

GEORGIA

I. Definition of Gambling

1. Definition

“Bet” means an agreement that, dependent upon chance even though accompanied by some skill, one stands to win or lose something of value. Ga. Code Ann., § 16-12-20(1). The statute mentions “some skill,” but does not address the situation where skill dominates. Even so, the cases seem to follow the “any chance” scheme. *See* 83 Ga. Op. Atty. Gen. 109 (1983) (one bets when he makes an agreement that, dependent upon chance even though accompanied by some skill, he stands to win or lose something of value).

The presence of skill will not save a wager from being illegal gambling in Georgia. *See Lewis v. State*, 189 S.E. 566 (Ga. App. 1937) (shooting gallery at which customers were given reward for shooting out target held illegal, notwithstanding that element of skill was involved); *Grant v. State*, 44 S.E.2d 513 (Ga. App. 1947) (saying “the fact that skill or proficiency might enter into the operation of the machine makes no difference”); and Ga. Code Ann., § 16-12-21 (making betting on games illegal without any mention of chance or skill).

It may be true that the player receives the value of the money he deposits in the slot, but he stands a chance to get twenty times its value, and it is the pressure of this chance that continues the progress of the game and makes it a game of chance. *Boyd v. Piggly Wiggly Southern, Inc.*, 155 S.E.2d 630, 636 (1967).

Lottery means any scheme or procedure whereby one or more prizes are distributed by chance among persons who have paid or promised consideration for a chance to win such prize. A lottery shall also include the organization of chain letter or pyramid clubs. Certain promotional giveaways, contests, and authorized raffles are excluded. Ga. Code Ann., § 16-12-20(4).

Promotions or promotional contests involving an element of chance in the distribution of prizes, gifts, awards, or other items shall be included within the definition of the term “lottery.” Ga. Code Ann., § 16-12-36.

2. Exemptions

There does not seem to be a common law exception for games that require no purchase. In Georgia, a closed participation scheme is one where a purchase is necessary to participate in a drawing or other game; a flexible scheme is one where no purchase is necessary. *Boyd v. Piggly Wiggly Southern, Inc.*, 155 S.E.2d 630, 636, 638 (1967) (ticket available when go through checkout lane held invalid, even though no purchase necessary to play). Both types of schemes have been held invalid by the courts. *Meyer v. State*, 37 S.E. 96 (1900) (deposit nickel in machine to receive five-cent cigar or gum and possibly win something in addition); *Brockett v. State*, 125 S.E. 513 (1924) (deposit nickel in machine to receive five-cent cigar or gum and

possibly win something else, and machine always tells whether the next nickel deposited will be a winner); *Standridge v. Williford-Burns-Rice Co.*, 96 S.E. 498 (1918) (chances in drawing given in proportion to amount of purchase); *Bloodworth v. Gay*, 96 S.E.2d 602 (1957) (chances in proportion to sales price). In essence, the “no purchase necessary artifice [has] failed utterly.” *Boyd*, 155 S.E.2d at 638.

“When the general scheme of such drawing is that only those who have purchased tickets participate therein and are entitled to win the prize, such scheme does not lose its identity as a lottery because some may participate in the drawing who have not bought tickets.” *Boyd*, 155 S.E.2d at 639; *Jorman v. State*, 188 S.E. 925 (1936) (where movie theater held drawing, and no purchase was necessary to enter the drawing, and a winner could enter the theater to claim a prize without buying a ticket, and results were announced outside the theater as well as inside, court held the scheme invalid; “it is immaterial that free tickets to the drawing are offered to persons not purchasing theater tickets”).

“[I]t is only necessary that among those persons who receive a chance to win a prize there must be some who have paid a consideration.” *Kemp v. American Tel. & Tel. Co.*, 393 F.3d 1354 (11th Cir. 2004).

Promotional activities are permitted by the unfair and deceptive practices sections of the Georgia Code; any promotional scheme involving chance and not meeting the requirements of those sections is declared to be an unlawful lottery. Ga. Code Ann., § 10-1-392; Ga. Code Ann., § 10-1-393.

II. Definition of Bookmaking

III. Specific Gaming Device Definitions

Gambling device" means: (A) Any contrivance which for a consideration affords the player an opportunity to obtain money or other thing of value, the award of which is determined by chance even though accompanied by some skill, whether or not the prize is automatically paid by contrivance; (B) Any slot machine or any simulation or variation thereof; (C) Any matchup or lineup game machine or device, operated for any consideration, in which two or more numerals, symbols, letters, or icons align in a winning combination on one or more lines vertically, horizontally, diagonally, or otherwise, without assistance by the player. Use of skill stops shall not be considered assistance by the player; or (D) Any video game machine or device, operated for any consideration, for the play of poker, blackjack, any other card game, or keno or any simulation or variation of any of the foregoing, including, but not limited to, any game in which numerals, numbers, or any pictures, representations, or symbols are used as an equivalent or substitute for cards in the conduct of such game. Ga. Code Ann., § 16-12-20(2).

A gambling device is any contrivance which, for a consideration, affords the player an opportunity to obtain money or other thing of value determined by chance, even if accompanied

by some skill, whether or not the prize is automatically paid by that device. 90 Ga. Op. Atty. Gen. 29 (1990).

Gambling devices are illegal, regardless of whether they are only used for amusement purposes. *Jones v. State*, 625 S.E.2d 4 (Ga. App. 2005).

IV. Bucket Shop Laws

“The maintenance or operation of a bucket shop is prohibited.” Ga. Code Ann., § 13-9-6. It is a felony, maximum two years. “Any contract of sale for future delivery of cotton, grain, stocks, or other commodities shall be null and void and unenforceable in any court by any party thereto where it is not the bona fide intention” to deliver the goods. Ga. Code Ann., § 13-9-3. Contracts of sale for future delivery of cotton or other commodities shall be valid and enforceable if (1) made in accordance with the rules of any board of trade, exchange, or similar institution, (2) actually executed on the floor of such institution, and (3) placed through a regular member in good standing of a cotton exchange, grain exchange, board of trade, or similar institution. Ga. Code Ann., § 13-9-2.

“No rights shall arise to either party out of an agency created for an illegal purpose.” Ga. Code Ann., § 10-6-20.

Money given to an agent to cover margins in futures can be recovered while still in the hands of the agent despite the illegality of the transaction. *Clarke, Harrison & Co. v. Brown*, 77 Ga. 606, 4 Am.St.Rep. 98 (1886).

Sale of cotton futures where actual delivery of cotton was contemplated did not violate bucket shop statute. *Taunton v. Allenberg Cotton Co., Inc.*, 378 F.Supp. 34 (1973).

A contract for the sale of futures is a sale in goods even if the crop is not yet planted. *Seminole Peanut Co. v. Goodson*, 335 S.E.2d 157 (1985).

V. Prohibition of Games of Skill

A bet does not include an offer of a prize, award, or compensation to the actual contestants in any bona fide contest for the determination of skill, speed, strength, or endurance or to the owners of animals, vehicles, watercraft, or aircraft entered in such contest. Ga. Code Ann., § 16-12-20(1)(b).

Playing, without betting, and without the purpose of others betting, is not an offense. *Johnson v. State*, 8 Ga. 453 (Ga. 1850).

1. Poker/Card Games

Betting on them is specifically prohibited by statute. Ga. Code Ann., § 16-12-21.

2. Dice

Betting on them is specifically prohibited by statute. Ga. Code Ann., § 16-12-21.

3. Billiards

Playing pool with the agreement that the loser will pay for use of the table is illegal gambling. *Hopkins v. State*, 50 S.E. 351 (Ga. 1905).

4. Bowling

5. Darts

VI. Express Exemptions

1. Social

2. Charity

“The General Assembly may by law provide that the operation of a nonprofit bingo game shall not be a lottery and shall be legal in this state.” GA CONST Art. 1, § 2, ¶ VIII.

“[T]he holding of raffles by nonprofit organizations shall be lawful and shall not be prohibited by any law enacted prior to January 1, 1994. Laws enacted on or after January 1, 1994, however, may restrict, regulate, or prohibit the operation of such raffles.” GA CONST Art. 1, § 2, ¶ VIII.

Ga. Code Ann., § 16-12-22.1 allows for raffles by the following: nonprofit, tax-exempt churches, schools, civic organizations, or related support groups; nonprofit organizations qualified under Section 501(c) of the Internal Revenue Code; or bona fide nonprofit organizations approved by the sheriff. A license from the local sheriff must be obtained prior to running a raffle. The statute also details the application process and reporting requirements. Violation of the section is a violation of the criminal statute prohibiting Commercial Gambling.

Ga. Code Ann., § 16-12-50 begins the bingo section. It is a statement of purpose and says that, aside from recreational games, only non-profit, tax exempt organizations are permitted to operate bingo games.

The state’s bingo legislation has been upheld despite the clear constitutional command that non-profit bingo shall be allowed; the court said restrictions are ok as long as bingo operations are not made unreasonably difficult. *St. John's Melkite Catholic Church v. Commissioner of Revenue*, 242 S.E.2d 108 (Ga. 1978).

Ga. Code Ann., § 16-12-52 contains a licensure requirement for non-profit bingo. The remaining sections deal with procedures, fees, license revocation, police access, reports, one-time licenses for schools, location of games, age restrictions, records, director authority, penalties, and related matters.

3. Chucky Cheese

Ga. Code Ann., § 16-12-35 contains exceptions to the gambling crime statutes for certain “chucky cheese” type games. The following are not illegal: amusement devices where the player, through “some skill,” can earn free replays, as long as they are discharged one at a time by replaying the game; crane (claw) games; and games that award only non-cash merchandise with a value of not more than \$5.00 per play of the game.

Violations of the section are misdemeanors and aggravated misdemeanors.

Ga. Code Ann., § 48-17-1 *et seq* contain the regulations for coin-operated amusement devices. Several examples and non-examples are given. The basic definition is that its operation depends in whole or in part on the skill of the player. The other sections detail licenses, fees, sanctions, hearings, appeals, enforcement, penalties, earning percentage limits, and related matters.

Coin-operated game that cannot accumulate more than 15 replays is not a gambling device because of that fact as long as replays are discharged only by replaying the game. 90 Ga. Op. Atty. Gen. 15 (1990). Neither does a knockoff switch make it a per se gambling device. However, the presence of both a knockoff switch, and the ability to accumulate more than 15 free replays does make it a per se gambling device. 90 Ga. Op. Atty. Gen. 15 (1990).

4. Commercial

5. Lottery

“[A]ll lotteries, and the sale of lottery tickets, and all forms of pari-mutuel betting and casino gambling are hereby prohibited” GA CONST Art. 1, § 2, ¶ VIII. “The General Assembly may by law provide for the operation and regulation of a lottery or lotteries by or on behalf of the state and for any matters relating to” education. GA CONST Art. 1, § 2, ¶ VIII.

The Georgia Lottery for Education Act, which creates the Georgia Lottery Corporation, begins at Ga. Code Ann., § 50-27-1 and goes through Ga. Code Ann., § 50-27-55 (though not every section is occupied). The sections create a board of directors, create the Lottery Retailer Advisory Board, define board powers, define corporation powers, discuss the CEO, detail regulation/policy adoption procedures, regulate employees, allocate revenues, create a pro-minority policy, regulate vendors, regulate retailers, discuss legal significance of lottery tickets, set up rental payment amounts, contain transferability sections, discuss taxes, define penalties, discuss bidding, discuss appeals, discuss audits and reports, create an oversight committee, and also handle many other related matters.

Lottery winnings are subject to child support obligations. Ga. Code Ann., § 19-6-15.

6. Horseracing & Other Pari-mutuel

“[A]ll forms of pari-mutuel betting and casino gambling are hereby prohibited” GA CONST Art. 1, § 2, ¶ VIII.

VII. Specific Internet Prohibition

None; but Ga. Code Ann., § 50-27-3 (part of the lottery statutes) seems to allow (or at least not prohibit) on-line games to be conducted by the state lottery.

VIII. Gaming Crimes & Penalties for Unlawful Gaming

“Bet” means an agreement that, dependent upon chance even though accompanied by some skill, one stands to win or lose something of value. Ga. Code Ann., § 16-12-20(1).

“[A]ll forms of pari-mutuel betting and casino gambling are hereby prohibited” GA CONST Art. 1, § 2, ¶ VIII.

Disorderly House: A person who keeps and maintains, either by himself or others, a common, ill-governed, and disorderly house, to the encouragement of gaming, drinking, or other misbehavior, or to the common disturbance of the neighborhood or orderly citizens, is guilty of a misdemeanor. Ga. Code Ann., § 16-11-44.

You must be an occupant, or keep and maintain house in some manner to be guilty of a Disorderly House. *Brewer v. State*, 199 S.E.2d 109(1973).

Running a cockfighting or dog fighting ring may lead to liability both for animal cruelty and illegal commercial gambling. Ga. Code Ann., § 16-12-4; *Morgan v. State*, 392 S.E.2d 715(1990).

A contract of insurance where the beneficiary has no insurable interest in the life of the insured is void as a wagering contract. *Wilson v. Progressive Life Ins. Co.*, 7 S.E.2d 44 (1940); *Quillian v. Johnson*, 49 S.E. 801 (1905).

Where players can call a toll-free phone number for a chance to win, and get charged a per-minute fee, the phone company that includes those fees on the phone bill is engaged in collection of an illegal debt in violation of the RICO statute. *Kemp v. American Tel. & Tel. Co.*, 393 F.3d 1354 (11th Cir. 2004).

Gambling: A person is guilty who makes a bet upon the partial or final result of any game or contest or upon the performance of any participant in such game or contest or plays and bets for money or other thing of value at any game played with cards, dice, or balls. Ga. Code Ann., § 16-12-21.

Misdemeanor.

Crime of gambling consists of elements of consideration, chance, and prize. *Monte Carlo Parties, Ltd. v. Webb*, 322 S.E.2d 246 (GA. 1984).

Commercial Gambling: Guilty if do any of the following: (1) Operates or participates in the earnings of a gambling place; (2) Receives, records, or forwards a bet or offer to bet; (3) For gain, becomes a custodian of anything of value bet or offered to be bet; (4) Contracts to deal in futures without intent to make delivery; (5) Sell chances on result or the margin of victory of any game or contest; (6) Sets up or promotes any lottery, sells or knowingly possesses for transfer any device designed to serve as evidence of participation in any lottery; or (7) Conducts, advertises, operates, sets up, or promotes a bingo game without having a valid license to operate a bingo game as provided by law. Ga. Code Ann., § 16-12-22.

Felony: one to five years, and up to \$20,000

Keeping a Gambling Place: knowingly permit any real estate, building, room, tent, vehicle, boat, or other property whatsoever owned by him or under his control to be used as a gambling place. Ga. Code Ann., § 16-12-23.

Aggravated Misdemeanor.

This offense is not aimed at the game or players, but the house. *Thrower v. State*, 45 S.E. 126 (Ga. 1903).

Gambling Devices: knowingly owns, manufactures, transfers commercially, or possesses any device which he knows is designed for gambling purposes or anything which he knows is designed as a subassembly or essential part of such device. Ga. Code Ann., § 16-12-24. There is an exception for antique slot machines (pre 1950) that are not actually being used for gambling.

Aggravated Misdemeanor.

Gambling devices are unlawful even if not used for gambling. *Jones v. State*, 625 S.E.2d 4 (Ga. App. 2005); *Miller v. State*, 94 S.E.2d 120 (Ga. App. 1956).

15 U.S.C. § 1175 (Johnson Act) preempts this statute to some extent for cruises and other ships. U92 Ga. Op. Atty. Gen. 20 (1992).

Gambling on or Adjacent to a Business: commit any of the following acts with the intent to defraud or deceive on or adjacent to any business: (1) Keeps, maintains, employs, or carries on a game for the hazarding of money or other thing of value; (2) Permits the playing for money or other thing of value of a game or device for the hazarding of money or other thing of value; (3) Keeps or employs a device or equipment for the purpose of carrying on or operating a game or device for the hazarding of money or other thing of value; (4) Permits the betting or wagering of money or other thing of value; (5) Sells or offers to sell to a person a ticket number or combination or chance or anything representing a chance in a lottery or other similar scheme; (6) Keeps, maintains, employs, or carries on a lottery or scheme or device for the hazarding of money or other thing of value; (7) Keeps, maintains, or employs a lottery ticket, lottery book, lottery ribbon, or other article used in keeping, maintaining, or carrying on a lottery or other

scheme, game, or device for the hazarding of money or other thing of value; (8) Solicits a person to engage in a game or to operate a device for the hazarding of money or other thing of value; or (9) Solicits a person to engage in a lottery or other scheme or device for the hazarding of money or other thing of value. Ga. Code Ann., § 16-12-25.

Felony: one to five years.

Advertising Gambling: knowingly prints, publishes, or advertises any lottery or other scheme for commercial gambling or who knowingly prints or publishes any lottery ticket, policy ticket, or other similar device designed to serve as evidence of participation in a lottery commits the offense of advertising commercial gambling. Ga. Code Ann., § 16-12-26. The constitutionality of this section is questionable in light of *Greater New Orleans Broadcasting Ass'n, Inc. v. U.S.*, 527 U.S. 173 (1999).

Aggravated Misdemeanor.

Advertisements: Advertise any gambling that is illegal in Georgia unless clearly indicate “void in Georgia.” Ga. Code Ann., § 16-12-27.

Misdemeanor.

Communicating Gambling Information: knowingly communicates information as to bets, betting odds, or changes in betting odds or who knowingly installs or maintains equipment for the transmission or receipt of such information with the intent to further gambling commits the offense of communicating gambling information. Ga. Code Ann., § 16-12-28.

Felony: one to five years and up to \$5000.

Ga. Code Ann., § 16-12-32 allows for seizure of a wide range of property associated with or in the vicinity of illegal gambling including cash *Griffin v. State*, 440 S.E.2d 483 (Ga. App. 1994); and cars *Macon Auto Cleaners v. State*, 332 S.E.2d 324 (Ga. App. 1985).

Bribery: Bribe any contestant, coach, trainer, manager or official of any athletic contest, sporting event, or exhibition. Ga. Code Ann., § 16-12-33. Or accept or solicit any bribe if you are the contestant, coach, trainer, manager or official. Ga. Code Ann., § 16-12-34.

Felony: one to five years and \$1000 to \$5000.

Dogfighting: allow dogs to fight for sport or gaming purposes. Ga. Code Ann., § 16-12-37.

Felony: mandatory \$5000 and one to five years.

“Allow” is construed very liberally; any act that contributes to the fight or furthers the success of the fight. *Hargrove v. State*, 321 S.E.2d 104 (Ga. 1984).

Pyramid Schemes: they are illegal.

Participants: misdemeanor

Establish/promote/operate: Felony: one to five years

Ga. Code Ann., § 16-14-1 *et seq* are the Georgia RICO statutes. A violation of Ga. Code Ann., § 16-12-22 or any gambling crime punishable by more than one year is a predicate act under the Georgia RICO act. Ga. Code Ann., § 16-14-3.

The commanding officer of any force of the organized militia performing military duty in or at any armory, arsenal, camp, range, base, or other facility of the organized militia or other place where the force is performing military duty may prohibit all gambling. Ga. Code Ann., § 38-2-306.

Nuisance: anything that causes hurt, inconvenience, or damage to another and the fact that the act done may otherwise be lawful shall not keep it from being a nuisance. The inconvenience complained of shall not be fanciful, or such as would affect only one of fastidious taste, but it shall be such as would affect an ordinary, reasonable man. Ga. Code Ann., § 41-1-1

Nuisance law contemplates some continuity, but one illegal gambling game, along with general reputation of the place for gambling, is sufficient to close down a place as a nuisance. *Thornton v. Forehand*, 87 S.E.2d 865 (Ga. 1955).

Betting With a Minor: A parent shall have a right of action against any person who shall play and bet at any game of chance with his minor child for money or any other thing of value without the parent's permission. Ga. Code Ann., § 51-1-18.

IX. Statute of Anne/ Recovery of Debts

Gambling contracts are void; and all evidences of debt executed upon a gambling consideration are void in the hands of any person (except negotiable instruments in the hands of holders in due course or encumbrances or liens on property); a loser can recover lost money and property from the winner within six months; after six months, and for four years, any person can sue to recover the losses; the person bringing the suit and the county educational fund share the recovered money. Ga. Code Ann., § 13-8-3.

For a person of the state to sue and recover a debt from a winner of a wager, it is irrelevant that the loser of the wager is located out of state, or even out of country. *Tatham v. Freeman*, 180 S.E. 871 (1935) (London insurance company paid Georgian money on contract that was not valid in Georgia).

Under an earlier version of the gambling debt recovery statute, a slot machine was a lottery, and so a plaintiff was not allowed to recover all money wagered in defendants slot machines over the prior four-year period because the statute provided for recovery from “the playing or betting at

any game whatever,” and lotteries did not fall under that definition. *Moore v. Atlanta Athletic Club*, 52 S.E.2d 628 (1949); *see also Thompson v. Ledbetter*, 39 S.E.2d 720 (1946).

A wager on a horse race, however, *is* a gaming transaction that allows for recovery under the statute. *Dyer v. Benson*, 69 Ga. 609 (1882).

“A contract which is against the policy of the law cannot be enforced. Contracts deemed contrary to public policy include but are not limited to . . . (4) Wagering contracts” Ga. Code Ann., § 13-8-2.

A Georgia court will not allow a creditor to recover against a debtor where the debt is a gambling debt even if the debt was incurred in a jurisdiction where the activity was legal. *Gulf Collateral, Inc. v. Morgan*, 415 F.Supp. 319 (1976). *But see Talley v. Mathis*, 453 S.E.2d 704 (1995) (contract entered into in Georgia to purchase Kentucky lottery ticket and split winnings was valid and enforceable because it was not a gambling contract); and *Hargreaves v. Greate Bay Hotel & Casino*, 357 S.E.2d 305 (1987) (giving full faith and credit to judgment of New Jersey enforcing gambling debt). If another state enters judgment against you based on a gambling debt, Georgia will uphold and enforce that judgment.

A contract to do an immoral or illegal thing is void, but severable portions may be saved. Ga. Code Ann., § 13-8-1.

Money paid over on illegal contracts cannot be recovered back except in case of statute allowing for recovery of gambling losses. *Thompson v. Ledbetter*, 39 S.E.2d 720 (1946).

Under (Georgia Uniform Commercial Code), even a holder in due course of an instrument (check) is subject to the maker’s defense of illegality. Ga. Code Ann., § 11-3-305. 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. *See also Citizens Nat. Bank of Quitman v. Brazil*, 233 S.E.2d 482 (1977) (listing gambling as the type of illegality that renders a transaction void and not merely voidable).

An intermediary holding money bet on a wager must return that money to a bettor if asked; that duty is relived once the money is paid to the winner of the wager. Ga. Code Ann., § 13-8-4.

X. Lawful Commercial Casino Gaming

None