



GAMBLING AND THE LAW^{®1}:

The Role of Credit in the Third Wave of Legal Gambling

@Copyright 1998 by Prof. I. Nelson Rose²

The Third Wave of Legal Gambling

We are in what I have labeled “the third wave of legal gambling.”³ For the third time in American history legalized gambling is sweeping the nation. The prior two waves crashed down in scandal and complete prohibition.

At the end of 1998 at least 25 states and three territories of the United States have legalized casino gaming. Twelve or more state lotteries are in the quasi-casino business with video lottery terminals (“VLTs”) and keno. Every state except Utah, Tennessee⁴ and Hawaii has some form of commercial gambling; and bills are pending in the Hawaii Legislature to legalize casinos on the island of Hawaii, if local residents approve.⁵

¹ GAMBLING AND THE LAW[®] is a federally registered trademark of Professor I. Nelson Rose, Whittier Law School, Costa Mesa, California.

² J.D. Harvard Law School 1979, Professor of Law, Whittier Law School, Costa Mesa, California. The author is recognized as a leading authority on gambling law and is an internationally known public speaker and consultant to governments and industry.

³ ROSE, I. NELSON, *GAMBLING AND THE LAW 1* (1986); Rose, I. Nelson, *The Legalization and Control of Casino Gambling*, *Fordham Urban L. J.* 245 (1979-80).

⁴ Tennessee had legalized horse racing, but the statute contained a sunset clause, causing it to expire by its own terms before a track could be licensed or built. The House of Representatives voted 64-30 for a November 1998 referendum calling for a constitutional convention to repeal the state’s lottery prohibition. Locker, Richard, *House Approves Lottery Convention Vote Senate Success Linked to Annexation Issue*, *The Commercial Appeal* (Memphis, TN) at B1 (April 16, 1998).

⁵ On February 28, 1997, Hawaii’s House of Representatives’ Finance Committee approved the proposal by a vote of 11-6. The Hawaii Legislature has had so many proposals to legalized gambling that it is considering a Senate Concurrent Resolution, No. 93 (1997), which would declare a moratorium “on the introduction and consideration of proposed legislation to legalize any form of gambling in Hawaii prior to the regular session of 2000 by which time the report

Every year Americans spend about \$9 billion at the nation's 25,000 movie theaters. This includes all ticket sales (\$6.4 billion in 1997), plus popcorn, sodas and confectioneries.⁶ A little more, about \$9.9 billion in 1997, is spent on compact discs; include all forms of prerecorded music, and the total is still less than \$13 billion (actually only \$12.2 billion in 1997).⁷

By comparison, in fiscal year 1997, lotteries operating in 37 states, the District of Columbia and three U.S. possessions,⁸ sold more than \$46 billion in lottery tickets.⁹ Add in parimutuel betting on horses, dogs and jai-alai; total "action" in casinos and on slot machines; wagers on sports; bets made in licensed card rooms; and expenditures before prize payments in charity gaming and Indian bingo, and the total amount bet legally in the United States is estimated to be well over half-a-trillion dollars: \$638.6 billion.¹⁰ Looking just at revenue, Americans spent more money on gambling, \$50.9 billion, than they did on all live events, concerts, plays, all movie theaters, all spectator sports, and all forms of recorded music -- combined." It may say something about us as a nation, or it may just be that Baby Boomers' children are growing up, but in 1994, for

of the National Gambling Impact Study Commission will be available. "

⁶ Caruso, Monica, **Movie Industry Leader Celebrates Strong Year, Warns of Rising Costs**, The Las Vegas Review-Journal 1D (Mar. 11, 1998); **Gambling Big: Hollywood Ponders a Year of Surprise Winners & Losers**, Washington Post, at Style, p. c01 (Jan. 3, 1995).

⁷ **Weekday Trader: Slow Business -2: Movie Costs Cause Concern**, Dow Jones News Service at 20:04:00 (May 27, 1998); 1994 **Southern Economic Survey -The Urban South**, Atlanta Constitution, at Business p. R/11 (Ap. 17, 1994).

⁸ Puerto Rico, Virgin Islands and the Northern Mariana Islands.

⁹ Christiansen, Eugene Martin, **The United States Gross Annual Wager: 1997**, International Gaming & Wagering Business, Aug. 1998 at 29.

¹⁰ Id. at 3. However, this number, called the "handle," is inflated, because it includes all wagers: If a player bets \$25 and wins and then \$25 and loses, a total of \$50 has been wagered, even though no money has changed hands. A more accurate number for making comparisons with other industries is the gross revenue or "win," i.e. the amount players lose. Since this is money left behind by customers after the gambling transaction, it corresponds nicely with gross revenue or sales from other retail businesses.

¹¹ Id. at 9 and 17.

the first time, adults in America spent more money on their gambling games than they did on toys for their children.¹²

It is not just the money, but rather the general availability of gambling that is the real story. For players, this looks like an unmixed blessing. With only a little effort, gamblers can find any type of game or bet they want. And since these wagers are legal, and usually heavily regulated, they know that the game is honest, they will be paid if they win and will not be robbed on the way to the car, and they will not be arrested for simply making a bet.

For legal gambling operations, the blessing is definitely mixed. New games introduce new players to gambling, but competition for the gambling dollar is fierce. As Arnie Wexler, former Executive Director of the New Jersey Council on Compulsive Gambling, put it, "The gambling dollar is like a rubber band: it cannot be stretched forever." Another analogy may be more appropriate: The legal gambling dollar is like a child's rubber balloon. The more available gambling is, the more people will gamble; however, players can only lose their gambling dollar once, and if the balloon expands too far, it will burst.

We really do not know where players are getting the money to wager on the new forms of gambling. A small, but significant, portion is money that would have otherwise been spent on long-established operations, like racetracks. Most people appear to not treat gambling money as merely part of their entertainment budget. The amounts spent on movies and beer are about as they were before the current gambling boom. So where is the money coming from? The Texas Lottery, for example, sold nearly \$4 billion in tickets last year, and kept half. Two billion dollars was spent that had to come from somewhere.¹³

¹² Total sales of durable toys & goods was \$39.0 billion compared to the \$39.9 billion in gross revenue for gambling. Christiansen, Eugene Martin & William E. Cummings, *The United States Gross Annual Wager*, International Gaming & Wagering Business 29 (Aug. 1, 1995).

¹³ This is a separate question from the more common and complex concern of whether legal gambling has a positive or negative impact on a society, comparing such factors as jobs created versus work-time lost by problem gamblers.

What does the spread of gambling means for the future? It is important to remember that the prior two gambling waves ended with nationwide prohibitions on virtually all forms of gaming. Is the current boom headed toward the same bust?

The Role of Credit

Casinos will tell you that credit is the lifeblood of any business, and they must make credit available to customers if they are to stay competitive. At the same time, our experience on the Delaware Council Helpline verifies that credit card debt is the single largest way in which compulsive gamblers get into financial difficulty. This in turn is related to the insane ease with which most of us can obtain far more credit than we could possibly repay if we indeed utilized it all.¹⁴

The latest available statistics¹⁵ show that the twelve casinos in Atlantic City issued approximately \$2.13 billion in "counter checks" -- credit markers -- to players in 1997. This is a slight increase from the \$1.954 billion in markets issued in 1996. This means in just this one jurisdiction and for just this one form of legal gambling, players borrow about \$2 billion each year from the casinos they are betting against. This does not include personal checks¹⁶ written directly to the casinos or to others, or, most importantly, patrons' use of credit cards or other forms of credit used to get cash to gamble.

A credit marker is issued by the casino to keep track of chips given to players on credit. Casinos are typically required to verify a player's credit-worthiness before

¹⁴ Pertzoff, Elizabeth, *National Gambling Impact Study Commission: Costs, Crime, & Responsibility*, 16 Delaware Council on Gambling Problems, Inc. Newsletter no. 2 at p. 3 (Sept./O&. 1998).

¹⁵ All figures are from Casino Chronicle.

¹⁶ Although personal checks might technically be called a form of short term credit, because players have an interest-free loan for the time it takes the check to clear, this should not be considered an extension of credit, because the recipient believes and civil and criminal laws require that the player have sufficient funds on deposit to cover the check. A casino should be considered to be extending credit if it gives a player gaming chips in the amount of a check, with the agreement that it will not cash the check immediately, or when the casino knows the check is post-dated, i.e. bearing a future date.

extending credit.¹⁷ The player signs the marker, which looks like a bank check, and receives playing chips in the amount of the marker. If the player has enough chips at the end of his game he can redeem the marker. If the player loses, or doesn't want to cancel the loan, the marker will be deposited in the casino's bank for collection from the player's bank, just like any other check.*

Why would anyone with enough chips not redeem a marker? The player has received a short term, interest free loan, often for several thousand dollars. The loan is open-ended, the money is the player's until the casino can collect. This practice may be illegal, as a fraud on the casino. Casino regulators regulate credit and especially watch for markers that are not promptly redeemed, because they fear casino insiders could use this as a form of skimming; in a few cases multi-thousand dollar markers have been issued to individuals whose home addresses turned out to be vacant lots. Further, in most jurisdictions, gambling debts, including credit extended by licensed casinos, are legally unenforceable and cannot be collected through the court system. Laws differ from state to state and practices differ among casinos, but there is obviously going to be tremendous pressure to have patrons redeem their markers before leaving the casino.

Of the approximately \$2.13 billion issued in credit markers in 1997, \$1,586,826,000 was redeemed prior to deposit. The casinos thus acted as lenders for short term loans of over a billion and one-half dollars for the duration of the players' visit. Most patrons were able to pay off most of their loans by the end of their trips and the markers were canceled as paid in full.

For some players, however, luck was not as kind. When a player cannot pay, or chooses not to, the casino has to try to collect. Markers issued in 1997 totaling \$543,174,000 remained unpaid after the players had left the casinos. Most of this money was recovered through the normal procedure of depositing the markers for collection through the banking system: the casinos collected \$424,400,000 from the players' banks in this way. Meaning, \$118,774,000 "bounced." However, the casinos

¹⁷ See, e.g., Nev. Gaming Cornm'n. Reg. 6.120, which also requires casinos to examine players' identifications before cashing checks.

¹⁸ Jurisdictions vary on whether markers and checks must be deposited immediately, or may be held to allow players to pay off the debt with other funds. In England, casinos were required to deposit all checks, even if the player won and wanted to redeem. Gaming Act, 1968, c.65, §16. The theory was that players would be embarrassed to write many checks in one night, because their bankers would know.

