31 constitute any form of gambling and shall not be considered as a  
32 lottery, a raffle, or an amusement game and shall not be subject to the  
33 provisions of this chapter or any rules and regulations adopted  
34 hereunder.

35       All factors incident to the activities authorized in this chapter  
36 shall be closely controlled, and the provisions of this chapter shall  
37 be liberally construed to achieve such end.

1       **Sec. 3.** RCW 67.70.010 and 1987 c 511 s 1 are each amended to read  
2 as follows:

3       For the purposes of this chapter:

4       (1) "Commission" means the state lottery commission established by  
5 this chapter;

6       (2) (~~("Lottery" or "state lottery" means the lottery established  
7 and operated pursuant to this chapter;~~

8       ~~(3))~~) "Director" means the director of the state lottery  
9 established by this chapter;

10       (3) "Lottery" or "state lottery" means the lottery established and  
11 operated pursuant to this chapter;

12       (4) "On-line game" means a lottery game in which a player pays a  
13 fee to a lottery retailer and selects a combination of digits, numbers,  
14 or symbols, type and amount of play, and receives a computer-generated  
15 ticket with those selections, and the lottery separately draws or  
16 selects the winning combination or combinations.

17       **Sec. 4.** RCW 67.70.040 and 1991 c 359 s 1 are each amended to read  
18 as follows:

19       The commission shall have the power, and it shall be its duty:

20       (1) To promulgate such rules governing the establishment and  
21 operation of a state lottery as it deems necessary and desirable in  
22 order that such a lottery be initiated at the earliest feasible and  
23 practicable time, and in order that such lottery produce the maximum  
24 amount of net revenues for the state consonant with the dignity of the  
25 state and the general welfare of the people. Such rules shall include,  
26 but shall not be limited to, the following:

27       (a) The type of lottery to be conducted which may include the  
28 selling of tickets or shares. The use of electronic or mechanical  
29 devices or video terminals which allow for individual play against such  
30 devices or terminals shall be prohibited. Approval of the legislature  
31 shall be required before entering any agreement with other state  
32 lotteries to conduct shared games;

33       (b) The price, or prices, of tickets or shares in the lottery;

34       (c) The numbers and sizes of the prizes on the winning tickets or  
35 shares;

36       (d) The manner of selecting the winning tickets or shares;

1 (e) The manner and time of payment of prizes to the holder of  
2 winning tickets or shares which, at the director's option, may be paid  
3 in lump sum amounts or installments over a period of years;

4 (f) The frequency of the drawings or selections of winning tickets  
5 or shares(~~(, without limitation)~~). Approval of the legislature is  
6 required before conducting any on-line game in which the drawing or  
7 selection of winning tickets occurs more frequently than once every  
8 twenty-four hours;

9 (g) Without limit as to number, the type or types of locations at  
10 which tickets or shares may be sold;

11 (h) The method to be used in selling tickets or shares;

12 (i) The licensing of agents to sell or distribute tickets or  
13 shares, except that a person under the age of eighteen shall not be  
14 licensed as an agent;

15 (j) The manner and amount of compensation, if any, to be paid  
16 licensed sales agents necessary to provide for the adequate  
17 availability of tickets or shares to prospective buyers and for the  
18 convenience of the public;

19 (k) The apportionment of the total revenues accruing from the sale  
20 of lottery tickets or shares and from all other sources among: (i) The  
21 payment of prizes to the holders of winning tickets or shares, which  
22 shall not be less than forty-five percent of the gross annual revenue  
23 from such lottery, (~~(less amounts of unclaimed prizes deposited in the~~  
24 ~~general fund under RCW 67.70.190 during the fiscal year ending June 30,~~  
25 ~~1989,)~~) (ii) transfers to the lottery administrative account created by  
26 RCW 67.70.260, and (iii) transfer to the state's general fund.  
27 Transfers to the state general fund shall be made in compliance with  
28 RCW 43.01.050;

29 (l) Such other matters necessary or desirable for the efficient and  
30 economical operation and administration of the lottery and for the  
31 convenience of the purchasers of tickets or shares and the holders of  
32 winning tickets or shares.

33 (2) To ensure that in each place authorized to sell lottery tickets  
34 or shares, on the back of the ticket or share, and in any advertising  
35 or promotion there shall be conspicuously displayed an estimate of the  
36 probability of purchasing a winning ticket.

37 (3) To amend, repeal, or supplement any such rules from time to  
38 time as it deems necessary or desirable.

1 (4) To advise and make recommendations to the director for the  
2 operation and administration of the lottery.

3 **Sec. 5.** RCW 67.70.190 and 1988 c 289 s 802 are each amended to  
4 read as follows:

5 (~~((1))~~) Unclaimed prizes shall be retained in the state lottery  
6 account for the person entitled thereto for one hundred eighty days  
7 after the drawing in which the prize is won, or after the official end  
8 of the game for instant prizes. If no claim is made for the prize  
9 within this time, the prize shall be retained in the state lottery fund  
10 for further use as prizes(~~(, except as provided in subsection (2) of~~  
11 ~~this section)~~), and all rights to the prize shall be extinguished.

12 (~~((2) During the fiscal year ending June 30, 1989, moneys from~~  
13 ~~unclaimed prizes shall be used as follows:~~

14 ~~(a) Fifty percent of the moneys, not exceeding one million dollars,~~  
15 ~~shall be deposited quarterly in the general fund.~~

16 ~~(b) The remainder of the moneys shall be retained in the state~~  
17 ~~lottery account for further use as prizes.)~~)

18 NEW SECTION. **Sec. 6.** The legislature recognizes that some  
19 individuals in this state are problem or compulsive gamblers. Because  
20 the state promotes and regulates gambling through the activities of the  
21 state lottery commission, the Washington horse racing commission, and  
22 the Washington state gambling commission, the state has the  
23 responsibility to continue to provide resources for the support of  
24 services for problem and compulsive gamblers. Therefore, the  
25 Washington state gambling commission, the Washington horse racing  
26 commission, and the state lottery commission shall jointly develop  
27 informational signs concerning problem and compulsive gambling which  
28 include a toll-free hot line number for problem and compulsive  
29 gamblers. The signs shall be placed in the establishments of gambling  
30 licensees, horse racing licensees, and lottery retailers.

31 NEW SECTION. **Sec. 7.** A new section is added to chapter 9.46 RCW  
32 to read as follows:

33 (1) The following are subject to seizure and forfeiture and no  
34 property right exists in them:

35 (a) All gambling devices as defined in this chapter;

1 (b) All furnishings, fixtures, equipment, and stock, including  
2 without limitation furnishings and fixtures adaptable to nongambling  
3 uses and equipment and stock for printing, recording, computing,  
4 transporting, or safekeeping, used in connection with professional  
5 gambling or maintaining a gambling premises;

6 (c) All conveyances, including aircraft, vehicles, or vessels, that  
7 are used, or intended for use, in any manner to facilitate the sale,  
8 delivery, receipt, or operation of any gambling device, or the  
9 promotion or operation of a professional gambling activity, except  
10 that:

11 (i) A conveyance used by any person as a common carrier in the  
12 transaction of business as a common carrier is not subject to  
13 forfeiture under this section unless it appears that the owner or other  
14 person in charge of the conveyance is a consenting party or privy to a  
15 violation of this chapter;

16 (ii) A conveyance is not subject to forfeiture under this section  
17 by reason of any act or omission established by the owner thereof to  
18 have been committed or omitted without the owner's knowledge or  
19 consent;

20 (iii) A forfeiture of a conveyance encumbered by a bona fide  
21 security interest is subject to the interest of the secured party if  
22 the secured party neither had knowledge of nor consented to the act or  
23 omission; and

24 (iv) If the owner of a conveyance has been arrested under this  
25 chapter the conveyance in which the person is arrested may not be  
26 subject to forfeiture unless it is seized or process is issued for its  
27 seizure within ten days of the owner's arrest;

28 (d) All books, records, and research products and materials,  
29 including formulas, microfilm, tapes, and electronic data that are  
30 used, or intended for use, in violation of this chapter;

31 (e) All moneys, negotiable instruments, securities, or other  
32 tangible or intangible property of value at stake or displayed in or in  
33 connection with professional gambling activity or furnished or intended  
34 to be furnished by any person to facilitate the promotion or operation  
35 of a professional gambling activity;

36 (f) All tangible or intangible personal property, proceeds, or  
37 assets acquired in whole or in part with proceeds traceable to  
38 professional gambling activity and all moneys, negotiable instruments,  
39 and securities used or intended to be used to facilitate any violation

1 of this chapter. A forfeiture of money, negotiable instruments,  
2 securities, or other tangible or intangible property encumbered by a  
3 bona fide security interest is subject to the interest of the secured  
4 party if, at the time the security interest was created, the secured  
5 party neither had knowledge of nor consented to the act or omission.  
6 Personal property may not be forfeited under this subsection (1)(f), to  
7 the extent of the interest of an owner, by reason of any act or  
8 omission that that owner establishes was committed or omitted without  
9 the owner's knowledge or consent; and

10 (g) All real property, including any right, title, and interest in  
11 the whole of any lot or tract of land, and any appurtenances or  
12 improvements that:

13 (i) Have been used with the knowledge of the owner for the  
14 manufacturing, processing, delivery, importing, or exporting of any  
15 illegal gambling equipment, or operation of a professional gambling  
16 activity that would constitute a felony violation of this chapter; or

17 (ii) Have been acquired in whole or in part with proceeds traceable  
18 to a professional gambling activity, if the activity is not less than  
19 a class C felony.

20 Real property forfeited under this chapter that is encumbered by a  
21 bona fide security interest remains subject to the interest of the  
22 secured party if the secured party, at the time the security interest  
23 was created, neither had knowledge of nor consented to the act or  
24 omission. Property may not be forfeited under this subsection, to the  
25 extent of the interest of an owner, by reason of any act or omission  
26 committed or omitted without the owner's knowledge or consent.

27 (2)(a) A law enforcement officer of this state may seize real or  
28 personal property subject to forfeiture under this chapter upon process  
29 issued by any superior court having jurisdiction over the property.  
30 Seizure of real property includes the filing of a lis pendens by the  
31 seizing agency. Real property seized under this section may not be  
32 transferred or otherwise conveyed until ninety days after seizure or  
33 until a judgment of forfeiture is entered, whichever is later, but real  
34 property seized under this section may be transferred or conveyed to  
35 any person or entity who acquires title by foreclosure or deed in lieu  
36 of foreclosure of a bona fide security interest.

37 (b) Seizure of personal property without process may be made if:

38 (i) The seizure is incident to an arrest or a search under a search  
39 warrant or an inspection under an administrative inspection warrant;

1 (ii) The property subject to seizure has been the subject of a  
2 prior judgment in favor of the state in a criminal injunction or  
3 forfeiture proceeding based upon this chapter;

4 (iii) A law enforcement officer has probable cause to believe that  
5 the property is directly or indirectly dangerous to health or safety;  
6 or

7 (iv) The law enforcement officer has probable cause to believe that  
8 the property was used or is intended to be used in violation of this  
9 chapter.

10 (3) In the event of seizure under subsection (2) of this section,  
11 proceedings for forfeiture are deemed commenced by the seizure. The  
12 law enforcement agency under whose authority the seizure was made shall  
13 cause notice to be served within fifteen days following the seizure on  
14 the owner of the property seized and the person in charge thereof and  
15 any person having any known right or interest therein, including any  
16 community property interest, of the seizure and intended forfeiture of  
17 the seized property. Service of notice of seizure of real property  
18 must be made according to the rules of civil procedure. However, the  
19 state may not obtain a default judgment with respect to real property  
20 against a party who is served by substituted service absent an  
21 affidavit stating that a good faith effort has been made to ascertain  
22 if the defaulted party is incarcerated within the state, and that there  
23 is no present basis to believe that the party is incarcerated within  
24 the state. Notice of seizure in the case of property subject to a  
25 security interest that has been perfected by filing a financing  
26 statement in accordance with chapter 62A.9 RCW, or a certificate of  
27 title, must be made by service upon the secured party or the secured  
28 party's assignee at the address shown on the financing statement or the  
29 certificate of title. The notice of seizure in other cases may be  
30 served by any method authorized by law or court rule including but not  
31 limited to service by certified mail with return receipt requested.  
32 Service by mail is deemed complete upon mailing within the fifteen-day  
33 period following the seizure.

34 (4) If no person notifies the seizing law enforcement agency in  
35 writing of the person's claim of ownership or right to possession of  
36 items specified in subsection (1) (c), (e), (f), or (g) of this section  
37 within forty-five days of the seizure in the case of personal property  
38 and ninety days in the case of real property, the item seized is deemed  
39 forfeited. The community property interest in real property of a

1 person whose spouse committed a violation giving rise to seizure of the  
2 real property may not be forfeited if the person did not participate in  
3 the violation.

4 (5) If any person notifies the seizing law enforcement agency in  
5 writing of the person's claim of ownership or right to possession of  
6 items specified in subsection (1) (b), (c), (d), (e), (f), or (g) of  
7 this section within forty-five days of the seizure in the case of  
8 personal property and ninety days in the case of real property, the  
9 person or persons must be afforded a reasonable opportunity to be heard  
10 as to the claim or right. The hearing must be before the chief law  
11 enforcement officer of the seizing agency or the chief law enforcement  
12 officer's designee, except if the seizing agency is a state agency as  
13 defined in RCW 34.12.020(4), the hearing must be before the chief law  
14 enforcement officer of the seizing agency or an administrative law  
15 judge appointed under chapter 34.12 RCW, except that any person  
16 asserting a claim or right may remove the matter to a court of  
17 competent jurisdiction. Removal of any matter involving personal  
18 property may only be accomplished according to the rules of civil  
19 procedure. The person seeking removal of the matter must serve process  
20 against the state, county, political subdivision, or municipality that  
21 operates the seizing agency, and any other party of interest, in  
22 accordance with RCW 4.28.080 or 4.92.020, within forty-five days after  
23 the person seeking removal has notified the seizing law enforcement  
24 agency of the person's claim of ownership or right to possession. The  
25 court to which the matter is to be removed must be the district court  
26 if the aggregate value of personal property is within the  
27 jurisdictional limit set forth in RCW 3.66.020. A hearing before the  
28 seizing agency and any appeal therefrom must be under Title 34 RCW. In  
29 a court hearing between two or more claimants to the article or  
30 articles involved, the prevailing party is entitled to a judgment for  
31 costs and reasonable attorneys' fees. In cases involving personal  
32 property, the burden of producing evidence is upon the person claiming  
33 to be the lawful owner or the person claiming to have the lawful right  
34 to possession of the property. In cases involving real property, the  
35 burden of producing evidence is upon the law enforcement agency. The  
36 burden of proof that the seized real property is subject to forfeiture  
37 is upon the law enforcement agency. The seizing law enforcement agency  
38 shall promptly return the article or articles to the claimant upon a  
39 final determination by the administrative law judge or court that the

1 claimant is the present lawful owner or is lawfully entitled to  
2 possession thereof of items specified in subsection (1) (b), (c), (d),  
3 (e), (f), or (g) of this section.

4 (6) If property is forfeited under this chapter the seizing law  
5 enforcement agency may:

6 (a) Retain it for official use or upon application by any law  
7 enforcement agency of this state release the property to the agency for  
8 training or use in enforcing this chapter;

9 (b) Sell that which is not required to be destroyed by law and  
10 which is not harmful to the public; or

11 (c) Destroy any articles that may not be lawfully possessed within  
12 the state of Washington, or that have a fair market value of less than  
13 one hundred dollars.

14 (7)(a) If property is forfeited, the seizing agency shall keep a  
15 record indicating the identity of the prior owner, if known, a  
16 description of the property, the disposition of the property, the value  
17 of the property at the time of seizure, and the amount of proceeds  
18 realized from disposition of the property. The net proceeds of  
19 forfeited property is the value of the forfeitable interest in the  
20 property after deducting the cost of satisfying any bona fide security  
21 interest to which the property is subject at the time of seizure, and  
22 in the case of sold property, after deducting the cost of sale,  
23 including reasonable fees or commissions paid to independent selling  
24 agents.

25 (b) Each seizing agency shall retain records of forfeited property  
26 for at least seven years.

27 (c) Each seizing agency shall file a report including a copy of the  
28 records of forfeited property with the state treasurer the calendar  
29 quarter after the end of the fiscal year.

30 (d) The annual report need not include a record of forfeited  
31 property that is still being held for use as evidence during the  
32 investigation or prosecution of a case or during the appeal from a  
33 conviction.

34 (8) The seizing law enforcement agency shall retain forfeited  
35 property and net proceeds exclusively for the expansion and improvement  
36 of gambling-related law enforcement activity. Money retained under  
37 this section may not be used to supplant preexisting funding sources.

38 (9) Gambling devices that are possessed, transferred, sold, or  
39 offered for sale in violation of this chapter are contraband and must

1 be seized and summarily forfeited to the state. Gambling equipment  
2 that is seized or comes into the possession of a law enforcement  
3 agency, the owners of which are unknown, are contraband and must be  
4 summarily forfeited to the state.

5 (10) Upon the entry of an order of forfeiture of real property, the  
6 court shall forward a copy of the order to the assessor of the county  
7 in which the property is located. The superior court shall enter  
8 orders for the forfeiture of real property, subject to court rules.  
9 The seizing agency shall file such an order in the county auditor's  
10 records in the county in which the real property is located.

11 (11)(a) A landlord may assert a claim against proceeds from the  
12 sale of assets seized and forfeited under subsection (6)(b) of this  
13 section, only if:

14 (i) A law enforcement officer, while acting in his or her official  
15 capacity, directly caused damage to the complaining landlord's property  
16 while executing a search of a tenant's residence; and

17 (ii) The landlord has applied any funds remaining in the tenant's  
18 deposit, to which the landlord has a right under chapter 59.18 RCW, to  
19 cover the damage directly caused by a law enforcement officer before  
20 asserting a claim under this section.

21 (A) Only if the funds applied under (a)(ii) of this subsection are  
22 insufficient to satisfy the damage directly caused by a law enforcement  
23 officer, may the landlord seek compensation for the damage by filing a  
24 claim against the governmental entity under whose authority the law  
25 enforcement agency operates within thirty days after the search; and

26 (B) Only if the governmental entity denies or fails to respond to  
27 the landlord's claim within sixty days of the date of filing, may the  
28 landlord collect damages under this subsection by filing within thirty  
29 days of denial or the expiration of the sixty-day period, whichever  
30 occurs first, a claim with the seizing law enforcement agency. The  
31 seizing law enforcement agency shall notify the landlord of the status  
32 of the claim by the end of the thirty-day period. This section does  
33 not require the claim to be paid by the end of the sixty-day or thirty-  
34 day period.

35 (b) For any claim filed under (a)(ii) of this subsection, the law  
36 enforcement agency shall pay the claim unless the agency provides  
37 substantial proof that the landlord either:

38 (i) Knew or consented to actions of the tenant in violation of this  
39 chapter; or

1 (ii) Failed to respond to a notification of the illegal activity,  
2 provided by a law enforcement agency within seven days of receipt of  
3 notification of the illegal activity.

4 (12) The landlord's claim for damages under subsection (11) of this  
5 section may not include a claim for loss of business and is limited to:

6 (a) Damage to tangible property and clean-up costs;

7 (b) The lesser of the cost of repair or fair market value of the  
8 damage directly caused by a law enforcement officer;

9 (c) The proceeds from the sale of the specific tenant's property  
10 seized and forfeited under subsection (6)(b) of this section; and

11 (d) The proceeds available after the seizing law enforcement agency  
12 satisfies any bona fide security interest in the tenant's property and  
13 costs related to sale of the tenant's property as provided by  
14 subsection (7)(a) of this section.

15 (13) Subsections (11) and (12) of this section do not limit any  
16 other rights a landlord may have against a tenant to collect for  
17 damages. However, if a law enforcement agency satisfies a landlord's  
18 claim under subsection (11) of this section, the rights the landlord  
19 has against the tenant for damages directly caused by a law enforcement  
20 officer under the terms of the landlord and tenant's contract are  
21 subrogated to the law enforcement agency.

22 **Sec. 8.** RCW 9.46.0241 and 1987 c 4 s 11 are each amended to read  
23 as follows:

24 "Gambling device," as used in this chapter, means: (1) Any device  
25 or mechanism the operation of which a right to money, credits, deposits  
26 or other things of value may be created, in return for a consideration,  
27 as the result of the operation of an element of chance, including, but  
28 not limited to slot machines, video pull-tabs, video poker, and other  
29 electronic games of chance; (2) any device or mechanism which, when  
30 operated for a consideration, does not return the same value or thing  
31 of value for the same consideration upon each operation thereof; (3)  
32 any device, mechanism, furniture, fixture, construction or installation  
33 designed primarily for use in connection with professional gambling;  
34 and (4) any subassembly or essential part designed or intended for use  
35 in connection with any such device, mechanism, furniture, fixture,  
36 construction or installation. In the application of this definition,  
37 a pinball machine or similar mechanical amusement device which confers  
38 only an immediate and unrecorded right of replay on players thereof,

1 which does not contain any mechanism which varies the chance of winning  
2 free games or the number of free games which may be won or a mechanism  
3 or a chute for dispensing coins or a facsimile thereof, and which  
4 prohibits multiple winnings depending upon the number of coins inserted  
5 and requires the playing of five balls individually upon the insertion  
6 of a nickel or dime, as the case may be, to complete any one operation  
7 thereof, shall not be deemed a gambling device: PROVIDED, That owning,  
8 possessing, buying, selling, renting, leasing, financing, holding a  
9 security interest in, storing, repairing and transporting such pinball  
10 machines or similar mechanical amusement devices shall not be deemed  
11 engaging in professional gambling for the purposes of this chapter and  
12 shall not be a violation of this chapter: PROVIDED FURTHER, That any  
13 fee for the purchase or rental of any such pinball machines or similar  
14 amusement devices shall have no relation to the use to which such  
15 machines are put but be based only upon the market value of any such  
16 machine, regardless of the location of or type of premises where used,  
17 and any fee for the storing, repairing and transporting thereof shall  
18 have no relation to the use to which such machines are put, but be  
19 commensurate with the cost of labor and other expenses incurred in any  
20 such storing, repairing and transporting.

21 NEW SECTION. **Sec. 9.** A new section is added to chapter 9.46 RCW  
22 to read as follows:

23 Whoever knowingly owns, manufactures, possesses, buys, sells,  
24 rents, leases, finances, holds a security interest in, stores, repairs,  
25 or transports any gambling device or offers or solicits any interest  
26 therein, whether through an agent or employee or otherwise, is guilty  
27 of a felony and shall be fined not more than one hundred thousand  
28 dollars or imprisoned not more than five years or both. However, this  
29 section does not apply to persons licensed by the commission, or who  
30 are otherwise authorized by this chapter, or by commission rule, to  
31 conduct gambling activities without a license, respecting devices that  
32 are to be used, or are being used, solely in that activity for which  
33 the license was issued, or for which the person has been otherwise  
34 authorized if:

35 (1) The person is acting in conformance with this chapter and the  
36 rules adopted under this chapter; and

37 (2) The devices are a type and kind traditionally and usually  
38 employed in connection with the particular activity. This section also

1 does not apply to any act or acts by the persons in furtherance of the  
2 activity for which the license was issued, or for which the person is  
3 authorized, when the activity is conducted in compliance with this  
4 chapter and in accordance with the rules adopted under this chapter.  
5 In the enforcement of this section direct possession of any such a  
6 gambling device is presumed to be knowing possession thereof.

7 NEW SECTION. **Sec. 10.** A new section is added to chapter 9.46 RCW  
8 to read as follows:

9 Whoever knowingly prints, makes, possesses, stores, or transports  
10 any gambling record, or buys, sells, offers, or solicits any interest  
11 therein, whether through an agent or employee or otherwise, is guilty  
12 of a gross misdemeanor. However, this section does not apply to  
13 records relating to and kept for activities authorized by this chapter  
14 when the records are of the type and kind traditionally and usually  
15 employed in connection with the particular activity. This section also  
16 does not apply to any act or acts in furtherance of the activities when  
17 conducted in compliance with this chapter and in accordance with the  
18 rules adopted under this chapter. In the enforcement of this section  
19 direct possession of any such a gambling record is presumed to be  
20 knowing possession thereof.

21 **Sec. 11.** RCW 9.46.220 and 1991 c 261 s 10 are each amended to read  
22 as follows:

23 (1) A person is guilty of professional gambling in the first degree  
24 if he or she engages in, or knowingly causes, aids, abets, or conspires  
25 with another to engage in professional gambling as defined in this  
26 chapter, and:

27 (a) While engaging in professional gambling acts in concert with or  
28 conspires with five or more people;

29 (b) Accepts wagers exceeding five thousand dollars during any  
30 (~~calendar month~~) thirty-day period on future contingent events; or

31 (c) Operates, manages, or profits from the operation of a premises  
32 or location where persons are charged a fee to participate in card  
33 games, lotteries, or other gambling activities that are not authorized  
34 by this chapter or licensed by the commission.

35 (2) However, this section shall not apply to those activities  
36 enumerated in RCW 9.46.0305 through 9.46.0361 or to any act or acts in  
37 furtherance of such activities when conducted in compliance with the

1 provisions of this chapter and in accordance with the rules adopted  
2 pursuant to this chapter.

3 (3) Professional gambling in the first degree is a class B felony  
4 subject to the penalty set forth in RCW 9A.20.021.

5 **Sec. 12.** RCW 9.46.221 and 1991 c 261 s 11 are each amended to read  
6 as follows:

7 (1) A person is guilty of professional gambling in the second  
8 degree if he or she engages in or knowingly causes, aids, abets, or  
9 conspires with another to engage in professional gambling as defined in  
10 this chapter, and:

11 (a) While engaging in professional gambling acts in concert with or  
12 conspires with less than five people;

13 (b) Accepts wagers exceeding two thousand dollars during any  
14 (~~calendar month~~) thirty-day period on future contingent events;

15 (c) Maintains a "gambling premises" as defined in this chapter; or

16 (d) Maintains gambling records as defined in RCW (~~9.46.020~~)  
17 9.46.0253.

18 (2) However, this section shall not apply to those activities  
19 enumerated in RCW 9.46.0305 through 9.46.0361 or to any act or acts in  
20 furtherance of such activities when conducted in compliance with the  
21 provisions of this chapter and in accordance with the rules adopted  
22 pursuant to this chapter.

23 (3) Professional gambling in the second degree is a class C felony  
24 subject to the penalty set forth in RCW 9A.20.021.

25 **Sec. 13.** RCW 9.46.222 and 1991 c 261 s 12 are each amended to read  
26 as follows:

27 (1) A person is guilty of professional gambling in the third degree  
28 if he or she engages in, or knowingly causes, aids, abets, or conspires  
29 with another to engage in professional gambling as defined in this  
30 chapter(~~(1)~~), and:

31 (a) His or her conduct does not constitute first or second degree  
32 professional gambling;

33 (b) He or she operates any of the unlicensed gambling activities  
34 authorized by this chapter in a manner other than as prescribed by this  
35 chapter; or

36 (c) He or she is directly employed in but not managing or directing  
37 any gambling operation.

1 (2) This section shall not apply to those activities enumerated in  
2 RCW 9.46.0305 through 9.46.0361 or to any acts in furtherance of such  
3 activities when conducted in compliance with the provisions of this  
4 chapter and the rules adopted pursuant to this chapter.

5 (3) Professional gambling in the third degree is a gross  
6 misdemeanor subject to the penalty established in RCW 9A.20.021.

7 **Sec. 14.** RCW 9.46.080 and 1981 c 139 s 6 are each amended to read  
8 as follows:

9 The commission shall employ a full time director, who shall be the  
10 administrator for the commission in carrying out its powers and duties  
11 and who shall issue rules and regulations adopted by the commission  
12 governing the activities authorized hereunder and shall supervise  
13 commission employees in carrying out the purposes and provisions of  
14 this chapter. In addition, the director shall employ a deputy  
15 director, (~~two~~) assistant directors, together with such investigators  
16 and enforcement officers and such staff as the commission determines is  
17 necessary to carry out the purposes and provisions of this chapter.  
18 The director, the deputy director, (~~both~~) the assistant directors,  
19 and personnel occupying positions requiring the performing of  
20 undercover investigative work shall be exempt from the provisions of  
21 chapter 41.06 RCW, as now law or hereafter amended. Neither the  
22 director nor any commission employee working therefor shall be an  
23 officer or manager of any bona fide charitable or bona fide nonprofit  
24 organization, or of any organization which conducts gambling activity  
25 in this state.

26 The director, subject to the approval of the commission, is  
27 authorized to enter into agreements on behalf of the commission for  
28 mutual assistance and services, based upon actual costs, with any state  
29 or federal agency or with any city, town, or county, and such state or  
30 local agency is authorized to enter into such an agreement with the  
31 commission. If a needed service is not available from another agency  
32 of state government within a reasonable time, the director may obtain  
33 that service from private industry.

34 **Sec. 15.** RCW 9.46.235 and 1987 c 191 s 1 are each amended to read  
35 as follows:

36 (1) For purposes of a prosecution under (~~RCW 9.46.230(4)~~) section  
37 9 of this act or a seizure, confiscation, or destruction order under

1 ((~~RCW 9.46.230(1)~~)) section 7 of this act, it shall be a defense that  
2 the gambling device involved is an antique slot machine and that the  
3 antique slot machine was not operated for gambling purposes while in  
4 the owner's or defendant's possession. Operation of an antique slot  
5 machine shall be only by free play or with coins provided at no cost by  
6 the owner. No slot machine, having been seized under this chapter, may  
7 be altered, destroyed, or disposed of without affording the owner  
8 thereof an opportunity to present a defense under this section. If the  
9 defense is applicable, the antique slot machine shall be returned to  
10 the owner or defendant, as the court may direct.

11 (2) ((~~RCW 9.46.230(2)~~)) Section 7 of this act shall have no  
12 application to any antique slot machine that has not been operated for  
13 gambling purposes while in the owner's possession.

14 (3) For the purposes of this section, a slot machine shall be  
15 conclusively presumed to be an antique slot machine if it is at least  
16 twenty-five years old.

17 (4) Sections 7 and 9 of this act do not apply to gambling devices  
18 on board a passenger cruise ship which has been registered and bonded  
19 with the federal maritime commission, if the gambling devices are not  
20 operated for gambling purposes within the state.

21 **Sec. 16.** RCW 9.46.260 and 1973 1st ex.s. c 218 s 26 are each  
22 amended to read as follows:

23 Proof of possession of any device used for professional gambling or  
24 any record relating to professional gambling specified in ((~~RCW~~  
25 ~~9.46.230~~)) section 9 of this act is prima facie evidence of possession  
26 thereof with knowledge of its character or contents.

27 **Sec. 17.** RCW 9A.82.010 and 1992 c 210 s 6 and 1992 c 145 s 13 are  
28 each reenacted and amended to read as follows:

29 Unless the context requires the contrary, the definitions in this  
30 section apply throughout this chapter.

31 (1) "Creditor" means a person making an extension of credit or a  
32 person claiming by, under, or through a person making an extension of  
33 credit.

34 (2) "Debtor" means a person to whom an extension of credit is made  
35 or a person who guarantees the repayment of an extension of credit or  
36 in any manner undertakes to indemnify the creditor against loss

1 resulting from the failure of a person to whom an extension is made to  
2 repay the same.

3 (3) "Extortionate extension of credit" means an extension of credit  
4 with respect to which it is the understanding of the creditor and the  
5 debtor at the time the extension is made that delay in making repayment  
6 or failure to make repayment could result in the use of violence or  
7 other criminal means to cause harm to the person, reputation, or  
8 property of any person.

9 (4) "Extortionate means" means the use, or an express or implicit  
10 threat of use, of violence or other criminal means to cause harm to the  
11 person, reputation, or property of any person.

12 (5) "To collect an extension of credit" means to induce in any way  
13 a person to make repayment thereof.

14 (6) "To extend credit" means to make or renew a loan or to enter  
15 into an agreement, tacit or express, whereby the repayment or  
16 satisfaction of a debt or claim, whether acknowledged or disputed,  
17 valid or invalid, and however arising, may or shall be deferred.

18 (7) "Repayment of an extension of credit" means the repayment,  
19 satisfaction, or discharge in whole or in part of a debt or claim,  
20 acknowledged or disputed, valid or invalid, resulting from or in  
21 connection with that extension of credit.

22 (8) "Dealer in property" means a person who buys and sells property  
23 as a business.

24 (9) "Stolen property" means property that has been obtained by  
25 theft, robbery, or extortion.

26 (10) "Traffic" means to sell, transfer, distribute, dispense, or  
27 otherwise dispose of stolen property to another person, or to buy,  
28 receive, possess, or obtain control of stolen property, with intent to  
29 sell, transfer, distribute, dispense, or otherwise dispose of the  
30 property to another person.

31 (11) "Control" means the possession of a sufficient interest to  
32 permit substantial direction over the affairs of an enterprise.

33 (12) "Enterprise" includes any individual, sole proprietorship,  
34 partnership, corporation, business trust, or other profit or nonprofit  
35 legal entity, and includes any union, association, or group of  
36 individuals associated in fact although not a legal entity, and both  
37 illicit and licit enterprises and governmental and nongovernmental  
38 entities.

1 (13) "Financial institution" means any bank, trust company, savings  
2 and loan association, savings bank, mutual savings bank, credit union,  
3 or loan company under the jurisdiction of the state or an agency of the  
4 United States.

5 (14) "Criminal profiteering" means any act, including any  
6 anticipatory or completed offense, committed for financial gain, that  
7 is chargeable or indictable under the laws of the state in which the  
8 act occurred and, if the act occurred in a state other than this state,  
9 would be chargeable or indictable under the laws of this state had the  
10 act occurred in this state and punishable as a felony and by  
11 imprisonment for more than one year, regardless of whether the act is  
12 charged or indicted, as any of the following:

- 13 (a) Murder, as defined in RCW 9A.32.030 and 9A.32.050;
- 14 (b) Robbery, as defined in RCW 9A.56.200 and 9A.56.210;
- 15 (c) Kidnapping, as defined in RCW 9A.40.020 and 9A.40.030;
- 16 (d) Forgery, as defined in RCW 9A.60.020 and 9A.60.030;
- 17 (e) Theft, as defined in RCW 9A.56.030, 9A.56.040, 9A.56.060, and  
18 9A.56.080;
- 19 (f) Child selling or child buying, as defined in RCW 9A.64.030;
- 20 (g) Bribery, as defined in RCW 9A.68.010, 9A.68.020, 9A.68.040, and  
21 9A.68.050;
- 22 (h) Gambling, as defined in RCW 9.46.220 and (~~9.46.230~~) sections  
23 9 and 10 of this act;
- 24 (i) Extortion, as defined in RCW 9A.56.120 and 9A.56.130;
- 25 (j) Extortionate extension of credit, as defined in RCW 9A.82.020;
- 26 (k) Advancing money for use in an extortionate extension of credit,  
27 as defined in RCW 9A.82.030;
- 28 (l) Collection of an extortionate extension of credit, as defined  
29 in RCW 9A.82.040;
- 30 (m) Collection of an unlawful debt, as defined in RCW 9A.82.045;
- 31 (n) Delivery or manufacture of controlled substances or possession  
32 with intent to deliver or manufacture controlled substances under  
33 chapter 69.50 RCW;
- 34 (o) Trafficking in stolen property, as defined in RCW 9A.82.050;
- 35 (p) Leading organized crime, as defined in RCW 9A.82.060;
- 36 (q) Money laundering, as defined in RCW 9A.83.020;
- 37 (r) Obstructing criminal investigations or prosecutions in  
38 violation of RCW 9A.72.090, 9A.72.100, 9A.72.110, 9A.72.120, 9A.72.130,  
39 9A.76.070, or 9A.76.180;

1 (s) Fraud in the purchase or sale of securities, as defined in RCW  
2 21.20.010;

3 (t) Promoting pornography, as defined in RCW 9.68.140;

4 (u) Sexual exploitation of children, as defined in RCW 9.68A.040,  
5 9.68A.050, and 9.68A.060;

6 (v) Promoting prostitution, as defined in RCW 9A.88.070 and  
7 9A.88.080;

8 (w) Arson, as defined in RCW 9A.48.020 and 9A.48.030;

9 (x) Assault, as defined in RCW 9A.36.011 and 9A.36.021;

10 (y) Assault of a child, as defined in RCW 9A.36.120 and 9A.36.130;

11 (z) A pattern of equity skimming, as defined in RCW 61.34.020; or

12 (aa) Commercial telephone solicitation in violation of RCW  
13 19.158.040(1).

14 (15) "Pattern of criminal profiteering activity" means engaging in  
15 at least three acts of criminal profiteering, one of which occurred  
16 after July 1, 1985, and the last of which occurred within five years,  
17 excluding any period of imprisonment, after the commission of the  
18 earliest act of criminal profiteering. In order to constitute a  
19 pattern, the three acts must have the same or similar intent, results,  
20 accomplices, principals, victims, or methods of commission, or be  
21 otherwise interrelated by distinguishing characteristics including a  
22 nexus to the same enterprise, and must not be isolated events.  
23 However, in any civil proceedings brought pursuant to RCW 9A.82.100 by  
24 any person other than the attorney general or county prosecuting  
25 attorney in which one or more acts of fraud in the purchase or sale of  
26 securities are asserted as acts of criminal profiteering activity, it  
27 is a condition to civil liability under RCW 9A.82.100 that the  
28 defendant has been convicted in a criminal proceeding of fraud in the  
29 purchase or sale of securities under RCW 21.20.400 or under the laws of  
30 another state or of the United States requiring the same elements of  
31 proof, but such conviction need not relate to any act or acts asserted  
32 as acts of criminal profiteering activity in such civil action under  
33 RCW 9A.82.100.

34 (16) "Records" means any book, paper, writing, record, computer  
35 program, or other material.

36 (17) "Documentary material" means any book, paper, document,  
37 writing, drawing, graph, chart, photograph, phonograph record, magnetic  
38 tape, computer printout, other data compilation from which information

1 can be obtained or from which information can be translated into usable  
2 form, or other tangible item.

3 (18) "Unlawful debt" means any money or other thing of value  
4 constituting principal or interest of a debt that is legally  
5 unenforceable in the state in full or in part because the debt was  
6 incurred or contracted:

7 (a) In violation of any one of the following:

8 (i) Chapter 67.16 RCW relating to horse racing;

9 (ii) Chapter 9.46 RCW relating to gambling;

10 (b) In a gambling activity in violation of federal law; or

11 (c) In connection with the business of lending money or a thing of  
12 value at a rate that is at least twice the permitted rate under the  
13 applicable state or federal law relating to usury.

14 (19)(a) "Beneficial interest" means:

15 (i) The interest of a person as a beneficiary under a trust  
16 established under Title 11 RCW in which the trustee for the trust holds  
17 legal or record title to real property;

18 (ii) The interest of a person as a beneficiary under any other  
19 trust arrangement under which a trustee holds legal or record title to  
20 real property for the benefit of the beneficiary; or

21 (iii) The interest of a person under any other form of express  
22 fiduciary arrangement under which one person holds legal or record  
23 title to real property for the benefit of the other person.

24 (b) "Beneficial interest" does not include the interest of a  
25 stockholder in a corporation or the interest of a partner in a general  
26 partnership or limited partnership.

27 (c) A beneficial interest shall be considered to be located where  
28 the real property owned by the trustee is located.

29 (20) "Real property" means any real property or interest in real  
30 property, including but not limited to a land sale contract, lease, or  
31 mortgage of real property.

32 (21)(a) "Trustee" means:

33 (i) A person acting as a trustee under a trust established under  
34 Title 11 RCW in which the trustee holds legal or record title to real  
35 property;

36 (ii) A person who holds legal or record title to real property in  
37 which another person has a beneficial interest; or

38 (iii) A successor trustee to a person who is a trustee under  
39 subsection (21)(a) (i) or (ii) of this section.

- 1 (b) "Trustee" does not mean a person appointed or acting as:  
2 (i) A personal representative under Title 11 RCW;  
3 (ii) A trustee of any testamentary trust;  
4 (iii) A trustee of any indenture of trust under which a bond is  
5 issued; or  
6 (iv) A trustee under a deed of trust.

7 **Sec. 18.** RCW 10.105.900 and 1993 c 288 s 1 are each amended to  
8 read as follows:

9 This chapter does not apply to property subject to forfeiture under  
10 chapter 66.32 RCW, RCW 69.50.505, 9.41.098, (~~9.46.230~~) section 7 of  
11 this act, 9A.82.100, 9A.83.030, 7.48.090, or 77.12.101.

12 NEW SECTION. **Sec. 19.** RCW 9.46.230 and 1987 c 202 s 139, 1987 c  
13 4 s 43, 1981 c 139 s 12, 1977 ex.s. c 326 s 16, 1974 ex.s. c 155 s 5,  
14 1974 ex.s. c 135 s 5, & 1973 1st ex.s. c 218 s 23 are each repealed.

15 NEW SECTION. **Sec. 20.** This act is necessary for the immediate  
16 preservation of the public peace, health, or safety, or support of the  
17 state government and its existing public institutions, and shall take  
18 effect immediately.

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