

IDAHO

I. Definition of Gambling

1. Gambling

a. Idaho code defines gambling as the following:

“Risking any money, credit, deposit or other thing of value for gain contingent in whole or in part upon lot, chance, the operating of a gambling device or the happening or outcome of an event” Idaho Code Ann. § 18-3801 (2009). The happening or outcome of an event can include sporting events and operation of casino gambling games such as blackjack, craps, poker, keno and roulette. *Id.*

b. Gambling under the Idaho code does not include any of the following:

Awards given to entrants in bona fide contests of skill, speed, strength or endurance. *Id.* The definition of gambling also does not include valid contracts arising out of bona fide business transactions and games that only award an additional right of play. *Id.* Also, “[m]erchant promotional contests and drawings conduct incidentally to bona fide nongaming business operations, if prizes are awarded without consideration being charged to participants,” does not constitute gambling. *Id.*

c. Based on the above statutory language Idaho applies a test of predominance in determining whether a game qualifies as gambling.

2. Lotteries:

A lottery is defined as a scheme for the distribution of property by chance to persons who have paid valuable consideration for the chance to win such property. Idaho Code Ann. § 18-4901 (2009). The pari-mutuel system of wagering is specifically excluded from the definition of lottery but does include a gift enterprise, by any name that possesses the elements prize, chance and consideration. *Id.*

II. Definition of Bookmaking

Bookmaking or pool selling is characterized by a person who keeps, for gain, books, papers, record, paraphernalia, or a mechanical device for the purpose of recording or registering bets on the outcome of contests of skill, speed, endurance or power of man or beast. *Id.* Bookmaking is a misdemeanor punishable by a fine of one thousand dollars, imprisonment in the county jail not to exceed six months, or by fine and imprisonment. Idaho Code Ann. § 18-3809 (2009). A person is also guilty of the crime of bookmaking and pool selling, if they are hired for the purpose of receiving, registering or recording money or something of value for the purpose of having it wagered. *Id.* A person who permits the conduct of bookmaking or pool selling on premises that they own, lease, rent or occupy will also be found guilty of the misdemeanor of bookmaking,

unless it can be shown that the person was unable to prevent the use of the property for said illegal purpose. *Id.*

III. Specific Gaming Device Definitions

Slot machines

Slot machines of any kind are illegal gambling devices under Idaho law. Idaho Code Ann. § 18-3810 (2009). However, possession of an antique slot machine is permitted. *Id.* Antique slot machines are those devices manufactured prior to 1950, “the operation of which is exclusively mechanical in nature and is not aided in whole or in part by any electronic means.” *Id.*

Possession and sale of antique slot machines for display purposes is permissible; however, an antique slot machine cannot be operated for any purpose. *Id.* In *MDS Investments, Inc. v. State*, MDS Investments challenged section 18-3810 definition of slot machines arguing their video gaming machines did not qualify as an illegal slot machine. 65 P.3d 197 (Idaho 2003). The Idaho supreme court stated that a “device is still a slot machine even though the player uses a token, bill, or credit account to place a bet, and the machine pays winnings by dispensing a token or receipt by adding credits to the player’s account.” *Id.* at 203. MDS Investment’s machine operates by the player inserting money which activates the video screen to display twenty credits to each dollar paid and the machine also dispenses a sports trading card. *Id.* Each play requires a bet of eight credits and “the computer determines, solely by chance, whether the play wins, and if so, how many credits he or she wins.” *Id.* Termination of play, by the player, allows the player to redeem the credits for value of five cents per credit. *Id.* The Idaho supreme court affirmed the district court hold that the machines constituted illegal gambling devices as defined in section 18-310 and constituted illegal gambling because the elements of prize, chance and consideration were all present. *Id.*

IV. Bucket Shop Laws

Idaho does not have a statutory, case law, or attorney general opinion definition governing bucket shops.

V. Prohibition of Games of Skill

Crime and punishment laws of the Idaho Penal Code governing pool & billiard halls have been repealed. This includes section 18-1201: Pool and billiard halls; section 18-1202: Use of screens on pool and card rooms and confectionaries; and section 18-1203: Minors – Loitering about pool halls prohibited.

VI. Express Exemptions

1. Bingo and Raffles:

Idaho code permits bingo and raffles to be conducted in the state but provides that they “must be strictly controlled and administered, [as] it is in the public interest for the state to provide for the administration of charitable bingo games and raffles to protect the public from fraudulently conducted bingo games and raffles.” Idaho Code Ann § 67-7701 (2009). Idaho further desires to create assurances that charitable groups realize profits from these games and to provide guidelines that the expenditure of proceeds from such games are for charitable purposes. *Id.*

a. Bingo

Bingo is defined as “the traditional game of chance played for a prize determined prior to the start of the game.” Idaho Code Ann. § 67-7702 (2009). Upon approval by the bingo-affle advisory board, other versions of bingo may be offered by the licensee where the players select their own numbers “if the cards used to conduct the games have controls that provide an audit trail adequate to determine all winning number combinations.” *Id.* Instant bingo games are not permitted as they are a game of chance, prepackaged in nature and “the winner is determined by the appearance of a preprinted winning designation on the bingo card.” *Id.* A raffle is a game played by the drawing of a name or number of a person who purchase a chance or chances to win the prize. *Id.*

Persons under the age of eighteen cannot play bingo where the cash prize offered in the game exceeds twenty-five dollars. Idaho Code Ann. § 67-7707 (2006). Also, persons under eighteen years of age cannot play in a bingo game operated by a licensed charitable or nonprofit organization. *Id.*

Session and prize limits are placed on the conduct of bingo games held by nonprofit or charitable organizations. Charitable and nonprofit organizations cannot hold more than three sessions of bingo per week each lasting no longer than eight hours per day. Idaho Code Ann. § 67-7708 (2009). Maximum prizes offered in a bingo game, after July 1, 1997 is promulgated by rule by the state lottery commission. *Id.*

b. Raffles

Charitable organizations are limited to twelve raffles per year, however this limitation does not apply to public or private elementary or secondary schools located in Idaho. Idaho Code Ann. § 67-7710 (2009). For one raffle, excluding holiday Christmas tree fundraisers and duck races, the maximum value of a cash prize cannot exceed one thousand dollars. *Id.* Duck races have no limit on the value of a cash prize that is underwritten by insurance; if the cash prize is not underwritten then the maximum cash value is one thousand dollars. *Id.* In a holiday Christmas tree fundraiser there is no maximum value that a tree may be raffled for. *Id.* However, in any type of raffle, if the prize is merchandise not redeemable for cash then there is not limit on the maximum value. *Id.*

c. Licensing

Licensing is required for the conduct of bingo where the charitable or nonprofit organization conducting the game has gross annual bingo sales of ten thousand dollars or more. Idaho Code Ann. § 67-7713 (2009). Raffles conducted by charitable or nonprofit organizations require licensing where the “maximum aggregate value of the merchandise exceeds one thousand dollars.” *Id.*

Licensing must also be obtained, from the state lottery commission for vendors of bingo and raffle equipment. Idaho Code Ann. § 67-7715. Vendors are those persons or entities who “manufacture, sell, distribute, furnish or supply to any person or entity any gaming device, equipment or material, in this state or for use in this state.” *Id.* Distributors of bingo and raffle equipment must also receiving licensing under this section of Idaho law. Idaho Code Ann. § 67-7718 (2009).

2. **Pari-Mutuel Wagering on Horse Races:**

Idaho permits, via the Idaho racing act, pari-mutuel wagering on horse races. *See* Idaho Code Ann. § 54-2501 (2009). The legislative intent behind the creation of the Idaho racing act was only to govern licensing and regulation of horse racing to the extent that the races are accompanied pari-mutuel wagering. *Idaho Quarterhorse Breeders Ass’n v. Ada County Fair Bd.*, 612 P.2d 1186, 1187 (Idaho 1980). Pari-mutuel wagering is a system “whereby wagers with respect to the outcome of a race are placed with, or in, a wagering pool conducted by a person licensed or otherwise permitted to do so under state law, and in which the participants are wagering with each other and not against the operator.” Idaho Code Ann. § 54-2502 (2009). Pari-mutuel wagering is the only authorized and lawful form of bet-making under this act; any behavior allowing for bookmaking, pool selling or circulation of handbooks that allow for bets or wagers to be placed on a race outside of the pari-mutuel system is unlawful. Idaho Code Ann. § 54-2512 (2009).

In order to hold race meet’s under this Act a licensed must be issued by the commission. Idaho Code Ann. § 54-2508 (2009). A license issued pursuant to this act will set forth the kind and character of the race meets, the number of days a race meet can be held for and the number of races to be conducted per day. *Id.* Wagering on simulcast races may also be conducted by license holders. *Id.*

The Idaho Racing Act sets forth that at least one race per day at a race must only be open to horses bred within the state of Idaho. Idaho Code Ann. § 54-2510 (2009). The purpose behind this requirement is to encourage the breeding of valuable thoroughbred, purebred and registered horses within the state. *Id.* Furthermore, ten percent “of the first money of every purse won by an Idaho bred horse shall be paid by the licensee conducting the race meet to the breeder of such horse.” *Id.*

3. **Pari-mutuel Wagering on Dog Races**

Section 54-2514(A) provides that dog racing is now illegal after the Idaho Racing Act became effective. The section provides in pertinent part:

[L]ive dog races and pari-mutuel betting on such races or the training of dogs to compete in live dog races shall be illegal in the state of Idaho [T]he provisions of this section shall not be deemed to alter or affect simulcasts and simulcast pari-mutuel wagering at a facility that was licensed and authorized prior to January 1, 1996, to conduct live dog races and pari-mutuel wagering on them prior to the effective date of this act . . . Any person participating or conducting a live dog race or pari-mutuel betting on such a live dog race or the training of dogs to compete in live dog races in violation of this section shall be guilty of a felony.

4. **State Lottery**

Idaho residents first passed an initiative to authorize a state lottery in 1986; however, the initiative was subsequently declared unconstitutional by the Idaho Supreme Court. Idaho Lottery, <http://www.idaholottery.com/lohist.asp>. Then, in 1988 a state lottery was again authorized and this time the court did not intervene and declare the decision unconstitutional. *Id.* By November 1988, the Idaho Lottery act became law. *Id.*

The director, under the Idaho Lottery act may select people to be lottery game retailers who will best promote the sale of tickets or share. Idaho Code Ann. § 67-7412 (2009). Factors to aid in selecting a lottery retailer include the financial responsibility of the retailer; security of the premises; accessibility of the business; reputation; and projection sales volumes for that retailer. *Id.* The retailer of lottery tickets cannot be a natural person under the age of eighteen. *Id.* Lottery game retailer's cannot transfer or assign their rights as a retailer nor can they be exclusively engaged in the business of lottery ticket sales. *Id.* A lottery game retailer cannot sell tickets or shares unless the retailer's certificate of authority is on public display. Idaho Code Ann. § 67-7416 (2009).

Idaho Lottery permits lotto games, including, Powerball, Wild Card 2, Idaho Pick 3, as well as a variety of instant scratch and pull tab games. Idaho Lottery, <http://www.idaholottery.com/pulltab.asp>.

VII. **Specific Internet Prohibition**

Idaho does not have statutory, attorney general opinions, or case law governing Internet gambling activity.

VIII. **Penalties for Unlawful Gambling/Gaming Crimes**

1. **Gambling Prohibited:**

Gambling is punishable as a misdemeanor. Idaho Code Ann. § 18-3802 (2009). A person is guilty of this crime by participation in gambling or by knowingly permitting gambling "to be

played, conducted or dealt upon or in any real or personal property owned, rented, or under the control of the actor, whether in whole or in party.” *Id.*

2. **Bookmaking & Pool Selling:**

Bookmaking is a misdemeanor punishable by a fine of one thousand dollars, imprisonment in the county jail not to exceed six months, or by fine and imprisonment. Idaho Code Ann. § 18-3809 (2009).

3. **Possession of Slot Machines:**

A person who possesses, operates, keeps, sells or maintains a slot machine in the state of Idaho is guilty of a misdemeanor. Idaho Code Ann. § 18-3810 (2009). However, the crime of possession of a slot machine does not apply to antique slot machines. *Id.* Antique slot machines are those devices manufactured prior to 1950, “the operation of which is exclusively mechanical in nature and is not aided in whole or in part by any electronic means.” *Id.* Possession and sale of antique slot machines for display purposes is permissible, however, an antique slot machine cannot be operated for any purpose. *Id.*

4. **Moral nuisances – Building where gambling is carried on**

Idaho code sets forth that the use of a building, place or grounds for gambling is a moral nuisance. Idaho Code Ann. § 52-106 (2009).

Any building, place, or the ground itself, wherein or whereon gambling or any game of chance for money, checks, credit or other representatives of value is carried on or takes place, or gambling paraphernalia is kept, or any notice, sign or device advertising or indicating the existence or presence of such gambling or any game of chance is displayed or exposed to view, is declared a moral nuisance and shall be enjoined and abated as provided by law. *Id.*

A moral nuisance is defined by Idaho law as a “nuisance which is injurious to public morals.” Idaho Code Ann. § 52-103 (2009). In *State v. Garden City*, the operation of gambling devices and machines to be a moral nuisance. 265 P.2d 328 (Idaho 1953). Some of the devices at issue in this case included punch boards, chance spindles and chance prize games. *Id.* at 330.

5. **Lottery:**

Any person who “contrives, prepares, sets up, proposes, or draws any lottery” as defined by section 18-4901 of the Idaho code is guilty of a misdemeanor. Idaho Code Ann. § 18-4902 (2009). Engaging in the sale, furnishing or transference of a ticket, chance or interest that is dependent upon the event of an illegal lottery is punishable as a misdemeanor. Idaho Code Ann. § 18-4903 (2009). A misdemeanor is also committed by assisting or aiding another in the printing, publishing, managing, drawing, or advertising of an illegal lottery. Idaho Code Ann. § 18-4904. Maintenance of a lottery office, including opening, setting up and keeping an office for

a lottery is a misdemeanor. Idaho Code Ann. § 18-4905 (2009). Maintenance of an office can be a misdemeanor for the person who set up the office as well as person who maintains the office for another individual. *Id.* Maintenance of an office for lottery purposes may include activities such as the sale of tickets, advertising, and publishing of the lottery. *Id.* An owner of property who knowingly permits the premises to be used in furtherance of an illegal lottery is guilty of a misdemeanor. Idaho Code Ann. § 18-4908 (2009).

IX. Statute of Anne/Recovery of Debts

Idaho case law establishes the precedent that the state's courts will not enforce contracts arising out of gambling debts. In *Fowler v. Cheirrett*, the plaintiff filed suit against defendant to recover a wager won in a pool game, the defendant countered with a claim to recover an amount won in a card game that plaintiff never paid. 205 P.2d 502 (Idaho 1949). The court held that they would not enforce the original indebtedness nor the indebtedness that stemmed from a compromise in settlement between the parties. *Id.* "The rule is that where the original promise is tainted with illegality the taint of illegality cannot be removed by a new promise, based on the alleged consideration of the old one." *Id.* at 503.