HO-CHUNK NATION LEGISLATURE

Governing Body of the Ho-Chunk Nation

HO-CHUNK NATION CODE (HCC)

TITLE 9 – CRIMINAL CODE

SECTION 945 – GAMBLING

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945.01 Definitions. In this chapter:

(1) BET. A bet is a bargain in which the parties agree that, dependent upon chance even though accompanied by some skill, one stands to win or lose something of value specified in the agreement. But a bet does not include:

(a) Bona fide business transactions which are valid under the law of contracts including without limitation:

1. Contracts for the purchase or sale at a future date of securities or other commodities, and
2. Agreements to compensate for loss caused by the happening of the chance including without limitation contracts of indemnity or guaranty and life or health and accident insurance;

(b) Offers of purses, prizes or premiums to the actual contestants in any bona fide contest for the determination of skill, speed, strength, or endurance or to the bona fide owners of animals or vehicles entered in such contest;

(cm) Participation in bingo or a raffle conducted under the laws of an applicable jurisdiction.

(d) Pari-mutuel wagering subject to the laws of an applicable jurisdiction.

(e) Participation in a lottery conducted under the laws of an applicable jurisdiction.

(f) An agreement under which an employee is given an opportunity to win a prize, the award of which is determined by chance, in return for the employee making a referral or identification described in s. 945.01 (5) (b) 2. h.

(2) BOOKMAKING. "Bookmaking" means the receiving, recording or forwarding of a bet or offer to bet on any contest of skill, speed, strength or endurance of persons or animals.

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

(b) "Gambling machine" does not include any of the following:

1. A device used in conducting a bingo occasion or raffle game, used in conducting a lottery or used in conducting a race.

2. Any amusement device if it rewards the player exclusively with one or more nonredeemable free replays for achieving certain scores and does not change the ratio or record the number of the free replays so awarded.

3. An amusement device involving skill, if it rewards the player exclusively with merchandise contained within the amusement device proper and limited to prizes, toys and novelties, each having a wholesale value which is not more than 7 times the cost charged to play the amusement device once or $5, whichever is less. In this subdivision, "skill" means, within an opportunity provided for all players fairly to obtain prizes or rewards of merchandise, a player's precision, dexterity or ability to use his or her knowledge which enables him or her to obtain more frequent rewards or prizes than does another less precise, dexterous or knowledgeable player.

(4) GAMBLING PLACE. **(a)** A gambling place is any building or tent, any vehicle (whether self−propelled or not) or any room within any of them, one of whose principal uses is any of the following: making and settling bets; receiving, holding, recording or forwarding bets or offers to bet; conducting lotteries; or playing gambling machines.

(am) "Gambling place" does not include a place where bingo, a raffle, lottery, or race is conducted under the laws of an applicable jurisdiction, and does not include a gambling vessel that is in the process of construction, delivery, conversion or repair by a shipbuilding business that complies with s. 945.095.

(b) Evidence that the place has a general reputation as a gambling place or that, at or about the time in question, it was frequently visited by persons known to be professional gamblers or known as frequenters of gambling places is admissible on the issue of whether it is a gambling place.

(c) Any gambling place is a public nuisance and may be proceeded against under applicable law.

(5) LOTTERY. **(a)** A lottery is 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.

(am) "Lottery" does not include bingo, raffle, pari−mutuel wagering, state or multijurisdictional lottery conducted under applicable laws.

(b) 1. "Consideration" in this subsection means anything which is a commercial or financial advantage to the promoter or a disadvantage to any participant, but does not include any

advantage to the promoter or disadvantage to any participant caused when any participant learns from newspapers, magazines and other periodicals, radio or television where to send the participant's name and address to the promoter.

2. In any game, drawing, contest, sweepstakes, or other promotion, none of the following constitutes consideration under this subsection:

a. Listening to or watching a television or radio program.

b. Filling out a coupon or entry form that is received through the mail or published in a newspaper or magazine, if facsimiles of the coupon or entry form or handwritten and other informal entries are acceptable or if no purchase is required.

c. Furnishing proof of purchase if the proof required does not consist of more than the container of any product as packaged by the manufacturer, or a part of the container, or a facsimile of either.

d. Sending the coupon or entry form and proof of purchase by mail to a designated address.

e. Filling out a coupon or entry form obtained and deposited on the premises of a bona fide trade fair or trade show defined as an exhibition by 5 or more competitors of goods, wares, or merchandise at a location other than a retail establishment or shopping center or other place where goods and services are customarily sold; but if an admission fee is charged to the exhibition all facilities for obtaining and depositing coupons or entry forms shall be outside the area for which an admission fee is required.

f. Visiting a mercantile establishment or other place without being required to make a purchase or pay an admittance fee.

g. Using a chance promotion that meets the following criteria:

1. Participation is available, free and without purchase of the package, from the retailer or by mail or toll-free telephone request to the sponsor for entry or for a game piece.

2. The label of the promotional package and any related advertising clearly states any method of participation and the scheduled termination date of the promotion.

3. The sponsor on request provides a retailer with a supply of entry forms or game pieces adequate to permit free participation in the promotion by the retailer's customers.

4. The sponsor does not misrepresent a participant's chances of winning any prize.

5. The sponsor randomly distributes all game pieces and maintains records of random distribution for at least one year after the termination date of the promotion.

6. All prizes are randomly awarded if game pieces are not used in the promotion.

gm. The sponsor provides on request of an agency a record of the names and addresses of all winners of prizes valued at $100 or more, if the request is made within one year after the termination date of the promotion.

h. An employee referring a person to the employee's employer to purchase goods or services from the employer, or identifying for the employer a person who may purchase goods or services from the employer, regardless of whether the employee who makes the referral or identification is compensated in any manner for the referral or identification.

(6) WIRE COMMUNICATION FACILITY. "Wire communication facility" means any and all instrumentalities, personnel and services, and among other things the receipt, forwarding or

delivery of communications used or useful in the transmission of writings, signs, pictures and sounds of all kinds by means of wire, cable, microwave or other like connection between the points of origin and reception of such transmission.

945.02 Gambling. Whoever does any of the following is guilty of a Class B misdemeanor:
(1) Makes a bet; or
(2) Enters or remains in a gambling place with intent to make a bet, to participate in a lottery, or to play a gambling machine; or
(3) Conducts a lottery, or with intent to conduct a lottery, possesses facilities to do so.

945.03 Commercial gambling. (1m) Whoever intentionally does any of the following is engaged in commercial gambling and, except as provided in sub. (2m), is guilty of a felony:

(a) Participates in the earnings of or for gain operates or permits the operation of a gambling place; or

(b) For gain, receives, records or forwards a bet or offer to bet or, with intent to receive, record or forward a bet or offer to bet, possesses facilities to do so; or

(c) For gain, becomes a custodian of anything of value bet or offered to be bet; or

(d) Conducts a lottery where both the consideration and the prize are money, or with intent to conduct such a lottery, possesses facilities to do so; or

(e) Sets up for use for the purpose of gambling or collects the proceeds of any gambling machine; or

(f) For gain, maintains in this jurisdiction any record, paraphernalia, tickets, certificates, bills, slip, token, paper, writing or other device used, or to be used, or adapted, devised or designed for use in gambling; or

(g) For gain, uses a wire communication facility for the transmission or receipt of information assisting in the placing of a bet or offer to bet on any sporting event or contest, or for the transmission of a wire communication which entitles the recipient to receive money or credit as a result of a bet or offer to bet.

(2m) If the violation of sub. (1m) involves the possession, operation, setup, collection of proceeds, participation in earnings or maintenance of, or involves acting as the custodian of anything of value bet or offered to be bet on, not more than 5 video gambling machines on premises for which a Class “B” or “Class B” license or permit has been issued under applicable law, the person may be penalized as follows:

(a) If the violation involves one video gambling machine, the person may be required to forfeit not more than $500.

(b) If the violation involves 2 video gambling machines, the person may be required to forfeit not more than $1,000.

(c) If the violation involves 3 video gambling machines, the person may be required to forfeit not more than $1,500.

(d) If the violation involves 4 video gambling machines, the person may be required to forfeit not more than $2,000.

(e) If the violation involves 5 video gambling machines, the person may be required to forfeit not more than $2,500.

945.035 Certain slot machines on licensed premises. (1) In this section, "exempt slot machine" means a slot machine manufactured before December 31, 1974, that is exempt from the prohibition under s. 945.05 (1) because it is intended to be used solely for display, restoration and preservation purposes.

(2) No person to whom a license or permit has been issued may do any of the following:

(a) Set up or keep an exempt slot machine on the premises for which the license or permit is issued.

(b) Permit another person to set up or keep an exempt slot machine on the premises for which the license or permit is issued.

(3) A person who violates sub. (2) may be required to forfeit not more than $500 for each violation.

945.04 Permitting premises to be used for commercial gambling. (1m) Except as provided in sub. (2m), whoever intentionally does any of the following is guilty of a Class A misdemeanor:

(a) Permits any real estate owned or occupied by him or her or under his or her control to be used as a gambling place; or

(b) Permits a gambling machine to be set up for use for the purpose of gambling in a place under his or her control.

(2m) If the violation of sub. (1m) involves the setup or use of not more than 5 video gambling machines on premises for which a Class "B" or "Class B" license or permit has been issued under applicable law, the person may be penalized as follows:

(a) If the violation involves one video gambling machine, the person may be required to forfeit not more than $500.

(b) If the violation involves 2 video gambling machines, the person may be required to forfeit not more than $1,000

(c) If the violation involves 3 video gambling machines, the person may be required to forfeit not more than $1,500.

(d) If the violation involves 4 video gambling machines, the person may be required to forfeit not more than $2,000

(e) If the violation involves 5 video gambling machines, the person may be required to forfeit not more than $2,500.

945.041 Revocation of license and injunction against gambling devices. (1) A license or permit issued under applicable law to any person who knowingly permits any slot machine, roulette wheel, other similar mechanical gambling device, or number jar or other device designed for like form of gambling, or any horse race betting or other bookmaking as defined in s. 945.01, to be set up, kept, managed, used or conducted upon the licensed premises or in connection therewith upon premises controlled directly or indirectly by the person, shall be revoked by the trial court by a special proceeding as provided in this section. If a license or permit has been revoked no other license or permit of any character provided for by applicable law may be issued to the person who held the license or permit, prior to the expiration of one year from the effective date of the revocation. If any appeal is taken from the revocation, any period during which the order is stayed shall be added to the one year.

(2) Any tribal police department, sheriff, undersheriff, deputy sheriff, constable or other municipal police officer or any person authorized to enforce the gambling laws shall within 10 days after acquiring such information report to the prosecutor the name and address of any licensee or

permittee under applicable law who to his or her knowledge has knowingly suffered or permitted any device in sub. (1) or any horse race betting to be set up, kept, managed, used or conducted upon the licensed premises or in connection therewith upon premises controlled directly or indirectly by such licensee or permittee. Such officer or person shall also report to the prosecutor knowledge of the circumstances and the name of the municipality or officer by whom the license or permit has been issued. Any other person may in writing and signed by that person report any such name, address and other information to the prosecutor. Within 10 days after any report the prosecutor shall institute a proceeding as hereinafter provided before the trial court or shall within such time report to the attorney general the reasons why such a proceeding has not been instituted. The attorney general may direct the department of justice or the prosecutor to institute such proceeding within a reasonable time.

(3) Such proceeding shall be in the name of the Nation and the issues may be determined by a jury. It shall be instituted by the filing of a petition and service of a notice as herein provided. The petition shall be directed to the trial court and shall set forth a clear and concise statement of the grounds that are alleged to exist justifying a revocation of the license or permit under sub. (1), and shall request an order revoking such license or permit. It shall also request an injunction restraining the defendant from thereafter knowingly suffering or permitting any such devices or any horse race betting to be set up, kept, managed, used or conducted upon premises directly or indirectly controlled by the defendant. Upon the filing of such petition the court shall fix a time for hearing not to exceed 30 days from the date of filing at a place within the court, and a copy of the petition and a notice of the time and place of hearing shall be served upon the defendant not less than 20 days prior to the date of hearing. Such service shall be made in the same manner as a summons is served in a civil action, except that it may also be made by leaving a copy of said petition and notice with any person charged with the operation of the licensed premises. The allegations of the petition shall be deemed controverted and shall be at issue without further pleading by the defendant. No hearing shall be adjourned except for cause. If upon such hearing the court finds that the allegations of the petition are true, it shall issue a written order revoking the license or permit and shall likewise enjoin the defendant from thereafter knowingly suffering or permitting any gambling devices referred to in sub. (1) or any horse race betting to be set up, kept, managed, used or conducted upon premises directly or indirectly controlled by the defendant. The prosecutor shall forthwith cause a copy of the order to be filed with the issuing authority of the license or permit and shall cause a copy to be served upon the defendant as above provided or the defendant's attorney. The revocation and injunction shall become effective upon such service. In cases where a license is issued by a town, city or village, a copy of the order shall also be filed with the department of revenue.

(4) The law enforcement officials referred to in sub. (2) shall also report to the attorney general the names and addresses of persons other than licensees who permit devices referred to in sub. (1) or any horse race betting to be set up, kept, managed, used or conducted upon premises controlled directly or indirectly by such persons. They shall also report their knowledge of the circumstances and the location of such premises. There upon the prosecutor shall proceed as in the case of licensees or permittees, except that the only request of the petition shall be for the issuance of the injunction referred to in sub. (3) and the other required allegations shall be correspondingly changed. Such proceeding shall be had and such injunctional orders entered and served as under sub. (3).

(5) Violations of injunctional orders under this section are punishable by the court as contempt's

of court.
(6) Appeals may be taken from orders issued by the court hereunder as in the case of special proceedings.
(7) Any proceeding instituted by a prosecutor shall not be dismissed with the district attorney's consent except upon the written approval of the court.
(8) Any officer or employee referred to in sub. (2) or any attorney who shall without proper excuse neglect or refuse to perform the duties required of him or her herein within such times as may be specified shall be subject to removal.
(9) Every officer and prosecutor shall keep a written record of reports made by or to him or her under sub. (2).
(10) No proceeding under this section may be commenced for violations of applicable bingo and raffle laws.
(11) No proceeding under this section may be commenced to revoke a Class "B" or "Class B" license or permit issued under applicable law to a person solely because the person knowingly permits 5 or fewer video gambling machines to be set up, kept, managed, used or conducted upon the licensed premises.

945.05 Dealing in gambling devices. (1) Except as provided in subs. (1e) (b) and (1m), whoever manufactures, transfers commercially or possesses with intent to transfer commercially either of the following is guilty of a felony:

(a) Anything which he or she knows evidences, purports to evidence or is designed to evidence participation in a lottery or the making of a bet; or

(b) Any device which he or she knows is designed exclusively for gambling purposes or anything which he or she knows is designed exclusively as a subassembly or essential part of such device. This includes without limitation gambling machines, numbers jars, punch boards and roulette wheels. Playing cards, dice, permanently disabled gambling machines and slot machines manufactured before December 31, 1974, that are intended to be used solely for display, restoration and preservation purposes shall not be considered devices exclusively for gambling purposes.

(1e) (a) In this subsection, "authorized gambling facility" means any of the following:

1. An Indian gaming facility, defined as a facility at which Indian gaming is conducted under an Indian gaming compact.
2. A gaming establishment located on lands acquired after October 17, 1998, by the U.S. secretary of the interior in trust for the benefit of an Indian tribe.
3. A facility at which gambling lawfully takes place.

(b) Subsection (1) does not apply to a person who manufactures, transfers commercially or possesses with intent to transfer commercially gambling devices described in sub. (1) (a) and (b) to any of the following:

1. An authorized gambling facility.
2. A nonprofit or public educational institution that provides an educational program for which it awards a bachelor's or higher degree for the use in a casino gaming management class.

(1m) If a violation of sub. (1) involves the commercial transfer of a video gambling machine or possession of a video gambling machine with the intent to transfer commercially, the person is subject to a Class C forfeiture.

(2) Proof of possession of any device designed exclusively for gambling purposes, which is less than 25 years old, is not in a gambling place and is not set up for use, is prima facie evidence of possession with intent to transfer.
(3) Any motor vehicle or aircraft, used or employed to aid in or to facilitate the unlawful manufacture or commercial transfer of those gambling devices enumerated in sub. (1), may be seized by any peace officer and shall be forfeited to the Nation in an action brought by the attorney general where the vehicle or aircraft is subject to forfeiture and such action shall be in the name of and on behalf of the Nation. Lienholders and owners shall have the same rights as provided in applicable seizure and confiscation laws.

945.06 Public utilities to cease service. When any public utility, common carrier, contract carrier, or railroad, subject to the jurisdiction of the Nation, public service commission, office of the commissioner of railroads or department of transportation of this Nation or a state, is notified in writing by a tribal, federal, state or local law enforcement agency, acting within its jurisdiction, that any facility furnished by it is being used or will be used for the purpose of transmitting or receiving gambling information in violation of the laws of this Nation it shall discontinue or refuse the leasing, furnishing or maintaining of such facility, after reasonable notice to the subscriber, but no damages, penalty or forfeiture, civil or criminal, shall be found against any such public utility, common carrier, contract carrier or railroad, for any act done in compliance with any notice received from a law enforcement agency under this section. Nothing in this section shall be deemed to prejudice the right of any person affected thereby to secure an appropriate determination as otherwise provided by law in any court or tribunal or agency, that such facility should not be discontinued or removed, or should be restored.

945.07 Gambling by participants in contest. (1) Any participant in, or any owner, employer, coach or trainer of a participant in, any contest of skill, speed, strength or endurance of persons, machines or animals at which admission is charged, who makes a bet upon any opponent in such contest is guilty of a Class A misdemeanor.
(2) In this section, "participant" includes any person who is selected or who expects to take part in any such contest.

945.08 Bribery of participant in contest. (1) Any person who, with intent to influence any participant to refrain from exerting full skill, speed, strength or endurance, transfers or promises any property or any personal advantage to or on behalf of any participant in a contest of skill, speed, strength or endurance is guilty of a felony.
(2) Any participant in any such contest who agrees or offers to refrain from exerting full skill, speed, strength or endurance in return for any property or any personal advantage transferred or promised to the participant or another is guilty of a Class A misdemeanor.
(3) In this section "participant" includes any person who is selected to or who expects to take part in any such contest.

945.09 Commercial printing. Sections 945.02, 945.03 and 945.05 do not apply to any person who operates a commercial printing business and without consideration other than for regular and customary printing charges, prints and sells tickets in the ordinary course of business which have been ordered by a customer in another jurisdiction to be sold in that jurisdiction, if the lottery is

lawful in the jurisdiction from which the order is placed and the order is shipped to such customer in that jurisdiction.

945.095 Shipbuilding business. (1) Notwithstanding ss. 945.03, 945.04 and 945.05, a person may construct, deliver, convert or repair a vessel that is equipped with gambling devices if all of the following conditions are satisfied:

(a) The work performed on the vessel is ordered by a customer who shall use or possess the vessel outside of this jurisdiction in a locality where the use or possession of the gambling devices on the vessel is lawful.

(b) The person performs the work on the vessel that is equipped with the gambling devices at a shipbuilding business that is located in Sturgeon Bay, Manitowoc, Marinette, Superior or La Crosse, Wisconsin.

(c) The person registers with the U.S. attorney general, pursuant to 15 USC 1173, and specifies in that registration that the person is in the business of installing and removing gambling devices, as defined in 15 USC 1171 (a), as part of the process of performing work on vessels ordered by a customer who shall use or possess the vessel outside of this jurisdiction in a locality where the use or possession of the gambling devices on the vessel is lawful.

(d) The person provides the department of administration, prior to the importation of the gambling devices into the jurisdiction, all records that account for the gambling devices, including the identification number affixed to each gambling device by the manufacturer, and that identify the location where the gambling devices will be stored prior to the installation of the gambling devices on the vessel.

(e) The person stores the gambling devices at a secured warehouse facility and permits any person authorized to enforce the gambling laws to inspect the facility where the gambling devices are stored and any records relating to the gambling devices.

(f) If the person removes used gambling devices from a vessel, the person shall provide the department of administration with an inventory of the used gambling devices prior to their removal from the vessel. The inventory shall include the identification number affixed to each gambling device by the manufacturer.

(g) The person submits documentation to the department of administration, no later than 30 days after the date of delivery, that the vessel equipped with gambling devices has been delivered to the customer who ordered the work performed on the vessel.

(h) The person does not sell a gambling device to any other person except to a customer who shall use or possess the gambling device outside of this jurisdiction in a locality where the use or possession of the gambling device is lawful. If a person sells a gambling device to such a customer, the person shall submit documentation to the department of administration, no later than 30 days after the date of delivery, that the gambling device has been delivered to the customer.

(2) If any person who constructs, delivers, converts or repairs a vessel that is equipped with gambling devices does not satisfy all of the conditions under sub. (1), the person is subject to ss. 945.03, 945.04 and 945.05.

945.10 Prizes forfeited. Anything of value received by any person as a prize in any lottery conducted in violation of this chapter shall be forfeited to the Nation and may be recovered in any proper action brought by the attorney general or any prosecutor in the name and on behalf of

the Nation.

945.12 Endless sales chains. Whoever sets up, promotes or aids in the promotion of a plan by which motor vehicles are sold to a person for a consideration and upon the further consideration that the purchaser agrees to secure one or more persons to participate in the plan by respectively making a similar purchase and in turn agreeing to secure one or more persons likewise to join in said plan, each purchaser being given the right to secure money, credits, goods or something of value, depending upon the number of persons joining in the plan, shall be held to have set up and promoted a lottery and shall be guilty of a Class B misdemeanor. The further prosecution of any such plan may be enjoined.

Legislative History:

12/17/13	Legislature established the Criminal Code Workgroup through Resolution 12-17-13C.
12/11/14	The Criminal Code Workgroup presented the Criminal Code to the Administration Committee at which time it was referred to the full Legislature to be placed out for 45 Day Public Comment.
01/06/15	Legislature placed the Criminal Code out for 45 Day Public Comment by Resolution 01-06-15B.
03/17/15	Legislature placed the Criminal Code out for an additional 45 Day Public Comment by Resolution 03-17-15K.
05/05/15	Legislature enacted the Criminal Code through Resolution 05-05-15P.
05/17/16	Technical corrections made in accordance with Section 45 of the Legislative Organization Act (2 HCC § 11).