

ALABAMA

1. Definition

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 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 guaranty and life, health or accident insurance.” Ala. Code 1975§ 13A-12-20(4)(2009).

The Supreme Court “held ... that statutory definition of gambling was not unconstitutionally vague as applied.” *Barber v. Jefferson County Racing Ass'n, Inc.* 960 So.2d 599 (Ala.,2006)

“The elements of gambling under § 13A-12-20(4) are the same as those at *common law*, namely, the payment of (1) consideration, for the (2) chance to win (3) a prize. See *Grimes v. State*, 235 Ala. at 193, 178 So. at 74; Kyle D. Craddock, *The Cardstock Chase, Trading Cards: A Legal Lottery?* 8 Gaming L.Rev. 310, 314 (2004) (the ‘three basic [common-law] elements of gambling [are] consideration, chance, and prize’).” *Barber v. Jefferson County Racing Ass'n, Inc.* 960 So.2d 599, 616 (Ala.,2006)

“[T]he meanings of the words ‘chance’ and ‘consideration’ are easily apprehended by reference to ‘judicial determinations [and] the common law,’ at which they ‘possess a common and generally accepted meaning.’ *Barber v. Jefferson County Racing Ass'n, Inc.* 960 So.2d 599, 616 (Ala.,2006) *Citing Bowers v. State*, 283 Md. at 125, 389 A.2d at 347. [T]he element of consideration is defined in § 13A-12-20(11). *Barber v. Jefferson County Racing Ass'n, Inc.* 960 So.2d 599, 616 (Ala.,2006).

Consideration – “Something of value. 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.” Ala. Code 1975§ 13A-12-20(11)(2009).

Chance, contest of – “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.” Ala. Code 1975§ 13A-12-20(3)(2009). It does not have to dominate, but neither is "any chance" enough.

The Supreme Court, *Barber v. Jefferson County Racing Ass'n, Inc.* 960 So.2d 599, 616 (Ala.,2006), has gone on to define **chance** as “a lack of control over events or the absence of “controllable causation’ - ‘the opposite of intention.’” *Opinion of the Justices No. 373*, 795 So.2d 630, 635 (2001) (quoting *Black's Law Dictionary* 231 (6th ed.1990)).

Alabama uses the “**dominant factor**” test to determine what constitutes a prohibited lottery.

Although, case law moves Alabama towards the dominant factor test, recent case has suggested “**any chance**” test. Judge Shaw’s concurring opinion on the game of “Texas Hold’em” poker explains that “the mere fact that the outcome of a game, either in a single play or over multiple plays, can be affected by an understanding of the laws of probability or an understanding of the rules of the game, or can be affected by other recognizable techniques or knowledge, does not change the fundamental nature of that game. Simply put, a player's understanding of the rules or of the laws of probability relating to a game of chance does not change the fact that he is playing a game of chance. A player may be ‘skilled’ at ‘playing the odds,’ but he is still ‘playing the odds.’ ” *Garrett v. State*, 893 So. 2d. 700, 701(Ala.Crim.App.,2007).

Shaw further states in “that “Texas Hold'em” poker is **fundamentally** a game of chance, in that the outcome of the game ultimately depends on a random draw of the cards”(even though a person must possess a **certain amount** of experience and skill in order to be a successful player. “However, a player's skill does not change the **fundamental nature** of the game. As the Court of Civil Appeals noted, “[a] player may be ‘skilled’ at ‘playing the odds,’ but he is still ‘playing the odds.’ ” 893 So.2d at 375. The majority held that “Texas Hold'em” poker is promoting gambling, in violation of § 13A-12-22, Ala.Code 1975. *Garrett v. State*, 963 So.2d 700, 701(Ala.Crim.App.,2007).

An activity where skill dominates is not prohibited by the state constitution. Billiards is such a game, but betting on it is still prohibited. However, billiards could be seen as an exception, since the statutes are separate from the general gambling statutes.

"[I]f a business legally authorized to play bingo should sell a pull tab wagering ticket to a purchaser/player for a consideration where the prizes are awarded to the pull tab ticket purchaser/player as a matter of chance, and not skill, both parties would be in violation of § 13A-12-21(a) which prohibits simple gambling." 230 Ala. Op. Atty. Gen. 36 (1993).

"Credits, free or purchased, provided to play gambling devices are 'something of value' as defined by section 13A-12-20(11) of the Code of Alabama. When a patron wagers these credits on a gambling device, consideration flows from the patron to the facility." 05 Ala. Op. Atty. Gen. 173 (2005).

"Skill or the competitors efforts must sufficiently govern the result. Skill must control the final result, not just one part of the larger scheme." *State ex rel. Tyson v. Ted's Game Enter.*, 893 So.2d 355, 373 (Ala. Civ. App. 2002) quoting *Horner v. U.S.*, 147 U.S. 449, 459 (1893). The test is whether chance is meaningful in determining the outcome of the game--skill should override the effect of the chance.

"[T]he word skillspeaks to the ability, through the application of human physical or mental capacity, to actually cause a desired outcome of a game when the game is played." "A player may be skilled at playing the odd but he is still playing the odds. " *State ex rel. Tyson v. Ted's Game Enter.*, 893 So.2d 355, 375 (Ala. Civ. App. 2002).

If the dominant factor in winning a game is chance, the game is a lottery. This is true despite some degree of judgment or skill being involved. *Opinion Of The Justices*, 795 So.2d 630 (Ala. 2001). It is left to the courts to decide if chance dominates in any particular game.

Lotteries are judged by the "**American**" rule, where it can still be a lottery even if it involves skill. The "**English**" rule (where only a scheme involving pure chance is a lottery) has been rejected. *Ted's Game Enter.*, 893 So.2d at 355.

There is a **proposed** constitutional amendment that has been introduced into the legislature that would (in addition to other changes) add the following:

An activity is a game of chance if:

- (1) played or engaged in for consideration or by staking or risking money or some other thing of value;
- (2) played or engaged in for the purpose of obtaining money or other thing of value or results in the distribution of money or other thing of value;
- (3) the outcome, measured by a single play or over multiple plays, is determined in **material degree by chance**, notwithstanding that the outcome is also determined in equal or greater degree by other factors.

2006 AL H.B. 646 (NS) (Feb 16, 2006); 2006 AL S.B. 441 (NS) (Feb 09, 2006). **This has not be amended as of 2009*

This amendment would switch the state over to the "chance as a material element" test for all types of gambling; chance would no longer need to dominate for an activity to be unconstitutional. However, as indicated in the concurring opinion in *Garrett v. State*, this has position has already made its move.

2. Exemptions

The state recognizes that having an alternative free method of entry destroys the consideration element, which will not constitute a lottery.

Pepsi's instant cash game was not a lottery. Pepsi went to a lot of trouble to make sure all retailers had an adequate number of free entries available to give away. The scheme was challenged on the basis of a previous injunction entered against Coke and Pepsi, prohibiting them from conducting similar schemes; the injunction seemed to be based on lack of availability of free entry methods. The incidental benefit to Pepsi in their sale of soft drinks did not provide consideration to make the game a lottery. *Pepsi Cola Bottling Co. of Luverne, Inc. v. Coca-Cola Bottling Co., Andalusia*, 534 So.2d 295 (Ala. 1988).

Stamping numbers under bottle caps, and redeeming the caps for cash based on the numbers, was an illegal lottery. *Try-Me Bottling Co. v. State*, 178 So. 231 (Ala. 1938).

A scheme where bottle tops were submitted, along with statement why Pepsi was the best beverage, for a chance to win money, was not a lottery. The court held that there was no element of chance. The contest had sufficient standards that it was judged by that contestants could use their writing skills to win. *Minges v. City of Birmingham*, 36 So.2d 93 (Ala. 1948). The court even upheld a second stage of the contest where the families submitting the most caps during the promotional period would be entitled to additional prizes. Again, the court said there was no chance involved (even though it was not possible to know how many caps were required to win until after the contest was over).

There is no lottery where a person can get a free game piece, even though chance and prize are present. 02 Ala. Op. Atty. Gen. 330 (2002). Contestant in hole-in-one contest not engaged in a lottery because he the only consideration paid was that to enter the tournament.

Cases have not always been so generous or consistent with the exception described above. Theatre bank night was an illegal lottery despite fact that free entry was available. When the court looked at consideration, it focused on what the theatre owner was getting increased ticket sales. *Grimes v. State*, 178 So. 73 (Ala. 1937); *Dozier v. Troy Drive-in-Theatres, Inc.*, 89 So.2d 537 (Ala. 1956).

II. Definition of Bookmaking

"Advancing gambling activity by unlawfully accepting bets from members of the public as a business, rather than in a casual or personal fashion, upon the outcome of future contingent events. Ala.Code 1975 § 13A-12-20(2).

III. Specific Gaming Device Definitions

A gambling device is any "device, machine, paraphernalia or equipment that is normally used or usable in the playing phases of any gambling activity, whether that activity consists of gambling between persons or gambling by a person involving the playing of a machine. However, lottery tickets, policy slips and other items used in the playing phases of lottery and policy schemes are not gambling devices within this definition." Ala.Code 1975 § 13A-12-20(5).

A slot machine is a "gambling device that, as a result of the insertion of a coin or other object, operates, either completely automatically or with the aid of some physical act by the player, in such a manner that, depending upon elements of chance, it may eject something of value. A device so constructed or readily adaptable or convertible to such use is no less a slot machine because it is not in working order or because some mechanical act of manipulation or repair is required to accomplish its adaptation, conversion or workability. Nor is it any less a slot machine because apart from its use or adaptability as such it may also sell or deliver something of value on a basis other than chance." Ala.Code 1975 § 13A-12-20(10).

A local ordinance that prohibited certain machines with movable parts was deemed void. It is for the state to define what a gambling device is, and the device prohibited by the local ordinance was a skill game under state law. *Hurvich v. City of Birmingham*, 46 So.2d 577 (Ala. Ct. App. 1950).

Also, it has been held that a machine was not a slot machine where it did not eject something of value. *Holley v. State*, 542 So.2d 952 (Ala. Crim. App. 1989).

IV. Bucket Shop Laws

Alabama bucket shop laws are contained in Ala.Code 1975 § 8-1-120 *et seq.* The laws are aimed at remedying the "evil" of gambling on the future price of commodities and securities. *Mitchell-Huntley Cotton Co., Inc. v. Waldrep*, 377 F.Supp. 1215 (N.D. Ala. 1974).

"All contracts of sale for the future delivery of any commodity, article, personal property, stock or bond, wherein the parties thereto do not intend a delivery of the article contracted for, but do intend to gamble on the difference between the contract price and some subsequent market price, shall be illegal and void, and no action shall be maintained in any court to enforce such contract or to compel payment of any note or security given in payment or settlement of the same."

Ala.Code 1975 § 8-1-121(a) (2006). At least one case has said that this statute may be preempted in some respects by federal laws covering the area. *Paine, Webber, Jackson & Curtis, Inc. v. Conaway*, 515 F.Supp. 202 (D.C. Ala. 1981).

Proof that one of the parties deposited or secured "margins" will constitute prima facie evidence of a void contract. Ala.Code 1975 § 8-1-123.

Any contract for the future delivery of cotton, not subject to federal laws, is void under this act. Ala.Code 1975 § 8-1-124.

It is illegal to contract for the sale and future delivery of property and not intend it to be actually delivered, but the difference between the contract price and the market price on the day of delivery shall be paid in money. Ala.Code 1975 § 8-1-125.

Misdemeanor: not less than \$100 or more than \$500; and may be sentenced to hard labor for not less than one month nor more than six months.

Contract for future delivery of any property, and use board of exchange for price, without actually using that board for exchange. Ala.Code 1975 § 8-1-126.

Misdemeanor: fined in a sum not to exceed \$1,000 or imprisoned in the county jail not exceeding two years.

Guilty even if you become a party to such a contract in another state, while in Alabama. Ala.Code 1975 § 8-1-127.

Misdemeanor: fined not less than \$50 nor more than \$200 and may be sentenced to hard labor for not less than one month nor more than six months.

Opening an office to trade in "futures" of cotton, Indian corn, wheat, rye, oats, tobacco, meal, lard, bacon, salt pork, salt fish, beef cattle, sugar, coffee, stocks, bonds, or chooses in action is a crime. Ala.Code 1975 § 8-1-128.

Misdemeanor: fined not less than \$100 and may be sentenced to hard labor for not less than one month, and upon a second conviction, he shall be fined not less than \$500 and sentenced to hard labor for not less than six months.

Any money paid in furtherance any contract in violation of this article may be recovered in an action brought by the person paying, his wife, or his child. Ala.Code 1975 § 8-1-131.

V. Prohibition of Games of Skill

1. Poker/Card Games

Video poker is a prohibited lottery. *State ex rel. Tyson v. Ted's Game Enter.*, 893 So.2d 355, 373 (Ala. Civ. App. 2002) citing *U.S. v. Marder*, 48 F.3d 564 (1st Cir. 1995).

2. Dice

Alabama does not have any statutory authority, attorney general opinions, or case law regarding games using dice.

3. Billiards

There is a specific set of statutes regulating billiards, beginning with Ala.Code 1975 § 34-6-1 (2006). Billiards rooms are subject to regular inspection by law enforcement to determine if these sections are being complied with. Ala.Code 1975 § 34-6-2. Cities and towns may share license fees for billiards rooms, and also regulate them further than state statues. Ala.Code 1975 § 34-6-3. They must be kept at all times in a clean, healthful, and sanitary condition. Ala.Code 1975 § 34-6-5. In a room with billiards tables, a clear view of the entire interior from the entrance to the rear of such room must be maintained at all times; no screens or partitions are permitted; there is an exception for restrooms and closets. Ala.Code 1975 § 34-6-6. No secret doors or connections may be maintained within any place where gambling is conducted or where persons congregate for immoral purposes. Ala.Code 1975 § 34-6-7.

Keeping a billiards table on which the public can play outside of any incorporated city or town having a police force shall be fined \$50 to \$100 per table; exceptions for military bases and welfare offices. Ala.Code 1975 § 34-6-8. But, any business establishment, which is located outside of the corporate limits of any town or municipality even though it may be located within the police jurisdiction of a town or municipality, is hereby authorized to install and commercially operate billiard tables on its premises so long as the person, firm, or corporation operating such

tables has secured a license for such operation from the judge of probate of the county. Ala.Code 1975 § 34-6-8.1.

It is unlawful for any person to play billiards or to be permitted to remain in a billiard room for any purpose who has not reached the age of 19 years, unless accompanied by a parent or guardian. But in a city of population 500,000 or more, anyone 16 years of age or older can play if no alcohol is served. Ala.Code 1975 § 34-6-9.

Gambling Prohibition: No dice, cards, dominoes, or other games of chance are permitted, nor any form of gambling allowed in any billiard room, or in any room in which billiard tables are located, or in any cigar store or other business located in the same room; and no game prohibited by law shall be played on the premises, and it is expressly provided that the games as are now known as Kelly pool, keno, star pool, scrub, and similar gambling devices are expressly prohibited, and that no racing or other betting pool shall be exhibited, permitted, or sold in the place of business. In counties having populations of not less than 56,500 nor more than 59,000, domino games shall be lawful in billiard rooms or other rooms in which billiard tables are located. Ala.Code 1975 § 34-6-12.

Misdemeanor: not less than \$50.00 nor more than \$500.00 or may be sentenced to hard labor for the county for not more than 12 months and, on a second conviction

Felony: and shall be fined not less than \$100.00 and sentenced to the penitentiary for not less than one and not more than two years.

Any person who bets or hazards any money, bank notes or other thing of value, except for charge for the use of the table or alley, at billiards, tenpins or any other game, at any table or any alley, regularly licensed, shall, on conviction, be fined not less than \$50.00 nor more than \$100.00. Ala.Code 1975 § 34-6-14.

Every licensed billiard room keeper who violates any of the provisions of this chapter, except as provided, will be deemed guilty of a misdemeanor and, upon conviction, be fined not less than \$50.00 nor more than \$250.00 for the first conviction and, upon the second conviction, will forfeit the full amount of the bond to the state, and thereafter no license will be issued to such billiard room keeper. Ala.Code 1975 § 34-6-16.

Operating without a license: Misdemeanor: fine in any sum not less than \$50.00 nor more than \$100.00, and each day that said table is operated without a license shall be deemed a separate offense. Ala.Code 1975 § 34-6-30.

The remaining provisions deal with licensure and include a section that allows city ordinances to prohibit billiards room inside cities.

4. Bowling

Alabama does not have any statutory authority, attorney general opinions, or case law regarding bowling games.

5. Darts

Alabama does not have any statutory authority, attorney general opinions, or case law regarding dart games.

VI. Express Exemptions

1. Social

Ala.Code 1975 § 13A-12-21 provides protection against prosecution for being a player if the person was engaged in a social game in a private place.

2. Charity

Ala. Const. Art. XVIII, § 284.01 (2006), allows individual counties to pass constitutional amendments that apply only to those counties. Several counties have passed such amendments, allowing for charitable forms of bingo. *See, e.g.*, Ala. Const. Amend. 508, 565, 506, 743, 569 (eighteen, total). Although each county makes its own amendment and rules for the games, they are substantially similar. Typical provisions include an age requirement of 19, not allowing places rented for conducting bingo to be paid for on a percentage of profits basis, and a requirement that the non-profit organization have been in existence for at least 12 months. Beyond the constitutional provisions, the counties are free to pass ordinances regulating the details of the bingo operations.

The bingo regulations for Calhoun County are found in Ala.Code 1975 § 45-8-150 to 150.18 (2006). Nine other counties have reserved sections in the Alabama Statutes for their own regulations. The numbering scheme is the same as above: § 45-X-150 *et seq.*, where the X is a number between 1 and 10. Most of these sections are "reserved" and not in use.

Ala.Code 1975 § 11-45-1 (2006) allows localities to adopt ordinances not inconsistent with state law. Where a man held a bingo game that fell within the city's definition of bingo, he was still criminally liable for holding an illegal lottery; the city ordinance did not control. *Foster v. State*, 705 So.2d 534 (Ala. Crim. App.1997).

The holding of raffles, cake walks, turkey shoots, and other similar contests of skill for charitable purposes by nonprofit organizations in Chambers County are legal, subject to the any resolution or ordinances by the Chambers County Commission or the governing bodies of the respective cities and towns. The commission and governing bodies will promulgate rules and regulations. Provided, that no proceeds from such activities will be payable to any officer or employee of the organization conducting the activity. Ala.Code 1975 § 45-9-11 (1985).

3. Chucky Cheese

Ala.Code 1975 § 13A-12-76 creates an exception for amusement games. Sections 13A-12-70 to 13A-12-75 of the criminal code do not apply to a coin-operated game or device designed and manufactured for bona fide amusement purposes which, by application of **some skill**, only entitles the player to replay the game at no additional cost and: if a single play of the bona fide coin-operated amusement machine or device can reach no more than 25 free replays or can be discharged of accumulated free replay, or

rewards the player exclusively with merchandise limited to noncash merchandise, prizes, toys, gift certificates, or novelties, each of which has a wholesale value of not more than five dollars (\$5)

This subsection does not apply to any game or device classified by the United States government as requiring a federal gaming tax stamp under applicable provisions of the Internal Revenue Code.

It is interesting that the statute only exempts those games from § § 13A-12-70 to 13A-12-75, which deal only with transportation of lottery paraphernalia. Presumably, the games could still be illegal under the myriad of other criminal statutes in the state.

Crane games meeting certain requirements are also excluded from the coverage of § § 13A-12-70 to 13A-12-75. Ala.Code 1975 § 13A-12-76(c)

Accumulation of winnings to get value higher than \$5.00 is permitted, as long as no single play results in a win of more than \$5.00 value. Ala.Code 1975 § 13A-12-76(d).

Ala.Code 1975 § 13A-12-76(e) provides examples of bona fide coin-operated amusement machines which include, but are not limited to, the following:

- a. Pinball machines.
- b. Console machines.
- c. Video games.
- d. Crane machines.
- e. Claw machines.
- f. Pusher machines.
- g. Bowling machines.
- h. Novelty arcade games.
- i. Foosball or table soccer machines.

- j. Miniature racetrack or football machines.
- k. Target or shooting gallery machines.
- l. Basketball machines.
- m. Shuffleboard games.
- n. Kiddie ride games.
- o. Skee-ball machines.
- p. Air hockey machines.
- q. Roll down machines.
- r. Coin-operated pool table or coin-operated billiard table.
- s. Any other similar amusement machine which can be legally operated in Alabama.
- t. Every machine of any kind or character used by the public to provide music whose operation requires the payment of or the insertion of a coin, bill, other money, token, ticket, or similar object, such as jukeboxes or other similar types of music machines.

The term "bona fide coin-operated amusement machine" does not include the following:

- a. Coin-operated washing machines or dryers.
- b. Vending machines which for payment of money dispense products or services.
- c. Gas and electric meters.
- d. . Pay telephones.
- e. Cigarette vending machines.
- f. Coin-operated scales.
- g. Coin-operated gumball machines.
- h. Coin-operated parking meters.
- i. Coin-operated television sets which provide cable or network programming.
- j. Machines which are not legally permitted to be operated in Alabama.
- k. Slot machines.
- l. Video poker games.

It should also be noted that the definitions in this section do not define what a slot machine is, but rather, the definition of a slot machine will define whether a machine falls in this section. *State ex rel. Tyson v. Ted's Game Enter.*, 893 So.2d 355 (Ala. Civ. App. 2002).

A statute exempting amusement machines from criminal gambling statutes was not construed to legalize slot machines in which skill did not predominate over chance. *State ex rel. Tyson v. Ted's Game Enter.*, 893 So.2d 355 (Ala. Civ. App. 2002) aff'd by *Ex Parte Ted's Game Enter.*, 893 So.2d 376 (Ala. 2004). The statute was unconstitutional to the extent that it authorized machines involving only "some skill." Court reasoned that lottery was defined using dominant factor test, and statute that allowed games with only some skill would violate it.

4. Commercial

Alabama does not have any statutory authority, attorney general opinions, or case law granting a commercial gaming exception.

5. Lottery

"The legislature shall have no power to authorize lotteries or gift enterprises for any purposes, and shall pass laws to prohibit the sale in this state of lottery or gift enterprise tickets, or tickets in any scheme in the nature of a lottery; and all acts, or parts of acts heretofore passed by the legislature of this state, authorizing a lottery or lotteries, and all acts amendatory thereof, or supplemental thereto, are hereby avoided." Ala. Const. Art. IV, § 65.

The state has a strong public policy against any scheme in the nature of a lottery. *Opinion Of The Justices*, 795 So.2d 630 (Ala. 2001).

The constitution prohibits lotteries, but the legislature may still authorize other forms of gambling. *Id.*; *Opinion of the Justices*, 287 Ala. 334, 251 So.2d 751 (Ala. 1971).

For a lottery, there must be prize, chance, and consideration. *Grimes v. State*, 178 So. 69 (Ala. App. 1937); *Minges v. City of Birmingham*, 36 So.2d 93 (Ala. 1948).

Where small amounts are risked to gain large ones, determined by chance, and where choice and skill have no effect, it is prohibited. *Chavannah v. State*, 49 Ala. 396 (Ala. 1873); *Buckalew v. State*, 62 Ala. 334 (Ala. 1878); *Yellow-Stone Kit v. State*, 7 So. 338 (Ala. 1890); *Reeves v. State*, 17 So. 104 (Ala. 1895); *Loiseau v. State*, 22 So. 138 (Ala. 1897); *State v. Shugart*, 35 So. 28 (Ala. 1903); *State v. Crayton*, 344 So.2d 771 (Ala. Civ. App. 1977); *Opinion of Justices*, 397 So.2d 546 (Ala. 1981); *Youngblood v. Bailey*, 459 So.2d 855 (Ala. 1984); *Pepsi Cola Bottling Co. v. Coca-Cola Bottling Co.*, 534 So.2d 295 (Ala. 1988).

When winning is determined by chance and neither choice nor skill can exert any effect, it is a prohibited lottery. *Opinion of the Justices*, 692 So.2d 107 (Ala. 1997).

A legislative bill that would authorize video machine gambling was unconstitutional; chance was the basic nature of the machines. Thus, it would have been an unconstitutional lottery. *Opinion Of The Justices*, 795 So.2d 630 (Ala. 2001).

There is a proposed amendment that was introduced in the house and senate in February, 2006 that would greatly increase the scope of Ala. Const. Art. IV, § 65. Essentially, all gambling would be prohibited by the state constitution, not just lotteries. 2006 AL H.B. 646 (NS) (Feb 16, 2006); 2006 AL S.B. 441 (NS) (Feb 09, 2006). To become law, the amendment must pass by a 3/5 vote in each house, and then be voted on by a majority of the electorate. Ala. Const. Art. XVIII, § § 284, 285. The amendment includes some exceptions, like those for amendments previously made by localities for bingo; but the future ability of localities to make such amendments would be restricted by statewide voting requirements.

Interestingly, the state statutes have a section reserved for the Alabama Education Lottery Corporation. § § 41-26-1 through 41-26-34. House Bill 73, which became Act 99-08, would have created such a corporation. It was submitted to the electorate on October 12, 1999 and was defeated.

6. Horseracing & Other Pari-mutuel

Pari-mutuel wagering is a form of gambling. *Opinion of the Justices*, 251 So.2d 751 (Ala. 1971) (holding that the element of chance necessary for a lottery was lacking; betting on a skill game does not turn it into a game of chance; "significant degree of skill is involved in picking the winning dog"). The Alabama Constitution does not prohibit pari-mutuel betting on horse and dog racing. *Opinion of the Justices*, 373 So.2d 278 (Ala. 1979). This opinion has changed over time. In 1947, the court held, four to three, that pari-mutuel wagering was an illegal lottery. *Opinion of the Justices No. 83*, 31 So.2d 753 (Ala. 1947). The question was again revived in 1961, one justice declined to answer the question, and the other six were divided three to three. *Opinion of the Justices No. 170*, 132 So.2d 142 (Ala. 1961).

The horse and greyhound racing provisions are found in Ala.Code 1975 § 11-65-1 *et seq.* It allows class 1 municipalities to hold referendum votes to decide to allow horse racing and pari-mutuel wagering in the area.

The provisions in this chapter are numerous, and deal with every aspect of racing. Some of the many areas regulated include: composition of the racing commission; qualifications of the commission; removal from office; provisions respecting members and officers of the commission; treasurer of the commission; investment of funds of commission; powers and duties of the commission; qualifications of commission employees; review of commission action; licenses required for certain activities; conditions relating to award and use of licenses; application for horse racing facility license; terms of horse racing facility license; application for operator's license; terms of operator's license; suspension or revocation of license; acquisition of interest in horse racing facility licensee or operator; permits required for certain individuals and

companies; application for permit; suspension or revocation of permit; licenses required for stewards and judges of races; appointment of stewards and judges; pari-mutuel, breakage, time for claiming tickets; state horse wagering fee; commission wagering fees; commission greyhound racing days; purses; televised simulcast; racetrack admission fee local tax; horse breeding fund; other taxes; 19-year age limit for employees and patrons; and penalties.

Holding or betting on an unlicensed race is a misdemeanor. Ala.Code 1975 § 11-65-37.

Not less than \$1,000.00, nor more than \$10,000.00, or imprisonment of not less than ten days nor more than six months.

No person who is a professional gambler on horse races is eligible for licensure by the horse racing commission. Ala.Code 1975 § 11-65-38.

Additional greyhound racing tax provisions are contained in Ala.Code 1975 § 40-26A-2 through § 40-26A-17.

VII. Specific Internet Prohibition

Alabama does not have any statutory authority, attorney general opinions, or case law regarding internet gaming.

VIII. Gaming Crimes & Penalties for Unlawful Gaming

All cities and towns have the power to prohibit gaming and the keeping of gambling houses or tables. Ala.Code 1975 § 11-47-111.

Ala.Code 1975 § 12-16-212 requires witnesses to give testimony on gaming-related matters, but it also makes them immune to prosecution on matters about which they have testified. It is unclear whether the witness would still be liable under a conspiracy charge, since conspiracy is itself an offense, and is not necessarily gaming related, even if a gaming crime forms the basis. A witness is NOT protected from attorney disbarment proceedings since such a proceeding is not prosecution for a crime. *Ex parte Montgomery*, 12 So.2d 314 (Ala. 1943).

Failing or refusing to give gaming related testimony required by the above section is a misdemeanor. Ala.Code 1975 § 12-16-213. A person convicted under the statute will be fined not less than \$20.00 nor more than \$300.00 and may also be imprisoned in the county jail or sentenced to hard labor for the county for not more than three months.

A person is guilty of criminal conspiracy if, with the intent that conduct constituting an offense be performed, he agrees with one or more persons to engage in or cause the performance of such conduct, and any one or more of such persons does an overt act to effect an objective of the agreement. Ala.Code 1975 § 13A-4-3. The penalty is always one level less than the substantive violation. For instance, a conspirator to a level A misdemeanor is guilty of a level B misdemeanor.

A person commits the crime of loitering if he loiters or remains in a public place for the purpose of gambling.

Ala.Code 1975 § 13A-11-9.

Any person who engages in gaming or card playing on Sunday shall be fined not less than \$10.00 nor more than \$100.00, and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than three months.

Ala.Code 1975 § 13A-12-1.

Simple Gambling: knowingly advance or profit from unlawful gambling activity as a player.

It is a defense that the player was engaged in a social game in a private place.

Ala.Code 1975 § 13A-12-21.

Class C misdemeanor.

Yard or curtilage of a private house 40 feet away and visible from a public highway is a public place as a matter of law. *Ingram v. State*, 226 So.2d 169 (Ala. App. 1969).

Promoting gambling: knowingly advance or profit from unlawful gambling activity otherwise than as a player.

Ala.Code 1975 § 13A-12-22.

Class A misdemeanor.

It is no defense to that section that the lottery was actually conducted out of state.

Ala.Code 1975 § 13A-12-29.

Conspiracy to promote gambling: conspire to advance or profit from gambling activity otherwise than as a player. Ala.Code 1975 § 13A-12-23.

Class A Misdemeanor.

Possession of gambling records in the first degree: with knowledge of the contents thereof, possess any writing, paper, instrument or article:

(1) Of a kind commonly used in the operation or promotion of a bookmaking scheme or enterprise, and constituting, reflecting or representing more than five bets, or more than \$500.00; or

(2) Of a kind commonly used in the operation, promotion or playing of a lottery or mutuel scheme or enterprise, and constituting, reflecting or representing more than five plays or chances therein.

Ala.Code 1975 § 13A-12-24.

Class A misdemeanor.

Possession of gambling records in the second degree: with knowledge of the contents thereof, possess any writing, paper, instrument or article:

(1) Of a kind commonly and peculiarly used in the operation or promotion of a bookmaking scheme or enterprise; or

(2) Of a kind commonly and peculiarly used in the operation, promotion or playing of a lottery or mutuel scheme or enterprise.

Ala.Code 1975 § 13A-12-25.

Class A misdemeanor.

It is a defense to possession of a gambling record that the article possessed by the defendant is neither used nor intended to be used in the operation or promotion of a bookmaking scheme or enterprise, or in the operation, promotion or playing of a lottery or mutuel scheme or enterprise.
Ala.Code 1975 § 13A-12-26.

Possession of a gambling device: with knowledge of the character thereof, manufacture, sell, transport, place or possess, or conduct or negotiate any transaction affecting or designed to affect ownership, custody or use of:

(1) A slot machine; or

(2) Any other gambling device, with the intention that it be used in the advancement of unlawful gambling activity.

Ala.Code 1975 § 13A-12-27.

Class A misdemeanor.

Forfeiture:

(a) Any gambling device or gambling record possessed or used in violation of this article is forfeited to the state, and shall by court order be destroyed or otherwise disposed of as the court directs.

(b) Any vehicle possessed or used in violation of this article may be forfeited to the state and disposed of by court order as authorized by law.

(c) Money used as bets or stakes in gambling activity in violation of this article is forfeited to the state and by court order shall be transmitted to the general fund of the state.

Ala.Code 1975 § 13A-12-30.

The criminal statutes do not apply to pari-mutuel betting at authorized horse and greyhound races. Ala.Code 1975 § 13A-12-31.

Electric bells: No person or persons shall maintain or use any electric bells, wires or signals or any elevators or dumbwaiters or other implements or appliances connected with any gaming place which may be used for the purpose of communicating with the occupants of such gaming place.

Ala.Code 1975 § 13A-12-50.

Felony: imprisonment in the penitentiary for not less than one nor more than five years.

Exhibiting gambling devices in barred house: No person or persons may exhibit or expose to view in any barred or barricaded house or room, in any place built or constructed in such manner as to make it difficult of access or ingress to police officers or other officers, or protected, furnished or equipped with speaking tubes, dumbwaiters, electric wires or bells, or other apparatus for giving alarm from the outside or from the inside of such house, or room when two or more persons are present, any cards, dice, roulette wheel or any gambling implements whatever.

Ala.Code 1975 § 13A-12-52.

Felony: imprisonment in the penitentiary for not less than one nor more than five years;

All persons who visit or resort to any such barred or barricaded house for the purpose of gaming are guilty.

Misdemeanor: fine not less than \$50.00 nor more than \$300.00 and may also be imprisoned in the county jail or sentenced to hard labor for the county for not more than six months.

Owner permitting bells: Any owner, proprietor, or keeper, or superintendent of any public house, who permits any person provide a barred or barricaded room to which persons resort for gaming or who knowingly permits any person to equip any room with electric bells, wires or signals, or elevators, dumbwaiters or other implements to be used for the purpose of communicating with an occupant or occupants of such gambling room or rooms, shall likewise be guilty.

Ala.Code 1975 § 13A-12-53.

Felony: imprisonment in the penitentiary for not less than one nor more than five years.

Transportation of lottery paraphernalia: Any person transporting lottery-related items (specifically "numbers game") who has been engaged in setting up, conducting or operating a lottery within the last three years is guilty of a misdemeanor. The vehicle used is subject to forfeiture. The statute is very long and should be read thoroughly by anyone concerned. Ala.Code 1975 § 13A-12-70. The vehicle need not be moving. Ala.Code 1975 § 13A-12-71.

The holding, owning, having in possession of, or paying the tax of a wagering occupational tax stamp issued by the internal revenue authorities of the United States shall be held as prima facie evidence in prosecution for violation of the gambling laws of this state against the person holding such stamp. Ala.Code 1975 § 13A-12-90.

Merely holding the stamp, without further proof, is sufficient to get indicted or have an information filed against you, charging you with the violation of the Alabama gambling laws. Ala.Code 1975 § 13A-12-91.

IX. Statute of Anne/ Recovery of Debts

Under the Alabama Uniform Commercial Code, even a holder in due course of an instrument (check) is subject to the maker's defense of illegality. Ala.Code 1975 § 7-3-305. Comment 1 to the section says that illegality is most often a matter of gambling. This means that a person writing a check for gambling purposes cannot be made to pay under the UCC.

"All contracts founded in whole or in part on a gambling consideration are void. Any person who has paid any money or delivered any thing of value lost upon any game or wager may recover such money, thing, or its value by an action commenced within six months from the time of such payment or delivery." Ala.Code 1975 § 8-1-150(a). Any other person may also recover the amount of such money by an action commenced within 12 months for the use of the wife or, if no wife, the children or, if no children, the next of kin of the loser. Ala.Code 1975 § 8-1-150(b).

A loan for gambling where the lender knows that the money is for gambling is a void transaction and is unenforceable. *Osborn v. Pointer*, 128 So.2d 530 (Ala. App. 1961). But this does not apply to a loan granted to pay an antecedent gambling debt.

A loser is not authorized to recover his money by force. *Jackson v. State*, 8 So.2d 590 (Ala. App. 1942).

An agreement by five holders of lottery tickets that anyone winning would share with the others was held void. *Dickerson v. Deno*, 770 So.2d 63 (Ala. 2000).

An agreement that a borrower would pay a lender one third of any recovery from a then-pending tort suit was held void. *Wilson v. Harris*, 688 So.2d 265 (Ala. Civ. App. 1996).

The creditor of a loser can garnish the winner within two years of the loss. Ala.Code 1975 § 8-1-151.

Any personal insurance contract upon another individual is void unless payable to a person having, at the time when the contract was made, an insurable interest in the individual insured (the statute lists those people, including charitable organizations). Ala.Code 1975 § 27-14-3. Can recover all premiums paid, but no interest.

Such contracts are wagering contracts, and such a policy may encourage the beneficiary to speed up the death of the insured. *Mutual Sav. Life Ins. Co. v. Noah*, 282 So.2d 271 (Ala. 1973).

The same rules apply to insurance contracts in personal property, for essentially the same reasons. Ala.Code 1975 § 27-14-4; *National Sec. Fire & Cas. Co. v. Hester*, 298 So.2d 236 (Ala. 1974).

X. Lawful Commercial Casino Gaming

Alabama does not have any statutory authority, attorney general opinions, or case law allowing commercial casino gaming.