

## **KENTUCKY**

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

#### **1. Definition**

“Gambling means staking or risking something of value upon the outcome of a contest, game, gaming scheme, or gaming device which is based upon an element of chance, in accord with an agreement or understanding that someone will receive something of value in the event of a certain outcome. A contest or game in which eligibility to participate is determined by chance and the ultimate winner is determined by skill shall not be considered to be gambling.” Ky. Rev. Stat. Ann. § 528:010(3) (1999m & Supp. 2009).

“Something of value” includes a privilege of playing at a game or scheme without charge. Ky. Rev. Stat. Ann. § 528.010(9).

The statutory language seems to indicate the ‘any chance’ scheme. Older cases are in accord with this interpretation. *See Smith v. Harris*, 102 S.W.2d 385, 386 (Ky. 1936) (despite skill, element of chance still remained in pinball game).

*But see* 93 Op. Att’y Gen. 58 (1993) (the dominant factor rule is in effect in Kentucky); citing 80 Op. Att’y Gen. 409 (1980); and 92 Op. Att’y Gen. 127 (1992); *See also* 05 Op. Att’y Gen. 003 (2005) (to be a “lottery” the winner must be chosen “purely by chance”). The current Attorney General, who issued this opinion, seems in favor of allowing the legislature to expand gambling in the state, despite a constitutional provision preventing “lotteries.” By strictly construing the “purely by chance” language, many casino games would not fall under the constitutional prohibition.

Ky. Rev. Stat. Ann. § 528.010(5): “Lottery and gift enterprise” means:

A gambling scheme in which:

1. The players pay value for chances, represented by numbers or by some other media, one or more of which are to be designated the winning ones; and
2. The ultimate winner is to be determined by a drawing or by some other method based upon the element of chance; and
3. The holders of the winning chances are to receive something of value. A gift enterprise or referral sales plan which meets the 3 elements of a lottery above is a lottery.

#### **2. Exemptions**

Licensed charitable gaming is expressly excluded from the definition of gambling. Ky. Rev. Stat. Ann. § 528.010(3).

The attorney general recognizes the alternative free method of entry exemption. A McDonald's promotional scheme is not a lottery and is not in violation of Ky. Const. § 226 (2002) and Ky. Rev. Stat. Ann. Ch. 528. Anyone can play in the game, even non-purchasers. 81 Op. Att'y Gen. 259 (1981).

In a promotional scheme, fact that some of the participants in fact make purchases does not, in and of itself, constitute consideration supporting a lottery; legal because chances to participate are given away on a reasonably equal basis. 81 Op. Att'y Gen. 146 (1981).

## **II. Definition of Bookmaking**

"Bookmaking means advancing gambling activity by unlawfully accepting bets upon the outcome of future contingent events from members of the public as a business." Ky. Rev. Stat. Ann. § 528.010(2)(2009). Section 528.010(1) says that "[a] person advances gambling activity when, acting other than as a player, he engages in conduct that materially aids any form of gambling activity." Examples of such conduct are also given. A person involved in bookmaking is statutorily declared *not* to be a "player." Ky. Rev. Stat. Ann. § 528.010(7)(2009).

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

Ky. Rev. Stat. Ann. § 528.010(4)(2009) defines Gambling device. The following is a *summary* of that definition:

(a) Any slot machine or other mechanical device, an essential part of which is a drum or reel, and which may deliver, as a result of the application of an element of chance, any money or property or

(b) Any other device, including but not limited to roulette wheels, gambling tables and similar devices, primarily for use in connection with gambling and which when operated may deliver, as the result of the application of an element of chance, any money or property;

(c) But, the following shall not be considered gambling devices within this definition:

1. Devices on licensed racetracks
2. Pinball machines if they only award free games and store no more than 30 free games
3. Devices used in the conduct of charitable gaming

A "punch board" allowing an individual to purchase a twenty-five cent punch on the chance he will win between five and fifty dollars is a gambling device as defined in Ky. Rev. Stat. Ann. § 520.010(4) (2009). 84 Op. Att'y Gen. 187 (1984).

## **IV. Bucket Shop Laws**

There is no current statute on the subject, but old cases declare bucket shops illegal. Where the keepers of a house permit persons to regularly assemble and engage in betting, winning and

losing money or property on the prospective rise and fall in stocks, bonds and grain, the house is a common gambling house and the keepers of such house are guilty of keeping a disorderly house. (Annotation from former Ky. Rev. Stat. Ann. 436.240). *Kneffer v. Commonwealth*, 22 S.W. 446 (Ky. 1893).

The most recent case is *Johnson v. John Clark & Co.*, 6 S.W.2d 1048 (Ky. 1927). It holds that bucket shop transactions are pure gambling transactions and thus illegal.

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

It appears that any person who pays to participate in a shooting match with the hope of winning a prize of greater value than the cost of participation would be in violation of this section. (Annotation from former Ky. Rev. Stat. Ann. § 436.200). 56 Op. Att’y Gen. 39173 (1956).

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

Kentucky does not have any statutory authority, attorney general opinions, or case law regarding poker or card games.

### **2. Dice**

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

### **3. Billiards**

One who knowingly allows betting on pool games played on pool tables under his control and on premises under his control, may be convicted under this section or for the offense denounced by Ky. Rev. Stat. Ann. § 436.250. (Annotation from former Ky. Rev. Stat. Ann. 436.300). *Allison v. Commonwealth*, 298 S.W. 680 (Ky. 1927). Although the statute has changed, the new version, Ky. Rev. Stat. Ann. § 528.070 (2009), would seem to continue this as an offense.

### **4. Bowling**

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

### **5. Darts**

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

## **VI. Express Exemptions**

### **1. Social Gaming**

“[T]he person who arranges a social game of chance is not subject to criminal liability.” Comments to Ky. Rev. Stat. Ann. § 528.020 (2009). This is consistent with the statutory scheme of ignoring players and going after only for-profit gambling enterprises.

## 2. Charity Gaming

The Kentucky Constitution allows a state lottery and charitable gaming; all other lotteries and gift enterprises are forbidden. Ky. Const. § 226.

All law enforcement agencies must notify the Office of Charitable Gaming of any investigation or prosecution of any violation of the charitable gaming laws as soon as reasonably possible. Ky. Rev. Stat. Ann. § 15.728 (2009).

Ky. Rev. Stat. Ann. §§ 238.010 to 238.410 contained the old regulations; they have all been repealed and the new charitable regulations are found in Ky. Rev. Stat. Ann. §§ 238.500 to 238.995 (2009). The statutes recognize the importance of charitable gaming, but also desire “to prevent the commercialization of charitable gaming.”

Since the state could prohibit gambling entirely, it clearly could put limits on charitable gaming which could not be put on other legitimate enterprises. *Com. v. Louisville Atlantis Community/Adapt, Inc.*, 971 S.W.2d 810 (Ky. Ct. App. 1997).

The "Bingo Licensing Act", which provided, inter alia, that cities could in certain instances license certain organizations to operate bingo games with the net proceeds of the games to be donated to educational, charitable, patriotic or religious uses, was invalid under constitutional section forbidding lotteries and gift enterprises. *Otto v. Kosofsky*, 476 S.W.2d 626 (Ky. 1971). The constitution authorizes charity events, but not events held by non-charities, even if for the benefit of charity.

"Charitable gaming" means bingo, charity game tickets, raffles, and charity fundraising events conducted for fundraising purposes by charitable organizations licensed and regulated under the provisions of this chapter. Charitable gaming shall not include slot machines, electronic video gaming devices, wagering on live sporting events, or simulcast broadcasts of horse races. Ky. Rev. Stat. Ann. § 238.505(2009).

Ky. Rev. Stat. Ann. § 238.510(2009) creates the Office of Charitable Gaming. Ky. Rev. Stat. Ann. § 238.535(2009) discusses licensing and exemptions. The major exemption is for charities with gross annual receipts under \$25,000. Bingo is specifically authorized.

The other sections of the charity statutes regulate such matters as powers of the Office, composition of the board, background checks, licensing, distributor licensing, frequency of events, prize limits, time limits, accounting, reporting, and related matters. It is also interesting to note that a person under 18 may participate in a charity bingo event if accompanied by a parent.

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

Kentucky does not have any statutory authority, attorney general opinions, or case law granting a chucky cheese exemption.

### **4. Commercial Gaming**

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

### **5. Lottery**

The Kentucky Constitution allows a state lottery and charitable gaming; all other lotteries and gift enterprises are forbidden. Ky Const § 226. A plan whereby customers of a tailor obtained chances to obtain free suits of clothes at weekly drawings was a “lottery” or “gift enterprise” under constitutional and statutory provisions prohibiting the operation of lotteries and gift enterprises. *Worden v. City of Louisville*, 131 S.W.2d 923 (Ky. 1939).

The lottery statutes are located in Ky. Rev. Stat. Ann. §§ 154A.010 to 154A.990 (1999 & Supp. 2009). Ky. Rev. Stat. Ann. § 154A.020(2009) creates the state lottery and the Kentucky Lottery Corporation. Ky. Rev. Stat. Ann. § 154A.030(2009) details the requirements of the board for the lottery corporation (8 members). More rules governing the board follow in the subsequent sections.

Ky. Rev. Stat. Ann. § 154A.063(2009), prohibits the board from utilizing amateur sports in any way. It also prevents the board from authorizing “any casino or similar gambling establishment” or “any game played with playing cards, dice, dominos, slot machines, roulette wheels, or where winners are determined by the outcome of a sports contest.”

The remainder of the sections list various restrictions, requirements, and provisions relating to president of the lottery corporation, background checks, administrative procedures/remedies, prize rules, funding, retailer regulations, gifts (including retailer promotional gifts), disclosure, criminal penalties, and other related matters.

Under Ky. Rev. Stat. Ann. § 164.774 (1999 & Supp. 2009), certain types of loan debts are withheld from a player’s winnings.

### **6. Horseracing/Greyhound racing**

Ky. Rev. Stat. Ann. T. XIX, Ch. 230, Refs & Annos (2003):

Executive Order Note: 2004 c 191, § 58, eff. 7-13-04, confirmed Executive Order 2004-030, issued 1-6-04, which directed the abolition of the Kentucky Racing Commission and thereafter established within the Environmental and Public Protection Cabinet the Kentucky Horse Racing Authority.

Ky. Rev. Stat. Ann. §§ 230.210 through 230.990 contain the horseracing provisions. “[I]t is the policy and intent of the Commonwealth to foster and to encourage the business of legitimate horse racing with pari-mutuel wagering . . . .” Ky. Rev. Stat. Ann. § 230.210(2009).

The purpose of the Racing Authority is to regulate racing and the wagering upon racing. Ky. Rev. Stat. Ann. § 230.225 (2009).

Licensure by the Racing Authority is necessary to conduct a horse race. Ky. Rev. Stat. Ann. § 230.280(2009). Simulcasting also requires licensure. Ky. Rev. Stat. Ann. § 230.300(2009). Participants in the race, as well as vendors that are present during a race all need to be licensed also. Ky. Rev. Stat. Ann. § 230.310(2009).

Licensed racetracks may obtain temporary liquor licenses despite other statutory provisions. Ky. Rev. Stat. Ann. § 230.350(2009).

Ky. Rev. Stat. Ann. § 230.3751 (2009), regulates pari-mutuel compacts with other states.

Ky. Rev. Stat. Ann. §§ 230.378 -230.379 (2009), regulate telephone account wagering. It is permitted in most scenarios as long as the person calling has an established account with funds already in it.

Ky. Rev. Stat. Ann. §§ 230.775 - 230.885 (2009) regulate hubs. International wagering hubs: a business which, through a qualified subscriber-based service, conducts pari-mutuel wagering on the horse races that it simulcasts and other races that it carries in its wagering menu. Up to four can be in the state at any one time. They cannot accept wagers that can otherwise be made in the state; if a wager can be made live at a track in the state, or through a telephone account, then it must be made in that manner and not through a hub.

The other statutes in the racing section regulate other aspects of the industry including, but not limited to, hiring of personnel, Attorney General representation, powers of the Racing Authority, taxes, funds, and penalties.

There is a “presumption that a trainer was primarily responsible for protecting his horses from prohibited drugs or medications.” *Deaton v. Kentucky Horse Racing Authority*, No. 2003-CA-002485- MR, 2004 WL 2756231, at \*1 (Ky. Ct. App. Dec. 3, 2004).

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

Exemption of this section of organized race tracks refers to race tracks where horse races only are run; wagering on dog races in such enclosures may be enjoined as a nuisance; this section also applies to betting and pool selling conducted on a race track as in places elsewhere. *Erlanger Kennel Club v. Daugherty*, 281 S.W. 826 (Ky. 1926).

## **VII. Specific Internet Prohibition**

Kentucky does not have any statutory authority, attorney general opinions, or case law regarding internet gaming.

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

Kentucky has a strong policy against unauthorized gaming; “[e]very peace officer shall take an oath that he will endeavor, to the best of his ability, to detect and prosecute all gamblers and others violating the laws against gaming.” Ky. Rev. Stat. Ann. § 62.040 (2009).

Under Ky. Rev. Stat. Ann. § 154A.990 (2009) (located with the lottery statutes), the following acts are made criminal:

- Selling a lottery ticket to a minor (under 18): Class B Misdemeanor
- With intent to defraud, falsely make/alter/forge/utter/pass/counterfeit a state lottery ticket: Class C felony
- Influences (or attempt) the winning of a prize through the use of coercion, fraud, deception, or tampering with lottery equipment or materials: Class B felony
- Several sections of the lottery code are also listed along with their respective penalties ranging from misdemeanors to felonies

Under Ky. Rev. Stat. Ann. § 230.990 (2009) (located in the horse racing statutes), the following acts are made criminal:

- A person is guilty of tampering with or interfering with a horse race when, with the intent to influence the outcome of a horse race, he uses any device, material, or substance not approved by the Kentucky Horse Racing Authority on or in any participant involved in or eligible to compete in a horse race to be viewed by the public: Class C felony
- The other offenses are references to specific horse racing statutes and the penalties range from misdemeanors to felonies.

Under Ky. Rev. Stat. Ann. § 238.995 (2009) (located with the charitable gaming statutes), the following acts are criminal:

- Willfully conduct, without the required license, any activity which under this chapter requires a license: Class A misdemeanor; Class D felony for second offense.
- Make any materially false or misleading statement in making application for licensure or in submitting reports required under this chapter, or any person who willfully fails to maintain records or make entries required under this chapter, or any person who willfully refuses to produce for inspection any books, documents, or records required under this chapter: Class A misdemeanor; Class D felony for second offense.

- Engage in conduct designed to corrupt the outcome of any charitable gaming activity with purpose to defraud or knowing that he is facilitating a fraud: Class A misdemeanor if the amount involved is less than three hundred dollars (\$300); Class D felony if three hundred dollars (\$300) or more.
- Knowingly divert charitable gaming funds from legitimate charitable purpose to his financial benefit: Class A misdemeanor if the amount involved is less than three hundred dollars (\$300); Class D felony if three hundred dollars (\$300) or more.
- Falsify, alter, erase, obliterate, delete, remove, destroy, or omit an entry in the business records of a charitable organization: Class A misdemeanor.

A person's acceptance of wagers on sporting events is an overt act under Ky. Rev. Stat. Ann. § 506.050 (2009), the conspiracy statute. *Commonwealth v. Speakes*, 740 S.W.2d 941 (Ky. 1987).

Ky. Rev. Stat. Ann. § 506.120(2009) is as criminal syndicate preventing organized crime; essentially any gambling offense qualifies a person for conviction of this statute if the other requirements are met (such as that the activity be conducted by 5 or more persons). Class B felony.

A player could be guilty under Ky. Rev. Stat. Ann. § 525.090 (2009) Loitering, which says:

(1) A person is guilty of loitering when he:

(a) Loiters or remains in a public place for the purpose of gambling with cards, dice or other gambling paraphernalia . . . Loitering is an infraction.

The gaming crime statutes in Ky. Rev. Stat. Ann. §§ 436.200-436.430 were repealed and replaced by Ky. Rev. Stat. Ann. §§ 528.010-528.120 in 1974. Under the new statutes, there is **no criminal liability for a mere player**. Ky. Rev. Stat. Ann. T. L, Ch. 528, Refs & Annos. "The status of a 'player' shall be a defense to any prosecution under this chapter." Ky. Rev. Stat. Ann. § 528.010(7)(2009). But a blackjack dealer (the house) is not a player; this is compensation for operating the game. *Meader v. Com.*, 363 S.W.2d 219 (Ky. 1962).

Promoting gambling in the first degree: knowingly advance or profit from unlawful gambling activity by: (a) engaging in bookmaking with 3 or more persons and accepting more than \$500 in a day; or (b) Receiving lottery money or records from a non-player or receiving \$500 or more; (c) Setting up and operating a gambling device Class D Felony; Ky. Rev. Stat. Ann. § 528.020(2009).

Promoting gambling in the second degree: knowingly advance or profit from unlawful gambling activity; Class A Misdemeanor; Ky. Rev. Stat. Ann. § 528.030 (1999 & Supp. 2009).

Conspiracy to promote gambling does not merge into this offense. *Com. v. Speakes*, 740 S.W.2d 941 (Ky. 1987).

Social games of bingo, where no one gets a cut, violate this rule. 75 Op Att’y Gen 324.

Conspiracy to promote gambling: conspire to advance or profit from gambling activity. Class D Felony. Ky. Rev. Stat. Ann. § 528.040(2009). *See also* Ky. Rev. Stat. Ann. § 506.040(2009).

Possession of gambling records - first degree: with knowledge of the contents thereof, possess any writing, paper, instrument or article of a kind commonly used: (a) In bookmaking and representing bets totaling more than \$500; or (b) In the operation of a lottery and representing more than 500 plays or chances therein.

*Defenses*: (a) The writing, paper, instrument or article represented bets of the defendant himself in a number not exceeding ten (10); or (b) The writing, paper, instrument or article was neither used nor intended to be used in the operation of a bookmaking scheme or playing of a lottery.

Class D felony. Ky. Rev. Stat. Ann. § 506.050(2009).

“[D]efendant must be shown to have knowledge of the content of the item, but possession is prima facie evidence of such knowledge as provided in Ky. Rev. Stat. Ann. § 528.090(2009). Comments to Ky. Rev. Stat. Ann. § 506.050(2009).

Possession of gambling records - second degree: with knowledge of the contents thereof, possess any writing, paper, instrument or article of a kind commonly used: (a) In bookmaking; or (b) In the operation of a lottery.

*Defenses*: (a) The writing, paper, instrument or article represented bets of the defendant himself in a number not exceeding ten (10); or (b) The writing, paper, instrument or article was neither used nor intended to be used in the operation of a bookmaking scheme or playing of a lottery.

Class A Misdemeanor. Ky. Rev. Stat. Ann. § 506.060(2009).

Permitting Gambling: having possession or control of premises which he knows are being used to advance gambling activity, he fails to halt or abate or attempt to halt or abate such use within a reasonable period of time.

Class B Misdemeanor. Ky. Rev. Stat. Ann. § 506.070(2009).

Possession of gambling device: with knowledge of the character thereof, manufacture, sell, transport, or possess a gambling device believing that it is to be used in the advancement of unlawful gambling .

Class A Misdemeanor.

Unlawful transaction with a minor - second degree: knowingly induce, assist, or cause a minor to engage in illegal gambling activity. Ky. Rev. Stat. Ann. § 530.065 (2009).

Class D Felony.

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

“Every contract, conveyance, transfer or assurance for the consideration, in whole or in part, of money, property or other thing won, lost or bet in any game, sport, pastime or wager, or for the consideration of money, property or other thing lent or advanced for the purpose of gaming, or lent or advanced at the time of any betting, gaming, or wagering to a person then actually engaged in betting, gaming, or wagering, is void.” Ky. Rev. Stat. Ann. § 372.010 (2009).

Checks written to off-track betting establishment to cover lawful gambling debts during betting process, promissory note made to cover checks, and any verbal assurances to pay were void and unenforceable under statute prohibiting gambling contracts. *Kentucky Off-Track Betting, Inc. v. McBurney*, 993 S.W.2d 946 (Ky. 1999). Legalization of wagering on horse races and off-track betting did not preclude enforcement of statute prohibiting enforcement of agreements to lend money or advance credit entered into during gambling process.

But then came Ky. Rev. Stat. Ann. § 372.005(2009). “The terms and provisions of this chapter do not apply to betting, gaming, or wagering that has been authorized, permitted, or legalized, including, but not limited to, all activities and transactions permitted under KRS Chapters 154A, 230, and 238.”

A check or other evidence of indebtedness, based on gambling consideration, is absolutely void, and obligor is not bound to even an innocent holder of instrument for amount thereof. *Dobbs v. Holder*, 242 S.W.2d 605 (Ky. 1951).

A losing gambler who pays can bring suit to recover the losses if initiated within 5 years. Ky. Rev. Stat. Ann. § 372.020(2009).

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

Kentucky does not have any statutory authority, attorney general opinions, or case law granting authority for commercial casino gaming.