

DELAWARE

I. Definition of Gambling

1. Definition of gambling

Delaware Constitution, Art. II, § 17 (1897), prohibits all forms of gambling except for State operated lotteries, lotteries (other than slot machines, roulette, craps, and baccarat) run by companies, organizations, or societies specifically mentioned in its Constitution, wagering or betting on races licensed under the laws of the state, and bingo games that are conducted under the limitations of Delaware's relevant provisions.

Like most states, Delaware considers something to be gambling if it contains the three lottery factors: prize, consideration, and chance. *Affiliated Enter., Inc. v. Waller*, 5 A.2d 257, 259 (Del. Super. Ct. 1939). Therefore, it seems that "gambling" in Delaware is defined as one giving up something of pecuniary value in hopes of winning a prize at a lottery/game of chance. *See State v. Panaro*, 91 A. 1000, 1000 (Ct. Gen. Sess. Del. 1914). The following two cases detail what degree of chance is necessary to make a game or scheme a lottery.

The Supreme Court of Delaware in the *Opinion of the Justices*, 385 A.2d 695 (Del. 1978), stated that even though the term lottery didn't apply to an analysis of pool-selling on jai-alai games, the majority approach in the United States is that chance must be the dominant element in a game or scheme to make it a lottery. *Id.* at 700. Further, Judge McNeilly in a dissenting opinion went on to state that the predominant element test should be the one used in Delaware because the legislative intent calls for the use of this test. *Id.* at 710-11.

In *Nat'l Football League v. Gov. of Del.*, 435 F. Supp. 1372, 1385 (D. Del. 1977), the court held that the term lottery should be broad enough to encompass games where chance is the dominating or determining factor, such as games that involved picking the winners of football games.

2. Free Entry

Del. Code Ann. tit. 11, § 1408 (2001) explicitly states that merchandising plans do not constitute gambling, unless the plan requires that money or something of pecuniary value be given to participate.

However, in *Affiliated Enter. v. Waller*, 5 A.2d 257 (Del. 1939), the court held that a theatre's bank night scheme, where individuals could sign a register whether or not they bought a ticket for admission, and a winner would be called from this list, had the necessary elements of a lottery. Even though the theatre argued that the consideration requirement wasn't met because purchasing a ticket was not required to sign the register, the court disagreed. *Id.* at 261. It felt that by running this promotion the movie theatre appealed to the gambling instinct of individuals. *Id.* at 260. It went on to state that those who entered the contest would be enticed to buy a ticket so

they could be seated comfortably for the announcement of the prize, while being able to enjoy a motion picture at the same time. *Id. See also State v. Eckerd's Suburban, Inc.*, 164 A.2d 873 (Del. 1960). This was sufficient for the court to determine that there was adequate consideration. *Waller*, 5 A.2d at 261.

II. Definition of Bookmaking

Del. Code Ann. tit. 11, § 1403(1) (2001) states that a person is guilty of advancing gambling in the first degree when the person “keeps, exhibits, or uses, or is concerned in interest in keeping, exhibiting or using any book, device, apparatus, or paraphernalia for the purpose of receiving, recording or registering bets or wages upon the result of any trial or contest, wherever conducted, of skill, speed or power of endurance of human or beast.”

Like most other bookmaking statutes, this statute has targeted those that run horseracing books. *See Rossitto v. State*, 291 A.2d 290 (Del. 1972).

III. Specific gaming device definitions

Del. Code Ann. tit. 11, § 1432 (2001) states a gambling device means any “device, machine, paraphernalia, or equipment which is used or usable in the playing phases of any gambling activity, whether the activity consists of gambling between persons or gambling by a person involving the playing of a machine.” Lottery tickets, policy slips, and other items used in the playing phases of lottery and policy schemes are not gambling devices. A slot machine is specifically described in Del. Code Ann. tit. 11, § 1432(b) (2001) as a gambling device. *See also Cate v. Haley*, 155 A. 728 (Del. Super. Ct. 1931). However, the definition of a slot machine does not include an antique slot machine over twenty-five years old that is not used for gambling purposes, or a slot machine which is manufactured in the State by a licensed business. Del. Code Ann. tit. 11, § 1405(c) (2001).

Del. Code Ann. tit. 11, § 1406(a) (2001) punishes persons with an interest in gambling devices. That provision lists a gaming table, faro bank, sweat cloth, roulette table or other device at which cards, dice, or any other game of chance is played for money or something of value, as gambling devices that could subject one to punishment. Del. Code Ann. tit. 11, § 1406(a)(1) (2001).

In *State v. Fossett*, 134 A.2d 272, 276 (Del. Super. Ct. 1957), the court held that money could be considered a gambling device if it formed an integral part of the gambling operation or it was separated and identified specifically for gambling purposes.

In *State v. Del. Novelty House*, 74 A.2d 83, 84 (Ct. Gen. Sess. 1950), the court held that punchboards were illegal gambling devices.

IV. Bucket Shops Laws

There is no provision dealing with Bucket Shops in Delaware.

V. Express prohibition on games of skill

1. Poker

It seems that Delaware's blanket gambling prohibition would include playing the game of poker for stakes. Poker is specifically labeled as a game of chance in *State v. Titlemen*, 108 A. 92, 92-3 (Ct. Gen. Sess. Del. 1918), and would thus be considered an illegal lottery in the state if consideration and prize were also present. Also, the statutory language of Del. Code Ann. tit. 11, § 1406(a)(1) (2001) seems to indicate that card games, including poker, are games of chance because it states that any gambling device at which "cards, dice, or *any other* (emphasis added) game of chance is played for money . . ." is illegal. Looking at the language, it seems to indicate that card games are grouped together under the broad heading "games of chance."

Furthermore, Del. Code Ann. tit. 11, § 1406(a)(1) (2001) prohibits the keeping of a device at which cards or other games of chance are played for money or something of value. *See also State v. Titlemen*, 108 A. 92, 92-3 (Ct. Gen. Sess. Del. 1918). Because Poker involves cards, it seems that the table used for these purposes would fall under this definition and the person that keeps or exhibits this table would be subject to a class A misdemeanor. Del. Code Ann. tit. 11, § 1406(a)(1) (2001).

2. Dice games

Del. Code Ann. tit. 11, § 1407 (2001) expressly makes it an offense for a person to take part or be knowingly present when the game of craps is played, a game that uses dice.

Also, the statutory language of Del. Code Ann. tit. 11, § 1406(a)(1) (2001) seems to indicate that dice games are games of chance because it states that any gambling device at which "cards, dice, or *any other* (emphasis added) game of chance is played for money . . ." is illegal. Looking at the language, it seems to indicate that dice games are grouped together under the broad heading "games of chance."

Del. Code Ann. tit. 11, § 1406(a)(1) (2001) prohibits the keeping of any device at which cards, dice, or any other games of chance are played for money. Because the actual device is illegal in the state, it seems that games involving dice would not be allowed in Delaware either.

3. Billiards

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

4. Bowling

Under Del. Code Ann. tit. 28, § 905 (1989) a bowling alley cannot be used for purposes of gambling but simply as a means of recreation and exercise. However, because Delaware

seemingly uses the predominant test and bowling is undoubtedly a skill-based activity, it seems that holding and conducting bowling tournaments is fine.

5. Darts

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

VI. Express Exemptions

1. Social gambling

As stated above, any merchandising plan that is used to stimulate public interest in the sale of merchandise or services is not considered gambling. Del. Code Ann. tit. 11, § 1408 (2001).

Also, the court in *State v. Titlemen*, 108 A. 92, 92-3 (Ct. Gen. Sess. Del. 1918), held that a table is not considered a gambling device when a small-time “social poker game” is played on it. Therefore, it seems that by association small-time poker games may not be “gambling.” *See also State v. Panaro*, 91 A. 1000 (Ct. Gen. Sess. Del. 1910) (explaining that the relevant statute does not prohibit four men from playing cards at a table for money).

2. Charitable gaming

It seems that bingo, instant bingo, and other games of chance are lawful when sponsored and conducted by Volunteer Fire Companies, veterans’ organizations, religious or charitable organizations, or by Fraternal Societies, provided that the profits from these games are used to promote the purpose of these organizations. Del. Const. art. II, § 17B (amended 1983). However, these games of chance cannot include slot machines, roulette, craps, or baccarat games. Del. Code Ann. tit. 28, § 1102(6) (1989).

The Delaware Gaming Control Board can issue a license to one of these organizations, provided that this organization is located in a district that has approved the licensing of these games by referendum as detailed in Del. Code Ann. tit. 28, § 1103 (1989). Del. Code Ann. tit. 28, § 1130 (1989).

The license fees for these games are fifteen dollars per game. Del. Code Ann. tit. 28, § 1133(a) (1989). However, the board may issue a license without fee to anyone of the aforementioned organizations if the organization does not conduct the game for a profit, does not charge a fee for participation, and offers no prize over five dollars for any such game. Del. Code Ann. tit. 28, § 1133(b1) (1989).

It seems that anyone under the age of 18 cannot participate in the charitable games of chance or instant bingo if the prize is for money. Del. Code Ann. tit. 28, § 1139(b) (1989). Anyone under the age of sixteen cannot participate in the regular bingo games. Del. Code Ann. tit. 28, § 1139(b) (1989).

Within these bingo games, the single game prize limit is two hundred and fifty dollars. Del. Code Ann. tit. 28, § 1139(h)(2) (1989 & Supp. 2004). The aggregate amount of all the prizes cannot exceed one thousand dollars for each occasion. Del. Code Ann. tit. 28, § 1139(h)(2) (1989 & Supp. 2004). At these games, the licensed operator can offer inducements that include cookie-jar bingo games that do not exceed five hundred dollars per game per night, or even free refreshments and free transportation to and from the events. Del. Code Ann. tit. 28, § 1139(h)(3) (1989 & Supp. 2004).

The Delaware Gaming Control Board also has a relatively new task in promulgating the rules and regulations for poker as a form of charitable gaming. Del. Code Ann. tit. 28, § 1504 (Supp. 2004). However, it seems these organizations can already use monitors or dealers to play a poker game. Del. Code Ann. tit. 28, § 1504 (Supp. 2004).

3. Chucky Cheese Exemptions

Delaware does not provide an exemption for family entertainment centers or redemptions slot machines.

4. Commercial gaming-Slot Machines

Slot machines are specifically listed as a gambling device in Delaware. Del. Code Ann. tit. 11, § 1432(b) (2001). There is no exception for commercial slot machines, even at the racetracks in the State. In fact, even licensed charitable organizations cannot possess and display any slot machine for charitable gaming purposes. Del. Code Ann. tit. 28, § 1102(6) (1989).

5. Lottery

The State Lottery Office oversees the state of Delaware's sponsored lottery activities. Del. Code Ann. tit. 29, § 4802 (2003). It can license agents to sell lottery tickets, but these agents cannot be in business exclusively to sell lottery tickets, except those persons hired to staff the State lottery Office or a state-operated sales office. Del. Code Ann. tit. 29, § 4806 (2003). However, these agents cannot sell tickets at a price greater than that fixed by the Office, and they cannot sell to anyone under the age of 18. Del. Code Ann. tit. 29, §§ 4809-4810 (2003).

Video lottery machines are allowed in Delaware, provided that they are only located within an existing racetrack facility which held either a horse racing meet or a harness race meet in 1993. Del. Code Ann. tit. 29, § 4819(a) (2003). Also, it seems that these machines can be used for promotion tournaments in which players are not required to pay an entry fee, but when not used for these purposes, they must be connected to the lottery's central computer system. Del. Code Ann. tit. 29, § 4819(c) (2003). These video lottery machines must be owned or leased by the State and can only be purchased from manufacturers licensed under the provisions of Del. Code Ann. tit. 29, § 4805(a)(17) (2003). Del. Code Ann. tit. 29, § 4820(a) (2003). Each racetrack is limited to one thousand of these machines, unless the Director of the State Lottery Office

approves an additional one thousand five hundred. Del. Code Ann. tit. 29, § 4820(b) (2003 & Supp. 2004).

Delaware is also authorized to enter into a Tri-State lottery compact with Vermont, Maine, and New Hampshire. Del. Code Ann. tit. 29, § 4831 (2003). The Tri-State Lotto Commission is in charge of designing games, determining the price of tickets, the number and size of prizes, the frequency and type of drawings, and licensing its agents. Del. Code Ann. tit. 29, § 4833(e) & (g) (2003).

6. Horseracing

The Delaware Thoroughbred Racing Commission can issue licenses to conduct racing for purse or reward in the state of Delaware. Del. Code Ann. tit. 3, § 10121 (2001). The Commission is forbidden to issue a license for flat racing on a track less than one mile in circumference or for steeplechase racing in the infield of at track less than one mile in circumference. Del. Code Ann. tit. 3, § 10122(b)(1) (2001). The commission also limits the racing for any one county to 340 total days. Del. Code Ann. tit. 3, § 10122(c) (2001).

Within the enclosure of a licensed horse racing facility, wagering or betting on horse races through pari-mutuel machines or totalizators is authorized and permitted. Del. Code Ann. tit. 3, § 10161 (2001).

On interstate simulcasts of races that a licensed entity under this act transmits or receives, it can combine wagers made at that track with wagers of the same type made at out-of-state legal facilities. Del. Code Ann. tit. 3, § 10169(a) (2001). This is to allow the creation of common pools for calculating odds and determining payouts. Del. Code Ann. tit. 3, § 10169(b) (2001).

Delaware's Kent County can hold licensed horse racing for purse or reward at any track that is at least five-eighths of a mile in circumference. Del. Code Ann. tit. 28, § 401 (1989). However, the Commission is limited to issuing only fifty-five total days for such racing. Del. Code Ann. tit. 28, § 403(d) (1989). Within these licensed facilities, the use of pari-mutuel machines or totalizators for the purpose of receiving wagers or bets on horse races is permitted. Del. Code Ann. tit. 28, § 442(a) (1989).

Harness Racing

Harness racing, or racing where the horse is not mounted by a jockey, is conducted under the authority of the Delaware Harness Racing Commission. Del. Code Ann. tit. 3, § 10005 (2001). This Commission is in charge of reviewing and granting licenses to conduct these types of races. Del. Code Ann. tit. 3, § 10023 (2001). The Commission cannot grant more than 340 days per calendar year for one licensee, though the aggregate total can exceed that number of days. Del. Code Ann. tit. 3, § 10023(c) (2001).

The Commission also requires those that want to participate in the race and those that want to officiate those races to be licensed. Del. Code Ann. tit. 3, §§ 10012-10013 (2001).

Licenseses can also offer non-stakes racing limited to horses owned by Delaware residents or sired by Delaware stallions. Del. Code Ann. tit. 3, § 10032(a) (2001). These horses must be registered and approved by the Commission. Del. Code Ann. tit. 3, § 10032(c) (2001).

These licensed facilities may be able to obtain a license from the commission to make, conduct, or sell pools by the use of pari-mutuel machines or totalizators and to make, conduct, and sell pools for the “daily double” by manual computation without the use of these machines. Del. Code Ann. tit. 3, § 10053(a) (2001). However, these facilities are the only places where this pari-mutuel betting can take place. Del. Code Ann. tit. 3, § 10052 (2001).

On interstate simulcasts of harness races that a person licensed transmits or receives, they can combine wagers made at that track with wagers of the same type made at out-of-state legal facilities. Del. Code Ann. tit. 3, § 10060(a) (2001). This is to allow the creation of common pools for calculating odds and determining payouts. Del. Code Ann. tit. 3, § 10060(b) (2001).

VII. Specific Internet Prohibition

No specific law covering Internet gambling is found in the Delaware statutes.

VIII. Gaming crimes and penalties

Advancing gambling in the second degree as defined in Del. Code Ann. tit. 11, § 1401 (2001) occurs when one:

- (1) The person sells or disposes of, or has in the person's possession with intent to sell or dispose of, a lottery policy, certificate or any other thing by which the person or another person or persons promises or promise, guarantees or guarantee that any particular number, series of numbers, character, ticket or certificate shall, in the event or on the happening of any contingency in the nature of a lottery, entitle the purchaser or holder to receive money, property or evidence of debt; or
- (2) The person uses or employs any other device by which such person, or any other person, promises or guarantees as provided in subdivision (1) of this section; or
- (3) The person is concerned in interest in lottery policy writing, or in selling or disposing of any lottery policy, certificate, number or numbers or any other thing by which the person or another person or persons promises or promise, guarantees or guarantee that any particular number or numbers, character, ticket or certificate shall, in the event or on the happening of any contingency in the nature of a lottery, entitle the purchaser or holder to receive money, property or evidence of debt; or

(4) The person uses or employs any other device by which such person or any other person promises or guarantees as provided in subdivision (3) of this section.

This is a Class A misdemeanor that seemingly only applies to those that are doing the selling or disposing of the lottery policies, or those that are employing a particular device. Del. Code Ann. tit. 11, § 1401 (2001). Therefore, this provisions looks like it only applies to the operators, and not the players themselves.

Engaging in foreign lotteries is also considered a Class A misdemeanor. Del. Code Ann. tit. 11, § 1402 (2001). This offense is described as:

a) A person is guilty of engaging in a foreign lottery when the person brings, sends or procures to be brought or sent into this State any scheme of any lottery or any drawing of any such scheme or any ticket or part of a ticket or certificate of or a substitute for any ticket or part of a ticket, *and sells or offers for sale* (emphasis added) any such ticket or part of ticket or any certificate or substitute for a certificate, and circulates in any manner any scheme or any drawing.

At first, it looks like this would apply to those that merely bring these tickets into the state, as well as those that sell them. However, looking through the statute, the person may sell or offer for sale these tickets for this offense to be complete. Therefore, those that just bring these tickets into Delaware are not guilty of this offense unless they offer it for sale or actually sell it.

A person is guilty of advancing gambling in the first degree when:

(1) The person keeps, exhibits or uses, or is concerned in interest in keeping, exhibiting or using any book, device, apparatus or paraphernalia for the purpose of receiving, recording or registering bets or wagers upon the result of any trial or contest, wherever conducted, of skill, speed or power of endurance of human or beast; or

(2) Being the owner, lessee or occupant of a room, house, building, enclosure or place of any kind, the person keeps, exhibits, uses or employs therein or permits or allows to be kept, exhibited, used or employed therein, or is concerned in interest in keeping, exhibiting, using or employing therein any book, device, apparatus or paraphernalia for the purpose of receiving, recording or registering bets or wagers as provided in subdivision (1) of this section, or of forwarding in any manner money, thing or consideration of value for the purpose of being bet or wagered as provided in subdivision (1) of this section; or

(3) The person records or registers bets or wagers, or receives, contracts or agrees to receive money or anything of value for the purpose or with the intent to bet or wager personally or for another person as provided in subdivision (1) of this section; or

(4) The person directly or indirectly bets or wagers, or promises to bet or wager, money or anything of value as provided in subdivision (1) of this section.

This is a class A misdemeanor and simply only applies to those that are engaged in the bookmaking, or those that own the house being used for such purposes. Del. Code Ann. tit. 11, § 1403 (2001). Therefore, it seems that the operators of these schemes and not the players would be subject to penalty under this statute.

A person is guilty of providing premises for gambling, an unclassified misdemeanor, when:

- 1) The person lets, demises or transfers to another person any building, structure, room or rooms knowing that the same will be used for the purpose of committing any gambling offense; or
- (2) The person knowingly permits any house, structure, building, room or rooms of which the person has possession or control to be used for the purpose of committing any gambling offense; or
- (3) The person contributes to the support and maintenance of any house or place where gambling is carried on or conducted; or
- (4) The person keeps or maintains any house or place where gambling is carried on.

Del. Code Ann. tit. 11, § 1404 (2001). This statute only applies to those that keep, permit, or allow their premises to be used for gambling purposes, and does not apply to those that frequent those premises.

A person is guilty of possessing a gambling device if one “knowingly manufactures, sells, transports, keeps, exhibits, manages, places, possesses or conducts or negotiates any transaction affecting or designed to effect ownership, custody or use of a slot machine or any other gambling device.” Del. Code Ann. tit. 11, § 1405(a) (2001). This is a class A misdemeanor and only applies to those that possess the gambling device in some way and not to those that only use or play it. Del. Code Ann. tit. 11, § 1405(a) (2001).

A person is guilty of being concerned in interest in keeping any gambling device when:

- 1) The person keeps or exhibits a gaming table, faro bank, sweat cloth, roulette table or other device under any denomination at which cards, dice or any other game of chance is played for money, or other thing of value or other gambling device of any kind whatsoever; or
- (2) The person, with the intent that it shall be kept or exhibited for use by the public, buys, sells or distributes a gaming table, faro bank, sweat cloth or other gambling device; or
- (3) The person is a partner or concerned in interest in the keeping or exhibiting of a gaming table, faro bank, sweat cloth or other gambling device.

This is considered a class A misdemeanor and only applies to those with an interest in keeping any gambling device. The court in *State v. Carbone*, 121 A.2d 909, 910 (Del. Super. Ct. 1956), said that a person concerned in interest in keeping the device does not necessarily mean that they

have a financial interest in the device. However, one who sanctions the table as a mere volunteer is not concerned in interest. *Id.* Either way, it seems that this punishment applies only to the “operators” of these tables, and not those players who only play upon it.

As mentioned above, it is illegal to take part in, or be knowingly present when a crap game is taking place. Del. Code Ann. tit. 11, § 1407 (2001). This applies to any player or anyone around with knowledge of the activity taking place.

A person is guilty of unlawfully disseminating gambling information when:

1) Being a public utility it knowingly furnishes to another person a private wire for use in disseminating information in furtherance of gambling or for gambling purposes; or

(2) The person knowingly uses a private wire in disseminating or receiving information in furtherance of gambling or for gambling purposes; or

(3) The person engages in the business of or receives compensation in any form for disseminating or receiving information in furtherance of gambling or for gambling purposes by means of a private wire or a call service.

This is a class A misdemeanor and it applies both to those that are furnishing the information and receiving the information through a private wire. Del. Code Ann. tit. 11, § 1411 (2001).

Horseracing Crimes

Anyone who aids or abets an unlicensed horse race for stake in this state will be fined between five hundred and ten thousand dollars for each day of unauthorized racing. Del. Code Ann. tit. 3, § 10146 (2001).

Anyone who aids or abets an unlicensed harness race for stake in this state is subject to a fine between five hundred seventy-five dollars and eleven thousand five hundred dollars for each day of unauthorized racing. Del. Code Ann. tit. 3, § 10046 (2001).

IX. Statute of Anne/ Recovery of Debts

There is no Delaware statute expressly dealing with the recovery of money lost from gambling. The case law in Delaware also does not deal with recovery of gambling losses, although the court in *Porter v. Sawyer*, 1 Del. 517 (Del. Super. Ct 1835), would not allow the winning party of a bet recover his opponent’s share because betting on who would win an election is illegal and void in the state.