



# State Lottery, Pari-Mutuel Wagering and Racing, and Charitable Gaming

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# State Lottery, Pari-Mutuel Wagering and Racing, and Charitable Gaming

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# State Lottery, Pari-Mutuel Wagering and Racing, and Charitable Gaming

## Introduction

Prior to 1965, Article IV, Section 24 of the Wisconsin Constitution stipulated that "the legislature shall never authorize any lottery..." This provision was broadly interpreted to exclude all forms of gambling in Wisconsin.

Five separate amendments have since modified this strict gambling prohibition. The first, ratified in 1965, allowed the Legislature to create an exception to permit state residents to participate in various promotional contests. In 1973 and 1977, amendments were passed authorizing the Legislature to allow charitable bingo games and raffles, respectively. Finally, in 1987, two amendments were adopted authorizing: (a) the creation of a state-operated lottery, with proceeds to be used for property tax relief; and (b) privately operated pari-mutuel on-track betting as provided by law.

In addition to these amendments, which expanded legal gambling in the state, Wisconsin voters ratified a constitutional amendment on April 6, 1993, that clarified that all forms of gambling are prohibited except bingo, raffles, pari-mutuel on-track betting and the current state-run lottery. The amendment also specifically bars the state from conducting prohibited forms of gambling as part of the state-run lottery. The amendment limits gambling in the state to those forms permitted in April, 1993.

In a parallel development, Indian tribes in Wisconsin and other states were provided the right, as a result of federal court rulings, to negotiate gaming compacts authorizing a wide variety of gambling activities on reservation and federal trust

lands. As a result, 11 Wisconsin Indian tribes and bands currently operate gaming facilities in 24 locations, including both gambling casinos and satellite sites offering electronic gaming devices.

Prior to October 1, 1992, three agencies performed gambling-related functions: (a) the Department of Regulation and Licensing regulated charitable bingo and raffle activities; (b) the Lottery Board operated the state lottery; and (c) the Racing Board regulated pari-mutuel betting and racing. Effective October 1, 1992, the Wisconsin Gaming Commission, comprised of three full-time members, was created (under 1991 Wisconsin Act 269) to coordinate and regulate all activities relating to legal gambling. This action: (a) eliminated the Lottery and the Racing Boards and transferred their functions to the Commission; (b) transferred the regulatory responsibilities for charitable bingo and raffles from the Department of Regulation and Licensing to the Commission; and (c) made the Commission responsible for the state's regulatory responsibilities under the state-tribal gaming compacts.

Under 1995 Wisconsin Act 27, the Gaming Commission was eliminated and replaced by a Gaming Board, effective July 1, 1996. Also, on that date, the administration of the state lottery was transferred to the Department of Revenue (DOR). All other Gaming Commission responsibilities were transferred to the Gaming Board. Finally, under 1997 Wisconsin Act 27, the Gaming Board was eliminated and its functions were transferred to a Division of Gaming in the Department of Administration (DOA), effective October 14, 1997.

This paper describes legal gambling in Wisconsin.

sin exclusive of tribal gaming activities. This focus includes: (a) a description of the state's current administrative structure relating to legal gambling in Wisconsin, including the Lottery Division in DOR, the Division of Gaming in DOA and the Gaming Enforcement Bureau in the Department of Justice (DOJ); (b) the history and operation of the state lottery; (c) the history and regulation of racing and pari-mutuel wagering; and (d) the history and regulation of charitable bingo and raffles, and crane-game amusement devices. A separate paper describes the development and current operation of tribal gaming [see the Legislative Fiscal Bureau's informational paper entitled, "Tribal Gaming in Wisconsin"].

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### **The Structure of State Gaming Administration**

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#### **The Lottery Division under the Department of Revenue**

Under 1995 Wisconsin Act 27, the operation of the state lottery was transferred to the Department of Revenue as a separate division within the agency. The state lottery is the one form of legal gambling in Wisconsin that is operated by the state, utilizing both state employees and contracted services, including private sector retailer outlets for lottery ticket sales.

The Lottery Division is authorized 109.5 full-time equivalent (FTE) positions in 2004-05, including one unclassified division administrator. The lottery is funded from the segregated (SEG) lottery fund. Positions are allocated for administration (35.25 FTE), lottery operations, including information technology services (25.25 FTE), and product development and retailer relations (49.0 FTE). All lottery employees are subject to background investigations and criminal record restrictions. The Division's funding in 2004-05 totals \$64,901,200 for general program operations (\$22,522,400), retailer compensation (\$29,452,100), and vendor fees

(\$12,926,700).

#### **The Division of Gaming under the Department of Administration**

The Department of Administration, through its Division of Gaming, regulates activities and promulgates rules relating to racing and pari-mutuel wagering, charitable gaming (bingo and raffles) and crane games. The Division also coordinates the state's regulatory activities under the state-tribal gaming compacts relating to Indian casino gaming.

There are 38.85 FTE positions authorized for the Division in 2004-05, including an unclassified division administrator and an unclassified director of the Office of Indian Gaming. Positions are allocated to pari-mutuel racing (17.1 FTE), Indian gaming (16.0 FTE), raffles and crane games (2.75 FTE) and bingo (3.0 FTE), funded from program revenue (PR) associated with each type of gaming. These employees are subject to background investigations and criminal record restrictions. The Division's base funding in 2004-05 totals \$3,796,000 [\$12,300 general purpose revenue (GPR) and \$3,783,700 PR] for pari-mutuel racing regulation (\$1,856,400 PR), Indian gaming regulation (\$1,501,900 PR), raffles and crane games (\$186,800 PR), and bingo regulation (\$238,600 PR). The GPR funding relates to interest earnings on racing and bingo proceeds that are transferred to the lottery fund.

The pari-mutuel racing unit advises DOA on policy and rule-making issues relating to racing and pari-mutuel wagering and regulates the pari-mutuel racing industry in the state. These activities include security oversight at the racetracks and the performance of background checks for pari-mutuel licensees.

The Office of Indian Gaming: (a) coordinates state regulation of Indian gaming; (b) functions as a gaming liaison between Indians, the general public and the state; (c) functions as a clearinghouse for information on Indian gaming; and (d) assists the



Governor in determining the types of gaming that may be conducted on Indian lands, and in entering into Indian gaming compacts.

The Office of Charitable Gaming administers the regulation of charitable games (bingo, raffles) and crane games. (Crane games are amusement devices, involving some degree of skill, which may reward a player exclusively with merchandise of limited value contained within the device.)

DOA is authorized to audit these various gaming operations, investigate suspected violations of gaming law, and report suspected gaming-related criminal activity to DOJ's Division of Criminal Investigation (DCI). If DCI chooses not to investigate the report, DOA may coordinate an investigation of the suspected criminal activity with local law enforcement officials and district attorneys.

### **The Gaming Enforcement Bureau Under the Department of Justice**

In addition to the state gaming administrative and regulatory functions in DOR and DOA, the Gaming Enforcement Bureau in DOJ's Division of Criminal Investigation provides law enforcement oversight of gambling activities in Wisconsin. In 2004-05, funding for the Bureau totals \$570,600 (\$316,400 SEG from the lottery fund, \$137,000 PR from pari-mutuel racing revenue, and \$117,200 PR from Indian gaming revenue). A bureau director and four special agents carry out the Department's responsibilities for the enforcement of the state's gambling statutes. The Bureau's primary responsibilities are as follows:

**Lottery.** DOJ may investigate activities of Lottery Division employees in the Department of Revenue and lottery vendors that affect the administration or operation of the state lottery or multijurisdictional lotteries. In addition, DOJ is required to perform the background investigations relating to major procurement contract vendors. DOJ must report suspected violations of state or federal law to the appropriate prosecuting author-

ity. As part of its investigation, the Department may issue a subpoena to compel the production of evidence. DOJ and district attorneys have concurrent jurisdiction to prosecute violations of state lottery statutes. DOJ also investigates crimes that are committed against the Lottery. These crimes generally involve attempts to defraud the Lottery.

**Racing.** DOJ may investigate activities of the Department of Administration and its employees and contractors and activities of racing licensees and their employees and contractors that affect the administration or operation of racing or on-track pari-mutuel wagering. DOJ must report suspected violations of state or federal law to the appropriate prosecuting authority. As part of its investigation, DOJ may issue a subpoena to compel the production of evidence. DOJ and district attorneys have concurrent jurisdiction to prosecute violations of state racing statutes.

**Indian Gaming.** DOJ is authorized, under the state-tribal compacts, to monitor each tribe's casino gaming to ensure compliance with the compacts, to investigate the activities of tribal officers, employees, contractors or gaming participants who may affect the operation or administration of the tribal gaming and to commence prosecutions relating to casino gaming for violations of any applicable state civil or criminal law or provision of a compact. DOJ special agents also have primary jurisdiction to investigate any other criminal activities that may occur at any of the Indian casinos.

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## **The Wisconsin State Lottery**

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### **Constitutional Provision**

Authorization of the Wisconsin lottery required the adoption of a constitutional amendment creating an exception to the gambling prohibition. This amendment received voter approval on April 7, 1987, by a vote of 739,181 (65%) to 391,942 (35%).

This amendment allowed the Legislature to create a state lottery, the net proceeds of which must be used for property tax relief. The amendment prohibits the expenditure of any public funds or lottery proceeds for promotional advertising of the lottery and stipulates that "any advertising of the state lottery shall indicate the odds of a specific ticket to be selected as the winning ticket for each prize amount offered." This language appears to allow the state to engage in advertising only to inform potential participants of the lottery's existence, but precludes the state from conducting advertising that is promotional in nature. Advertising by private businesses acting as lottery ticket retailers or suppliers must also disclose a ticket's odds of winning; however, the prohibition of promotional advertising does not apply to these businesses.

### Lottery Definitions in State Law

A "lottery" is defined under s. 945.01(5)(a) of the Wisconsin Statutes as "...an enterprise wherein for a consideration the participants are given an opportunity to win a prize, the award of which is determined by chance, even though accompanied by some skill." This definition contains three elements which are essential in any lottery:

1. **Consideration.** Either the promoters must receive some commercial or financial advantage or the participants must be disadvantaged in some way. An example of a consideration is the price paid for a lottery ticket.

2. **Chance.** The determination of prize winners must be through some random selection process.

3. **Prize.** Selected participants must be awarded some sort of prize. In a lottery, prizes may range from \$1 to large cash amounts.

Chapter 945 of the statutes, which prohibits anyone from conducting or participating in a "lottery," also specifies that a lottery does not include bingo and raffles, pari-mutuel wagering or the

state lottery or any multijurisdictional lottery conducted under Wisconsin law. (A "multijurisdictional" lottery pertains to games in which Wisconsin participates in conjunction with another state of the United States of America, the District of Columbia, the Commonwealth of Puerto Rico or any territory or possession of the United States of America or the government of Canada or any Canadian province.)

The types of games that may be offered to players of the state lottery are restricted under s. 565.01(6m) of the statutes. The state lottery is defined as an enterprise, including a multijurisdictional lottery in which the state participates, where the player, by purchasing a ticket, is entitled to participate in a game of chance in which any of the following applies:

1. The winning tickets are randomly predetermined and the player reveals preprinted numbers or symbols from which it can be immediately determined whether the ticket is a winning ticket entitling the player to win a prize, including an opportunity to win a prize in a secondary or subsequent chance drawing or game.

2. The ticket is evidence of the numbers or symbols selected by the player or, at the player's option, selected by a computer, and the player becomes entitled to a prize, including an opportunity to win a prize in a secondary or subsequent chance drawing or game. The player wins if some or all of the player's symbols or numbers are selected in a chance drawing or game, if the player's ticket is randomly selected by the computer at the time of purchase or if the ticket is selected in a chance drawing.

This definition is consistent with the types of lottery games that have been conducted by the Wisconsin state lottery since its inception. The state lottery cannot include any of the following games or games simulating any of the following games:

1. Any game in which winners are selected

based on the results of a race or sporting event.

2. Any banking card game, including blackjack, baccarat or chemin de fer.

3. Poker, roulette, craps or other dice games, keno, bingo 21, bingo jack, bingolet or bingo craps.

4. Any game of chance played on a slot machine or any mechanical, electromechanical or electronic device that is generally available at a gambling casino.

5. Any game or device that is commonly known as a video game of chance, a video gaming machine or a video gambling machine, except a video device authorized by the Department to permit the sale of tickets for an authorized game if the device does not determine or indicate whether the player has won a prize.

6. Any game that is similar to a game identified above.

7. Any other game that is commonly considered to be a form of gambling and is not substantially similar to a game that the Department has the authority to conduct under state law.

The Legislature cannot pass any bill that authorizes the conduct of any game specified in the above prohibited categories unless, prior to the passage of that bill and during the same legislative session, a bill requiring a statewide advisory referendum on whether such a game should be authorized is enacted and the advisory referendum is held.

The definition of the state lottery does not affect the provisions of any Indian gaming compact entered into by the state before January 1, 1993.

### **Wisconsin Lottery Games**

The state lottery offers two types of instant games: "scratch" ticket games and pull-tab games. In the scratch games, participants purchase a card

with a latex covering, which is scratched off to reveal the prize, if any, that is won. Depending on the game, tickets cost \$1, \$2, \$3, \$5 or \$10. In 2003-04, scratch game sales amounted to \$266.6 million and accounted for 55.2% of total lottery sales.

Pull-tab games are played with "break-open" tickets that are made of laminated paper partially perforated to permit strips to be torn from one side to reveal the underlying play symbols, from which it can be immediately determined whether the ticket is a winner. Pull-tab tickets may only be redeemed at the place the ticket is purchased. In 2003-04, pull-tab game sales amounted to \$3.7 million and accounted for 0.8% of total lottery sales.

The state lottery also offers "on-line" games. In these games, tickets are distributed from terminals linked to the state lottery's central office computer (in late 2004, some 4,352 retailers had on-line ticket terminals). Participants select a combination of numbers (or have a computer randomly select the numbers) from a larger field. Periodic drawings are held to determine the winning combinations. There are two basic types of on-line games. In daily or weekly draw games, prizes are awarded to winners with no carryover to subsequent drawings. In "jackpot" games, the odds against selecting the correct combination of numbers are higher, so there may be no winner among the participants in a given drawing. When this occurs, the prize money is added to the amounts from subsequent drawings until a winner emerges.

The state currently offers four daily or weekly draw games (SuperCash, Daily Pick 3, Daily Pick 4 and Badger 5) and two jackpot games (Powerball and Wisconsin's Very Own Megabucks). The Powerball game is a multi-state game, while the others are Wisconsin-only games. In 2003-04, on-line game sales amounted to \$212.6 million and accounted for 44.0% of total lottery sales.

The state lottery began selling tickets September 14, 1988. Total lottery ticket sales for the years 1988-89 through 2003-04 are summarized in Table 1.

**Table 1: Wisconsin Lottery Ticket Sales**

| Fiscal Year | Instant Games | On-Line Games | Totals        |
|-------------|---------------|---------------|---------------|
| 1988-89     | \$230,365,300 | \$0           | \$230,365,300 |
| 1989-90     | 182,674,800   | 126,923,100   | 309,597,900   |
| 1990-91     | 230,724,800   | 160,672,200   | 391,397,000   |
| 1991-92     | 289,685,900   | 159,370,500   | 449,056,400   |
| 1992-93     | 310,951,800   | 184,180,100   | 495,131,900   |
| 1993-94     | 285,317,800   | 210,203,500   | 495,521,300   |
| 1994-95     | 320,356,100   | 198,558,900   | 518,915,000   |
| 1995-96     | 310,401,700   | 171,722,300   | 482,124,000   |
| 1996-97     | 273,413,600   | 157,677,500   | 431,091,100   |
| 1997-98     | 252,915,500   | 165,724,800   | 418,640,300   |
| 1998-99     | 230,817,600   | 197,378,500   | 428,196,100   |
| 1999-00     | 241,040,900   | 165,629,300   | 406,670,200   |
| 2000-01     | 237,944,200   | 163,244,400   | 401,188,600   |
| 2001-02     | 238,214,000   | 189,336,300   | 427,550,300   |
| 2002-03     | 249,467,400   | 185,570,400   | 435,037,800   |
| 2003-04     | 270,286,700   | 212,633,600   | 482,920,300   |

### Statutory Provisions

Although the constitutional amendment authorized a lottery, legislation was needed to create the lottery and specify the details of its operation. The following sections briefly outline the major provisions of the current state lottery statutes.

**Administration by the Department of Revenue.** The Department of Revenue has the responsibility for operating the state lottery and has certain oversight responsibilities under current law. The Department, prior to appointing an unclassified administrator of the lottery division, is required to conduct a nationwide search to find the most qualified appointee. The search must consider the business management experience, marketing experience, computer experience and lottery management experience of the applicants. No person may serve as the administrator who has been convicted of, or entered a plea of guilty or no contest to, any of the following: (a) a felony during the immediately preceding 10 years (unless the person has been pardoned); (b) a gambling-related offense; (c) fraud or any type of misrepresentation; or (d) a violation of lottery law or administrative rules.

DOR has broad authority to promulgate rules relating to implementing the lottery statutes. The Department is required to adopt rules governing specific aspects of the lottery's management and operations, including rules for: (a) establishing a plan of organizational structure for lottery division employees; (b) selecting retailers; (c) establishing requirements for information to be submitted with a bid or proposal by a person proposing to contract with the state lottery; (d) determining the types of lottery games to be offered; (e) defining the terms "advertising" and "lottery shares;" (f) establishing the circumstances and procedures under which a retailer may not be reimbursed if he or she accepts and directly pays a prize on an altered or forged lottery ticket or lottery share; (g) providing for terms of lottery retailer contracts for periods that are shorter than three years; (h) establishing the retailer performance program; and (i) establishing goals to increase the total amount of expenditures for advertising, public relations and other procurements that are directed to minority businesses, the number of retailers that are minority businesses and the number of employees of the lottery division who are minority group members. Additional rules relating to the operation of the state lottery may be promulgated by DOR.

The Department is also authorized to: (a) approve whether lottery functions are to be performed by DOR employees or provided under contract; (b) approve a major procurement contract, if the Department of Administration delegates responsibility for the procurement process to DOR; (c) approve the features and procedures for each lottery game; and (d) conduct hearings and render final decisions relating to the suspension or termination of a lottery retailer contract.

**Lottery Procurements.** Subject to approval by the Secretary of Revenue, the lottery division administrator may determine whether lottery functions will be performed by DOR employees or be provided under contract with private businesses or individuals. However, no contract may provide for the entire management or operation of the lottery

by any private person.

Major procurements for the lottery are made by the Department of Administration (DOA), unless DOA delegates this authority to DOR. "Major procurements" are defined as materials, supplies, equipment or services which are unique to the operation of the lottery and not common to the ordinary operations of other state agencies. Other goods and services used by the state lottery are subject to normal state purchasing procedures. DOA may not contract for financial auditing or security monitoring services, except that, if DOA delegates the procurement process to DOR, then DOR may contract with DOA for warehouse and building protection services relating to the state lottery.

DOA must solicit separate bids or proposals for management consultation services. Major procurement contracts must be awarded using a formula based on: (a) cost; (b) the proposed vendor's technical capability and expertise; (c) the integrity, reliability and expertise of the proposed vendor; (d) security considerations; and (e) the vendor's financial stability.

Like lottery employees, major procurement vendors are subject to background investigations and criminal record restrictions. Major procurement vendors are also required to establish an office in Wisconsin.

Conflict of interest provisions prohibit a vendor selected to provide management consultation services from submitting a bid or proposal to provide other supplies, goods or services under a major procurement contract or to have an ownership interest in any vendor under such a contract or submitting a bid for such items. In addition, conflict of interest provisions apply to the employees in the lottery division in DOR, the Executive Assistant, the Secretary and the Deputy Secretary of DOR.

**Lottery Retailers.** Under state lottery administrative rules, retailers enter into contracts with the

state lottery for the sale of lottery tickets to the public. These rules authorize an initial retailer application fee and an additional fee for a three-year certificate of authority. Currently, the initial contract application fee is \$75. The certificate of authority fee of \$25 per sales location is imposed when a contract is awarded or renewed. Retailer contracts typically run for three years, although other time periods can be used to stagger contract expiration dates.

Retailer selection must provide for the convenient availability of lottery tickets to prospective buyers. Rules relating to retailer selection must be based on objective criteria and may not limit the number of retailers in a municipality solely based on its population. The rules must also establish requirements for: (a) financial responsibility; (b) security; (c) accessibility; (d) the sufficiency of existing retailers to serve the public; (e) expected sales volume; (f) ensuring that there will not be an undue concentration of retailers in any geographic area of the state; and (g) additional qualifications (determined by rule).

A retailer contract may be terminated or suspended if a retailer has done any of the following: (a) violated lottery statutes or rules; (b) failed to meet retailer qualifications; (c) endangered lottery security; (d) engaged in fraud, deceit, misrepresentation or other conduct prejudicial to public confidence in the lottery; (e) failed to accurately account for lottery tickets, revenues or prizes; (f) is delinquent in making payment of lottery ticket revenues; or (g) violated contractual provisions in a manner that constitutes grounds for termination or suspension. In addition, the lottery administrator can suspend or terminate a contract, without prior notice or hearing, if he or she determines that such action is necessary to protect the public interest or the security, integrity or fiscal responsibility of the state lottery. In this circumstance, the retailer can have such a suspension or termination reconsidered by the lottery administrator and, if necessary, reviewed by DOR through a hearing process.

No retailer contract may be entered into with a person who is less than 18 years of age or is finally adjudged to be delinquent in the payment of state taxes or unemployment compensation; also, criminal record restrictions apply. There is also a prohibition against entering into a retailer contract with a person engaged in business exclusively as a lottery retailer, unless the contract is on a temporary basis or is with a person with a disability, a group of individuals with disabilities or a nonprofit organization providing services to such persons.

The state lottery may operate retail sales outlets or enter into retailer contracts with state and local governmental agencies. However, under these circumstances, the lottery division administrator must minimize the competitive effect of such sales on sales by private retailers. Retailer contracts with private persons operating activities on state or local government property are also allowed but, in awarding these contracts, the state lottery must give preference to individuals with disabilities and nonprofit organizations providing services to such persons.

**Retailer Compensation.** Basic retailer compensation is established by statute at 5.5% of the retail price of on-line lottery tickets and 6.25% of the retail price of instant tickets sold by the retailer. A higher rate of basic compensation (approximately 26% in 2003-04) is permitted to nonprofit organizations selling pull-tab lottery tickets at special events.

**Retailer Performance Program.** Under 1999 Wisconsin Act 9, DOR was authorized, effective January 1, 2000, to establish by rule a program to pay additional compensation to retailers who meet certain performance goals identified by the Department. The additional compensation paid to retailers under the program may not exceed 1% of gross lottery sales revenue in a fiscal year.

The retailer performance program is composed of three components: (a) a winning ticket bonus component; (b) a sales goal incentive component;

and (c) a short-term incentive component. The winning ticket and sales goal components are viewed by DOR as the major components of the program, while the short-term incentives are characterized as a minor component of the program designed to support certain lottery products or to strengthen sales during certain periods of the year.

The rules for the program require the lottery administrator to document and report, within 90 days of the completion of a fiscal year, the total payments made to retailers under the program. The report must detail the incentives paid under the winning ticket incentive, the sales goal incentive and the short-term incentive.

*Winning Ticket Component.* The winning ticket component provides a payment to the retailer selling a winning ticket equal to 2% of the winning ticket value, if the winning ticket value is at least \$600. The maximum payment authorized under the winning ticket incentive component is \$100,000 per winning ticket. Under the winning ticket component of the program, retailers received \$820,300 in 2002-03 and \$802,100 in 2003-04.

*Sales Goal Incentive Component.* The sales goal incentive component pays bonuses of 10% of sales increases (unless adjusted to a lower payment percentage by the lottery administrator) in three categories of lottery products: (a) instant ticket games; (b) non-jackpot on-line games; and (c) jackpot on-line games. Each lottery product category is treated separately. The flexibility to adjust the sales goals incentive payments to less than 10% of sales increases is designed to ensure that total payments will not exceed the 1% of total sales funding limit in a fiscal year. Any adjustment must consider historical sales and incentive information and must be applied equally to all retailers receiving payment.

Sales goal incentive payments to retailers totaled \$3,148,400 in 2002-03 and \$3,769,300 in 2003-04.

*Short-Term Incentive Component.* The short-term

incentive component of the program provides bonus payments to retailers who satisfy a specific, short-term performance expectation. The intent of providing short-term incentives is to support certain lottery products or strengthen sales during certain periods of the year through a flexible incentive mechanism that has a limited life cycle. For example, short-term incentives may be used to help reduce the ticket inventory for certain games or to support seasonal lottery products.

Under rules governing the program, the lottery administrator may offer a maximum of four, short-term incentives in a fiscal year. A short-term incentive may not continue from one fiscal year to the next and may not run for more than 13 weeks. Each short-term incentive is limited to a maximum of \$100,000 in total incentive payments. Thus, the maximum fiscal effect in any fiscal year for this component would be \$400,000. In 2002-03, four short-term incentive programs resulted in payments of \$337,900 to retailers; in 2003-04, these payments totaled \$185,400.

In summary, 2002-03 retailer performance payments totaled \$4,306,600 (\$820,300 for the winning ticket component, \$3,148,400 for sales goal incentives, and \$337,900 for short-term incentives) and 2003-04 payments totaled \$4,756,800 (\$802,100 for the winning ticket component, \$3,769,300 for sales goal incentives, and \$ 185,400 for short-term incentives).

**Lottery Games and Prizes.** The Department must promulgate rules governing the types of games offered by the state lottery. Subject to these rules and the approval of the Secretary of Revenue, the lottery administrator must determine the particular features of and procedures for each lottery game offered. The criteria must be in writing, accessible to the public and must include: (a) the theme and name of the game; (b) the price of the lottery tickets; (c) the prize structure, including the number and value of prizes; (d) the frequency of drawings or other winner selections; (e) the method of selecting winners; and (f) the method of

making payment to winners.

Lottery tickets cannot be sold to anyone under 18 years of age. However, an adult may give a ticket to a minor. In addition, no employee in the Lottery Division or the Executive Assistant, the Secretary or Deputy Secretary of Revenue and no member of such a person's immediate family may purchase a lottery ticket.

By statute, total annual lottery prizes must equal at least 50% of gross sales. (In 2003-04, prizes totaled approximately 56.8% of gross sales.) Prizes under \$600 may be redeemed by lottery retailers. Larger prizes must be paid by the state lottery. Lottery winners have 180 days from the date of the drawing in which to claim prizes.

Annually, no later than March 1, DOR must submit a report to the Joint Committee on Finance that estimates all of the following for the current and subsequent fiscal years: (a) gross revenue from lottery ticket sales; (b) the total amount to be paid as prizes; (c) the prize payout ratio for each type of lottery game offered; and (d) an evaluation of the effect prize payout ratios have on lottery sales, lottery operating costs and on maximizing the revenue available for the lottery property tax credit. If, within 14 days of the receipt of the report, the Co-chairs of the Committee notify DOR that a meeting of the Committee has been scheduled to review the proposed prize payouts, DOR may proceed with the payout plans for the next fiscal year only upon approval by the Committee. If no meeting is scheduled within 14 days, the payout plans for the following year are considered approved by the Committee.

**Additional Options for Prizewinners.** Under 1999 Wisconsin Act 9, additional options for prizewinners were provided. These provisions allow lottery prizes to be used as security for a loan or assigned to another person.

A lottery prize winner may use a lottery prize or part of a lottery prize as security for a loan if author-

ized by a court order. Any prize winner who intends to use part or all of a lottery prize as security for a loan must petition the circuit court of the county in which the prize winner resides or the circuit court of Dane County for a court order confirming the use of a lottery prize as security for a loan.

The court is required to issue an order confirming the use of a lottery prize as security for a loan if certain conditions are met. For example, the prize winner must be represented by independent legal counsel, a copy of the contract that provides for using any part of the lottery prize as security for the loan must be attached to the petition and the contract executed by the prize winner must provide that the prize winner has the right to cancel the contract until midnight of the 3rd business day after the date on which the prize winner entered into the contract. Additional conditions relate to ensuring the payment of claims to, or judgments, liens, security interests, garnishments, assignments or attachments against, all or any part of the lottery prize payments. Finally, requirements are also specified for the contents of the court order, the organization making the loan and the administrator of the lottery.

A second option is that a lottery prize winner, acting as an "assignor," may make a voluntary assignment of a lottery prize or part of a lottery prize if authorized by a court order. Larger lottery prizes associated with the on-line games of Powerball and Megabucks may be paid out in annual installments, usually over a 25-year period, or as a smaller, one-time payment, depending on the option chosen by the purchaser. Assignment authorizes the transfer to another of any property, in whole or in part, and may be executed for a variety of reasons. Assignment, in the context of lottery prizes, involves the ability of a prize winner to "sell" or assign his or her right to collect all or part of future lottery prize payments to a third party in exchange for a more immediate payment or other return made by the third party to the prize winner. Examples of such third parties could include investors, banks or loan companies. Any assignor who intends to voluntarily assign part or all of a lottery

prize to any individual or organization is required to petition the circuit court of the county in which the assignor resides or the circuit court of Dane County for a court order confirming the assignment.

As with using a lottery prize as security for a loan, the court is required to issue an order confirming the assignment if a variety of conditions are met. Again, the assignor must be represented by independent legal counsel and the assignor has the right to cancel the contract until midnight of the 3rd business day after the date on which the assignor entered into the contract. Additional requirements are also specified for obtaining the court order, the contents of the court order, the individual or organization to whom the lottery prize is assigned and the administrator of the lottery.

**Advertising.** The Wisconsin Constitution prohibits spending public funds or lottery revenues to engage in promotional advertising of the lottery. Article IV, Section 24(6)(a) of the Constitution states, "The expenditure of public funds or of revenues derived from lottery operations to engage in promotional advertising of the Wisconsin state lottery is prohibited." Statutory provisions repeat this prohibition and define promotional advertising as "advertising which is for the purpose of inducing persons to purchase lottery tickets or lottery shares." This prohibition does not include advertising designed to provide the public with the following information: (a) the fact that the state has a lottery or participates in a multijurisdictional lottery; (b) the locations where lottery tickets are sold; (c) the price of lottery tickets; (d) the prizes or prize structure of the lottery; (e) the type of lottery game and an explanation of how it works; (f) the time, date, and place of conducting the lottery; (g) the winning tickets or ticket numbers or the identity of winners and the amounts won; and (h) how the lottery is operated or how the net proceeds of the lottery are to be used.

Retailers and vendors can engage in promotional advertising of the state lottery; however,



such promotional advertising must indicate that it is paid for by the retailer or vendor.

The Wisconsin Constitution also specifies that, "Any advertising of the state lottery shall indicate the odds of a specific lottery ticket being selected as a winning ticket for each prize amount offered." By statute, any lottery advertising describing a specific game must include: (a) for games in which the prizes and odds of winning are predetermined, the prize structure, prize amounts and the odds of a specific ticket being selected as a winner; and (b) for games in which the prizes and odds of winning are determined by the number of participants in the game, an explanation that the prize amounts and odds of winning are determined by the number of participants in the game, an explanation of the prize structure and estimates of prize amounts and the odds of winning each prize amount. This information must also be disclosed on lottery tickets. Finally, any lottery informational material must state whether prize amounts are paid in installments and the number of years over which such payments will be made.

The lottery's annual advertising budget totals \$4,608,000. In 2003-04, advertising expenditures and encumbrances totaled \$4,590,100.

**Taxes and Other Withholdings.** Lottery ticket sales are exempt from state and county sales taxes; however, lottery winnings may be taxable as income at both the state and federal levels. The lottery is required to withhold state income taxes from lottery prizes of \$2,000 or more. Statutory provisions also provide for withholding from certain lottery winnings delinquent state taxes, child support, spousal support, maintenance, family support or other debts owed the state.

**Lottery Fund.** The lottery fund is a segregated fund, the net proceeds of which are constitutionally required to be used for property tax relief. Under current law, property tax relief is provided through a lottery and gaming credit distributed to owners of primary residences and through a farmland tax

relief credit.

Revenues accruing to the lottery fund include: (a) lottery ticket sales and other miscellaneous lottery revenue; (b) the net state revenue relating to pari-mutuel racing and charitable bingo; and (c) the interest earnings of the fund. Lottery fund appropriations are made for the following purposes: (a) prize payments; (b) retailer compensation; (c) vendor payments for major lottery equipment and data processing; (d) general program operations of the lottery; (e) gaming law enforcement costs of the Department of Justice; (f) lottery credit administration costs of the Department of Revenue; and (g) property tax relief, including appropriations for the lottery and gaming credit, lottery and gaming credit payments relating to late applications, and the farmland tax relief credit. Further, a lottery fund reserve is statutorily required. Under current law, the Legislature may not enact any bill directly or indirectly affecting the lottery fund if the bill would cause the estimated lottery fund balance on June 30 of any fiscal year to be less than 2% of the estimated gross lottery revenues for that year. This 2% reserve helps to ensure that adequate funds are available for property tax relief in the event that lottery sales decline.

**Limit on Administrative Expenditures.** The amount paid annually for state lottery administrative expenses (including general program operations and vendor payments for equipment and data processing) may not exceed 10% of yearly gross lottery revenues, unless additional expenditures are approved by the Joint Committee on Finance. Capital expenditures may be amortized over an extended period for purposes of complying with the 10% annual limit. Retailer compensation, and monies appropriated from the lottery fund to the Department of Justice (for criminal enforcement) are not included as lottery expenses under the limitation.

Before January 1 of every even-numbered year, the Department is required to submit a report to the Legislature on the effects on the operation of

the lottery of the 10% expense limitation. Administrative expenses, as reported in the Department's December 5, 2003, report, totaled 7.9% of gross revenues in 2001-02 and 7.7% in 2002-03.

**Miscellaneous Provisions.** State statutes also include provisions relating to the enforcement authority and subpoena power of the Department of Justice, criminal penalties for violation of lottery laws and rules, required financial and performance audits by the Legislative Audit Bureau and other required audits and financial reports regarding the lottery.

### Wisconsin Lottery Retailers

In prior years, lottery tickets were distributed to retailers through five regional sales and distribution routes, centered in Eau Claire, Green Bay, Madison, Milwaukee and Rhinelander. While ticket distribution and retailer support is now centralized, it is still helpful to view the number of retailers by region. Table 2 indicates, for each region of the state, the number of for-profit retailers and nonprofit organizations. All for-profit retailers now have on-line ticket terminals. Nonprofit organizations sell pull-tab tickets only.

**Table 2: Lottery Retailers by Region (as of October, 2004)**

| Region      | For-Profit Retailers | Pull-Tab Only Nonprofit Organizations |
|-------------|----------------------|---------------------------------------|
| Eau Claire  | 529                  | 74                                    |
| Green Bay   | 893                  | 88                                    |
| Madison     | 664                  | 63                                    |
| Milwaukee   | 1,710                | 251                                   |
| Rhinelander | <u>556</u>           | <u>80</u>                             |
| Total       | 4,352                | 556                                   |

### Property Tax Relief

The Wisconsin Constitution requires that "the net proceeds of the state lottery shall be deposited in the treasury of the state, to be used for property tax relief for residents of this state as provided by

law." A particular method to accomplish this directive is not specified. Since the creation of the lottery, the Legislature has appropriated lottery funds for four property tax relief programs. In addition, a gubernatorial veto resulted in the transfer of lottery funds to the general fund in 1991-92. One program, the lottery property tax credit, was restructured under 1997 Wisconsin Act 27 to address a state Supreme Court ruling described below. The credit was restructured again in the 1999 legislative session to address an April, 1999, constitutional amendment, also discussed below. These uses of lottery proceeds from 1988-89 through 2004-05 are shown in Table 3 and are described below.

**Lottery Property Tax Credit.** Although there have been other uses of lottery proceeds, this credit has been the most significant use of these funds. For the years 1991-92 through 1995-96, the lottery credit provided direct property tax relief in the form of a state credit on property tax bills for primary home owners. However, on October 29, 1996, a Dane County Circuit Court ruled (*Wisconsin Out-of-State Landowners Association, Inc., et al. v. Wisconsin Department of Revenue, et al.*) that the state's lottery tax credit provisions were unconstitutional because they violated the uniformity clause of the state Constitution, which requires that all classes of property be taxed in a uniform manner. The lottery tax credit benefited only the owners of principal residential dwellings. (The credit was determined by multiplying the local school tax rate by the estimated fair market value, but not exceeding a credit base established under law, of every parcel of taxable property on which a principal dwelling was located and for which a claim for the credit was made by its owner.)

The lottery tax credit was not applied to 1996 tax bills and the funds available for 1996(97) lottery property tax relief (\$125.2 million plus a 2% reserve) remained in the lottery fund. (The \$975,700 in property tax relief expenditures made in 1996-97, related to prior year adjustments and credit administration costs.) Under 1997 Wisconsin Act 27, a new lottery credit distribution mechanism

**Table 3: Lottery Property Tax Relief Payments**

| Fiscal Year | General Equalization School Aids | Farmland Tax Relief Credit | District Attorney Salaries | Transfer to General Fund | Lottery Property Tax Credit | Totals          |
|-------------|----------------------------------|----------------------------|----------------------------|--------------------------|-----------------------------|-----------------|
| 1988-89     | \$69,358,500                     | \$0                        | \$0                        | \$0                      | \$0                         | \$69,358,500    |
| 1989-90     | 66,748,300                       | 17,997,600                 | 3,156,900                  | 0                        | 0                           | 87,902,800      |
| 1990-91     | 0                                | 14,745,300                 | 10,276,200                 | 0                        | 0                           | 25,021,500      |
| 1991-92     | 0                                | 14,717,800                 | 0                          | 54,054,800               | 167,890,500                 | 236,663,100     |
| 1992-93     | 0                                | 15,410,300                 | 0                          | 0                        | 185,021,400                 | 200,431,700     |
| 1993-94     | 0                                | 15,865,900                 | 0                          | 0                        | 153,916,600                 | 169,782,500     |
| 1994-95     | 0                                | 15,547,600                 | 0                          | 0                        | 136,881,800                 | 152,429,400     |
| 1995-96     | 0                                | 15,141,300                 | 0                          | 0                        | 156,778,000                 | 171,919,300     |
| 1996-97     | 0                                | 12,939,200                 | 0                          | 0                        | 975,700                     | 13,914,900      |
| 1997-98     | 0                                | 11,118,700                 | 0                          | 0                        | 205,777,200                 | 216,895,900     |
| 1998-99     | 0                                | 11,218,200                 | 0                          | 0                        | 142,682,300                 | 153,900,500     |
| 1999-00     | 0                                | 0                          | 0                          | 0                        | 216,255,200                 | 216,255,200     |
| 2000-01     | 0                                | 11,748,000                 | 0                          | 0                        | 90,009,300                  | 101,757,300     |
| 2001-02     | 0                                | 13,744,600                 | 0                          | 0                        | 105,248,700                 | 118,993,300     |
| 2002-03     | 0                                | 23,516,900                 | 0                          | 0                        | 106,048,100                 | 129,565,000     |
| 2003-04     | 0                                | 13,252,400                 | 0                          | 0                        | 118,351,000                 | 131,603,400     |
| 2004-05*    | 0                                | 11,718,100                 | 0                          | 0                        | 133,347,200                 | 145,065,300     |
| Totals      | \$136,106,800                    | \$218,681,900              | \$13,433,100               | \$54,054,800             | \$1,919,183,000             | \$2,341,459,600 |

\*Estimated

was provided that extended lottery credits to all taxable properties (by multiplying the local school tax rate by the estimated fair market value of the property, but not exceeding a credit base established under law). Under this distribution mechanism, lottery property tax credits totaled \$205.8 million in 1997-98 and \$142.7 million in 1998-99.

On April 6, 1999, state voters approved (648,903 to 105,976) an amendment to the Wisconsin Constitution relating to the use and distribution of gaming proceeds. The amendment required that state revenues from the lottery, pari-mutuel wagering activities and charitable bingo, including interest earnings, be used for property tax relief, with the exception of funds used for lottery operations and the regulation and enforcement of these gambling activities. The amendment also specified that the distribution of monies for property tax relief may not be based on the recipient's age or income and is not subject to the rules of uniform taxation re-

quired under Article VIII, Section 1, of the Wisconsin Constitution.

Under 1999 Wisconsin Act 5, a number of provisions relating to the administration and use of gambling revenues, including provisions relating to the lottery property tax credit, were enacted to reflect these new Constitutional requirements. The lottery credit was renamed the lottery and gaming credit and now applies only to property used as the owner's principal dwelling. Act 5 also provided for lottery gaming and credit certification payments to reimburse counties and cities in 1999-00 for certifying principal dwellings (at a rate of \$0.70 for each certification) that would qualify an owner for the lottery and gaming credit. These reimbursements totaled \$889,900 in 1999-00. The certification reimbursement was authorized to be made in 1999-00 and every fifth year thereafter. (However, the reimbursement provision was repealed under 2003 Wisconsin Act 33, the 2003-05 biennial

budget act.) In addition, Act 5 created and amended appropriations to effectuate the new constitutional requirements for state gaming revenue to be used for property tax relief. These provisions direct that available pari-mutuel- and bingo-related revenue, including interest earnings, be transferred to the lottery fund.

In addition to these Act 5 provisions relating to the lottery and gaming credit, the 1999-01 biennial budget act (1999 Wisconsin Act 9) appropriated general fund revenue for various lottery operating expenses and for the farmland tax relief credit to effectuate a larger distribution under the lottery and gaming credit. Under these provisions, the credit in 1999-00 increased to \$216.3 million. In 2000-01, lottery expenses are once again funded from the segregated lottery fund. This change, along with a significantly lower opening balance and smaller net proceeds in 2000-01 than in 1999-00, resulted in a smaller lottery and gaming credit (totaling \$90.0 million).

Since 2000-01, the amount available for lottery property tax credits has increased each year, reflecting improved lottery sales. Sales totaled \$401.2 million in 2000-01, the lowest total since the initial years of lottery operations. Beginning in 2001-02, sales have steadily improved and totaled \$482.9 million in 2003-04. While sales are projected to decrease in 2004-05 to \$472.3 million, the amount available for lottery property tax credits is projected to increase to \$133.1 million, due to a larger than expected 2004-05 opening balance in the lottery fund.

[For additional information and a more detailed discussion of the lottery and gaming credit, see Legislative Fiscal Bureau's informational paper entitled "State Property Tax Credits."]

**Farmland Tax Relief Credit.** The farmland tax relief credit was created in the 1989-91 budget. Act 5 modified the credit by replacing the existing credit reimbursement rate, which equaled 10% of first \$10,000 in property taxes. Under the modifica-

tions, the reimbursement rate on the first \$10,000 in property taxes is determined annually by DOR at a rate that will be sufficient to distribute the funds available for credit payments in that year. This funding amount was set at \$15 million for claims filed for tax year 1999. For each year thereafter, annual credit payments are to total \$15 million plus an amount equal to the amount estimated to be expended in the previous year minus the actual expenditures for the credit in the previous year. For tax year 2004, with \$11,718,100 available for distribution, DOR established the credit reimbursement rate at 15% of the first \$10,000 in property taxes. Act 5 also increased the maximum allowable credit from \$1,000 to \$1,500.

Farmland tax relief credits are funded from a sum sufficient appropriation from the segregated lottery fund, except for 1999-00, when the credit was funded from general fund revenues. [For additional information and a more detailed discussion of the farmland tax relief credit, see Legislative Fiscal Bureau's informational paper entitled "Farmland Preservation and Tax Relief Credits."]

**General Equalization School Aids.** The first use of lottery proceeds was to offset general purpose revenue (GPR) funding for general equalization school aids. The lottery fund expenditures were part of the state aid payments made to local school districts. Funds were expended for this purpose in both 1988-89 and 1989-90.

**District Attorney Salaries.** District attorneys, and their deputies and assistants, who had formerly been county employees, became state employees on January 1, 1990. During 1989-90 and 1990-91, lottery proceeds were used to fund the salaries and fringe benefits of these employees.

**Transfer to the General Fund.** As partially vetoed, 1991 Wisconsin Act 39 would have transferred \$83.2 million from the lottery fund to the general fund in 1991-92. In his veto message, the Governor directed the Secretary of DOA to use these revenues to partially fund an increase in the

1991-92 school aids appropriation. No mechanism existed, however, by which these monies could be specifically earmarked within the general fund for school aids. In a May 4, 1992, Dane County Circuit Court ruling (*Branshaw, et al. v. Wisconsin Department of Administration*), the Court determined that the use of lottery proceeds for general equalization school aids violates the constitutional requirement that lottery revenues be used for property tax relief. (The Court found that using lottery funds for school aids, which the court viewed as a traditional state program, did not provide property tax relief

that was "separate, different and extra" as intended by the voters in approving the lottery constitutional amendment.) Prior to the decision, \$54.1 million of the \$83.2 million had already been transferred from the lottery fund to the general fund. The Court's decision prevented the transfer of the remaining \$29.1 million.

### Current Fund Condition

Table 4 shows the lottery fund condition for the years 2003-04 (actual) and 2004-05 (estimated), including revenues, expenditures and the appropriations from the lottery fund for property tax relief.

**Table 4: Lottery Fund Condition**

|  | 2003-04        | 2004-05        |
|--|----------------|----------------|
| Fiscal Year Opening Balance                  | \$12,366,000   | \$23,291,500** |
| <b>Operating Revenues</b>                    |                |                |
| Ticket Sales                                 | \$482,920,300  | \$472,291,100  |
| Retailer Fees and Miscellaneous              | <u>145,800</u> | <u>86,400</u>  |
| Gross Revenues                               | \$483,066,100  | \$472,377,500  |
| <b>Expenditures</b>                          |                |                |
| Prizes                                       | \$274,529,500  | \$275,140,200  |
| Basic and Bonus Retailer Compensation        | 33,875,800     | 33,210,300     |
| Vendor Payments                              | 12,383,700     | 12,552,200     |
| General Program Operations                   | 21,248,000     | 21,924,800     |
| Appropriation to DOJ - Lottery Enforcement   | 298,800        | 301,100        |
| Appropriation to DOR - Credit Administration | 247,300        | 274,200        |
| Program Reserves                             | <u>0</u>       | <u>127,900</u> |
| Total Expenditures                           | \$342,583,100  | \$343,530,700  |
| <b>Net Proceeds</b>                          |                |                |
| Interest Earnings                            | \$768,500      | \$1,242,200    |
| Gaming-Related Revenue                       | \$1,277,000    | \$1,132,400    |
| <b>Total Available for Tax Relief *</b>      | \$154,894,500  | \$154,512,900  |
| <b>Appropriations for Tax Relief</b>         |                |                |
| Lottery and Gaming Credit                    | \$118,056,000  | \$133,147,200  |
| Farmland Tax Relief Credit                   | 13,252,400     | 11,718,100     |
| Late Lottery and Gaming Credit Applications  | <u>295,000</u> | <u>200,000</u> |
| Total Appropriations for Tax Relief          | \$131,603,400  | \$145,065,300  |
| Gross Closing Balance                        | \$23,291,100   | \$9,447,600    |
| Reserve (2% of Gross Revenues)               | \$9,661,300    | \$9,447,600    |
| Net Closing Balance                          | \$13,629,800   | \$0            |

\*Opening balance, net proceeds, interest earnings and gaming-related revenue.

\*\*The 2004-05 opening balance is increased by \$400 to reflect a technical adjustment relating to the change in encumbrance balance from 2002-03 to 2003-04.

### Pari-Mutuel Wagering and Racing in Wisconsin

#### Constitutional Provision

Authorization of pari-mutuel on-track wagering in Wisconsin required the adoption of a constitutional amendment creating an exception to the gambling prohibition. This amendment received voter approval on April 7, 1987, by a vote of 580,089 (52%) to 529,729 (48%).

This amendment specifies that the Wisconsin Constitution's general gambling prohibition "shall not prohibit pari-mutuel on-track betting as provided by law." It also prohibits the state from owning or operating a pari-mutuel betting enterprise or facility and from leasing state-owned land for the purpose of conducting pari-mutuel betting.

## **Pari-Mutuel Wagering**

The term "pari-mutuel" does not refer specifically to racetrack betting or to any particular game or event upon which a bet is made. Rather, it describes a method by which the payout of a wager is determined. Under a pari-mutuel betting system, bettors wager against each other rather than against "the house" as in casino betting. For example, in pari-mutuel greyhound race wagering, the individual bets are pooled and payouts are determined based on the proportion of wagers placed on individual dogs. A winning dog on which very little was bet would pay out at more favorable odds than a dog that was heavily bet upon.

Because bettors wager among themselves in a pari-mutuel gambling system, the racetrack organization has no wagering interest in the outcome of any race. Rather than earning gambling revenue, as do casinos, racetracks retain a fixed percentage of each bet, and also earn admission and concession income. The state receives revenue from pari-mutuel wagering primarily through taxes on bets, unclaimed prizes and various fees.

## **Statutory Provisions**

Although the constitutional amendment authorized the legalization of pari-mutuel betting, enabling legislation was needed to implement the constitutional change. The following sections outline the major provisions of the state racing statutes.

**Racing Governance.** The Division of Gaming in the Department of Administration coordinates and regulates activities and promulgates rules relating to racing and pari-mutuel wagering. Under prior law, the Wisconsin Gaming Board governed racing and pari-mutuel wagering, charitable gaming and the state's regulatory responsibilities under the Indian gaming compacts. Under 1997 Wisconsin Act 27, the Board was eliminated and its functions transferred to a newly-created Division of Gaming in DOA.

In addition to dog and horse racing, DOA may authorize on-track pari-mutuel wagering on snowmobile racing that does not conflict with animal racing. If the Department authorizes on-track pari-mutuel wagering on snowmobile racing, the Department is required to regulate the pari-mutuel wagering and to promulgate rules for its administration. On-track pari-mutuel wagering on snowmobile racing has never been approved in Wisconsin.

In general, the provisions described below apply to wagering on dog and horse races and the regulation of races where such wagering is authorized.

**Licenses and License Fees.** The Division of Gaming may issue licenses for the following activities:

1. The ownership and operation of a racetrack at which pari-mutuel wagering is conducted.
2. The sponsorship and management of racing on which pari-mutuel wagering is conducted, other than at fairs.
3. The sponsorship and management of horse racing on which pari-mutuel wagering is conducted and which is located at a fair held by a county, or a county agricultural society, association or board.
4. Engaging in certain racing-related occupations. Licensed occupations must include, but are not limited to: (a) occupations of participants in horse racing, including horse owners or lessees, trainers and their assistants, jockeys, drivers, exercise riders and grooms; (b) occupations of participants in dog racing, including dog owners or lessees, trainers and their assistants, kennel masters and kennel helpers; and (c) veterinarians, race officials and personnel; pari-mutuel personnel; security personnel and persons holding contracts to provide goods and services to licensees. Persons serving under contract with DOA are also subject

to conflict of interest provisions.

The statutes prohibit engaging in the activities outlined above without a valid license issued by DOA. The Department may suspend or revoke licenses and impose forfeitures for any violation of racing law or rules. A license may be denied if the applicant has not made required payments, has violated certain laws, is delinquent in making court-ordered payments of child or family support, maintenance, birth expenses, medical expenses or other expenses related to the support of a child or former spouse or is liable for delinquent taxes.

**License to Own and Operate a Racetrack.** In deciding whether to issue a license to own and operate a racetrack that is not at a fair, DOA must consider the competitive effects on other licensees. In general, this license may include horse racing, dog racing, or both. Prior to issuing a license, DOA must hold at least one public hearing. In addition, an initial license application must be accompanied by a resolution supporting the application that has been adopted, after a public hearing, by the municipality where the track would be located.

The Department must determine that the following conditions are met before it may issue this license: (a) at least 51% of the ownership interest in the track is held by state residents; (b) the license will not adversely affect the public health, welfare and safety; (c) the racetrack will be operated in accordance with applicable laws; and (d) the applicant is qualified and financially able to operate a racetrack.

For each location, the initial license is valid for five years; subsequent licenses must be renewed annually.

**Licenses to Sponsor and Manage Racing.** A license to sponsor and manage racing, other than at fairs, may include horse racing, dog racing, or both. The license application must be accompanied by a bond sufficient to guarantee the payment of fees, taxes and other moneys due, including pay-

ments to winning bettors and the payment of purses to the owners of winning animals. In issuing a license, DOA must hold at least one public hearing and must determine that: (a) the license will not adversely affect the public health, welfare and safety; (b) the applicant will conduct races in accordance with applicable laws; and (c) the license will not create competition that will adversely affect other licensees.

Only horse racing may be conducted at county fairs and requires a separate license. The bonding and public hearing requirements also apply in issuing a license to sponsor and manage racing at a fair; further, the issuance of such a license is subject to county board approval. This license may allow for racing on days on which the fair is held and for two additional periods not to exceed five days each. Either or both of the additional periods may be consecutive with the days of the fair. In assigning these race dates, DOA must consider the competitive effects on other licensees.

A license to sponsor and manage racing (including fairs) must be renewed annually. The statutes prohibit a person from holding more than one license to own and operate a racetrack and one license to sponsor and manage racing (including fairs). If the applicant is a corporation, association, limited liability company or partnership, DOA must determine whether the applicant is the same "person" as another licensee in applying this restriction. Applications for licenses to own and operate a racetrack or to sponsor and manage races must include a statement setting forth the assets and liabilities of the applicant.

In addition to the qualifications outlined above, the statutes specify a number of criminal record restrictions for all licensees and require DOA to establish further qualifications and fees by rule. The statutes also specify the conditions under which a license may be suspended or revoked. License applicants are subject to background investigations, conducted with the assistance of the Department of Justice. DOA must establish, by rule,

fees for such background investigations. Table 5 shows the current fees relating to the ownership and operation of a racetrack or the sponsorship or management of racing.

**Table 5: Ownership and Management Fees**

|                   |   |
|-------------------|---|
| \$25,000          | Application fee for a license to own and operate a racetrack (Renewal: \$1,500)   |
| 25,000            | Application fee for a license to sponsor and manage racing (Renewal: \$1,500)   |
| 45,000            | Application fee for a joint license to own and operate a racetrack and to sponsor and manage racing   |
| 10,000            | Background investigation fee for a license to own and operate a racetrack or to sponsor and manage racing (applicant pays the fee shown or actual costs, whichever is greater)        |
| 15,000            | Background investigation fee for a joint license to own and operate a racetrack and to sponsor and manage racing (applicant pays the fee shown or actual costs, whichever is greater) |
| 100,000           | Original issuance fee for a license to own and operate a racetrack (per location)   |
| 50,000            | Annual renewal fee for a license to own and operate a racetrack   |
| \$125/performance | Performance fee for a license to sponsor and manage racing  |

The Department may adopt, by rule, conflict of interest provisions for licensees. At least 85% of the employees of a licensee, or of a person providing services to a licensee under contract, who work at a racetrack must have been residents of Wisconsin for at least one year immediately prior to their employment at the track.

**Racing Officials.** Other than at fairs, the pari-mutuel statutes require that three stewards preside over licensed races. At least two of the stewards must be employed by, or serving under contract with, DOA. Other stewards may be employed by the licensee; however, all stewards are subject to criminal record restrictions and must be approved by DOA. Stewards must ensure that all races are run in accordance with DOA rules, certify official race results, settle disputes regarding races and perform other duties assigned by the Department. Stewards may impose sanctions (license suspen-

sions and forfeitures) on occupational licensees who engage in conduct that adversely affects the integrity of racing or who violate pari-mutuel laws or rules. Licensees who have received steward sanctions can appeal the decision to DOA.

For races held at county fairs, DOA must specify the requirements for stewards, by rule. In addition, DOA must adopt rules relating to other racing officials, fees for services by racing officials employed by, or serving under contract with, the Department and the qualifications of all racing officials.

**Minors.** No person under the age of 18 years may be admitted to a licensed racetrack unless accompanied by an adult parent, grandparent, great-grandparent, guardian or spouse or by another adult with the written consent of the minor's parent or guardian. Although permitted at a racetrack under these conditions, minors are prohibited from making wagers and receiving payouts on wagers. Licensees are expressly prohibited from knowingly accepting wagers from, and making payouts to, minors. Persons under the age of 16 years may not be employed at a licensed racetrack, other than at fairs. At fairs, this restriction applies only to employment in pari-mutuel wagering activities.

**Income Tax.** Winnings from pari-mutuel wagers are subject to the state income tax. The holder of the sponsorship and management license at a racetrack must withhold state taxes from payments on winning wagers, if the winnings exceed \$1,000.

**Simulcasting and Intertrack Wagering.** Simulcasting refers to conducting wagering at a Wisconsin-licensed racetrack on horse and dog races that are broadcast from a racetrack in another state. State licensees are also permitted to simulcast their races to any legal, out-of-state wagering entity. Intertrack wagering refers to wagering at Wisconsin racetracks on races conducted at other Wisconsin racetracks.

Under 1995 Wisconsin Act 27, each Wisconsin racetrack may simulcast, with state approval, any



number of out-of-state races. (Previously, no more than nine out-of-state races annually could be simulcast at each racetrack). In addition, Act 27 stipulated that where a racetrack engages in simulcasting or intertrack wagering that: (a) for venues at which \$25,000,000 or more was wagered during the preceding calendar year, at least 250 live race performances must have been conducted during that year; and (b) for venues at which less than \$25,000,000 was wagered, at least 200 race performances must have been conducted.

Prior to July 26, 2003, simulcast and intertrack wagering could be conducted only as an adjunct to live race wagering and could not be conducted in a manner that would supplant live race wagering. Further, simulcast and intertrack wagering could not be the primary source of revenue at a racetrack. Under 2003 Wisconsin Act 33, these simulcast racing and intertrack wagering limitation provisions were temporarily repealed. The suspension of the provisions began on July 26, 2003, and will continue until January 1, 2007, when the limitations on simulcast and intertrack wagering will again become effective.

Current provisions described below regarding take-out, the pari-mutuel tax, and a 0.75% allocation for special programs apply to simulcast and intertrack wagering. In addition, under a policy adopted by the Gaming Commission, effective January 1, 1996, simulcast horse race wagers are taxed at the pari-mutuel tax rate schedule applicable to horse racing. Prior to January 1, 1996, simulcast horse race wagers were taxed at the dog race pari-mutuel rates. Each year, this change results in no pari-mutuel tax being collected on the first \$50.0 million in simulcast wagers on horse races at each dog track.

**Alcoholic Beverages.** Notwithstanding existing license quotas, municipalities are authorized to issue licenses for the sale of intoxicating beverages at racetracks. Persons under the legal drinking age may be on racetrack premises, even if alcoholic beverages are sold.

**Medication and the Humane Treatment of Animals.** Numerous provisions govern the humane treatment of animals, including the medication of or tampering with race animals, the administration of foreign substances, testing for medication or a foreign substance, prohibiting the use of live lures in training race dogs and governing the humane killing of race dogs.

DOA must adopt rules governing the administration of medication and foreign substances to animals at racetracks. The general requirements are that no medication or foreign substance may be administered to an animal within 48 hours of its entry into a race and no animal participating in a race may carry any medication or foreign substance in its body. However, certain exceptions have been made to these provisions. DOA may permit specified levels of procaine and its metabolites, sulfa drugs and their metabolites, and polyethylene glycol to be present in a race animal's body if the substance entered the body through the food chain. DOA may also allow any other medication or foreign substance that may enter the animal's body through the food chain that the Department determines will not affect the integrity of a race or be relevant to the wagering public if the medication or foreign substance is present in the animal.

The owner, or the agent or employee of the owner, of a race animal must permit race officials to test race animals for medication or foreign substances. At least one animal per race must be tested to determine whether medication or foreign substance violations have occurred. The Department may establish and charge fees for this testing.

Under current law, the state pays the total costs of drug testing. Expenditures in 2003-04 for testing totaled \$181,700; the average cost of testing is currently \$21 per sample.

**Miscellaneous Provisions.** Pari-mutuel betting and racing statutes also include criminal penalties for violations of pari-mutuel laws and rules, provi-

sions relating to the enforcement authority of the Department of Justice and audit and reporting requirements.

**Allocations of Amounts Wagered.** The amounts wagered at racetracks are subject to a variety of statutory provisions, as follows:

**1. Take-Out.** For straight pools (wagers on a single animal in a single race), licensees are required to take out a minimum of 17% of the total amount wagered (and up to 20% with DOA approval); the remainder, minus breakage (the rounding down of payouts to the nearest \$0.10), must be paid to winning bettors. The take-out for multiple pools (wagers involving more than one animal) is a minimum of 23% (or up to 25% with DOA approval). These provisions apply to both horse and dog racing.

**2. Purses.** For horse races, at least 8% of the total amount wagered must be used for purses; dog race purses must equal at least 4.5% of the total amount wagered. Purses, which are paid to the animal owners, must be paid from the licensee's take-out.

**3. Pari-Mutuel Tax.** The most significant source of state revenue from pari-mutuel wagering is the pari-mutuel tax. The tax is calculated as a percentage of the total amount bet (the "handle"), and licensees must pay the tax from each day's take-out, under a sliding rate scale. The current rates for both horse and dog racing are summarized in Table 6. All revenues from the pari-mutuel tax are credited to appropriations for the general program operations of DOA (for racing regulation) and DOJ (for racing law enforcement). Pari-mutuel tax revenue totaled \$1.1 million in 2003-04.

**4. Allocation for Special Programs.** In addition to the pari-mutuel tax, licensees must remit to DOA 0.75% of the total amount wagered within 48 hours of each race day. These revenues are credited to appropriations for the general

**Table 6: Pari-Mutuel Tax Rates for Horse and Dog Racing**

| Amount Wagered on all Previous Race Days During Calendar Year | Tax as Percent of Total Wager |
|---|-------------------------------|
| <b>Horse Racing</b>   |                               |
| \$50 million or less  | 0.00%                         |
| \$50 million to \$100 million                                 | 1.00                          |
| \$100 million to \$150 million                                | 2.00                          |
| More than \$150 million                                       | 3.00                          |
| <b>Dog Racing</b>   |                               |
| \$25 million or less  | 2.00%                         |
| \$25 million to \$100 million                                 | 2.67                          |
| \$100 million to \$150 million                                | 4.67                          |
| \$150 million to \$200 million                                | 6.67                          |
| \$200 million to \$250 million                                | 7.67                          |
| More than \$250 million                                       | 8.67                          |

program operations of DOA (for racing regulation) and DOJ (for racing law enforcement).

**5. Breakage.** Winning bets are calculated by rounding down to the nearest \$0.10. The remainder above the \$.10 is termed the "breakage." For example, a winning ticket on a race may be computed exactly at \$5.87. The bettor would be paid \$5.80 and the remaining \$0.07 is the breakage. Licensees are permitted to retain 100% of the breakage. (Prior to July 29, 1995, 50% of the breakage was provided to the state.)

**6. Unclaimed Winnings.** Winnings on a race that are not claimed within 90 days of the end of a racing year are divided equally between the state and licensee. The state portion is credited to appropriations for the general program operations of DOA (for racing regulation) and DOJ (for racing law enforcement). (Prior to July 1, 2001, all unclaimed winnings were credited to these appropriations.)

**Allocation of Amounts Wagered at Fairs.** Licensees must take out 20% from all amounts wagered on horse races held at county fairs; the remainder, minus breakage, must be paid to winning bettors. From the take-out, licensees must allocate 8% of the amount wagered for the payment of purses. After the deduction of purses, licensees

may retain an amount equal to the costs of conducting racing and pari-mutuel wagering and 50% of the remainder. The other 50% of the remaining take-out must be deposited with DOA to be credited to appropriations for the general program operations of DOA (for racing regulation) and DOJ (for racing law enforcement). The licensee may also retain the total breakage for each race day.

**Admissions Tax; Local Taxes.** On each race day when an admissions fee is charged, racetrack owners and operators are required to collect an admissions tax of \$0.50 per person. The tax includes persons entering the racetrack on free passes or complimentary tickets. Funds from the admissions tax are to be divided equally between the county and the municipality in which the racetrack is located to defray the costs of law enforcement, traffic control and other municipal expenditures incidental to the conduct of racing.

Counties and municipalities are prohibited from levying or collecting any tax, fee or assessment on pari-mutuel betting or on any admission to a racetrack.

**General Program Operations Appropriation and Transfers to the Lottery Fund.** On April 6, 1999, state voters approved an amendment to the Wisconsin Constitution relating to the use and distribution of gaming proceeds. The amendment requires that state revenues from the lottery, pari-mutuel wagering activities and charitable bingo, including interest earnings, be used for property tax relief, with the exception of funds used for lottery operations and the regulation and enforcement of these gambling activities. Under 1999 Wisconsin Act 5, a number of provisions relating to the administration and use of gambling revenues were enacted to reflect these new constitutional requirements. The lottery credit was renamed the lottery and gaming credit and now applies only to property used as the owner's principal dwelling. In addition, Act 5 creates and amends appropriations to effectuate the constitutional requirements for

state gaming revenue to be used for property tax relief.

As noted above, DOA receives revenue from a number of racing-related sources. These amounts, less the amounts appropriated to DOJ for racing law enforcement responsibilities (\$131,500 in 2004-05) are credited to a general program operations appropriation for racing (with \$1,772,200 appropriated in 2004-05). The unencumbered balances in these appropriation accounts at the end of each fiscal year are now transferred to the lottery fund. In 2003-04, \$916,000 was transferred from the DOA general program operations appropriation account to the lottery fund.

**Wisconsin Racetracks**

The Racing Board, initially authorized to regulate pari-mutuel racing, began operations in the fall of 1988. The first candidates for racetrack licensure had to file an application with the Board by January 17, 1989. Subsequent license applications must be filed on or after September 15, but not later than October 15, of any calendar year or by such other date as the state's regulatory agency (now DOA) may declare.

During the initial round of licensure, the Racing Board evaluated applications for 11 greyhound racetrack locations; no applications for horse racetracks were submitted. On May 19, 1989, the Board announced that the following five racetracks would receive licenses:

| <b>Racetrack</b>                                | <b>Opening Date</b> |
|---|---------------------|
| Wisconsin Dells Greyhound Park<br>(Lake Delton) | April 30, 1990      |
| Geneva Lakes Kennel Club (Delavan)              | May 25, 1990        |
| Dairyland Greyhound Park (Kenosha)              | June 20, 1990       |
| Fox Valley Greyhound Park (Kaukauna)            | August 2, 1990      |
| St. Croix Meadows Greyhound Park<br>(Hudson)    | June 20, 1991       |

Three racetracks subsequently went out of business. The Fox Valley Greyhound Park closed on August 11, 1993; the Wisconsin Dells Greyhound Park closed on September 9, 1996; and the St. Croix Meadows Greyhound Park closed August 9, 2001.

Tables 7 and 8 summarize wagering, attendance and revenue data relating to pari-mutuel wagering and racing at currently operating racetracks for calendar years 1997 through 2003. Table 7 provides combined data for all the racetracks. Table 8 pro-

vides selected data for each racetrack.

### Trends in Wagering

Statutory and related policy changes in recent years have tended to create an incentive for racetracks to conduct wagering on simulcast horse races. These changes and the wagering trends on live races and simulcast races are described in this section.

As noted above, the prior-law limitation on

**Table 7: Racing Statistics and Revenue Totals for Wisconsin Racetracks -- 1997 through 2003**

|  | 1997             | 1998             | 1999             | 2000             | 2001             | 2002           | 2003           |
|--|------------------|------------------|------------------|------------------|------------------|----------------|----------------|
| <b>Performances</b>                    |                  |                  |                  |                  |                  |                |                |
| Live                                   | 1,045            | 1,028            | 1,050            | 968              | 840              | 629            | 631            |
| Percent Change                         | NA               | -1.6%            | 2.1%             | -7.8%            | -13.2%           | -25.1%         | 0.3%           |
| Simulcast - Horse                      | 9,921            | 9,081            | 9,055            | 8,814            | 7,993            | 5,402          | 6,219          |
| Simulcast - Greyhound                  | 3,695            | 3,793            | 4,595            | 4,562            | 3,784            | 2,387          | 3,471          |
| Total Simulcast Performances           | 13,616           | 12,874           | 13,650           | 13,376           | 11,777           | 7,789          | 9,690          |
| Percent Change                         | NA               | -5.4%            | 6.0%             | -2.0%            | -12.0%           | -33.9%         | 24.4%          |
| Total Performances                     | 14,661           | 13,902           | 14,700           | 14,344           | 12,617           | 8,418          | 10,321         |
| Percent Change                         | NA               | -5.2%            | 5.7%             | -2.4%            | -12.0%           | -33.3%         | 22.6%          |
| <b>Handle</b>                          |                  |                  |                  |                  |                  |                |                |
| Live Handle                            | \$89,039,979     | \$85,745,793     | \$75,456,933     | \$63,155,728     | \$48,531,842     | \$44,408,391   | \$38,152,674   |
| Percent Change                         | NA               | -3.7%            | -12.0%           | -16.3%           | -23.2%           | -8.5%          | -14.1%         |
| Simulcast - Horse                      | 54,796,437       | 61,681,692       | 61,274,264       | 57,964,498       | 53,182,572       | 46,743,184     | 44,939,096     |
| Simulcast - Greyhound                  | 15,222,456       | 16,914,184       | 17,391,115       | 16,592,752       | 14,913,634       | 11,552,809     | 13,320,243     |
| Total Simulcast Handle                 | 70,018,893       | 78,595,876       | 78,665,379       | 74,557,250       | 68,096,206       | 58,295,993     | 58,259,339     |
| Percent Change                         | NA               | 12.2%            | 0.1%             | -5.2%            | -8.7%            | -14.4%         | -0.1%          |
| Total Handle                           | \$159,058,872    | \$164,341,669    | \$154,122,312    | \$137,712,978    | \$116,628,048    | \$102,704,384  | \$96,412,013   |
| Percent Change                         | NA               | 3.3%             | -6.2%            | -10.6%           | -15.3%           | -11.9%         | -6.1%          |
| <b>Attendance</b>                      |                  |                  |                  |                  |                  |                |                |
| Average Live Wager                     | 86               | 81               | 79               | 77               | 71               | 75             | 69             |
| Average Simulcast Wager                | 67               | 74               | 82               | 91               | 100              | 99             | 105            |
| <b>Public Winnings</b>                 |                  |                  |                  |                  |                  |                |                |
| Percent of Total Handle                | 76.2%            | 76.4%            | 76.4%            | 76.8%            | 77.2%            | 77.3%          | 77.4%          |
| <b>Purses to Dog Owners</b>            |                  |                  |                  |                  |                  |                |                |
| Percent of Total Handle                | 3.7%             | 3.9%             | 3.8%             | 3.7%             | 3.6%             | 3.6%           | 3.6%           |
| <b>State Revenue</b>                   |                  |                  |                  |                  |                  |                |                |
| Pari-Mutuel Tax                        | \$2,367,631      | \$2,317,655      | \$2,075,965      | \$1,760,384      | \$1,373,388      | \$1,219,144    | \$1,104,538    |
| Special Programs                       | 1,192,960        | 1,232,580        | 1,155,937        | 1,032,865        | 874,727          | 770,292        | 723,101        |
| Other State Revenue *                  | <u>1,655,625</u> | <u>1,657,677</u> | <u>1,673,849</u> | <u>1,510,773</u> | <u>1,372,848</u> | <u>804,611</u> | <u>818,382</u> |
| Total Revenues to the State            | \$5,216,216      | \$5,207,912      | \$4,905,751      | \$4,304,023      | \$3,620,963      | \$2,794,047    | \$2,646,021    |
| Percent of Total Handle                | 3.3%             | 3.2%             | 3.2%             | 3.1%             | 3.1%             | 2.7%           | 2.7%           |
| <b>Amount Retained by Racetrack **</b> |                  |                  |                  |                  |                  |                |                |
| Percent of Total Handle                | 17.4%            | 17.2%            | 17.3%            | 16.7%            | 16.5%            | 16.7%          | 16.6%          |

\*Includes race supervision fees and miscellaneous revenue paid by tracks, other state payments made by individuals associated with pari-mutuel racing operations, and unclaimed prizes paid from the handle.

\*\*From retained revenues, tracks must pay such costs as employee compensation, facility maintenance, debt payments and other operating expenses.

**Table 8: Summary Data for Individual Racetracks -- 1997 through 2003**

|                                     | 1997         | 1998         | 1999         | 2000         | 2001         | 2002         | 2003         |
|-------------------------------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|
| <b>Live Performances</b>            |              |              |              |              |              |              |              |
| Dairyland                           | 443          | 433          | 430          | 365          | 369          | 368          | 369          |
| Geneva Lakes                        | 323          | 312          | 334          | 331          | 325          | 261          | 262          |
| St. Croix                           | 279          | 283          | 286          | 272          | 146          | 0            | 0            |
| Wisconsin Dells                     | 0            | 0            | 0            | 0            | 0            | 0            | 0            |
| <b>Simulcast Performances</b>       |              |              |              |              |              |              |              |
| Dairyland                           | 5,072        | 4,595        | 5,065        | 5,365        | 4,932        | 3,391        | 4,903        |
| Geneva Lakes                        | 4,606        | 4,750        | 5,452        | 5,606        | 5,575        | 4,398        | 4,787        |
| St. Croix                           | 3,938        | 3,529        | 3,133        | 2,405        | 1,270        | 0            | 0            |
| Wisconsin Dells                     | 0            | 0            | 0            | 0            | 0            | 0            | 0            |
| <b>Attendance</b>                   |              |              |              |              |              |              |              |
| Dairyland                           | 659,898      | 644,657      | 573,574      | 485,999      | 426,913      | 409,458      | 386,296      |
| Geneva Lakes                        | 234,788      | 267,129      | 262,295      | 232,520      | 210,249      | 181,047      | 166,021      |
| St. Croix                           | 144,701      | 144,698      | 124,502      | 99,269       | 46,571       | 0            | 0            |
| Wisconsin Dells                     | 0            | 0            | 0            | 0            | 0            | 0            | 0            |
| <b>Average Live Wager</b>           |              |              |              |              |              |              |              |
| Dairyland                           | \$90         | \$85         | \$84         | \$83         | \$75         | \$79         | \$70         |
| Geneva Lakes                        | 87           | 78           | 71           | 71           | 67           | 66           | 66           |
| St. Croix                           | 63           | 69           | 67           | 62           | 50           | 0            | 0            |
| Wisconsin Dells                     | 0            | 0            | 0            | 0            | 0            | 0            | 0            |
| <b>Average Simulcast Wager</b>      |              |              |              |              |              |              |              |
| Dairyland                           | \$69         | \$74         | \$83         | \$94         | \$104        | \$101        | \$107        |
| Geneva Lakes                        | 61           | 76           | 76           | 83           | 87           | 94           | 101          |
| St. Croix                           | 72           | 75           | 89           | 98           | 114          | 0            | 0            |
| Wisconsin Dells                     | 0            | 0            | 0            | 0            | 0            | 0            | 0            |
| <b>Total Revenues to the State</b>  |              |              |              |              |              |              |              |
| Dairyland                           | \$3,215,613  | \$3,145,687  | \$2,932,733  | \$2,539,062  | \$2,205,380  | \$1,926,015  | \$1,804,519  |
| Geneva Lakes                        | 1,251,948    | 1,294,653    | 1,256,446    | 1,159,011    | 1,076,968    | 868,032      | 841,502      |
| St. Croix                           | 748,655      | 767,572      | 716,572      | 605,950      | 338,614      | 0            | 0            |
| Wisconsin Dells                     | 81,239       | 0            | 0            | 0            | 0            | 0            | 0            |
| <b>Amount Retained by Racetrack</b> |              |              |              |              |              |              |              |
| Dairyland                           | \$18,448,046 | \$17,729,960 | \$16,839,443 | \$14,566,931 | \$12,811,172 | \$12,404,428 | \$11,430,700 |
| Geneva Lakes                        | 5,852,739    | 6,906,482    | 6,515,506    | 5,808,943    | 5,223,955    | 4,740,724    | 4,547,155    |
| St. Croix                           | 3,359,971    | 3,557,386    | 3,327,586    | 2,562,037    | 1,179,628    | 0            | 0            |
| Wisconsin Dells                     | 0            | 0            | 0            | 0            | 0            | 0            | 0            |

simulcast races was eliminated under 1995 Wisconsin Act 27, effective July 29, 1995. In addition, effective January 1, 1996, simulcast horse race wagers are taxed at the pari-mutuel tax rate schedule applicable to horse racing. Since the first \$50 million in wagers on horse races each year are not taxed under the pari-mutuel tax schedule, it is unlikely that any pari-mutuel taxes will be collected on these proceeds in the future. The largest Wisconsin racetrack (Dairyland) had simulcast horse race handles totaling \$33.9 million in 2002 and \$32.3 million in 2003.

Calendar year 1996 was the first full year in which the number of simulcast races was not limited and the taxing policy that encourages simulcast horse racing events was in place. With the closure of the St. Croix Meadows racetrack in August, 2001, two racetracks continue to operate: Dairyland and Geneva Lakes. An analysis of the wagering patterns at these two racetracks from 1996 through 2003 (see Table 9) illustrates certain trends in racetrack programming and pari-mutuel wagering.

Prior to July, 1995, with simulcast races strictly

limited, the racetrack handle was derived almost entirely from live greyhound racing. This situation has changed significantly, as shown in Table 9. The simulcast handle grew to more than 32% of the total handle in 1996 and increased to 60.4% of the total handle in 2003. The majority of the simulcast handle for both tracks relates to horse races; although the handle for simulcast dog races also increased significantly during these years. Simulcast wagering, then, has become a major portion of the handle generated at the two tracks.

Live racing, on the other hand, declined from 1996 through 2003, a trend that has held since 1992. The decline in the live handle from 1996 through 2003 exceeds 60.0%. On the one hand, it could be argued that simulcast wagering has helped to stabilize the Wisconsin pari-mutuel racing industry

by supplementing racetrack revenue that is otherwise in decline. On the other hand, it could also be argued that simulcast wagering may negatively impact live racing. It appears, for both racetracks, that the decline in live race wagering may be related to the increase in simulcast wagering. It also appears that simulcast wagering may have also passed its peak. Total simulcast wagering at the Dairyland racetrack has declined since its high point in 1999 (although there was a slight increase between 2002 and 2003), and simulcast wagering at Geneva Lakes has been in decline since 1998. The total handle for the two racetracks in 2003 is 32.6% less than the total handle was in 1996.

Division of Gaming officials indicate that simulcast races typically have fee costs for these races that reduce the net revenue retained by the

**Table 9: Trends in Pari-Mutuel Wagering – 1996 through 2003**

| Racetrack                                      | Calendar Year     |                   |                   |                   |                   |                   |                   |                   | % Change<br>1996-2003 |
|--|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-----------------------|
|  | 1996              | 1997              | 1998              | 1999              | 2000              | 2001              | 2002              | 2003              |                       |
| <b>Dairyland</b>                               |                   |                   |                   |                   |                   |                   |                   |                   |                       |
| Live Handle                                    | \$69,959,277      | \$59,364,554      | \$54,951,796      | \$48,425,338      | \$40,523,109      | \$32,151,716      | \$32,465,213      | \$27,129,728      | -61.2%                |
| Simulcast Horse                                | 33,912,301        | 37,514,817        | 38,336,405        | 38,292,797        | 36,293,602        | 35,987,107        | 33,873,143        | 32,342,645        | -4.6                  |
| Simulcast Dog                                  | 3,961,382         | 7,782,065         | 9,213,128         | 9,261,850         | 9,165,634         | 8,442,047         | 7,448,399         | 9,076,313         | 129.1                 |
| Total Simulcast                                | <u>37,873,683</u> | <u>45,296,882</u> | <u>47,549,533</u> | <u>47,554,647</u> | <u>45,459,236</u> | <u>44,429,154</u> | <u>41,321,542</u> | <u>41,418,958</u> | 9.4                   |
| Total Handle                                   | \$107,832,960     | \$104,661,436     | \$102,501,329     | \$95,979,985      | \$85,982,345      | \$76,580,870      | \$73,786,755      | \$68,548,686      | -36.4%                |
| Live Racing as Percent<br>of Total Handle      | 64.9%             | 56.7%             | 53.6%             | 50.5%             | 47.1%             | 42.0%             | 44.0%             | 39.6%             | -25.3%                |
| Simulcast Racing as Percent<br>of Total Handle | 35.1%             | 43.3%             | 46.4%             | 49.5%             | 52.9%             | 58.0%             | 56.0%             | 60.4%             | 25.3%                 |
| <b>Geneva Lakes</b>                            |                   |                   |                   |                   |                   |                   |                   |                   |                       |
| Live Handle                                    | \$27,081,417      | \$20,519,324      | \$20,775,774      | \$18,651,563      | \$16,488,144      | \$14,030,016      | \$11,943,178      | \$11,022,946      | -59.3%                |
| Simulcast Horse                                | 7,035,218         | 10,680,542        | 15,650,761        | 14,976,811        | 14,690,104        | 13,749,794        | 12,870,041        | 12,596,451        | 79.0                  |
| Simulcast Dog                                  | 1,035,542         | 3,563,247         | 4,530,407         | 5,057,773         | 4,718,655         | 4,629,243         | 4,104,410         | 4,243,930         | 309.8                 |
| Total Simulcast                                | <u>8,070,760</u>  | <u>14,243,789</u> | <u>20,181,168</u> | <u>20,034,584</u> | <u>19,408,759</u> | <u>18,379,037</u> | <u>16,974,451</u> | <u>16,840,381</u> | 108.7                 |
| Total Handle                                   | \$35,152,177      | \$34,763,113      | \$40,956,942      | \$38,686,147      | \$35,896,903      | \$32,409,053      | \$28,917,629      | \$27,863,327      | -20.7%                |
| Live Racing as Percent<br>of Total Handle      | 77.0%             | 59.0%             | 50.7%             | 48.2%             | 45.9%             | 43.3%             | 41.3%             | 39.6%             | -37.5%                |
| Simulcast Racing as Percent<br>of Total Handle | 23.0%             | 41.0%             | 49.3%             | 51.8%             | 54.1%             | 56.7%             | 58.7%             | 60.4%             | 37.5%                 |
| <b>Total All Tracks</b>                        |                   |                   |                   |                   |                   |                   |                   |                   |                       |
| Live Handle                                    | \$97,040,694      | \$79,883,878      | \$75,727,570      | \$67,076,901      | \$57,011,253      | \$46,181,732      | \$44,408,391      | \$38,152,674      | -60.7%                |
| Simulcast Horse                                | 40,947,519        | 48,195,359        | 53,987,166        | 53,269,608        | 50,983,706        | 49,736,901        | 46,743,184        | 44,939,096        | 9.7                   |
| Simulcast Dog                                  | 4,996,924         | 11,345,312        | 13,743,535        | 14,319,623        | 13,884,289        | 13,071,290        | 11,552,809        | 13,320,243        | 166.6                 |
| Total Simulcast                                | <u>45,944,443</u> | <u>59,540,671</u> | <u>67,730,701</u> | <u>67,589,231</u> | <u>64,867,995</u> | <u>62,808,191</u> | <u>58,295,993</u> | <u>58,259,339</u> | 26.8                  |
| Total Handle                                   | \$142,985,137     | \$139,424,549     | \$143,458,271     | \$134,666,132     | \$121,879,248     | \$108,989,923     | \$102,704,384     | \$96,412,013      | -32.6%                |
| Live Racing as Percent<br>of Total Handle      | 67.9%             | 57.3%             | 52.8%             | 49.8%             | 46.8%             | 42.4%             | 43.2%             | 39.6%             | -28.3%                |
| Simulcast Racing as Percent<br>of Total Handle | 32.1%             | 42.7%             | 47.2%             | 50.2%             | 53.2%             | 57.6%             | 56.8%             | 60.4%             | 28.3%                 |

tracks. Such fees are not applicable to live racing. Thus, while the simulcast handle may exceed 50% of the total handle, the actual wagering revenue the tracks derive from live and simulcast racing respectively may still be approximately equal. As noted above, the statutory provision that simulcast and intertrack wagering may not be the primary source of revenue at a racetrack has been temporarily repealed under 2003 Wisconsin Act 33 for the period July 26, 2003, to January 1, 2007. It remains to be seen how this statutory change will affect wagering trends.

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## Charitable Gaming

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### Background

In 1973 and 1977, constitutional amendments were passed that authorized the Legislature to provide for the conduct of charitable bingo and raffles, respectively. Prior to October 1, 1992, the statutes related to these forms of gambling were administered by the Bingo Control Board, attached to the Department of Regulation and Licensing. At that time, this responsibility was transferred to the Gaming Commission. On July 1, 1996, these functions were transferred to the Gaming Board and, on October 14, 1997, were transferred to the Division of Gaming in DOA.

Within the Division of Gaming, these functions are performed by the Office of Charitable Gaming. This Office advises DOA on policy and rule making related to bingo, raffles and crane games and administers the legal requirements for the conduct of these games.

The Office of Charitable Gaming is provided the following funding and position authority in 2004-05: (a) \$238,600 and 3.0 positions for bingo regulation; and (b) \$186,800 and 2.75 positions for raffle and crane game regulation.

The Wisconsin Constitution now requires that

state revenues from the lottery, racing and pari-mutuel wagering activities and charitable bingo, including interest earnings, be used for property tax relief, with the exception of funds used for lottery operations and the regulation and enforcement of racing, pari-mutuel wagering and charitable bingo activities. In 2003-04, \$348,200 in available bingo revenue was transferred to the lottery fund

The following section discusses certain bingo and raffle charitable gaming provisions. The final section discusses provisions relating to crane games.

### General Provisions of Charitable Gaming

Bingo and raffle licenses may be granted to any bona fide religious, charitable, service, fraternal or veteran's organization and to any organization to which contributions are deductible for state and federal income tax purposes. License fees are deposited in separate DOA general operations appropriations for bingo, and raffle and crane games.

A bingo license may only be granted to an organization that has been in existence for the three years preceding its license application. A \$10 fee is required for each bingo occasion (a bingo playing session) and a \$5 annual fee is required for the designated member of an organization responsible for the proper utilization of gross receipts. A bingo suppliers license fee is \$25; in addition, a supplementary suppliers fee ranging from \$10 to \$1,000 is charged on a sliding scale basis, depending upon annual gross sales of bingo supplies during the preceding year. In 2003-04, there were 556 active bingo organizations and bingo license fees generated \$182,400.

In addition, an occupational tax is imposed on the gross receipts of licensed bingo organizations. The tax rate is 1% on the first \$30,000 in gross receipts and 2% on gross receipts in excess of \$30,000. In 2003-04, the bingo gross receipts tax totaled \$361,600. These revenues are deposited in the general operations appropriation for bingo regulation.

To qualify for a raffle license, an organization must have been in existence for one year immediately preceding its license application or show that it is chartered by a national organization that has existed for at least three years. The annual raffle license fee is \$25, which allows an organization to conduct a maximum of 200 raffles and one calendar raffle annually. (A calendar raffle involves drawing and awarding a prize on each date specified in a calendar.) Two license types are available, a Class A raffle license for the conduct of raffles in which at least some tickets are sold on days other than the day of the drawing and a Class B raffle license for the conduct of raffles in which all tickets are sold on the same day as the drawing. In 2003-04, there were 7,768 licensed raffle organizations and raffle license fees generated \$192,800 (used by the Office of Charitable Gaming for the regulation of raffles).

The Office's responsibilities regarding charitable gaming include: (a) rule-making relating to the conduct of bingo and raffles; (b) licensing of bingo organizations and persons distributing supplies or equipment to a licensed bingo organization; (c) licensing raffle organizations; (d) administering pro

ceedings relating to the suspension and revocation of licenses; and (e) receiving required semi-annual reports from bingo licensees and required annual financial reports from raffle licensees.

### **General Provisions of Crane Games**

A crane game is an amusement device involving skill that may reward a player exclusively with merchandise contained within the device. This merchandise is limited to prizes, toys and novelties, each having a wholesale value not more than seven times the cost charged to play the device once or \$5, whichever is less. A crane game may not be operated unless an owner is registered with the state and an identification number is affixed to the game. The Division of Gaming registers owners and issues the required identification numbers. The registration fee is \$120 per game. The registration remains in effect until canceled by DOA, with the advice and consent of the Department of Justice, or is withdrawn by the registered owner. Revenues from these fees totaled \$19,600 in 2003-04 (used by the Division of Gaming for the regulation of crane games) and 163 registration permits were issued.