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Criminal Offenses and Defenses in Alabama

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## Gambling

See [COCKFIGHTING OR KEEPING A COCKPIT](#); [DOG FIGHTING](#); [GAMBLING, CONSPIRACY TO PROMOTE](#); [GAMBLING, LEGALIZED PARI-MUTUEL BETTING NOT AFFECTED](#); [GAMBLING, POSSESSION OF DEVICE](#); [GAMBLING, POSSESSION OF RECORDS](#); [GAMBLING, POSSESSION, ETC., OF STAMP PRIMA FACIE EVIDENCE OF VIOLATION OF GAMBLING LAWS](#); [GAMBLING PLACES, GAMBLING DEVICES IN BARRED HOUSE](#); [GAMBLING PLACES, MAINTAINING ELECTRIC BELLS](#); [GAMBLING PLACES, OWNER PERMITTING PERSON TO EQUIP ROOM](#); [LOTTERY PARAPHERNALIA, TRANSPORTATION OF](#); [SOLICITATION](#).

### I In General

[Code of Ala. 1975, § 13A-12-21](#).

“A person commits the crime of simple gambling<sup>[1]</sup> if he knowingly advances<sup>[2]</sup> or profits<sup>[3]</sup> from unlawful<sup>[4]</sup> gambling activity as a player.”<sup>[5]</sup>

### II Classification

Class C misdemeanor.

### III Comments

[Section 13A-12-20 of the Alabama Code](#) comprehensively defines gambling in one statute and clarifies “at risk” as not being limited to just loss or gain of money, but includes anything of value.<sup>[6]</sup>

[Section 13A-12-21\(b\) of the Alabama Code](#) expressly provides a defense to the charge of gambling, stating that “a person charged with being a player ... engaged in a social game in a private place” has a complete defense. Keeping paraphernalia has been dropped as a chargeable offense.

### IV Defenses

(1) [Section 13A-12-21\(b\) of the Alabama Code](#) expressly provides that if the person charged with being a

player was engaged in a social game in a private place, he has a complete defense.

(2) The person did not have the requisite intent (“knowingly advances or profits”).

(3) Bona fide business transactions valid under the law of contracts, including securities, commodities, contracts of indemnity or guaranty, and life, health or accident insurance. See [§ 13A-12-20\(4\) of the Alabama Code](#).

(4) The person did not profit or advance within the meaning of the statute.

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[FN1]

“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.” [Code of Ala. 1975, § 13A-12-20\(4\)](#).

[FN2]

“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.” [Code of Ala. 1975, § 13A-12-20\(1\)](#).

Gambling machines are subject to forfeiture. See [Wade v. State, 986 So. 2d 1212, 1217 \(Ala. Civ. App. 2007\)](#) (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 an undercover 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).

[FN3]

“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.” [Code of Ala. 1975, § 13A-12-20\(9\)](#).

[FN4]

“UNLAWFUL. Not specifically authorized by law.” [Code of Ala. 1975, § 13A-12-20\(12\)](#).

[FN5]

“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.” [Code of Ala. 1975, § 13A-12-20\(8\)](#).

[\[FN6\]](#)

“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.” [Code of Ala. 1975, § 13A-12-20\(11\)](#).

See [Holley v. State, 542 So. 2d 952 \(Ala. Crim. App. 1989\)](#) (gambling device held not to be a slot machine when it did not actually eject something of value).

The applicability of Alabama's criminal gambling statutes generally depends on whether a game or activity is one whose outcome depends in a material degree upon chance. [State ex rel. Tyson v. Ted's Game Enterprises, 893 So. 2d 355, 366 \(Ala. Civ. App. 2002\)](#), judgment aff'd, [893 So. 2d 376 \(Ala. 2004\)](#). “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, 609 \(Ala. 2006\)](#), cert. denied, [127 S. Ct. 2975, 168 L. Ed. 2d 703 \(2007\)](#).

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