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Code of Alabama [Currentness](#)

Title 13A. Criminal Code. ([Refs & Annos](#))

Chapter 12. Offenses Against Public Health and Morals. ([Refs & Annos](#))

[Article 2.](#) . Gambling Offenses.

[Division 1.](#) . General Provisions. ([Refs & Annos](#))

→ **§ 13A-12-20. Definitions.**

The following definitions apply to this article:

(1) **ADVANCE GAMBLING ACTIVITY.** A person “advances gambling activity” if he engages in conduct that materially aids any form of gambling activity. Conduct of this nature 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. A person advances gambling activity if, having substantial proprietary control or other authoritative control over premises being used with his knowledge for purposes of gambling activity, he permits that activity to occur or continue or makes no effort to prevent its occurrence or continuation.

(2) **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.

(3) **CONTEST OF CHANCE.** 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.

(4) **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.

(5) **GAMBLING DEVICE.** 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.

(6) **LOTTERY or POLICY.** An unlawful gambling scheme in which:

- a. The players pay or agree to pay something of value for chances, represented and differentiated by numbers or by combinations of numbers or by some other medium, one or more of which chances are to be designated by the winning ones; and
- b. The winning chances are to be determined by a drawing or by some other fortuitous method; and
- c. The holders of the winning chances are to receive something of value.

(7) PARI-MUTUEL, MUTUEL or THE NUMBERS GAME A form of lottery in which the winning chances or plays are not determined upon the basis of a drawing or other act on the part of persons conducting or connected with the scheme, but upon the basis of the outcome of a future contingent event or events otherwise unrelated to the particular scheme.

(8) PLAYER.A person who engages in any form of gambling solely as a contestant or bettor, without receiving or becoming 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 the particular gambling activity.

(9) PROFIT FROM GAMBLING ACTIVITY. A person “profits from gambling activity” if he accepts or receives money or other property pursuant to an agreement or understanding with any person whereby he shares or is to share in the proceeds of gambling activity.

(10) SLOT MACHINE. 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.

(11) 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.

(12) UNLAWFUL.Not specifically authorized by law.

CREDIT(S)

(Acts 1977, No. 607, p. 812, § 6101.)

13A-12-20 COMMENTARY

These definitions apply to the various sections of this article and are discussed in the respective commentaries which follow.

CROSS REFERENCES

As to definitions applicable to title generally, see [§ 13A-1-2](#).

RESEARCH REFERENCES

Treatises and Practice Aids

[Criminal Offenses and Defenses in Alabama § G10](#), Gambling.

[Criminal Offenses and Defenses in Alabama § G20](#), Gambling, Conspiracy to Promote.

[Criminal Offenses and Defenses in Alabama § G50](#), Gambling, Possession of Device.

[Criminal Offenses and Defenses in Alabama § G60](#), Gambling, Possession of Records.

CASENOTES

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[1/2](#). Constitutionality

Statutory definition of gambling, for purposes of statute governing gambling offenses, was not unconstitutionally vague as applied to owners of electronic “readers,” which when integrated with servers, central database, and related computer equipment, comprised a system involving sales of Internet access in conjunction with chances to win cash prizes; readers were manufactured as slot machines and had been modified for use within the particular computerized network, and owner took the risk that its gaming venture would offend the law, such that it was not unfair to require that owner bore consequences of failure. [Barber v. Jefferson County Racing Ass'n, Inc., 960 So.2d 599 \(Ala.2006\)](#), rehearing denied, certiorari denied [127 S.Ct. 2975, 168 L.Ed.2d 703](#). [Constitutional Law](#)  [4509\(13\)](#); [Gaming](#)  [3](#)

[3/4](#). Construction and application

“Chance,” within meaning of statute governing gambling offenses, means a lack of control over events or the absence of controllable causation, i.e., the opposite of intention. [Barber v. Jefferson County Racing Ass'n, Inc., 960 So.2d 599 \(Ala.2006\)](#), rehearing denied, certiorari denied [127 S.Ct. 2975, 168 L.Ed.2d 703](#). [Gaming](#)  [64.1](#)

[1](#). Lottery

Elements of gambling, within meaning of statute governing gambling offenses, are the same as those at common law, namely, the payment of (1) consideration, for the (2) chance to win (3) a prize. [Barber v. Jefferson County Racing Ass'n, Inc., 960 So.2d 599 \(Ala.2006\)](#), rehearing denied, certiorari denied [127 S.Ct. 2975, 168 L.Ed.2d 703](#). [Gaming](#)  [64.1](#)

While the state's evidence tended to show that defendant took orders for "Florida lottery tickets," there was absolutely no evidence offered by the state as to the mechanics of the Florida lottery; it was incumbent upon the State of Alabama to prove how the Florida lottery worked so the jury could reach the factual conclusion whether it was gambling activity, and because the state failed to prove one of the elements of the charged offense, the judgment of the trial court was reversed and a judgment of acquittal rendered in favor of the defendant. [Henderson v. State, 616 So.2d 406 \(Ala.Crim.App.1993\)](#).

There are three elements to a lottery: (1) a prize (2) awarded by chance, and (3) for a consideration. [Opinion of the Justices, 397 So.2d 546 \(Ala.1981\)](#).

1.5. ---- Consideration, lottery

Opportunity for free plays does not negate the element of "consideration" within meaning of statute governing gambling offenses, or obviate an inquiry into the purpose and effect of the operation as the final proof of consideration. [Barber v. Jefferson County Racing Ass'n, Inc., 960 So.2d 599 \(Ala.2006\)](#), rehearing denied, certiorari denied [127 S.Ct. 2975, 168 L.Ed.2d 703. Gaming 🔑64.1](#)




2. Gambling device

Younger abstention was appropriate with respect to suit brought by owners challenging seizure of their video gaming machines as unconstitutional takings without just compensation; pivotal question was whether the machines were legal under Alabama law, or fell within statutory definition of a "gambling device" which was subject to forfeiture, and that question was currently pending in Alabama courts, and owners had more than adequate remedies available to them in the state courts, none of which had been exercised. [Taylor v. Siegelman, 230 F.Supp.2d 1284 \(N.D.Ala.2002\). Federal Courts 🔑47.1](#)


Evidence was sufficient to establish that gaming machines seized by county sheriff's department during search of arcade were gambling machines, and thus subject to forfeiture; there was evidence that players paid for the opportunity to play on the machines, that there was a sign on the arcade wall instructing players to see an attendant to cash out, that an arcade attendant made a cash payout to a deputy sheriff in exchange for credits deputy had won while playing one of the machines, that arcade attendants were observed making cash payouts to multiple other players who had successfully played the machines, and that deputies seized nearly \$19,000 in cash from the arcade during the search. [Wade v. State, 986 So.2d 1212 \(Ala.Civ.App.2007\). Gaming 🔑58](#)


State's reliance upon then-recently issued Supreme Court case to support its contention that gaming machines that had been seized from gaming establishment in criminal prosecution violated criminal gaming laws, and, despite suppression of machines as evidence in underlying criminal prosecution, were nevertheless subject to forfeiture, did not constitute ex post facto change in law as to deprive purported owner of machines, a claimant in forfeiture proceeding, of its due process rights, when another Supreme Court case, an advisory opinion, had been issued prior to the instant forfeiture proceeding, which indicated that such gaming machines were in fact violative of criminal gambling statutes. [Kevin Sharp Enterprises, Inc. v. State ex rel. Tyson, 923 So.2d 1117 \(Ala.Civ.App.2005\)](#), certiorari denied, certiorari denied [126 S.Ct. 1173, 546 U.S. 1151, 163 L.Ed.2d 1129. Constitutional Law 🔑4078; Gaming 🔑61](#)

State's argument, in action against owner of video game machines, that statute did not legalize machines that otherwise fell within the definitions of "gambling devices" and "slot machines" in other statute banning such machines, was not barred by doctrine of collateral estoppel as a result of judgments in other actions involving video game ma-

chines, where in one of the prior actions owner of machines was not a party and construction of statutes was not necessary, another case was summarily disposed of, and in remainder of cases judgments were entered upon joint applications of dismissal by the parties and no issues were actually litigated by orders dismissing cases. [State ex rel. Tyson v. Ted's Game Enterprises, 893 So.2d 355 \(Ala.Civ.App.2002\)](#), rehearing denied, affirmed [893 So.2d 376. Judgment](#) 632; [Judgment](#) 654; [Judgment](#) 735

2.5. Slot machine

Electronic “readers,” which when integrated with servers, central database, and related computer equipment, comprised a system involving sales of Internet access in conjunction with chances to win cash prizes, violated statute prohibiting possession of “slot machines,” even though there was opportunity for free entries, and winning and losing entries were predetermined at the point of purchase, rather than at electronic readers; readers were manufactured as slot machines and had been modified for use within the particular computerized network, element of chance was as much a feature of network system as of a stand-alone slot machine, consumers played for entries regardless of Internet time acquired in conjunction with those entries, and system had a payout percentage of 92%, consistent with a permanent, high-stakes game, rather than a low-stakes, temporary promotional sweepstakes. [Barber v. Jefferson County Racing Ass'n, Inc., 960 So.2d 599 \(Ala.2006\)](#), rehearing denied, certiorari denied [127 S.Ct. 2975, 168 L.Ed.2d 703. Gaming](#) 68(3)

A device is no less a “slot machine,” under statute prohibiting possession of slot machines, because it operates within a network, i.e., because it shares computer-processing equipment with a number of similar devices. [Barber v. Jefferson County Racing Ass'n, Inc., 960 So.2d 599 \(Ala.2006\)](#), rehearing denied, certiorari denied [127 S.Ct. 2975, 168 L.Ed.2d 703. Gaming](#) 68(3)

3. Decisions under prior law


A gambling device possessed by a defendant was ruled not to be a slot machine under this section where the device did not actually eject something of value. [Holley v. State, 542 So.2d 952 \(Ala.Crim.App.1989\)](#).

Gambling devices and paraphernalia distinguished. See [Walker v. State ex rel. Baxley, 285 Ala. 315, 231 So.2d 882 \(Ala.1970\)](#).

Evidence adduced showed that baseball machine could be operated as a game of chance and came within the condemnation of former § 13-7-70. [Club 400 v. State ex rel. Thetford, 38 Ala.App. 136, 78 So.2d 819 \(Ala.App.1955\)](#).

As to pinball machines, see [White v. State, 35 Ala.App. 617, 51 So.2d 550 \(Ala.App.1951\)](#).

Roulette wheel or drumhead, which did not have (1) a ball, (2) a drum or (3) a layout table, and which was found crated and unopened in a private residence without evidence of use thereof, was held to be a gambling device within the terms of former § 13-7-70, since it was an appurtenance adapted to the purpose of gambling and could be reasonably used only for that purpose. [Agnesia v. State, 35 Ala.App. 264, 45 So.2d 712 \(Ala.App.1950\)](#).

A device which was termed a “fifth inning baseball machine” and was operated by placing coin in slot, which released certain balls and by ejecting balls on board by pulling a plunger and striking against the balls, which would then strike projections or bumpers on the board, a higher score resulting by striking certain number than by striking others, was a “game of chance” subject to condemnation as a “gambling device.” [State ex rel. Green v. One 5 cent Fifth Inning Base Ball Machine, 241 Ala. 455, 3 So.2d 27 \(Ala.1941\). Gaming](#) 58

Evidence established that electrically operated machine, which could be played by striking small propelled balls with a paddle or bat which was controlled by player by lever on outside of machine and could be adjusted so that it would have a payoff device, could be operated as a game of chance, and was therefore a “gambling device” so as to authorize conviction of accused for ownership of the machine. [Kropp v. City of Tuscaloosa, 29 Ala.App. 419, 197 So. 91 \(Ala.App.1940\)](#). [Gaming §98\(1\)](#)

Beverage bottle caps, under some of which were printed numbers making crowns redeemable in cash in amount of numbers, were subject to seizure from possession of bottler, condemnation, forfeiture and destruction. [Try-Me Bottling Co. v. State, 235 Ala. 207, 178 So. 231 \(Ala.1938\)](#). [Lotteries §18](#)

As to slot machines, see [Hurvich v. State, 230 Ala. 578, 162 So. 362 \(Ala.1935\)](#).

Ala. Code 1975 § 13A-12-20, AL ST § 13A-12-20

Current through Act 2009-812 of the 2009 Regular and First Special Sessions, except Act 2009-513.

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