

Senate Study Bill 40

Conference Committee Text

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1 1 Section 1. Section [99B.1](#), subsection 2, Code 1995, is
1 2 amended by striking the subsection.
1 3 Sec. 2. Section [99B.1](#), subsection 14, Code 1995, is
1 4 amended by striking the subsection and inserting in lieu
1 5 thereof the following:
1 6 14. "Game of chance" means a game whereby the result is
1 7 determined by chance and includes the game defined as bingo.
1 8 A game of chance does not include a game, such as poker, in
1 9 which some level of skill affects the results of the game.
1 10 Games of chance do not include slot machines or pull-tabs. A
1 11 game of chance is not an amusement device.
1 12 Sec. 3. Section [99B.1](#), subsection 15, Code 1995, is
1 13 amended by striking the subsection and inserting in lieu
1 14 thereof the following:
1 15 15. "Game of skill" means a game in which skill has a
1 16 bearing on the results. A game with some level of skill is
1 17 neither a game of chance nor a gambling device as defined in
1 18 section 725.9. A game of skill does not include a device if
1 19 adapted, possessed, and used in accordance with section
1 20 99B.10.
1 21 Sec. 4. Section [99B.1](#), Code 1995, is amended by adding the
1 22 following new subsection:
1 23 NEW SUBSECTION. 22A. "Slot machine" means a mechanical,
1 24 electronic, or video gambling device into which a player
1 25 deposits coins, tokens, or currency and from which credits,
1 26 tickets, tokens, or coins are paid out when a particular
1 27 random, configuration of symbols appears on the reels,
1 28 simulated reels, or screen of the device. A slot machine may
1 29 have a lever, buttons, or other means to activate or stop the
1 30 play.
1 31 Sec. 5. Section [99B.10](#), unnumbered paragraph 1, Code 1995,
1 32 is amended to read as follows:
1 33 It is lawful to own, possess, and offer for use by any
1 34 person at any location an

~~electrical or mechanical~~

~~amusement~~

1 35 device, but only if all of the following are complied with:

2 1 Sec. 6. Section [99B.10](#), subsection 1, Code 1995, is

2 2 amended to read as follows:

2 3 1. A

~~prize of merchandise exceeding five dollars in value~~

~~2 4~~

~~or~~

~~cash prize shall not be awarded for use of the device.~~

2 5 However, a

~~mechanical or~~

~~merchandise prize not exceeding five~~

2 6 dollars in value may be awarded and an amusement device may be

2 7 designed or adapted to award a prize or one or more free games

2 8 or portions of games without payment of additional

2 9 consideration by the participant.

2 10 Sec. 7. Section [99B.10](#), Code 1995, is amended by adding
2 11 the following new subsection:

2 12 NEW SUBSECTION. 4. An amusement device shall have an
2 13 identification tag or plate with the name, address, and retail
2 14 sales tax permit number of the owner. The identification tag
2 15 or plate must be no less than two and one-half inches square
2 16 in size and must be affixed in a visible and easily accessible
2 17 location on the device. An owner or lessee of an amusement
2 18 device shall not knowingly fail to display an identification
2 19 tag or plate with the name, address, and retail sales tax
2 20 permit number of the owner or lessee before the device is
2 21 offered for commercial use by the public.

2 22 Sec. 8. Section [99B.10](#), unnumbered paragraph 3, Code 1995,
2 23 is amended by striking the unnumbered paragraph and inserting
2 24 in lieu thereof the following:

2 25 NEW UNNUMBERED PARAGRAPH. When used and possessed in
2 26 accordance with this section, an amusement device is not a
2 27 game of chance, a game of skill, or a gambling device as
2 28 defined in section 725.9. A slot machine is not an amusement
2 29 device. An amusement device is not a gambling game authorized
2 30 under chapter 99F and the use of an amusement device which
2 31 complies with this section is not gambling or gaming.

2 32 Sec. 9. Section [99B.10](#), Code 1995, is amended by adding
2 33 the following new unnumbered paragraph:

2 34 NEW UNNUMBERED PARAGRAPH. This section does not apply to
2 35 an amusement device owned, possessed, and used for personal,
3 1 noncommercial purpose.

3 2 Sec. 10. Section [99B.14](#), Code 1995, is amended by striking
3 3 the section and inserting in lieu thereof the following:

3 4 99B.14 DISCIPLINARY ACTION – LICENSE DENIAL, SUSPENSION,
3 5 OR REVOCATION, AND CIVIL PENALTY.

3 6 1. The director may deny a license application, suspend a
3 7 license issued pursuant to this chapter for not more than one
3 8 year, revoke a license issued pursuant to this chapter for not
3 9 more than two years, impose a civil penalty of not more than
3 10 one thousand dollars per violation, or take more than one of
3 11 the actions specified in this subsection for a violation.

3 12 2. The director shall deny, suspend, or revoke a license,
3 13 or impose a civil penalty by delivering to the applicant or
3 14 the licensee by mail or personal service to the current
3 15 address of record, a notice setting forth the particular
3 16 reason for the action. The action becomes effective fifteen
3 17 days after the date of mailing or service of notice unless the
3 18 applicant or licensee gives written notice to the department
3 19 requesting a hearing before the expiration of the fifteen
3 20 days. If a hearing has been requested, the applicant or
3 21 licensee shall be given an opportunity for a prompt hearing.
3 22 An administrative law judge from the department of inspections
3 23 and appeals shall conduct the hearing and issue a proposed
3 24 decision. On the basis of the hearing or upon default of the
3 25 applicant or licensee, the determination involved in the
3 26 notice may be affirmed, modified, or denied by the director.
3 27 A copy of the decision shall be sent by mail or served
3 28 personally upon the applicant or licensee. A licensee or
3 29 applicant aggrieved by a decision of the director may seek
3 30 judicial review of the director's decision in accordance with
3 31 chapter 17A.

3 32 3. The suspension or revocation of a license or the
3 33 imposition of a civil penalty or a combination of the actions
3 34 shall be stayed pending the result of the hearing. Before a
3 35 hearing, the department may rescind the notice of denial,
4 1 suspension, revocation or civil penalty, or a combination of
4 2 the actions if the department is satisfied that the reason for
4 3 the denial, suspension, or revocation, or other disciplinary
4 4 action is or will be removed.

4 5 4. A license issued under this chapter may be suspended or
4 6 revoked, a civil penalty may be imposed, or a combination of

4 7 those actions may be taken for any of the following causes
4 8 including, but not limited to:
4 9 a. Misrepresentation of any material fact in the
4 10 application for the license.
4 11 b. A violation of any of the provisions of this chapter or
4 12 rules adopted pursuant to this chapter.
4 13 c. An event which would have resulted in disqualification
4 14 from receiving the license when originally issued.
4 15 d. A sale, hypothecation, or transfer of a license.
4 16 e. The failure or refusal on the part of a licensee to
4 17 submit a report when due to the department under this chapter.
4 18 Sec. 11. Section [725.9](#), subsection 2, Code 1995, is
4 19 amended by striking the subsection.
4 20 Sec. 12. Section [725.9](#), subsection 3, Code 1995, is
4 21 amended to read as follows:
4 22 3. "Gambling device" means a device used or adapted or
4 23 designed to be used for gambling and includes, but is not
4 24 limited to, roulette wheels, klondike tables, punchboards,
4 25 faro layouts, keno layouts, numbers tickets, slot machines,
4 26

~~pinball machines,~~

~~push cards, jar tickets, and pull-tabs.~~

4 27 However, "gambling device" does not include an antique slot
4 28 machine

~~, antique pinball machine,~~

~~or any device regularly~~

4 29 manufactured and offered for sale and sold as a toy, except
4 30 that any use of

~~such a~~

~~the toy~~

~~or~~
~~antique slot machine~~

~~or~~

4 31

~~antique pinball machine~~

~~for gambling purposes constitutes~~

4 32 unlawful gambling.

4 33 Sec. 13. Section [725.9](#), subsection 5, Code 1995, is

4 34 amended to read as follows:

4 35 5. This chapter does not prohibit the possession of

5 1 gambling devices by a manufacturer or distributor if the

5 2 possession is solely for sale

~~out of the state~~

~~in another~~

5 3 jurisdiction including a tribal jurisdiction where possession

5 4 of the device is legal

~~or for sale in the state or use in the~~

5 5

~~state if the use is licensed pursuant to either chapter 99B or~~

5 6

~~chapter 99E~~

5 7 Sec. 14. Section [725.16](#), Code 1995, is amended by striking

5 8 the section and inserting in lieu thereof the following:

5 9 725.16 GAMBLING PENALTY.

5 10 1. A person who commits an offense declared in chapter
5 11 99B, except in section 99B.10, to be a misdemeanor is guilty
5 12 of a serious misdemeanor.

5 13 2. If an owner of a device claimed, promoted, or
5 14 identified as an amusement device commits an offense in
5 15 violation of section 99B.10, the owner is guilty of a class
5 16 "D" felony.

5 17 3. However, if an owner only violates section 99B.10,
5 18 subsection 4, the owner is guilty of a serious misdemeanor.

5 19 EXPLANATION

5 20 This bill amends the definitions of amusement device, game
5 21 of chance, and game of skill to distinguish between amusement
5 22 devices and gambling games. The bill also defines slot
5 23 machines and provides new identification requirements for
5 24 amusement devices.

5 25 The bill amends provisions relating to the issuance,
5 26 denial, suspension, and revocation of licenses to offer
5 27 gambling devices to the public. A civil penalty of not more
5 28 than \$1,000 may also be imposed for failure to comply with
5 29 regulatory requirements.

5 30 The bill amends penalty sections under chapter 725 to
5 31 delete the definition of antique pinball machines, removes
5 32 pinball machines from the definition of gambling device, and
5 33 provides for tribal possession of gambling devices. The bill
5 34 also provides that the possession and operation of an
5 35 amusement device with an identification tag or plate is a
6 1 serious misdemeanor. A serious misdemeanor is punishable by
6 2 imprisonment for not more than one year, or by a fine of at
6 3 least \$250 but not more \$1,500, or by both imprisonment and
6 4 fine.

6 5 BACKGROUND STATEMENT

6 6 SUBMITTED BY THE AGENCY

6 7 Section 1 strikes the definition of "amusement device".
6 8 Because "amusement device" is defined by possession and use,
6 9 the qualifying language related to amusement devices is moved
6 10 to section 99B.10 where the legal use and possession of the
6 11 device is described.

6 12 Section 2 amends the definition of "game of chance" for
6 13 clarification and to show that pull-tabs and slot machines are
6 14 not included and that a game of chance is not an amusement
6 15 device.

6 16 Section 3 amends the definition of "game of skill" for
6 17 better clarification and to bring the definition up-to-date.

6 18 Section 4 adds a definition of "slot machine" to chapter
6 19 99B. References are made to slot machines, but no definition
6 20 currently exists. A definition is necessary to advise the
6 21 public of what constitutes a slot machine under chapter 99B.

6 22 Sections 5 and 6 are intended to clarify the Code section
6 23 on amusement devices, including that cash shall not be awarded
6 24 for using a device.

6 25 Section 7 adds a new identification requirement for persons
6 26 owning or leasing amusement devices to assist in the
6 27 regulation of legal devices.

6 28 Section 8 further defines "amusement devices".

6 29 Section 9 exempts amusement devices owned, possessed, and
6 30 used for personal, noncommercial purposes from the
6 31 requirements of section 99B.10. This refers to those devices
6 32 that an individual has in the individual's home for personal
6 33 use.

6 34 Section 10 amends the provision on revocation of licenses
6 35 by adding intermediate sanctions for violations of chapter 99B
7 1 and clarifying the contested case hearing process on adverse
7 2 agency actions. The department would have the authority to
7 3 suspend or revoke a license for a period of time or to impose
7 4 a civil penalty of up to \$1,000. This language is needed to
7 5 provide the department with flexibility in bringing licensees

7 6 into compliance. Some violations would not warrant a
7 7 revocation, but may warrant suspension or civil penalty. The
7 8 language also clarifies that the department may deny a
7 9 license.

7 10 Section 11 deletes the definition of "antique pinball
7 11 machines" as explained later in the explanation to section 11.

7 12 Section 12 deletes pinball machines from the definition of
7 13 a gambling device under section 725.9. Pinball machines are
7 14 not designed or intended for use as a gambling device, but are
7 15 designed and intended for use as an amusement device. A
7 16 pinball machine used in accordance with section 99B.10 would
7 17 be legal. Antique pinball machines are being deleted from
7 18 this subsection. Since pinball machines are not being
7 19 considered as a gambling device, there is no need to exempt
7 20 antique pinball machines from the definition of gambling
7 21 device. Antique pinball machines would automatically be
7 22 considered a nongambling device.

7 23 Section 13 specifies who may legally possess gambling
7 24 devices. Tribal jurisdiction is being added as a result of
7 25 the Indian gaming compacts.

7 26 Section 14 rewrites and revises the penalty for offenses
7 27 under chapter 99B. Under current law, an offense of section
7 28 99B.10 is a class "D" felony. This amendment would make an
7 29 exception to this if the violation is only for the new
7 30 subsection on requiring an identification tag or plate – this
7 31 would be a serious misdemeanor, which is the same as other
7 32 misdemeanor offenses under chapter 99B.

7 33 LSB 1186DP 76

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