

## **ARKANSAS**

### **I. Definition of Gambling**

#### **1. Definition**

There is no specific definition of gambling, but the statutes indicate that the chance-skill dichotomy is irrelevant. *See* Ark. Code Ann. § 5-66-113 (2009) (prohibiting betting on any game of hazard *or skill*) (emphasis added). The attorney general has indicated that a poker game is illegal under Arkansas code even if it is demonstrated to be a game of skill and not chance. 2005 Op. Att’y Gen. 034 (2005).

In *Portis v. State*, 27 Ark. 360, 362 (1872), the court stated that gambling is “the risking of money between two or more persons, on a contest or chance of any kind, where one must be a loser and the other gainer.” *See also State v. Torres*, 831 S.W.2d 903 (Ark. 1992); *Pre-Paid Solutions, Inc. v. City of Little Rock*, 34 S.W.3d 360 (Ark. 2001); and *Sharp v. State*, 88 S.W.3d 848 (Ark. 2002).

“A lottery is a species of gaming, which may be defined as a scheme for the distribution of prizes by chance among persons who have paid, or agreed to pay, a valuable consideration for the chance to obtain a prize.” *State v. Bass*, 277 S.W.2d 479, 480 (Ark. 1955).

Whether something is a lottery involves a “three prong test where the initial question is whether consideration is paid to participate. The second question is whether the game is controlled by chance such that winning is not influenced by the skill or judgment of those participating. The third question is whether a prize is awarded. If any of these questions is answered in the negative, the scheme will not be considered a lottery.” 2006 Op. Att’y. Gen. 052 (2006).

“The Arkansas Supreme Court has defined a lottery as a species of gaming which may be defined as a scheme for the distribution of prizes by chance among persons who have paid, or agreed to pay, a valuable consideration for the chance to obtain a prize. 2004 Op. Att’y Gen. 091 (2004)(citing *Scott v. Dunaway*, 311 S.W.2d 305 (Ark. 1958).” 2004 Op. Att’y Gen. 357 (2004) (indicating that merely showing up at a bar to play a free poker tournament with prizes would not be sufficient consideration to constitute a lottery).

#### **2. Exemptions**

Whether an alternate free method of entry will save a promotion from being illegal is largely a fact question to be decided on a case-by-case basis. An important factor is whether there is indirect consideration; whether the price of the item being promoted stayed constant before, during, and after the promotion. 2006 Op. Att’y Gen. 052 (2006).

Arkansas recently enacted legislation to curb the tide of sweepstakes, contests, and prize promotions. There was concern with deception and misleading promotions. The statutes dealing

with the matter are to be construed liberally to prohibit misleading and deceptive prize promotions. Ark. Code Ann. § 4-102-101 (2009). The legislature was clearly concerned with promotions that had alternative free entry methods, but where the consumer was generally not aware that they did not have to purchase any product to participate.

A hole-in-one car giveaway during a golf tournament did not fall under these sections where the plaintiff did not even know of the giveaway when entering the tournament. *Burford Distributing, Inc. v. Starr*, 20 S.W.3d 363 (Ark. 2000).

Penalties for violation of the act can potentially be harsh, and violation is also a violation of the Deceptive Trade Practices Act. Ark. Code Ann. § 4-102-103(2009). The penalty is the greater of \$500 or twice the actual pecuniary loss of a plaintiff (plus costs and attorney's fees); after the AG rules that an offer violates the act, the necessary 'intent' is deemed to be established; each item sold is a separate violation.

The chapter does not apply where everything given away is absolutely free and there is no opportunity for the payment of money. Ark. Code Ann. § 4-102-104(2009). "If the prize promotion provides any opportunity for any payment by the person to the sponsor for any reason, regardless of whether such payment is required, and regardless of how such payment is denominated, this exemption shall not apply." Ark. Code Ann. § 4-102-104(b)(3)(2009).

Ark. Code Ann. § 4-102-105(2009) contains specific prohibited actions; it seems mostly aimed at mail sweepstakes (such as Publishers Clearing House).

In general, consumers must be provided with all relevant information necessary to make informed decisions concerning sweepstakes, contests, and prize promotions. Ark. Code Ann. § 4-102-106(2009).

McDonald's Monopoly game passed muster even where a misprint stamp read "\$200,000 -- Instant Winner;" the rules were posted sufficiently to put consumers on notice that misprinted stamps would not be accepted. *Barnes v. McDonald's Corp.*, 72 F.Supp.2d 1038 (E.D. Ark. 1999).

Prepaid phone card vending machine with a game for a chance to win additional money is a gaming device. The right to play the game constituted property that may be won or lost, risking the value of the points awarded for another spin of the reels was risking that property to win a prize. *Pre-Paid Solutions, Inc. v. City of Little Rock*, 34 S.W.3d 360 (Ark. 2001).

## **II. Definition of Bookmaking**

Arkansas has no statutory authority, attorney general opinions, or case law defining bookmaking.

## **III. Specific Gaming Device Definitions**

Anything for the purpose of playing any game of chance, or at which any money or property may be won or lost. Ark. Code Ann. § 5-66-104 (2009). A game of chance is not a requirement; it is only necessary that gambling be involved. 2005 Op. Att’y Gen. 034 (2005).

To be a gaming device, the device must be adapted or designed for the purpose of playing a game of chance at which money or property may be won or lost. *Sharp v. State*, 88 S.W.3d 848 (Ark. 2002) (holding that slot machines are illegal despite falling within the *de minimis* “chucky cheese” exemption for prize amounts under \$12.50); *Pre-Paid Solutions, Inc.*, 34 S.W.3d at 360. Whether the machines are properly licensed by the state is irrelevant.

A teletype machine is not a gaming device *per se*, but it may consider such when used for gambling. *Albright v. Muncrief*, 176 S.W.2d 426 (Ark. 1943).

Ark. Code Ann. § 5-66-114(b): Any teletype, telegraph ticker tape, or similar machine or device used in the transmitting or receiving of information relating to a game or sport as set out in subsection (a) of this section, that is used either directly or indirectly for the purpose of gaming, is defined and declared to be a “gaming device”.

#### **IV. Bucket Shop Laws**

The maintenance or operation of a bucket shop at any point in this state is prohibited. Ark. Code Ann. § 23-44-106 (2009).

Ark. Code Ann. § 23-44-103: All contracts of sale for future delivery of cotton, grain, stocks, or other commodities shall be valid and enforceable in the courts of this state if certain requirements are met, including conformity with federal regulations.

Ark. Code Ann. § 23-44-105: Any contract of sale for the future delivery of cotton, grain, stocks, or other commodities which is to be settled according to public market quotation without any actual bona fide execution shall be null and void.

#### **V. Prohibition of Games of Skill**

Betting is forbidden, even if on a game of skill. Ark. Code Ann. § 5-66-113(2009).

##### **1. Poker/Card Games**

Betting in poker games is a crime under Ark. Code Ann. § 5-66-112(2009).

A free game, where attendance at a bar to play is the only requirement, is legal, even when prizes are offered for winners. 2004 Op. Att’y Gen. 357 (2004)

##### **2. Dice**

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

### **3. Billiards**

Billiards are specifically listed as amusement devices under the “chucky cheese” statutes. Ark. Code Ann. § 26-57-402(1) (2009). But they still cannot be bet on under Ark. Code Ann. § 5-66-113(2009).

### **4. Bowling**

Bowling is specifically listed as amusement devices under the “chucky cheese” statutes. Ark. Code Ann. § 26-57-402(1)(2009). But they still cannot be bet on under Ark. Code Ann. § 5-66-113(2009).

### **5. Darts**

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

## **VI. Express Exemptions**

### **1. Social**

Arkansas does not have any statutory authority, attorney general opinions, or case law granting a social gaming exemption.

### **2. Charity**

There is currently a proposed amendment to the Arkansas Constitution that would allow bingo and raffles to be conducted by non-profit organizations. Acts Of 2005, H.J.R. 1003. The amendment will be on the ballot on November 7, 2006.

### **3. Chucky Cheese Exemption**

Ark. Code Ann. §§ 26-57-401 through 26-57-421 regulate coin-operated amusement devices.

Free games, such as those typically given by pinball machines, are said not to constitute “something of value” for purposes of anti-gambling statutes. Amusement devices may reward players with prizes of value not exceeding \$5.00, or not exceeding \$12.50 cumulatively. Ark. Code Ann. § 26-57-402(2)(2009).

A city cannot make pinball machines a nuisance where they are licensed by the state and there is no evidence of gambling. *City of Piggott v. Eblen*, 366 S.W.2d 192 (Ark. 1963).

The remaining sections cover privilege taxes, license tags, disposition of taxes, license fees, qualifications, bonds, penalties, records, vendor licensing, and related matters.

Arkansas law does not permit casino-type machines, even where the prizes meet the requirement of being less than \$12.50 in value. *Paris v. State*, 192 S.W.3d 277 (Ark. Ct. App. 2004) (credits were risked for chance at additional credits; accumulated credits could be redeemed for prizes).

#### **4. Commercial**

New Arkansas legislation allows for the addition of electronic games of skill at horse racing tracks under specified circumstances. Ark. Code Ann. § 23-113-101 through § 23-113-604 (2009).

An electronic game of skill is one where the “outcome is not completely controlled by chance alone.” Ark. Code Ann. § 23-113-103(2009). This seems to indicate an “any skill” test; if some element of skill is present, the game is authorized. “A game is not completely controlled by chance alone if the betting public may attain through the exercise of skill or judgment a better measure of success in playing the game than could be mathematically expected on the basis of pure luck, that is, on the basis of pure random chance alone.” Ark. Code Ann. § 23-113-201(d)(2)(2009).

The statute requires a track to receive a majority of the vote in a local election approving the new machines before implementation. Ark. Code Ann. § 23-113-201(2009). That section also contains voting requirements, minimum payout percentages, and other matters.

Ark. Code Ann. §§ 23-113-301 through 23-113-304, vests control of the games in the Arkansas Racing Commission. Powers and duties of the commission, licensing, vendor requirements, hearings, and other matters are also laid out.

The remaining sections concern a purse contribution from the machines to the horse races, fees, records, and conflict provisions.

#### **5. Lottery**

Ark. Const. Art. 19, § 14 prohibit lotteries in the state: “No lottery shall be authorized by this State, nor shall the sale of lottery tickets be allowed.”

The Arkansas Constitution does not prohibit all gambling, just lotteries. *Scott v. Dunaway*, 311 S.W.2d 305 (Ark. 1958).

Betting on greyhound racing is not a lottery because it involves some exercise of judgment; to be a lottery, it must be completely controlled by chance. *Id.*

Fact of charitable purpose does not save lottery from being illegal. *State v. Bass*, 277 S.W.2d 479 (Ark. 1955).

Lotteries are unlawful under Ark. Code Ann. § 5-66-118: It is unlawful for any person to: (1) Keep an office, room, or place for the sale or disposition of a lottery, policy, and gift concert

ticket or slip or like device; (2) Vend, sell, or otherwise dispose of any lottery, policy, or gift concert ticket, slip, or like device; (3) Possess any lottery, policy, or gift concert ticket, slip or like device, except a lottery ticket issued in another state where a lottery is legal; or (4) Be interested either directly or indirectly in the sale or disposition of any lottery, policy, or gift concert ticket, slip or like device.

It is permissible for an Arkansas company to print lottery tickets to be used in another jurisdiction where lotteries are lawful.

Misdemeanor (not less than \$50; not more than \$500)

“A lottery is a species of gaming, which may be defined as a scheme for the distribution of prizes by chance among persons who have paid, or agreed to pay, a valuable consideration for the chance to obtain a prize.” *State v. Bass*, 277 S.W.2d 479, 480 (Ark. 1955).

Where 200 lots (real property) of differing value were sold to 200 persons at the same price, and the lot each person got was determined by chance, an illegal lottery existed. *Burks v. Harris*, 120 S.W. 979 (Ark. 1909).

## **6. Horseracing**

Ark. Const. Amend. 46 provides: “Horse racing and pari-mutuel wagering thereon shall be lawful in Hot Springs, Garland County, Arkansas, and shall be regulated by the General Assembly.”

Arkansas Code Title 23, Chapter 110 contains the “Arkansas Horse Racing Law.”

All inconsistent statutes (like the gaming criminal statutes), do not apply to conduct regulated by the horseracing statutes. Ark. Code Ann. § 23-110-102(2009).

Ark. Code Ann. §§ 23-110-104 and -105 deal with allocation of revenues and the number of racing passes to be issued.

Ark. Code Ann. § 23-110-201(2009) begins the regulation of the Arkansas Racing Commission. §§ 23-110-201 through 23-110-205(2009) governs membership, officer selection, commission meetings, powers, duties, hearings, and related matters.

Ark. Code Ann. § 23-110-301(2009) begins the sections on licensure on horse racing. That section through Ark. Code Ann. § 23-110-308(2009) cover restrictions on licensure, application procedures, publication requirements, site acquisition, voter power to annul a local racing license, employee regulations, and related matters.

Ark. Code Ann. § 23-110-401(2009) begins the section governing the conduct at racing meets. That section through Ark. Code Ann. § 23-110-415(2009) govern total annual racing days, racing need applications, license fees, wagering, money distribution/division (including

unclaimed tickets), purses, breaks, admissions tax, recordkeeping, state access, bond requirements, penalties, and related matters.

A racing patron could not sue in negligence for improperly issued ticket which would have been a winner had it been issued correctly. *Register v. Oaklawn Jockey Club, Inc.*, 821 S.W.2d 475 (Ark. 1991).

Ark. Code Ann. § 26-51-1303(2009) mandates a 7% withholding tax on wins over \$1000 for both horse and dog racing. *See also* Section VI(4) above, detailing new provisions for electronic games of skill within horse race tracks.

## **7. Other Pari-mutuel**

Arkansas Code Title 23, Chapter 111 contains the “Arkansas Greyhound Racing Law.”

All inconsistent statutes (like the gaming criminal statutes), do not apply to conduct regulated by the horseracing statutes. Ark. Code Ann. § 23-111-103(2009). Revenues and the maximum number of racing passes are also regulated. Ark. Code Ann. § 23-111-104(2009); Ark. Code Ann. § 23-111-105(2009).

The Arkansas Racing Commission governs hound racing in the same manner as horse racing. Ark. Code Ann. § 23-111-201(2009). Membership, jurisdiction, authority, and hearings are regulated also. Ark. Code Ann. § 23-111-202 through § 23-111-205(2009).

Ark. Code Ann. §§ 23-111-301 through 23-111-308(2009) govern the granting of racing franchises. Those sections cover applications, elector requirements, notice requirements, site acquisition, voter power to annul a local racing license, age restrictions, local employee quota requirements, and related matters.

Dog racing and pari-mutuel wagering are within the public interests. Ark. Code Ann. § 23-111-401(2009). Strict personal background checks will be carried out to assure proper regulation. This includes anyone with 10% or more interest in a corporation which is a holder of a license. Ark. Code Ann. § 23-111-402(2009).

Ark. Code Ann. §§ 23-111-404 to 23-111-409(2009), govern application procedures, background checks, electoral requirements, residency requirements, change in management reporting requirements, management investigation requirements, and related matters.

Ark. Code Ann. §§ 23-111-501 to 23-111-517(2009) govern purses, meets, racing days, meet applications, license fees, wagering, recordkeeping, admission tax, audits, access, penalties, bond requirements, health insurance for employees, tax revenue disposition, and related matters.

## **VII. Specific Internet Prohibition**

Ark. Code Ann. § 23-113-101 et. seq. are the only statutes allowing wagering on electronic games of skill in the state (and only at race tracks). Ark. Code Ann. § 23-113-201(g)(2009) specifically prohibits remote wagering; to make a bet, the bettor must be physically present.

### **VIII. Gaming Crimes & Penalties for Unlawful Gaming**

English Common Law is expressly adopted in Arkansas unless preempted by statute. Ark. Code Ann. § 1-2-119 (1947).

A gambling house was a nuisance at common law. *State ex rel. Williams v. Karston*, 187 S.W.2d 327 (Ark. 1945). A person may be charged under the old common laws even though the crime has now been codified. *Blumensteil v. State*, 230 S.W. 262 (Ark. 1921).

Betting on a horse race is not a crime; but a place where the selling pools on horse races is done is a common-law criminal nuisance. *State v. Vaughan*, 98 S.W. 685, (Ark. 1906).

The gaming crime statutes are Ark. Code Ann. §§ 5-66-101 to 5-66-119(2009). The statutes are construed liberally to avoid circumvention through the creation of new games. The statutes are construed in favor of prohibition where not clear. Ark. Code Ann. § 5-66-101(2009).

All law enforcement has a duty to report gaming violations and prosecute where possible. Ark. Code Ann. § 5-66-102(2009).

Gambling House (Ark. Code Ann. § 5-66-103(2009)): Any person who: (1) keeps, conducts, or operates (or who is interested in) any gambling house or place where gambling is carried on; (2) sets up, keeps, or exhibits (or causes such) (or assists in such); or (3) is interested directly or indirectly in running any gambling house or in setting up any gambling device.

Felony (not less than 1 year; not more than 3 years)

State cannot constitutionally prohibit radio/television stations in other states from advertising lawful gambling, even though in-state residents receive that advertising. *Greater New Orleans Broad. v. U.S.*, 527 U.S. 173 (1999).

Civil gambling forfeiture provisions are subject to Eight Amendment's excessive fines clause. *Austin v. U.S.*, 509 U.S. 602 (1993). Essence of offense of operating gambling house is maintaining a place where those who wish to gamble may do so. *McDougal v. State*, 922 S.W.2d 323 (Ark. 1996).

A gambling house is also a common law nuisance. *State ex rel. Williams v. Karston*, 187 S.W.2d 327 (Ark. 1945).

A place used to bet on horse races is a gambling house. *Albright v. Muncrief*, 176 S.W.2d 426 (Ark. 1943).

A bingo hall is a gambling house, and thus a common law nuisance. *State ex rel. Bryant*, 949 S.W.2d 63 (Ark. 1997).

You don't have to own the place to be guilty of keeping a gambling house; it can be someone else's house. *Turner v. State*, 239 S.W. 373 (Ark. 1922).

Maintaining Gaming Tables or Devices (ARK. CODE ANN. § 5-66-104(2009)): set up, keep, or exhibit any gaming table or gambling device. Examples (non-exclusive) include "A. B. C.," "E. O.," roulette, or rouge et noir, or any faro bank, or any other gaming table or gambling device. Anything for the purpose of playing any game of chance, or at which any money or property may be won or lost.

Misdemeanor (not less than \$100; possible 30 days to 1 year)

To be a gaming device, it must be adapted or designed for the purpose of playing a game of chance at which money or property may be won or lost. *Sharp v. State*, 88 S.W.3d 848 (Ark. 2002) (finding that slot machines are illegal despite falling within the *de minimis* "chucky cheese" exemption for prize amounts under \$12.50); *Pre-Paid Solutions, Inc. v. City of Little Rock*, 34 S.W.3d 360 (Ark. 2001). Whether the machines are properly licensed by the state is irrelevant.

Before statutory exemptions for amusement devices, they were gaming devices. A pinball-type game, with no possibility of any prize, was a gambling device. *Stanley v. State*, 107 S.W.2d 532 (Ark. 1937). So any game that does not meet the amusement device exception requirements may still be a gaming device by default.

Poker and blackjack machines were not gaming devices because they had no automatic payoff mechanism. *State v. 26 Gaming Machines*, 145 S.W.3d 368 (Ark. 2004). The court analogized to a child's handheld device, which could contain a poker game, but not be a gaming device. The 'winning' of nude scenes on the game was not sufficient prize for the activity to be considered gambling.

Mint dispensing machine that also randomly dispensed slugs allowing play of separate 'baseball' game was a gaming device. *Rankin v. Mills Novelty Co.*, 32 S.W.2d 161 (Ark. 1930). Any amusement is 'thing of value' to bring game within gambling statutes.

Financial Interest in Gaming (Ark. Code Ann. § 5-66-105(2009)): any person directly or indirectly interested or concerned in any gaming prohibited by § 5-66-104, either by furnishing money or another article for the purpose of carrying on gaming, or interested in the loss or gain of such prohibited gaming is guilty of a misdemeanor.

Fine as in § 5-66-104 (but doesn't mention jail)

Betting and Gambling (Ark. Code Ann. § 5-66-106(2009)): betting any money or other valuable thing or any representative of any thing that is esteemed of value, on any game prohibited by § 5-66-104.

Not less than \$50; not more than \$100

Gaming in Houses (Ark. Code Ann. § 5-66-107(2009)): knowingly permit or suffer any of the games, tables, or banks mentioned in § 5-66-104 or suffer any kind of gaming under any name whatsoever, to be carried on or exhibited in their houses or boats.

Punish as in § 5-66-104

A person renting may also be subject to eviction for gambling:

Ark. Code Ann. § 18-16-502 (2001): any tenant engaging in or allowing gambling on the premises is subject to eviction.

Ark. Code Ann. § 5-66-108(2009): any devices mentioned in § 5-66-104 shall be burned after seizure.

Ark. Code Ann. § 5-66-109(2009): the keeper/exhibitor of a gaming table or traveling gambler is treated as a vagrant.

Setting up Keno (Ark. Code Ann. § 5-66-110(2009)): set up or exhibit (or aid in such activity) keno or a similar game; a prosecuting attorney has 5 days to take action or else faces a minimum \$500 fine.

Misdemeanor (not less than \$200)

Ark. Code Ann. § 5-66-111(2009): Pinball Machines: Any coin-operated pinball machine or other device that is designed so that more than one (1) coin can be inserted so as to give the player additional odds in making a high score or winning an additional free game is unlawful.

Operation of such a machine is a misdemeanor: (Maximum \$1000 + 1 year in jail)

It is not clear whether ‘operation’ refers keeping or to merely playing such a machine. Because all the other criminal statutes use words such as ‘keeping,’ it is assumed that a player of such a machine is guilty of the offense.

The purpose of this section is to prevent “bingo”-type pinball machines. *See* 15 U.S.C. § 1172.

Playing Card Games (Ark. Code Ann. § 5-66-112(2009)): betting any valuable thing on any card game; non-exclusive list is included in statute.

Fine (not less than \$10; not more than \$25)

Betting on Anything (Ark. Code Ann. § 5-66-113(2009)): betting anything of value on any game of hazard or skill.

Fine (not less than \$10; not more than \$25)

Transmission of Sports Information (Ark. Code Ann. § 5-66-114(2009)): receive or transmit information relating to football, baseball, basketball, hockey, polo, tennis, horse racing, boxing, or any other sport or game for the purpose of gaming.

Subject to penalties as set out in §§ 5-66-101 to 5-66-110, 5-66-112, 5-66-113, 5-66-116, and 5-66-118.

Bribing Athletic Participants (Ark. Code Ann. § 5-66-115(2009)): Class D Felony.

Betting on Horse Race (Ark. Code Ann. § 5-66-116(2009)): it is unlawful to bet on any horse race, whether conducted within the state or outside of it.

Misdemeanor with escalating penalties for subsequent violations. *But see* Ark. Code Ann. § 23-110-102 (exempting certain betting activities from the scope of § 5-66-116)(2009).

Betting on Horse Race (Ark. Code Ann. § 5-66-117(2009)): it is unlawful to place a wager on a horse race for another person.

Class D Felony

Lotteries (Ark. Code Ann. § 5-66-118(2009)): It is unlawful for any person to: (1) Keep an office, room, or place for the sale or disposition of a lottery, policy, and gift concert ticket or slip or like device; (2) Vend, sell, or otherwise dispose of any lottery, policy, or gift concert ticket, slip, or like device; (3) Possess any lottery, policy, or gift concert ticket, slip or like device, except a lottery ticket issued in another state where a lottery is legal; or (4) Be interested either directly or indirectly in the sale or disposition of any lottery, policy, or gift concert ticket, slip or like device.

It is lawful for an Arkansas company to print lottery tickets to be used in another jurisdiction where lotteries are permitted.

Misdemeanor (not less than \$50; not more than \$500)

“A lottery is a species of gaming, which may be defined as a scheme for the distribution of prizes by chance among persons who have paid, or agreed to pay, a valuable consideration for the chance to obtain a prize.” *State v. Bass*, 277 S.W.2d 479, 480 (Ark. 1955).

Where 200 lots (real property) of differing value were sold to 200 persons at the same price, and the lot each person got was determined by chance, an illegal lottery existed. *Burks v. Harris*, 120 S.W. 979 (Ark. 1909).

Lotteries (Ark. Code Ann. § 5-66-119(2009)): setting up, promoting, engaging in, or participating in a pyramid scheme is a crime.

Class D Felony

Loitering (Ark. Code Ann. § 5-71-213(2009)): (a) A person commits the offense of loitering if he or she . . . (4) Lingers or remains in a public place for the purpose of unlawful gambling.

Class C misdemeanor

Enticing a Student (Ark. Code Ann. § 6-2-113(2009)): entice any student (of certain schools) into the practice of gaming or to furnish any student any device or instrument for gaming.

Class B misdemeanor

Ark. Code Ann. § 12-63-211(2009) allows military officers to abate gambling within a one-mile radius of any post, camp grounds, place of encampment, parade, or drill.

Gambling laws are reserved to the state; no municipality may authorize gambling. Ark. Code Ann. § 14-43-604(2009); Ark. Code Ann. § 14-54-103(2009).

A city cannot make pinball machines a nuisance where they are licensed by the state and there is no evidence of gambling. *City of Piggott v. Eblen*, 366 S.W.2d 192 (Ark. 1963).

Ark. Code Ann. § 14-55-103(2009): It is the duty of municipal corporations to publish such bylaws and ordinances as shall be necessary to . . . suppress gambling.

Arkansas and Missouri have concurrent jurisdiction over some portion of at least one river (St. Francis). A violation of Arkansas gaming laws can be charged of anyone gambling on the river. Ark. Code Ann. § 16-88-107; *Brown v. State*, 159 S.W. 1132 (Ark. 1913).

Ark. Code Ann. § 23-79-103: insurance policies taken out on the life of another, where insurer has no insurable interest in that person's life, are void as against public policy. *Dodson v. Dodson*, 825 S.W.2d 608 (Ark. App. 1992).

## **IX. Statute of Anne/ Recovery of Debts**

Under Ark. Code Ann. § 4-3-305(a)(1)(ii)(2009) (Arkansas Uniform Commercial Code), even a holder in due course of an instrument (check) is subject to the maker's defense of illegality. 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.

Ark. Code Ann. § 16-118-103(2009): A person losing money at gambling may bring suit to recover it within 90 days. Heirs or creditors have the same right to recovery. The section does not apply to any turf race. Any instrument where any part of the consideration is money or

property won at any gambling device is void. The state has a strong policy against gambling on credit and such debts will not be enforced. Purpose of this section is to discourage gambling.

An Arkansas bettor who loses money gambling in another jurisdiction where it is legal cannot sue to recover that money. *In re Armstrong*, 217 B.R. 569 (Bankruptcy ED Ark. 1998).

The statute changes the Arkansas common law, which left illegal gamblers in the position in which the court found them. *Martin v. Wheatley*, 62 F.Supp. 104 (W.D. Ark. 1945).

Money loaned for the purpose of gambling cannot be recovered back by the lender. *Singley v. Norman*, 150 S.W.2d 947 (Ark. 1941).

Attempting to forcefully recover a lost wager within 90 days is not robbery; though it may be assault. *Davidson v. State*, 139 S.W.2d 409 (Ark. 1940).

An auction is not gambling, so there is no right to recover something sold at an auction under his statute. *Carey v. Watkins*, 133 S.W. 1016 (Ark. 1911).

At one time, there was no defense against a third party that took a gambled note from the winner without notice of its nature. *Rumping v. Arkansas Nat. Bank of Hot Springs*, 180 S.W. 749 (Ark. 1915). This seems to have changed under the Arkansas UCC (mentioned above), which says that even a holder in due course is subject to the defense of illegality.

## **X. Lawful Commercial Casino Gaming**

There is no lawful commercial casino gaming in Arkansas. *But see* Section VI (4) above, detailing new state provisions allowing for addition of electronic games of skill at horse racing tracks.