

MISSOURI

I. Definition of Gambling

Under Missouri statute a person engages in gambling “when he stakes or risks something of value upon the outcome of a contest of chance or a future contingent event not under his control or influence, upon an agreement or understanding that he will receive something of value in the event of a certain outcome.” Mo. Rev. Stat. § 572.010 (2009). Gambling does not include business transactions when valid under the law of contracts. *Id.* Furthermore, gambling does not include any licensed activity under Missouri statute, nor does it include the playing of an amusement device where the device only confers an immediate right of replay and nothing that can be exchange for something of value. *Id.* The test found within this definition of gambling, is the material element test. In other words, it is unlawful in Missouri to bet on something where chance plays a material element.

Contest of Chance:

Contest of chance includes “any contest, game, gaming scheme or gaming device in which the outcome depends in a material degree upon an element of chance, notwithstanding that the skill of the contestants may also be a factor.” *Id.* In *In re Omega Brand*, a video poker machine was held to be a gambling device, because in playing the poker game the outcome depended “in a material degree upon the element of chance.” 676 S.W.2d 292, 294 (Mo. Ct. App. 1984). Therefore, even though skill was necessary for certain portions of the poker game, the court concluded that the final outcome materially depended on chance.

II. Definition of Bookmaking

Bookmaking is defined under Missouri law as the advancement of gambling activity “by unlawfully accepting bets from members of the public as a business, rather than in a casual or personal fashion, upon the outcomes of future contingent events.” Mo. Rev. Stat. § 572.010 (2009). A person is deemed to be advancing gambling activity when the individual acts not as a player but engages in conduct that materially aids the gambling activity. *Id.* This can include behavior such as establishing gambling games, aiding in the acquisition of equipment or devices or toward any phase of the operation of a gambling activity. *Id.*

III. Specific Gaming Device Definitions

1. Missouri law defines a gambling device as the following:

“[A]ny device, machine, paraphernalia or equipment that is used or usable in the playing phases of any gambling activity, whether that activity consists of gambling between persons or gambling by a person with a machine.” Mo. Rev. Stat. § 572.010 (2006). This definition does not intend to include lottery tickets and other items used in lottery schemes. *Id.*

2. Missouri statute also provides a specific definition for a slot machine.

A slot machine, also a gambling device, operates via the insertion of a coin and either automatically or with the aid of a player, and depending upon the element of chance, the machine may eject something of value. Mo. Rev. Stat. § 572.010 (2006).

3. Craps tables

Although not specifically enumerated in the statute, craps tables have been held to be an illegal gaming device. *State v. Frisby* 214 S.W.2d 553 (Mo. 1948). The table at issue in the case had been designed to play games of chance, dice or craps for money. *Id.* Although the tables had not been manufactured, but instead were crude and homemade, they nonetheless depicted the necessary markings of a gambling device. *Id.*

IV. Bucket Shop Laws

It is apparent from Missouri case law that bucket shops existed in Missouri in the early 1900's. In order to counteract the negative effects of bucket shop activities Missouri enacted the Missouri Bucket Shop Laws (§§ 4316 - 4323) to prohibit, conducting, participating or maintaining bucket shop establishments or activities. It does not appear that the bucket shop laws are in effect today; however, Missouri Statute has not explicitly repealed the laws.

In *Dickson v. Uhlmann Grain Co.*, a 1933 United States Supreme Court case, it is evidenced that Missouri at one time had statutes in effect that governed bucket shops and bucket shop activities. 288 U.S. 188 (1933). Under the 1929 Missouri Revised Statutes, a bucket shop was defined as follows:

[T]ransactions in grain declared to constitute gambling and makes it punishable either to enter into the prohibited transactions or to keep a place where they are entered into . . . a bucket shop is a place wherein the person carrying on the shop goes through the form of buying and selling certain commodities for other persons at prices fixed or pretended to be fixed by trades or transactions made or offered to be made in same on boards of exchange or otherwise, but wherein there is in fact no actual purchase and sale *Id.* at 196.

In *Dickson*, as well as other Missouri cases such as *State v. Christopher*, the courts were faced with the issue of determining how Missouri's bucket shop laws interacted with the Federal Grain Futures Act. *See id.* 2 S.W.2d 621 (Mo. 1927). The Grain Futures Act allowed businesses to make contracts with customers for the sale of grain for future delivery. *Christopher*, 2 S.W.2d 621. In *Dickson*, the United States Supreme Court determined that Missouri's bucket shop statutes were not superseded by or in conflict with the Grain Futures Act; instead the laws could co-exist, the factual situations of each case would clearly distinguish whether the conduct at issue was illegal bucket shop activities or the behavior permitted under the Grain Futures Act. *Dickson*, 288 U.S. 188. In *Dickson* and *Christopher* the U.S. Supreme Court and Missouri's

Supreme Court, respectively, found that the defendant's in both cases were guilty of conducting activities prohibited by Missouri's Bucket Shop Laws. *Id. Christopher*, 2 S.W.2d 621.

V. Prohibition of Games of Skill

"Missourians may legally participate in games or contests of skill or chance where no consideration is required to be eligible for a prize. Many fast-food restaurants offer no-purchase-necessary games in which consumers can obtain free tickets without a purchase." Attorney General of Missouri, *available at*, <http://www.ago.mo.gov/publications/gambling2.htm>.

Billiards:

A keeper of billiard tables must receive licensing from the county commission. Mo. Rev. Stat. § 318.010 (2009). A billiard table includes all similar tables upon which balls and cues are used. *Id.* However, this definition is not intended to include individuals and families who keep the billiard table in their residence and the use is purely persons. Mo Rev. Stat. § 318.070 (2009). Also, this statute excludes a club that keeps billiard tables for use exclusively by club members and there is no charge for playing. *Id.*

A licensed keeper may permit persons under the age of sixteen to play pool in their facility, provided permission is first given from the parent or guardian. Mo. Rev. Stat. § 318.090 (2009). However, if the licensee's establishment is also licensed to serve alcoholic beverages, and the beverages and tables are contained in the same room, then all participants must be over the age of twenty-one. *Id.* This provision does not apply where the tables are located in a different room in the building from where the alcoholic beverages are served. *Id.*

VI. Express Exemptions

1. Bingo:

Legalized by votes in 1980, bingo is the oldest form of legalized gaming in the state. It was the first form of a legal lottery in the state since the enactment of the Missouri Constitution in 1865. Bingo . . . is restricted to certain . . . organizations . . . [and] all bingo proceeds must be used for charitable purposes. *The History of Bingo Games in Missouri, available at*, <http://www.mgc.dps.mo.gov/bingohistory.html>.

The statutes governing bingo games are found in Missouri's Revised Statutes under Chapter 313.

a. Definition of Bingo

A bingo game is defined by the statute as a game in which each participant receives a card (this can include a pull-tab card) that has twenty-five squares arranged with five horizontal rows of five squares. Mo. Rev. Stat. § 313.005 (2009). The squares are each designated with a letter or number with the exception that the center square must be designated "free." *Id.* The numbers or letters called must be selected by chance from a device. *Id.* The winner of the game is the first

individual to properly cover the bingo card in a predetermined pattern and prizes may be awarded to the winner of the game. *Id.*

b. Conducting Bingo games

In order to conduct bingo games, an organization must receive an application from the Missouri Gaming Commission. Mo. Rev. Stat. § 313.010 (2009). The type of organization that may apply to the commission for an application includes, “[a]ny bona fide religious, charitable, fraternal, veteran or service organization.” *Id.* Further requirements are that the organization must be in existence for at least five years prior to applying for a license, and during its existence the organization must have twenty members. *Id.* Eligible organizations, with a maximum of five, may make a joint application to receive one license. *Id.* The commission may also grant abbreviated licenses to organizations that do not conduct more than four bingo occasions per year, where only pull-tab cards are used. *Id.* An organization licensed to conduct bingo games may also conduct progressive bingo games. Mo. Rev. Stat. § 313.013 (2009). A progressive bingo game is defined by this section of the statute as a game where a stated quantity of numbers is called and there is no winner; also called either a coverall or blackout game. *Id.* When a bingo game results in a coverall or blackout the prize may be added to the next bingo occasion. *Id.*

c. Licensing for Bingo manufacturers and suppliers

A Missouri bingo equipment and supplies manufacturer or supplier license must be properly obtained in order for an individual to lawfully manufacture, supply, lease or sell bingo gaming equipment. Mo. Rev. Stat. § 313.057 (2009).

d. Bingo licensee may obtain a liquor license

A bingo licensee who meets all necessary requirements may also lawfully make application to obtain a liquor license. Mo. Rev. Stat. § 313.075 (2009). The sale or consumption of alcohol on the same premises where bingo games are conducted is lawful. *Id.* Since bingo gaming is lawful, the conduct or playing of bingo games is an insufficient reason for refusal or suspension of a liquor license. *Id.*

2. State Lottery:

The State Lottery is operated pursuant to §§ 313.200 – 313.350. Mo. Rev. Stat. § 313.205 (2009). Under this law, the lottery commission may establish lottery games, authorized by written rule, “whereby prizes are distributed among persons who have paid, or have unconditionally agreed to pay, for tickets or shares which provide the opportunity to win such prizes” *Id.* An Attorney’s General Opinion addressed whether it was permissible via the current language of the statute, for a game to be devised whereby the player would predict the outcome of actual sporting events. 1990 Mo. AG LEXIS 5. The opinion stated that since the language of the statute does not prohibit developing such a game, then the Commission has the

authority to develop such a game as long as the elements of prize, chance and consideration are all present. *Id.*

a. Retailers of State lottery games

In order to be a retailer of State lottery games, application must be made to the lottery commission. Mo. Rev. Stat. § 313.255 (2009). The license may be revoked by the commission for a variety of reasons including, insufficient sales volume, change of location, violation of any rule or regulation; or discovery that the licensee is a felon or provided misleading information to the commission. *Id.*

b. Selling to those under the age of Eighteen

Lottery tickets may not be sold to any person under the age of eighteen. Mo. Rev. Stat. § 313.280 (2009). However, this does not prohibit the purchase of a ticket as a gift for a minor by an individual eighteen years of age or older. *Id.* A retailer of lottery tickets can be suspended or forfeit his license for knowingly selling or offering to sell a lottery ticket to a person under the age of eighteen. *Id.*

3. Pari-Mutuel Wagering on Horse Racing:

“Pari-Mutuel Horse Racing was established in the State of Missouri with the enactment of Senate Bill 572 in 1986 To this date no track has been established in the state. The Gaming Commission assumed the responsibility for governing pari-mutuel horse racing from the Missouri Horse Racing Commission in 1997.” Mo. Gaming Comm’n, *Pari-Mutuel Horse Racing*, available at, <http://www.mgc.dps.mo.gov/horse.html>.

a. Where Pari-mutual wagering may take place

“Pari-mutuel wagering shall only be conducted within the grounds or enclosure of a race track licensed by the commission and shall only be conducted with respect to horse races and race meetings which have been authorized by the commission at such licensed race track.” Mo. Rev. Stat. § 313.580 (2009).

b. Licensing

Some guidelines that the commission uses in assessing whether a license should be granted includes the economic feasibility of a racetrack in the desired location, whether the location is in the public interest, the adequacy of the licensee's financing of the operation and whether the proposed licensee is suitable. *Id.* Any occupational license must be obtained by each individual participating in horse racing in any capacity including an employee, concessionaire contract holder, racing official and all other individuals required to be on the racing premises during race hours. Mo. Rev. Stat. § 313.640 (2009). Occupational licenses have a life-span of one year,

unless the commission at its own discretion chooses to grant a three-year license. *Id.* Also, the Commission may refuse to grant an occupational license for a variety of reasons. *Id.*

“At least eighty percent of all individuals employed directly at each and every race meeting by an organization licensed to conduct horse racing . . . shall be residents of the state of Missouri for a period of ninety days precedent the date of employment and during the course of employment.” *Id.* This section is important to note because its primary is the development of job opportunities for Missouri residents.

c. Simulcast horse racing

Simulcast horse racing may be conducted provided it is done so with the approval of the commission and involves only licensed organization’s and will only occur in other states where pari-mutuel wagering is permitted by law. Mo. Rev. Stat. § 313.655 (2009). Although simulcast wagering is permitted, this is vastly different from off-track wagering which is a class C felony. Mo. Rev. Stat. § 313.660 (2009). Off-track wagering occurs when an individual, for a fee, accepts a wager to be delivered as a wager in the pari-mutuel system of wagering on horse races. *Id.*

d. Age requirements

Persons under the age of eighteen are not permitted to enter the racetrack or racetrack enclosure unless accompanied by a parent or guardian. Mo. Rev. Stat. § 313.670 (2009). Also, a minor may not place or attempt to place wagers on any horse races. *Id.* Violation of this section is a class A misdemeanor. *Id.*

4. Excursion Gambling Boats:

a. Types of gambling legally permissible

On excursion gambling boats various types of gambling games may be legally conducted. Gambling games, including those of chance and skill, are permissible on excursion gambling boats. Mo. Rev. Stat. § 313.800 (2009). Permitted games include poker, blackjack, craps, Texas hold’em, video versions of these games, and any game of chance where the player’s expected return is not favorably increased due to the player’s dexterity, information or strategy. *Id.* Games of skill, in addition to those listed, may also be approved by the Commission pursuant to a petition for approval of the game, provided the game is in the best interest of gaming and it is shown by the petitioner that the game is in fact one of skill. *Id.*

b. Licensing

A license must be obtained in order to conduct games on an excursion gambling boat and also to operation an excursion gambling boat. Mo. Rev. Stat. § 313.807 (2009). In order to supply gaming equipment and devices to a licensee of an excursion gambling boat, the supplier must

obtain a license from the Missouri Gaming Commission. *Id.* Also, licenses must be obtained for any occupation within the operations of the excursion gambling boat that the Commission has determined requires appropriate licensing. *Id.*

Since the conduct of playing games on a licensed excursion boat does not constitute illegal gambling, the licensee of such an excursion boat may be eligible to also apply to a liquor license. Mo. Rev. Stat. § 313.840 (2009). Therefore, the division of liquor control does not have the power to prohibit licensing of an excursion gambling boat on the sole basis of gambling activities being conducted therein. *Id.*

c. Wagers

Wagers may only be placed at certain times designated by the Commission. Mo. Rev. Stat. § 313.817 (2009). Also, wagers cannot be placed using negotiable currency; only tokens, chips and other forms of credit may be used. *Id.* The licensee may not accept wagers from any individual not physically present on the boat. *Id.* Persons under the age of twenty-one are not permitted to place wagers on games conducted on excursion gambling boats. *Id.* An employee, however, who is eighteen years of age may be permitted in portions of the boat where gambling is conducted provided it is for employee related purposes and activities. *Id.* Nonetheless, all dealers or individuals who accept wagers in games on the gambling boat must be twenty-one years of age or older. *Id.*

5. Raffles:

In a 1998 Amendment to Missouri's Constitution, raffles and sweepstakes became permissible. Mo. Const Article III § 39(f). The types of organizations that may conduct raffles and sweepstakes are those organizations recognized by federal law as charitable or religious. *Id.*

VII. Specific Internet Prohibition

Missouri has not developed a specific statute prohibiting or governing internet gambling. However, case law indicates that Missouri will punish internet gambling activities under other applicable laws, typically via the securities laws of the state.

Many of the cases arise under the context of hearings before the Missouri Securities and the orders issued pursuant to those hearings are binding. *See* Global Dev. Holdings, 2004 Mo. Sec. LEXIS 13 (2004). *In the Matter of: Global Development Holdings*, Global was a Nevada based corporation acting as the managing partner of a gaming website called Purchaseacasino.com. *Id.* Purchaseacasino.com, also a Nevada business, sells Internet gambling partnerships located offshore. *Id.* As a result of radio advertising for Purchaseacasino.com, a Missouri resident contacted the business in order to invest in a gambling partnership; a second Missouri resident also contacted the business after receiving a packet of information – in the end, neither resident made any investments. *Id.* Subsequently the Missouri Securities Commission received

information the Missouri residents had been offered unregistered securities within the State. *Id.* The hearing before the securities commission held that the Nevada business was not properly authorized or registered to offer or sell securities to Missouri residents. *Id.* Although the residents at issue in this case did not make investments, the business was further prohibited from either selling unregistered securities in Missouri or from selling investments in Purchaseacasino.com in Missouri. *Id.*

In the Matter of: 711.TV, Inc., the Missouri Securities Commission was faced with a Delaware corporation engaged in the business of Internet Gambling. 2002 Mo. Sec. LEXIS 35 (2002). The Missouri resident in this case, however, did in fact make purchases and investments in the Internet Gambling business. *Id.* The securities commission found that the Delaware based business was not engaging in the sale of registered securities in Missouri, omitted material facts making the transactions misleading to the Missouri resident, and conducting transactions as an unregistered agent. *Id.*

VIII. Penalties for unlawful gambling/Gaming crimes

The penalties for engaging in gambling in Missouri are classified by promotion, possession, participation and keeping of a gambling house. Each classification different levels of punishment depending on the degree of the illegality.

1. Gambling:

Participation in gambling is either a class B or C misdemeanor or a class D felony. Mo. Rev. Stat. § 572.020 (2009). The crime of gambling is committed when an individual knowingly engages in gambling and is punishable as a class C misdemeanor. *Id.* However, if the individual is a professional player, the punishment rises to the level of a class D felony. *Id.* Finally, a class B misdemeanor is committed when an individual knowingly engages in gambling with a minor. *Id.*

2. Promoting Gambling:

Promotion of gambling is either a first degree or second degree crime.

a. First degree promotion of gambling occurs where an individual “knowingly advances or profits from unlawful gambling or lottery activity” Mo. Rev. Stat. § 572.030 (2009). This promotion of gambling includes such behavior as setting up and operating gambling devices, engaging in bookmaking, and receiving money or other property of value in connection with an illegal lottery. *Id.* Promotion of gambling in the first degree is punishable as a class D felony. *Id.* In *State v. Deppe*, the defendant was found guilty under this statute for engaging in bookmaking for occupying a house for purposes of conducting a bookmaking operation, even though he had no ownership rights in the house. 286 S.W.2d 776 (Mo. 1956). Occupation, without a showing of ownership rights was all that was necessary in order to satisfy the statute. *Id.*

b. Promotion of gambling in the second degree is a class A misdemeanor. Mo. Rev. Stat. § 572.040 (2009). This crime is evidenced where an individual “knowingly advances or profits from unlawful gambling or lottery activity.” *Id.*

3. Possession of Gambling Records or Devices:

a. Possession of gambling records is either a first or second degree crime.

i. “Possession of gambling records in the first degree is a Class D felony.” Mo. Rev. Stat. § 572.050 (2009). A person is guilty of first degree possession of gambling records, if with knowledge of the contents, the person possesses any gambling records. *Id.* The gambling records must be of the kind use for bookmaking reflecting more than five bets, or the operation or promotion of an illegal lottery. *Id.* In *State v. Taylor*, the defendant was arrested in relation to a drug transaction; his car was seized in relation to the drug deal and in conducting an inventory of the vehicle’s contents a spiral bound notebook containing gambling records was found. 714 S.W.2d 767 (Mo. Ct. App. 1986). The statute was held to mean either actual or constructive possession; defendant was held to have constructive possession of the notebook constituting the gambling records since he was the driver and registered owner of the vehicle. *Id.*

ii. Possession of gambling records in the second degree is punishable as a Class A misdemeanor. Mo. Rev. Stat. § 572.060 (2009). A person is found guilty under this portion of the statute for knowingly possessing gambling records for bookmaking or lottery schemes, with knowledge of the contents therein. *Id.*

b. “Possession of a gambling device is a class A misdemeanor.” Mo. Rev. Stat. § 572.070 (2009).

A person commits this crime when he manufactures, transports, sells, affects ownership or custody of a slot machine or a gaming device that will be used in the State of Missouri for unlawful gambling. *Id.* Also, the person must have knowledge of the character of the machine as a gambling device. *Id.*

4. Gambling Houses:

A public nuisance is created by the use of a house, building, room or any structure for the purpose of unlawful gambling. Mo. Rev. Stat. § 572.090 (2009). If it is found that the owner of the premises knew that the property was being used for unlawful gambling then the court may order that the premises not be occupied for a specified period. *Id.*

IX. Statute of Anne/Recovery of Debts

Missouri state statute indicates that recovery of debts arising from gambling transactions are void. Section 434.010 of the Missouri Revised Statutes provides in pertinent part: “All judgments by confession, conveyances, bonds, bills, notes and securities, when the consideration

is money or property won at any game, gambling device, or by any bet or wager whatever, shall be void and may be set aside and vacated by any court”

Missouri statute is supported by case law indicating the strong dislike that courts have for debts arising out of gambling transactions. Courts have long held that debts arising from gambling activities are void because they do not give rise to a valid contract. In *Saunders v. Baker*, the court said that “indebtedness . . . is fictitious and void because it arose out of gambling transactions Courts will not permit themselves to be made arbiters of the gaming table or lend aid to the enforcement or correction of its results” 99 S.W. 51, 53 (Mo. Ct. App. 1907). The courts will refuse to enforce gambling debts because by doing so an obstacle will be placed in the way of indulgence in the vice of gambling and will consequently protect the public morals. *Id.*

In contrast lies § 434.030 of the Missouri Revised Statutes which states that “[a]ny person who shall lose any money or property at any game, gambling device or by any bet or wager whatever, may recover the same by a civil action.” In *Cox v. Lee* the court said that “one may sue at common law and recover his stake in a bet, provided he repudiates the bet before the happening of the event on which the wager was to be decided and gives timely and proper notice thereof to and makes demand on the other gamester or stakeholder.” 530 S.W.2d 273, 274 (Mo. Ct. App. 1975).

In situations where the gambling loss stems from a minor placing money or property of value as a bet or wager in a game or a gambling device then the parents may sue and recover from the winner any money or property so lost. Mo. Rev. Stat. § 434.060 (2009).