

Video poker in Gray Area in West Virginia Third in a series

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STAFF WRITER If the kitchen is greasy and dirty, county health inspectors can shut down a tavern, publish its name in local newspapers and fine the owner.

If the owner has no state liquor or beer license hanging on the wall, state liquor inspectors can close the bar and fine the owner.

If patrons under 21 are served alcohol, the inspectors can impose bigger fines and force immediate closure.

But if that same bar owner makes tens of thousands of dollars in illegal payouts to video poker players, no one does anything.

As many as 30,000 video gambling machines light up convenience stores, neighborhood bars, coffee shops and restaurants throughout the Mountain State.

Each machine displays a "For Amusement Only" sign. But most, if not all, of these machines pay players off. The machines themselves are not illegal. Payoffs are.

West Virginia bar and store owners might make 100,000, or more, illegal payoffs every day.

One industry insider says each machine generates a "drop," or profit, of at least \$250 a week. The industry figure is probably low, especially for machines in popular bars.

If each of the 30,000 machines, commonly referred to as "gray market" machines, generates \$250 a week, the lucrative industry in the shadows would make profits of \$390 million a year. Typically, half goes to bar owners and the other half to machine owners.

Under this scenario, if a single machine vendor like Derrick Music Co in Charleston owns 1,500 machines, the business would generate \$19.5 million a year.

And the company's investment is not that great. If each machine cost \$5,000, total investment in equipment would be \$7.5 million.

Last year, 3,000 machines at the state's four racetracks generated a "gross terminal revenue," or profit, of \$131.4 million.

That means the average state-regulated machine made nearly \$44,000 in profit from bets of nearly \$550,000.

Because 744 machines at Charles Town Races were not installed until September, the estimate of \$44,000 in profits is low.

But if each of 30,000 gray machines generated \$44,000 in profit, the untaxed industry would collect an annual profit of \$1.3 billion. If there are only 15,000 machines, profits would be \$650 million.

State-regulated machines keep only 8 percent of the cash bet. The gray machines keep 30 percent to 35 percent of the cash bet.

If a gray machine was played at the same rate as machines at the track, it would generate at least \$150,000 in profit. If it were played a third as frequently, it would still generate \$50,000 a year in profit.

Any way you look at it, this is big cash and a major public issue.

West Virginians are betting billions of dollars on gray machines, and expecting illegal payouts. The state is losing a lot of tax money.

Most public officials try to avoid the issue.

Bill Pepper, a Charleston lawyer whose firm handles more bankruptcies than any other firm in the state, says gambling losses account for a relatively small number of personal bankruptcies, between 1 percent and 2 percent of all of them.

"But these machines create a disrespect for the law. They are wide open. They make government look weak and ineffective," Pepper said.

"This is the most obvious illegal activity that goes on without government intervention.

"If they do this wide open, I ought to be able to smoke a joint or hire a hooker without getting into trouble," Pepper said.

Mike Callaghan, chief of the criminal division of the U.S. Attorney's Office in Charleston, said, "The state needs to grapple with it. It puts us in a funny spot." Callaghan said it is difficult for federal prosecutors to do anything when "the state is willing to let the machines stay in a never-never land." Former U.S. Attorney Mike Carey said interstate sports bookmaking is the "biggest form of illegal gambling and the predominant area the federal government has looked at." It is hard to enforce gambling laws. "When you have activities that are illegal, but historically permitted, it is problematic to devote limited resources to that type of investigation," Carey said.

"Undercover work - playing the games, winning on the machine and getting paid by the bar owner - is very labor intensive." State-sanctioned betting also clouds the issue, Carey said. "In a trial, jurors might ask themselves, 'Why should we find someone guilty [of playing gray machines] when they can go down and play the lottery?' " More pressing crimes Local and State Police officers don't arrest patrons for taking illegal payouts from video poker machines.

They don't arrest bar and restaurant owners for making the payments.

In their defense, state law prohibits police officers from entering private clubs unless the owners invite them in.

All but about 150 of the 2,303 bars and restaurants with alcohol licenses are considered private clubs. Police officers may freely enter establishments that sell beer only.

Ric Robinson, a State Police spokesman, said, "It is no violation to have the machines." Robinson said the State Police focuses on more pressing crimes.

Alcohol Beverage Control Administration Commissioner Donald Stemple said his 33 field inspectors spend their time making sure underage drinkers don't get served alcohol in taverns and restaurants.

ABCA inspectors don't have time for prolonged sting operations to catch illegal poker payments, Stemple said.

Today, the ABCA regulates 2,303 businesses with licenses allowing them to serve alcohol on

their premises. Another 2,253 businesses - groceries, convenience stores and drugstores - sell alcohol that must be consumed off the premises.

The West Virginia Lottery Commission, the most natural agency to supervise gambling activities, currently does not have the staff, or the finances, to monitor thousands of gray machines.

Ready and willing West Virginia state law is clear. It is illegal to pay people playing video gaming machines. It is a misdemeanor punishable by jail terms between two months and 12 months and/or fines between \$100 and \$1,000.

All money seized during a raid is forfeited to the county government.

The machines are seized and destroyed.

State law specifically outlaws the use of "any gaming table, or Keno table, or any slot machine, multiple coin console machine, or device in the nature of a slot machine, or any other gaming table or device of like kind, under any denomination, or which has no name." In 1992, West Virginia's Supreme Court ruled, "When [a] video poker machine is provided for gambling, rather than amusement purposes, betting on outcome of such machine violates state statute proscribing betting on games of chance." Deputy Attorneys General Barbara Allen and Will Steele both said payouts are illegal. But the state constitution prevents the attorney general from initiating prosecutions. Only county prosecutors can.

"Attorney General Darrell McGraw is a longstanding and vocal opponent of illegal gambling," Allen said. "However, this office does not have prosecutorial powers or authority to act in this matter, absent direction from the governor, who is charged with the constitutional duty to see that the laws of this state are faithfully executed.

"If the governor requests that we act to enforce West Virginia's gambling laws, we stand ready and willing to do so," Allen said.

Jim Teets, Underwood's chief of staff, said, "The governor is not in favor of the general expansion of gambling in West Virginia.

"We view these machines as amusement machines. In that sense, they are very similar to other kinds of amusement machines. The illegal activity is not in the use of the machines, but in cash payouts.

"We expect people who have them in their facilities should be paying taxes on the revenues, just as they would on other amusement machines or vending machines," Teets said.

"We are asking the Department of Tax and Revenue to look into this question and see what needs to be done to make sure the owners of places where these machines are located are following the tax laws of West Virginia," Teets said.

Kanawha County Prosecuting Attorney Bill Forbes apparently has no intention of taking action against owners of hundreds of poker machines used illegally in the state's largest county.

"This is one of those areas where a certain amount of tolerance has grown up on the part of the law enforcement community. It is a victimless crime.

"In the past, maybe the state could call gambling a sin," Forbes said.

"Now the No. 1 gambler in the state is the state itself - the lotteries, the greyhound track. It is all legitimate and wonderful." Forbes also observed, "If you are a member of a fraternal order, the Elks or the Moose or the Fraternal Order of Police, you have a legitimate right to do a lot of stuff

we have banished on the open market.

"In a fraternal order, you can pull a tip board or play a poker machine. But if Joe out here runs a bar, and wants to make a living, and puts in a poker machine, it is a crime.

"Monitor it. Make sure we don't have an organized crime problem. Neither myself nor any past prosecutor has found an onrush by organized crime. Where you don't have that problem, where Joe is just running a poker machine in his family bar, people leave it alone," Forbes said.

A central lottery system It would be impossible for a handful of state liquor inspectors to police 30,000 gray machines, or even 5,000 machines.

If lawmakers made gray machines legal, personal inspections by State Police, county deputies or local police would be cumbersome at best.

But the solution seems very simple.

Telephone lines hook every one of the 3,000 video gaming machines at the state's four legal racetracks into a central computer system at the Lottery Commission offices in Charleston.

The lines work the same way a phone line connects your home computer to the Internet.

Today, state Lottery computers can tell you exactly how much money was bet in each machine yesterday, last week, last month or last year.

A Lottery computer analyst can also tell exactly what was paid out, by each machine, during any period of time.

Each machine is preset to pay back about 92 percent of all money wagered to the players, over the life of the machine. Payouts can vary from day to day.

A video lottery machine at Tri-State Greyhound park may pay back 30 percent of everything bet today and then pay 130 percent tomorrow.

Local track owners cannot tamper with any computer settings. Any time a machine is opened, or malfunctions, the central computer in the Lottery offices in Charleston knows immediately.

From Charleston, the system operator can immediately shut down that machine - whether it is located in Cross Lanes, Wheeling, Chester or Charles Town.

John C. Musgrave, director of the West Virginia Lottery, said, "If the gray machines were legalized, we would want them under a central system so we could maintain their integrity." To contact staff writer Paul J. Nyden, call 348-5164.