

sewerage plants.

Veto
Message

I am vetoing the last two sentences of the bill, portions of which establish an effective date for requiring permits for municipal discharges in 1975. I believe that the need to ensure the continuing state effort to maximize water quality is too great to delay implementation of municipal waste coverage for three more years. Additionally, there is a high probability that Congress will establish a 'national waste elimination permit program' within the near future. This new federal program contemplates state control of waste discharge permits if the state law meets federal criteria; criteria which include a requirement that the state program cover all major discharges into public waters. By this veto the state will be in a much better posture to continue its program without interruption by a federal agency should the proposed federal legislation be enacted prior to the next session of our legislature.

To allay any concerns of local governments presently operating sewerage systems, I have instructed the administering agency, the Department of Ecology, to provide an implementing procedure which allows local governments a reasonable time after the effective date of the act to prepare and file the applications necessary to secure the permits required under the bill.

The remainder of House Bill No. 279 is approved."

CHAPTER 141
[Substitute House Bill No. 411]
GAMBLING

AN ACT Relating to gambling; and amending sections 2, 3, 4, 5, 6, 8 and 16, chapter 280, Laws of 1971 ex. sess. and RCW 9.47.310, 9.47.320, 9.47.330, 9.47.340, 9.47.350, 9.47.370 and 9.47.400.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

Section 1. Section 2, chapter 280, Laws of 1971 ex. sess. and RCW 9.47.310 are each amended to read as follows:

As used in RCW 9.47.300 through 9.47.440:

(1) "Contest of chance" means any contest, game, gaming scheme, or gaming device in which the outcome depends in a material degree upon an element of chance, notwithstanding that skill of the

contestants may also be a factor therein.

(2) "Gambling". A person engages in gambling if he stakes or risks something of value upon the outcome of a contest of chance or a future contingent event not under his control or influence, upon an agreement or understanding that he or someone else will receive something of value in the event of a certain outcome. Gambling does not include parimutuel betting as authorized by chapter 67.16 RCW, bona fide business transactions valid under the law of contracts, including, but not limited to, contracts for the purchase or sale at a future date of securities or commodities, and agreements to compensate for loss caused by the happening of chance, including, but not limited to, contracts of indemnity or guarantee and life, health or accident insurance [and games of physical skill]. V

(3) "Player", except as otherwise in RCW 9.47.400 provided, means a natural person who engages, on equal terms with the other participants, and solely as a contestant or bettor, in any form of gambling in which no person may receive or become entitled to receive any profit therefrom other than personal gambling winnings, and without otherwise rendering any material assistance to the establishment, conduct or operation of a particular gambling activity. A natural person who gambles at a social game of chance on equal terms with the other participants therein does not otherwise render material assistance to the establishment, conduct or operation thereof by performing, without fee or remuneration, acts directed toward the arrangement or facilitation of the game, such as inviting persons to play, permitting the use of premises therefor, and supplying cards or other equipment used therein. A person who engages in "bookmaking" as defined in this section is not a "player".

(4) A person is engaged in "professional gambling" when:

(a) Acting other than as a player or in the manner set forth in RCW 9.47.400, he knowingly engages in conduct which materially aids any other form of gambling activity; or

(b) Acting other than as a player, or in the manner set forth in RCW 9.47.400, he knowingly accepts or receives money or other property pursuant to an agreement or understanding with any person whereby he participates or is to participate in the proceeds of gambling activity; or

(c) He engages in bookmaking.

Conduct under subparagraph (a), except as exempted under RCW 9.47.400, includes but is not limited to conduct directed toward the creation or establishment of the particular game, contest, scheme, device or activity involved, toward the acquisition or maintenance of premises, paraphernalia, equipment or apparatus therefor, toward the solicitation or inducement of persons to participate therein, toward the actual conduct of the playing phases thereof, toward the

arrangement of any of its financial or recording phases, or toward any other phase of its operation. If a person having substantial proprietary or other authoritative control over any premises shall permit said premises to be used with the person's knowledge for the purpose of conducting gambling activity other than ((nonprofessional)) gambling activities as set forth in RCW 9.47.400, and acting other than as a player, and said person permits such to occur or continue or makes no effort to prevent its occurrence or continuation, he shall be considered as being engaged in professional gambling.

(5) "Gambling device" means: (a) Any device or mechanism used for professional gambling by the operation of which a right to money, credits, deposits or other things of value may be created, in return for a consideration, as the result of the operation of an element of chance; (b) any device or mechanism used for professional gambling which, when operated for a consideration, does not return the same value or thing of value for the same consideration upon each operation thereof; (c) any device, mechanism, furniture, fixture, construction or installation designed primarily for use in connection with professional gambling; and (d) any subassembly or essential part designed or intended for use in connection with any such device, mechanism, furniture, fixture, construction or installation used in professional gambling. But in the application of this definition, a pinball machine or similar mechanical amusement device which confers only an immediate and unrecorded right of replay on players thereof, which does not contain any mechanism which varies the chance of winning free games or the number of free games which may be won, or have a mechanism or a chute for dispensing coins or a facsimile thereof, which prohibits multiple winnings depending upon the number of coins inserted and requires the playing of five balls individually upon the insertion of a nickel or dime, as the case may be, to complete any one operation thereof, shall not be deemed a gambling device.

(6) "Gambling premises" means any building, room, enclosure, vehicle, vessel or other place used or intended to be used for professional gambling. In the application of this definition, any place where a gambling device is found shall be presumed to be intended to be used for professional gambling.

(7) "Gambling information" means any wager made in the course of and any information intended to be used for professional gambling. In the application of this definition information as to wagers, betting odds and changes in betting odds shall be presumed to be intended for use in professional gambling: PROVIDED, HOWEVER, That this subsection shall not apply to newspapers of general circulation or commercial radio and television stations licensed by the Federal

Communications Commission.

(8) "Thing of value" means any money or property, any token, object or article exchangeable for money or property, or any form of credit or promise, directly or indirectly, contemplating transfer of money or property or of any interest therein, or involving extension of a service, entertainment or a privilege of playing at a game or scheme without charge.

(9) "Gambling record" means any record, receipt, ticket, certificate, token, slip or notation given, made, used or intended to be used in connection with professional gambling.

(10) "Bookmaking" means accepting bets as a business, rather than in a casual or personal fashion, upon the outcome of future contingent events.

(11) "Bingo" means a game in which prizes are awarded on the basis of designated numbers or symbols on a card conforming to numbers or symbols selected at random and in which no cards are sold except at the time and place of said game, when said game is conducted by a bona fide charitable or nonprofit organization which does not conduct or allow its premises to be used for conducting bingo on more than three occasions per week and which does not conduct bingo in any location which is used for conducting bingo on more than three occasions per week, or if an agricultural fair authorized under chapters 15.76 and 36.37 RCW, which does not conduct bingo on more than twelve consecutive days in any calendar year, and except in the case of any agricultural fair as authorized under chapter 15.76 and 36.37 RCW, no person other than a bona fide member of said organization takes any part in the management or operation of said game, and no person who takes any part in the management or operation of said game takes any part in the management or operation of any game conducted by any other organization or any other branch of the same organization and no part of the proceeds thereof inure to the benefit of any person other than the organization conducting said game.

(12) "Raffle" means a game in which tickets bearing an individual number are sold for not more than one dollar each and in which a prize or prizes are awarded on the basis of a drawing from said tickets by the person or persons conducting the game, when said game is conducted by a bona fide charitable or nonprofit organization, no person other than a bona fide member of said organization takes any part in the management or operation of said game, and no part of the proceeds thereof inure to the benefit of any person other than the organization conducting said game.

(13) "Amusement game" means a game played for entertainment in which:

(a) The contestant actively participates;

(b) The outcome depends in a material degree upon the skill of the contestant;

(c) Only merchandise prizes are awarded;

(d) The outcome is not in the control of the operator;

(e) The wagers are placed, the winners are determined, and a distribution of prizes or property is made in the presence of all persons placing wagers at such game; and

(f) Said game is conducted by a bona fide charitable or nonprofit organization, no person other than a bona fide member of said organization takes any part in the management or operation of said game, including the furnishing of equipment, and no part of the proceeds thereof inure to the benefit of any person other than the organization conducting such game or said game is conducted as part of any agricultural fair as authorized under chapters 15.76 and 36.37 RCW.

(14) "Bona fide charitable or nonprofit organization" means any organization duly existing under the provisions of chapters 24.12, 24.20 or 24.28 RCW, any agricultural fair authorized under the provisions of chapters 15.76 or 36.37 RCW, or any nonprofit corporation duly existing under the provisions of chapter 24.03 RCW for charitable, benevolent, eleemosynary, educational, civic, patriotic, political, social, fraternal, athletic or agricultural purposes only, which has been organized and is operated primarily for purposes other than the operation of bingo games, raffles, amusement games, and which receives not more than ((five)) twenty thousand dollars or twenty-five percent of its gross receipts, whichever is the greater, in any calendar year from the operation of bingo, raffles, amusement games, but these limitations on receipts shall not apply to any organization which conducts only one raffle per calendar year, the total gross income from which does not exceed twenty thousand dollars, and which does not conduct bingo games((,)) and/or amusement games: PROVIDED, That the money or gross receipt limitations hereinabove set forth in this subsection shall not include the amount of cash prizes actually paid out in the operation of bingo games or the actual cost to an organization of any prizes given in the conduct of a raffle. The fact that contributions to an organization do not qualify for charitable contribution deduction purposes or that the organization is not otherwise exempt from payment of federal income taxes pursuant to the Internal Revenue Code of 1954, as amended, shall constitute prima facie evidence that the organization is not a bona fide charitable or nonprofit organization for the purposes of this section.

(15) "Whoever" and "person" include natural persons, corporations and partnerships and associations of persons; and when any corporate officer, director or stockholder or any partner

authorizes, participates in, or knowingly accepts benefits from any violation of RCW 9.47.300 through 9.47.440 committed by his corporation or partnership, he shall be punishable for such violation as if it had been directly committed by him.

Sec. 2. Section 3, chapter 280, Laws of 1971 ex. sess. and RCW 9.47.320 are each amended to read as follows:

Whoever engages in professional gambling, or knowingly causes, aids, abets, or conspires with another to engage in professional gambling, shall be guilty of a felony and fined not more than one hundred thousand dollars or imprisoned not more than five years or both: PROVIDED, HOWEVER, That this section and the provisions of chapter 9.59 RCW shall not apply to those ((nonprofessional)) gambling activities enumerated in RCW 9.47.400 or to any act or acts in furtherance thereof.

Sec. 3. Section 4, chapter 280, Laws of 1971 ex. sess. and RCW 9.47.330 are each amended to read as follows:

(1) All gambling devices as defined in RCW 9.47.310 are common nuisances and shall be subject to seizure, immediately upon detection by any peace officer, and to confiscation and destruction by order of a superior or district justice court, except when in the possession of officers enforcing RCW 9.47.300 through 9.47.440.

(2) No property right in any gambling device as defined in RCW 9.47.310 shall exist or be recognized in any person, except the possessory right of officers enforcing RCW 9.47.300 through 9.47.440.

(3) All furnishings, fixtures, equipment and stock, including without limitation furnishings and fixtures adaptable to nongambling uses and equipment and stock for printing, recording, computing, transporting or safekeeping, used in connection with professional gambling or maintaining a gambling premises, and all money or other things of value at stake or displayed in or in connection with professional gambling or any gambling device used therein, shall be subject to seizure, immediately upon detection, by any peace officer, and unless good cause is shown to the contrary by the owner, shall be forfeited to the state or political subdivision by which seized by order of a court having jurisdiction, for disposition by public auction or as otherwise provided by law. Bona fide liens against property so forfeited, on good cause shown by the lienor, shall be transferred from the property to the proceeds of the sale of the property. Forfeit moneys and other proceeds realized from the enforcement of this subsection shall be paid into the general fund of the state if the property was seized by officers thereof or to the political subdivision or other public agency, if any, whose officers made the seizure, except as otherwise provided by law. This subsection and the provisions of chapter 9.59 RCW shall not apply to such items utilized in ((nonprofessional)) gambling activities

enumerated in RCW 9.47.400 or any act or acts in furtherance thereof.

(4) Whoever knowingly owns, manufactures, possesses, buys, sells, rents, leases, finances, holds a security interest in, stores, repairs or transports any gambling device as defined in RCW 9.47.310 or offers or solicits any interest therein, whether through an agent or employee or otherwise, shall be guilty of a felony and fined not more than one hundred thousand dollars or imprisoned not more than five years or both: PROVIDED, HOWEVER, That this subsection and the provisions of chapter 9.59 RCW shall not apply to devices used in those ((nonprofessional)) gambling activities enumerated in RCW 9.47.400, or to any act or acts in furtherance thereof. Subsection (2) of this section shall have no application in the enforcement of this subsection. In the enforcement of this subsection direct possession of any such gambling device shall be presumed to be knowing possession thereof.

(5) Whoever knowingly prints, makes, possesses, stores or transports any gambling record, or buys, sells, offers or solicits any interest therein, whether through an agent or employee or otherwise, shall be guilty of a gross misdemeanor: PROVIDED, HOWEVER, That this subsection and the provisions of chapter 9.59 RCW shall not apply to records relating to ((nonprofessional)) gambling activities((,)) enumerated in RCW 9.47.400 or to any act or acts in furtherance thereof. In the enforcement of this subsection direct possession of any such gambling record shall be presumed to be knowing possession thereof.

Sec. 4. Section 5, chapter 280, Laws of 1971 ex. sess. and RCW 9.47.340 are each amended to read as follows:

Whoever knowingly transmits or receives gambling information by telephone, telegraph, radio, semaphore or similar means, or knowingly installs or maintains equipment for the transmission or receipt of gambling information, shall be guilty of a gross misdemeanor: PROVIDED, HOWEVER, That this section and the provisions of chapter 9.59 RCW shall not apply to such information transmitted or received or equipment installed or maintained relating to ((nonprofessional)) gambling activities as enumerated in RCW 9.47.400 or to any act or acts in furtherance thereof.

Sec. 5. Section 6, chapter 280, Laws of 1971 ex. sess. and RCW 9.47.350 are each amended to read as follows:

(1) All gambling premises are common nuisances and shall be subject to abatement by injunction or as otherwise provided by law. The plaintiff in any action brought under this subsection against any gambling premises, need not show special injury and may, in the discretion of the court, be relieved of all requirements as to giving security.

(2) When any property or premise held under a mortgage,

contract or leasehold is determined by a court having jurisdiction to be a gambling premises, all rights and interests of the holder therein shall terminate and the owner shall be entitled to immediate possession at his election: PROVIDED, HOWEVER, That this subsection and the provisions of chapter 9.59 RCW shall not apply to those premises in which ((nonprofessional)) gambling activities set out in RCW 9.47.400, or any act or acts in furtherance thereof are carried on.

(3) When any property or premises for which one or more licenses, permits or certificates issued by this state, or any political subdivision or other public agency thereof, are in effect, is determined by a court having jurisdiction to be a gambling premises, all such licenses, permits and certificates shall be deemed voided and no longer in effect, and no license, permit or certificate so voided shall be issued or reissued for such property or premises for a period of sixty days thereafter. Enforcement of this subsection shall be the duty of all peace officers and all taxing and licensing officials of this state and its political subdivisions and other public agencies. This subsection shall not apply to property or premises in which ((nonprofessional)) gambling activities set out in RCW 9.47.400, or any act or acts in furtherance thereof, are carried on.

Sec. 6. Section 8, chapter 280, Laws of 1971 ex. sess. and RCW 9.47.370 are each amended to read as follows:

The premises and paraphernalia and all the books and records of any bona fide charitable or nonprofit organization conducting ((nonprofessional)) gambling activities such as bingo, raffles, or amusement games as defined in RCW 9.47.300 through 9.47.440, shall be subject to inspection and audit at any reasonable time, with or without notice, upon demand, by the attorney general, the state patrol or the prosecuting attorney, sheriff of the county, or legal counsel, or chief of police of any city or town in which said organization or person is located for the purpose of determining compliance or noncompliance with the provisions of RCW 9.47.300 through 9.47.440 or any local ordinances relating thereto. The department of revenue shall be provided at such reasonable intervals as the department shall determine with a report, under oath, detailing all receipts and disbursements in connection with such ((nonprofessional)) gambling activities together with such other reasonable information as required in order to determine whether such activities comply with the purposes of RCW 9.47.300 through 9.47.440 or any local ordinances relating thereto. Upon request, copies of such reports shall be provided by the department of revenue to any law enforcement agency.

Sec. 7. Section 16, chapter 280, Laws of 1971 ex. sess. and

RCW 9.47.400 are each amended to read as follows:

(~~if person or an organization is not engaged in "professional gambling" as defined in RCW 9.47.340, subsection (5) when (if) such person or organization is engaged in such nonprofessional gambling activities as bingo, raffles, or amusement games, all as defined in RCW 9.47.300 through 9.47.440.)~~ The penalties provided for professional gambling in RCW 9.47.320, 9.47.330, 9.47.340, and 9.47.350 (2) and (3), as now or hereafter amended, shall not apply to bingo games, raffles or amusement games when such games are conducted as defined in RCW 9.47.310 (11), (12), (13) and (14), as now or hereafter amended.

NEW SECTION. Sec. 8. If any provision of this 1972 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected.

Passed the House February 19, 1972.

Passed the Senate February 18, 1972.

Approved by the Governor February 25, 1972 with the exception of an item in section 1 which is vetoed.

Filed in Office of Secretary of State February 28, 1972.

Note: Governor's explanation of partial veto is as follows:

"...This bill amends the comprehensive revision of the state's gambling laws enacted by the Legislature in 1971. The words 'and games of physical skill' have been added to the definition of 'gambling' in RCW 9.47.310. While this change was apparently intended only to clarify that the gambling bill, consistent with present case law, does not apply to wagers between participants in contests of physical skill, it goes further and creates a dangerous ambiguity. It could now be argued that all wagers, whether by participants or spectators, on contests of physical skill are exempted from the definition of gambling. I have therefore vetoed this phrase to erase the ambiguous construction, and I am confident it will cause no change in the law which has not applied to wagers between participants in games of physical skill.

Veto
Message

With the exception of this item in section 1, the bill is approved."