

MONTANA

I. Definition of Gambling

1. Montana Code defines gambling as the following:

The risking of “any money, credit, deposit, check, property or other thing of value for a gain that is contingent in whole or in part upon lot, chance, or the operation of a gambling device or gambling enterprise.” Mont. Code Ann. § 23-5-112 (2009).

2. Gambling does not include:

Participation in or the conducting of a promotional game of chance. *Id.* Amusement games that are regulated by Title 23, chapter 6 of the Montana Code are also excluded from the definition of gambling. *Id.*

3. Essential elements for determining gambling:

The elements of prize, chance and consideration are essential in determining whether an activity is gambling. Consideration is an element of equal importance to the elements of prize and chance. Consideration “represents the earnings which are hazarded in the hope of getting something of greater value. To determine whether a consideration is contemplated by a particular scheme, it is therefore necessary to inquire if a participant is induced to hazard anything of value to win.” State v. Cox, 349 P.2d 104, 107 (Mont. 1960). The language of the court in Cox lends itself to the conclusion that Montana does not categorize free registration for a contest as sufficient consideration to qualify the game as a gambling activity. *See id.*

Montana code provides that unless specifically authorized by statute, “all forms of public gambling, lotteries, and gift enterprises are prohibited.” Mont. Code Ann. § 23-5-151 (2009).

4. Predominance test

Determining whether an activity is one of gambling in Montana requires application of the predominance test. Where chance plays a predominant factor in the outcome of the game, then the game will qualify as gambling. Mont. Code Ann. § 23-5-112 (2009).

II. Definition of Bookmaking

Bookmaking, defined as a person placing a wager on the outcome of an athletic event, is prohibited by Montana Code and qualifies as an illegal gambling enterprise. Mont. Code Ann. § 23-5-112 (2009).

III. Specific Gaming Device Definitions

4. Definition of gambling device

Gambling device is defined by the Montana Code as “a mechanical, electromechanical, or electronic device, machine, slot machine, instrument, apparatus, contrivance, scheme, or system used or intended for use in any gambling activity.” Mont. Code Ann. § 23-5-112 (2009). Prior to the enactment of the chapter authorizing amusement games, an Attorney’s general opinion held that crane games qualified as gaming devices under Montana law. 43 Op. Atty Gen. Mont. No. 39 (1989). At the time of the opinion crane games were not authorized under any other section of the Montana code. *Id.* Based on the fact that the game was an electronic device operated by the risking of money or value for the opportunity to win a prize the Attorney General categorized the machine as a gambling device. *Id.*

2. Definition of illegal gambling device

The Montana Code also defines what constitutes an “illegal gambling device.” An illegal gambling device is a device “not specifically authorized by statute or by the rules of the department.” Mont. Code Ann. § 23-5-112 (2009). Illegal gambling devices include tickets or cards containing concealed numbers, such as pull tabs, punchboards, push cards, tip boards and pickle tickets. *Id.* Also, devices used for illegal gambling enterprises, such as a faro box, faro layout, roulette wheel or table, craps table or slot machine, also constitute illegal gambling devices. *Id.*

3. Slot Machines

Slot machines are defined by the Montana code as mechanical, electrical or electronic devices that operate by the insertion of currency, constituting consideration, allows the player to play or operate the game and through skill of the player or an element of chance the player may become entitled to receive a prize such as cash, merchandise, tokens or anything of value. *Id.* The definition of slot machine does not include video gambling machines authorized by chapter 6 of Title 23. *Id.*

An antique slot machine, characterized as being a mechanically or electronically operated slot machine more than 25 years old, may legally be possessed by an individual. Mont. Code Ann. § 23-5-153 (2009). Possession may be by an individual provided it is located and operated only in a private residential dwelling. *Id.* For display purposes only, and not for operation, an antique slot machine may also be possessed and located in a public or private museum or any other public location provided the machine is no longer operable as a gambling device. *Id.* A person who possesses a slot machine in either of the above two described situations may sell the machine to another person legally entitled to possess the machine. *Id.* Under no circumstances may an antique slot machine be operated for commercial or charitable purposes. *Id.*

IV. Bucket Shop Laws

There is no indication, from either statutory or case law, that Montana ever had bucket shop laws in effect.

V. **Prohibition of Games of Skill**

Gambling enterprises that are not specifically authorized by, or violate, a statute or rule of the department qualify as an illegal gambling enterprise. Mont. Code Ann. § 23-5-112 (2009).

3. **Card games**

Card games that involve a bank or fund from which a player may win money, and that fund receives money or consideration from participants constitutes an illegal gambling enterprise. *Id.* Some of the card games specifically included as an illegal gambling enterprise are blackjack, twenty-one, jacks, baccarat and chemin de fer. *Id.*

2. **Dice Games**

Dice games where wagers are placed on the outcome of a roll of one or more dice, such as craps, chuck-a-luck and hazard constitute illegal gambling enterprises. *Id.*

3. **Credit gambling, internet gambling and sports betting, where a person places a wager on the outcome of an athletic event are all prohibited gambling enterprises. *Id.***

VI. **Express Exemptions**

3. **Shaking dice for a drink or music or in a shake-a-day game:**

In establishments licensed for the sale of alcoholic beverages a customer may shake one or more dice, “alone or with an owner or employee of the establishment, to determine whether the customer or the establishment shall immediately pay for a predetermined amount of money, not to exceed \$2, for music from a jukebox in the establishment.” Mont. Code Ann. § 23-5-160 (2009). A customer may also play the dice game known as shake-a-day at an establishment licensed to sell alcoholic beverages. *Id.* Shake-a-day is a game where the customer, limited to once a day, may pay a predetermined amount of money not to exceed fifty cents and shake a predetermined number of dice “in an attempt to roll certain combinations simulating poker hands predetermined by the establishment.” *Id.* If one of the predetermined combinations is rolled the winning player may win merchandise or a portion of the money contributed to play the game since the last winning combination was rolled. *Id.* All amounts paid in to play the game must be distributed as winnings. *Id.* This provision is not intended to authorize dice games of craps or other dice games. *Id.*

2. **Fishing derbies and wagering on natural occurrences**

A fishing derby is one “in which two or more persons pay valuable consideration for an opportunity to win a prize for the species, size, weight, or otherwise specified fish caught in a fishing event . . .” is an authorized gambling activity. Mont. Code Ann. § 23-5-165 (2009). Other authorized gambling activities include “wagering on the outcome of a natural occurrence in

which two or more persons pay valuable consideration for an opportunity to win a prize by most accurately predicting the date or time of an event resulting from a climatological or meteorological activity.” *Id.* All consideration paid to participate in either of the above gambling activities must be paid to the winners unless the gambling activity is sponsored by a nonprofit organization, who may retain up to fifty percent of the amount paid to participate. *Id.*

3. **Calcutta Pools**

It is lawful to conduct a Calcutta pool in Montana as defined under section 23-5-221. Mont. Code Ann. § 23-5-221 (2009). A Calcutta pool is “a form of auction pool conducted by an organization authorized by the department.” Mont. Code Ann. § 23-5-221 (2009). A Calcutta pool must be an auction pool within the following guidelines:

- a. Person’s wager is equal to his bid;
- b. Proceeds from the pool are contributed to a charitable or nonprofit corporation, association or cause;
- c. The rules of the pool are public posted;
- d. Each competitor is only allowed one wager;
- e. A minimum of fifty percent of the total pool must be paid out in prizes;
- f. Bids or wagers may not be made on elementary or high school sports events; and
- g. The underlying event must have more than two entrants. *Id.*

An Attorney’s general opinion held that a legal Calcutta pool must possess the following characteristics:

- h. Bets must vary in amount and must have been “sold” at an auction;
- i. The auctioneer/house cannot have an interest of any nature in the outcome of the event;
- j. Amount won by a bettor can vary with the size of the pool, and not by odds set by the auctioneer or house;
- k. The pool must be fully subscribed. This means that all competitors in the event must be wagered on so as to prevent the auctioneer/house from having an interest in the outcome of the event;
- l. The rules of the pool prohibit more than one wager per competitor per pool. 42 Op. Atty Gen. Mont. No. 39 (1987).

4. **Licensing to operate card games, sports pools, or video gaming**

“An applicant for a gambling license to operate card games, sports pools, or video gaming must possess a valid liquor license to be eligible to offer gaming.” *Germann v. Stephens*, 137 P.3d 545, 551 (Mont. 2006). The applicant for a license to conduct gambling activities must possess, in the applicant’s name one of the following types of alcohol licenses: a retail license for the sale of all alcoholic beverages; license issued prior to October 1, 1997 for the sale of beer and wine to be consumed on the premises; or “beer and wine license issued in an area outside of an incorporated city or town . . . may offer gambling, regardless of when the license was issued.” Mont. Code Ann. § 23-5-119 (2009).

a. Card Games Act

i. Licensing for alcohol, food, and tobacco

The holder of both an operator’s license under section 23-5-177 and a license to sell alcoholic beverages for consumption on the premises may receive a permit for live card game tables. Mont. Code Ann. § 23-5-306 (2009). If the person does not have a license for sale of alcoholic beverages, they may still qualify for a permit for live card game tables provided: they have been granted an operator’s license; at least one live card game table was legally operated on the premises on January 15, 1989; the premises were licensed to sell food, cigarettes or other consumables on January 15, 1989; and “at the time of application for the permit the person has continuously operated a live card game table on the premises since January 15, 1989”; and the natural person who owns the business operated on the premises is the same person as on January 15, 1989. *Id.* With the enactment of this section, it is clear that it is unlawful to conduct or participate in a card game that is not authorized by this section. *Palmer v. State*, 625 P.2d 550 (Mont. 1981).

ii. Hours

Live card game tables cannot be operated for play between 2 a.m. and 8 a.m. each day unless an ordinance is adopted by the local government in the jurisdiction where the game is conducted. Mont. Code Ann. § 23-5-307 (2005).

iii. Card games

Card games authorized to be conducted under this section are limited to bridge, cribbage, hearts, panguingue, pinochle, pitch, poker, rummy, solo and whist. Mont. Code Ann. § 23-5-311 (2005).

iv. Prizes

Prizes awarded in the conduct of these games cannot exceed a value of \$300 for an individual game. Mont. Code Ann. § 23-5-312 (2005). Unless the game is conducted as a tournament, the prizes must be awarded immediately upon winning a hand. *Id.* The rules that govern the conduct

of each game played must be prominently posted in the view of the players the card tables. Mont. Code Ann. § 23-5-313 (2005). If there is a rake-off then the rules must give notice of the maximum percentage of rake-off along with the requirement “that the person taking the rake-off do so in an obvious manner.” *Id.*

v. Licensing for card games

A licensed operator holding a permit to conduct live card game tables may, upon approval of the department, conduct up to twelve live card game tournaments on a year on the premises. Mont. Code Ann. § 23-5-317 (2009). Approval from the board results in the operating receiving a tournament permit. *Id.* Tournaments can be no longer than five consecutive days, and there must be a period of at least seven days between the conclusion of one tournament and the beginning of the next. *Id.* A copy of the tournament rules must be provided to all participants in addition to being conspicuously posted on the premises where the tournament is conducted. *Id.* Licensed operators may change an entry fee for participant in a tournament. *Id.* Rake-offs are not permitted in tournament games. *Id.*

b. Sports Pools

Montana code defines a sports pool as a gambling activity where a person “wagers money for each chance to win money or other items of value based on the outcome of a sports event or series of sports events” and the competitors in the sports events are either natural persons or animals. Mont. Code Ann. § 23-5-501 (2009). Sports tabs are tickets, that are folded or banded and have a face “covered to conceal a combination of two numbers, with each number ranging from zero through nine.” *Id.* A sports tab game is “conducted on a card to which 100 sports tabs are attached that have 100 different combinations for which consideration in money is paid by the person purchasing a tab.” *Id.* A person, interested in playing a sports tab game may purchase a sports tab from the card for a chance to win money or other prizes of value. *Id.*

There are various rules governing the conduct of sports pools or sports tab games. Included in these rules are the requirement that sports tabs be purchased from a licensed sports tab game seller; the device used for recording the sports pool or tab game must clearly indicate “in advance of the sale of any chances the number of chances to be sold in that specific pool . . .”; the amount that is to be paid to winners and the consideration that must be paid for each chance. *Id.* A chance to participate in a tab game or sports pool cannot exceed five dollars, and each chance must be sold for the same amount. *Id.* The amount paid to all winners in the sports pool or tab game cannot exceed \$500 in value. *Id.* Winners of a sports pool must receive 100% of the payout value. *Id.* However, in a sports tab game the winner must receive at least 90% of the total cost of the sports tab, the remaining money can be used for operation and administrative expenses of the game. *Id.* If the organization operating the sports pool or tab game is a nonprofit then the organization may retain up to 50% of the value of the game or pool. *Id.* Another rule governing sports pools and tab games is that the operator of the game or pool may purchase

changes in the game or pool but cannot: charge a fee for participation; establish odds or handicaps; retain any portion of the amount wagered unless the operator is a nonprofit organization. *Id.*

The seller of sports tabs must obtain a sports tab game seller's license under this section; failure to do so is a misdemeanor. Mont. Code Ann. § 23-5-513 (2009).

c. Video Gaming Machine Control Law

i. Video gaming machines authorization

The following video gaming machines are authorized by the section of the Montana code: bingo machines; keno machines; and poker machines. Mont. Code Ann. § 23-5-602 (2009). A bingo machine is an electronic machine that operates via the insertion of cash and allows the player to play bingo and by skill, chance or a combination of both the player receives free games, bonuses or credit that can be redeemed for cash. *Id.* A bingo machine does not include a device such as a slot machine that directly dispenses something of value such as coins, cash or tokens. *Id.* A keno machine is an electronic video gambling machine that allows for the video playing of keno upon insertion of cash into the device. *Id.* By chance, skill or both, the player can receive free games, bonuses or credits. *Id.* A poker machine allows for the play or simulated play of poker, 5-card stud, 7-card stud or hold 'em after insertion of cash into the machine. *Id.*

Only the gambling machines described above – bingo, keno, and poker – may be made available, by a licensed operator, in a public location for use by the public. Mont. Code Ann. § 23-5-603 (2009). A licensed operator is only allowed to operate as many machines as it has been granted in its permit. *Id.* If the video gambling machines are maintained at an establishment licensed to sell alcoholic beverages for consumption on the premises, then the machines must be placed in a part of the premises in which alcoholic beverages are sold and in the control of the operator so as to prevent persons under the age of 18 from accessing the machines. *Id.*

ii. Prizes

There are limitations set forth by this section on the amount of money that can be played and the value of prizes. A video gambling machine cannot allow more than two dollars to be played on a game. Mont. Code Ann. § 23-5-608 (2009). The free games awards or credits give cannot be in excess of \$800 a game for video draw poker, video keno or video bingo. *Id.*

iii. Hours

Video gambling machines cannot be operated between 2 a.m. and 8 a.m. unless authorized by an ordinance of the local government of the jurisdiction. Mont. Code Ann. § 23-5-620 (2009). Purposefully or knowingly manipulating, attempting to, or conspiring to manipulate the outcome of a video gambling machine by physical tampering is an offense punishable as a felony. Mont. Code Ann. § 23-5-622 (2009).

iv. Limit on selling machines

A licensed operator, even though not licensed as a manufacturer or distributor, may sell a maximum of video gambling machines in a calendar year provided the licensed operator has permits for the machines, legally operated the machines prior to sale and sells the machines to another licensed operator or licensed manufacturer or distributor. Mont. Code Ann. § 23-5-614 (2009).

5. **Bingo & Raffles**

Bingo and raffles, pursuant to Title 5, Chapter 23 of the Montana code, authorizes a person to “conduct or participate in a live bingo and keno game or raffle . . .” Mont. Code Ann. § 23-5-405 (2009). This section does not apply to games of this nature that are conducted by simulation on a video gambling machine. *Id.* In *Treasure State Games v. State*, Montana’s supreme court held that the state’s Bingo and Raffles law did not prohibit the electronic play of bingo or keno games. 551 P.2d 1008, 1009 (Mont. 1976).

. Hours

Live bingo and keno games cannot be conducted between 2 a.m. and 8 a.m. each day unless authorized by an ordinance of the local government in the jurisdiction where the games are conducted. Mont. Code Ann. § 23-5-408 (2009). A person may not participate in a live game of bingo or keno unless they are physically present on the premises where the game is being conducted. Mont. Code Ann. § 23-5-414 (2009).

b. Licensing

The manufacturer or equipment used in live bingo or keno games must apply for a manufacturer’s license under this section. Mont. Code Ann. § 23-5-424 (2009). A manufacturer’s license includes the ability to assemble, product, manufacture and supply the equipment. *Id.*

Permits must be issued by the county commissioners’ board for each raffle conducted within the jurisdiction. Mont. Code Ann. § 23-5-413 (2009). However, if raffle tickets are going to be sold in more than one county then a permit must only be obtained in the county where the raffle winner is to be determined. *Id.* A permit is not required at all when the raffle is conducted by a religious or nonprofit corporation. *Id.* The sale of raffle tickets is restricted to “the geographic confines of the state.” *Id.* Prizes for an individual ticket cannot exceed \$5,000 and may be awarded as cash, tangible or intangible personal property or real property. *Id.* However, where the raffle was conducted by a religious or nonprofit organization the prize may equal or exceed \$5,000 provided the award is either tangible personal property or real property “the fair market value of which has been certified in writing by an appraiser.” *Id.*

c. Prizes and wagers

Individual bingo or keno cards cannot cost more than fifty cents. Mont. Code Ann. § 23-5-412 (2009). The prize for each individual bingo game or keno card cannot exceed a value of \$100 and bingo and keno games cannot be combined in any manner so as to increase the total value of the prize. *Id.* Prizes from bingo and keno games may be awarded as either tangible personal property or cash. *Id.* Variations of both keno and bingo games are permissible provided they are conducted within the guidelines of a variation of the game. Variation of keno, where a player selects three or more numbers and places a wager on combinations of the numbers is permissible where the wager does not exceed fifty cents on each combination of numbers and the winning combination does not award a prize greater than \$100. In a variation of a bingo game, prizes can be awarded for each winning bingo pattern provided that the wager is not more than fifty cents for each bingo pattern and the winning pattern does not pay out more than \$100. *Id.*

6. **Casino Nights**

A “casino night” as authorized by this section is defined as a “fundraising event during which wagers may be made in gambling activities . . . through the use of imitation money.” Mont. Code Ann. § 23-5-701 (2009). The games authorized to be conducted at a casino night includes live card games, live bingo and keno games, raffles. Mont. Code Ann. § 23-5-702 (2009). The casino nights may be conducted by or participated in by nonprofit organizations. *Id.*

A nonprofit organization with the proper permit for conducting casino nights may conduct the night provided it complies with the following conditions: a casino night cannot last more than 12 consecutive hours, however a casino night can be split into two separate six hour sessions not held on the same day but held within the same calendar year; the event can only be managed and operated by members of the nonprofit organization that was issued the permit; merchandise and cash can be awarded as prizes; proceeds must be put towards charitable purposes, however a portion, not in excess of 50%, can be used for payment of operation costs; cash prizes awarded cannot exceed the prize limits established under the statutory section for the applicable game. Mont. Code Ann. § 23-5-710 (2009).

7. **Fantasy Sports Leagues**

The Montana code defines a fantasy sports league as a gambling activity that is conducted within the following guidelines:

- c. The league consists of a limited number of persons or groups, each paying an entrance fee for membership into the league;
- d. Every league member creates a fictitious team of athletes from the professional sport (baseball, basketball, or football). Player selection is accomplished through random drawings or a bidding process;

- e. After initial teams are selected, replacement of players may occur by trade or purchase. A fee, not in excess of the entrance fee, is charged for the transaction;
- f. A method is devised to permit each team to compete against other teams in the league. The method devised is defined by league rules and points are then awarded to a team according to the performance of individual players or teams during designated time periods;
- g. Members of the league may be eligible to receive payouts based on the number of points accrued. Payouts can be either cash or prizes, as determined by league rules; and
- h. Rules governing conduct of the league must be provided to each member in writing. Mont. Code Ann. § 23-5-801 (2009).

Fantasy sports leagues are authorized as a permissible gambling activity, to conduct or participate in, under Montana Law. Mont. Code Ann. § 23-5-802 (2009).

State Lottery

The state lottery chapter authorizes the playing of lottery games purchased by a player from the state, “through administrators of the state” for a chance to win a prize. Mont. Code Ann. § 23-7-102 (2009). The state lottery is not permitted to operate slot machines and can only conduct those games that are encompassed in the lottery game definition. *Id.* For purposes of the state lottery chapter a lottery game is defined as “any procedure, including any online or other procedure using a machine or electronic device, by which one or more prizes are distributed among persons who have paid for a chance to win a prize.” Mont. Code Ann. § 23-7-103 (2009). Lottery games may include, but are not limited to, weekly winner games, instant winner games, daily numbers games and sports pool games. *Id.*

Some of the games currently provided by the Montana State Lottery are a variety of instant scratch tickets ranging in cost from \$1, \$2, \$3 and \$5; Powerball; power pay; Montana cash; Wild Card 2; Hot Lotto; and Qwik Tix instant win games. Montana Lottery, <http://www.montanalottery.com/qwiktiz.xsp>

Amusement Games

. Under certain conditions and with an appropriate permit an operator, concessionaire, nonprofit organization or arcade can provide amusement games to the public. Mont. Code Ann. § 23-6-102 (2009).

The first condition is that the sale of a right to participate as well as determination of winners and distribution of prizes occurs in the presence of all players. *Id.*

The person or organization conducting the game must have obtained the appropriate permit for operation of the game. *Id.*

The player of an amusement game must pay cash for the right to play and can be awarded a prize in the form of tangible personal property or tokens that can be redeemed for tangible personal property. *Id.*

If tangible personal property is the prize awarded immediately after play of the game then the value of the item cannot exceed fifty dollars. *Id.*

Where tokens are awarded at the end of an amusement game the value of an individual token cannot exceed five cents and accumulated tokens redeemed for tangible personal property may exceed a value of fifty dollars. *Id.*

Winning a game does not require forfeiture of a previously won prize except where the prize is traded in for another prize of equal or greater value. *Id.*

All amusement games must be conducted in a fair and honest manner and the object of the game must be attainable, “under the stated game rules from the playing position of the player.” *Id.*

Also, the game cannot be adapted in a manner such that a control device would permit manipulation or control of the game and effect the ability of a player to win or cause predetermination of the winner. *Id.*

a. Games permitted

The kinds of games that are permitted to be conducted as amusement games are varied and extensive. Although not exhaustive, some of the permitted games include: crane games, fish/duck pond, dart games, balloon smash, ball tosses, milk bottle tosses, basketball toss, football toss, break the plate/bottle, teeth game, rolldown, fascination, batter-up, sky bowling, skee ball, shooting games, water racer, rapid fire, plate pitch, skill chute, rope ladder, horserace derby, bean bag, frog game and pocket billiards. Mont. Code Ann. § 23-6-104 (2005). The comprehensive list of permitted amusement games, along with descriptions of each game, is contained in the Montana code at section 23-6-104. *See id.*

b. Permit

The appropriate permit can be obtained from the board of county commissioners of the county where the game(s) will be made available for public play. Mont. Code Ann. § 23-6-103 (2005). Application can be made for either a fourteen consecutive day permit or an annual permit. *Id.*

Pari-Mutuel Wagering

Unless conducted under this chapter, all reports, records, bets or wagers placed on the results of a contest of speed, skill, or endurance of an animal is unlawful. Mont. Code Ann. § 23-4-301 (2005). An individual cannot hold a race meet or simulcast a race meet under Montana’s pari-mutuel system unless the individual has obtained a valid license from the department. Mont.

Code Ann. § 23-4-201 (2005). An applicant seeking to become a license holder must set forth in the application the time, place, and number of days the license will continue. *Id.*

The holder of a license can allow the pari-mutuel system of wagering to be conducted on horse races in one of two methods:

. First, the licensee may provide a place on the race grounds for the conduct of pari-mutuel wagering by patrons on the races conducted on those grounds. Mont. Code Ann. § 23-4-301 (2005).

a. Second, the licensee of a race meet may simulcast live races at the racetrack enclosure or a simulcast facility and allow the conduct of pari-mutuel wagering by patrons on the results of the simulcast races. *Id.*

Bookmaking or circulation of handbooks or betting on the outcome of a horse race in any manner outside of the pari-mutuel wagering system is unlawful. *Id.*

Specific Internet Prohibition

Internet Gambling in Montana constitutes as “illegal gambling enterprise.” Mont. Code Ann. § 23-5-112 (2009). An illegal gambling enterprise is an enterprise that “violates or is not specifically authorized by a statute or a rule of the department.” *Id.*

Internet gambling, as prohibited by the Montana Code, includes conducting any legal or illegal gambling enterprise with the use of communications technology and it allows a person to use money of any form, including paper checks, debit cards, credit cards, electronic transfers of money, in order to place a bet or wager by transmitting information to a computer. *Id.* Internet gambling does not include those activities specifically authorize by other sections of the Montana Code including operation of a simulcast facility as authorized by chapter 4 of Title 23, or the state lottery as provided by chapter 7 of Title 23. *Id.* Also excluded from the definition of Internet gambling is class II and class III gaming conducted on Indian lands in full conformity with federal statute and administrative regulations of the Indian gaming commission. *Id.*

Statute of Anne/Recovery of Debts

Montana Code allows for recovery of losses from illegal gambling activity. Mont. Code Ann. § 23-5-131 (2009). A person has one year following the loss of money, property or anything of value, resulting from playing or betting on an illegal gambling enterprise or device to take action to recover the loss. *Id.* The person may bring a civil action to recover the loss and can recover costs of the civil action along with exemplary damages no less than \$500 and no more than \$5,000. *Id.* The person bringing the action is allowed to join as a defendant “any person having an interest in the illegal gambling device or illegal gambling enterprise.” *Id.*

In contrast to the ability of an individual to recover losses from illegal gambling activities, Montana law will not enforce contracts based on unlawful goods, activities or behavior. *See MPH Co. v. Imagineering*, 792 P.2d 1081 (Mont. 1990). Montana code sets forth that “[t]he object of the contract must be lawful when the contract is made . . .” Mont. Code Ann. § 28-2-602 (2009). Furthermore contracts will be found unlawful and not enforceable by a court of law when they are “contrary to an express provision of law; contrary to the policy of express law, though not expressly prohibited; or otherwise contrary to good morals.” Mont. Code Ann. § 28-2-701 (2009). In *MPH Co. v. Imagineering*, the court found that a Poker All Keno machine, designed to dispense cash prizes to winning players, was not authorized under the Montana Card Games Act, Video Poker Machine Control Law, or the Bingo and Raffle law. 792 P.2d 1081,1086 (1990). Since the machine at issue did not qualify under any of the authorized gaming provisions, the machine was classified as a slot machine prohibited under Montana law. *Id.* As a result of the court finding that the machine was an illegal gambling device, the contract for the sale of the machine from a Nevada corporation to a business in Montana was an unenforceable contract. *Id.*

Gaming Crimes and Penalties

5. Misdemeanor

. Gambling device

A person who purposely or knowingly keeps an illegal gambling device in their own possession or allows the device to be maintained or kept in a room, space or enclosure either owned or leased by the person is guilty of a misdemeanor. Mont. Code Ann. § 23-5-152 (2009). Knowing or purposefully operating of an illegal gambling enterprise is also punishable as a misdemeanor. *Id.*

Soliciting participation in illegal gambling enterprise

“A person who purposely or knowingly advertises for or solicits another person to participate in an illegal gambling enterprise or use an illegal gambling device is guilty of a misdemeanor . . .” Mont. Code Ann. § 23-5-154 (2009).

Offering Gambling activity using fraud or misrepresentation

A person who offers in a gambling activity, by fraud, misrepresentation, use of an illegal gambling device or illegal gambling enterprise, money, property, or something of value, not exceeding \$750 is guilty of a misdemeanor. Mont. Code Ann. § 23-5-156 (2009).

The sale, assignment, lease or transfer of a license or permit by a licensee is punishable as a misdemeanor. Mont. Code Ann. § 23-5-159 (2009).

6. Felony

c. Involvement in gambling activity through fraud or misrepresentation

A person who is involved in a gambling activity and receives or offers money, property or value, in excess of \$750 through the use of fraud, misrepresentation, use of an illegal gambling device or illegal gambling enterprise is guilty of a felony. Mont. Code Ann. § 23-5-156 (2009).

d. “A person who in an activity involving gambling offers or obtains money, property, or anything of value as part of a common scheme . . . by misrepresentation, fraud, or the use of an illegal gambling device or an illegal gambling enterprise is guilty of a felony . . .” *Id.* A common scheme is defined by Montana Code as a “series of acts or omissions motivated by a purpose to accomplish a single criminal objective or by a common purpose or plan that results in the repeated commission of the same offense or that affects the same person . . .” Mont. Code. Ann. § 45-2-101 (2009).