



ICLG

The International Comparative Legal Guide to:

Gambling 2017

3rd Edition

A practical cross-border insight into gambling law

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USA – Alabama



Jones Walker LLP

Kirkland E. Reid

1 Relevant Authorities and Legislation

1.1 Which entities regulate what type of gambling activity in your jurisdiction?

Gambling is prohibited by the Alabama Constitution; however, certain activities have been exempted from this general prohibition: charitable bingo; and pari-mutuel. Charitable bingo operations are regulated by local authorities as defined in each local constitutional amendment. These local authorities are generally either the county sheriff, or the county commission. There are four pari-mutuel locations, each governed by its own local racing commission. The local racing commissions are responsible for permitting and oversight of the facilities.

1.2 Specify all legislation which impacts upon any gambling activity (including skill, prize competitions and draws, fantasy, egaming and social games), and specify in broad terms whether it permits or prohibits those activities.

Section 65 of the Official Recompilation of the Constitution of Alabama of 1901 prohibits the legislature from passing any laws to authorise lotteries or gift enterprises, and requires the legislature to pass laws “to prohibit the sale in this state of lottery or gift enterprise tickets, or tickets in any scheme in the nature of a lottery...”. This section has been interpreted broadly to prohibit all forms of lottery and gambling schemes.

Bingo

In order to avoid the constitutional prohibition against gambling, and allow for charitable bingo operations, 18 local constitutional amendments have been passed. These constitutional amendments are not uniform. Each amendment concerns a specific county or municipality, and empowers a specific local governing official or body with the responsibility to license and regulate the bingo activity. The local jurisdictions, and their corresponding amendments, are as follows:

- 1) Calhoun County – Official Recompilation of the Constitution of Alabama of 1901, Local Amendments, Calhoun County § 1;
- 2) Covington County – Official Recompilation of the Constitution of Alabama of 1901, Local Amendments, Covington County § 1;
- 3) Etowah County – Official Recompilation of the Constitution of Alabama of 1901, Local Amendments, Etowah County § 2;

- 4) Greene County – Official Recompilation of the Constitution of Alabama of 1901, Local Amendments, Greene County § 1;
- 5) Houston County – Official Recompilation of the Constitution of Alabama of 1901, Local Amendments, Houston County § 1;
- 6) Jefferson County – Official Recompilation of the Constitution of Alabama of 1901, Local Amendments, Jefferson County § 2;
- 7) Limestone County – Official Recompilation of the Constitution of Alabama of 1901, Local Amendments, Limestone County § 1;
- 8) Macon County – Official Recompilation of the Constitution of Alabama of 1901, Local Amendments, Macon County § 1;
- 9) Madison County – Official Recompilation of the Constitution of Alabama of 1901, Local Amendments, Madison County § 1;
- 10) Mobile County – Official Recompilation of the Constitution of Alabama of 1901, Local Amendments, Mobile County § 1;
- 11) Montgomery County – Official Recompilation of the Constitution of Alabama of 1901, Local Amendments, Montgomery County § 1;
- 12) Morgan County – Official Recompilation of the Constitution of Alabama of 1901, Local Amendments, Morgan County § 1;
- 13) Russell County – Official Recompilation of the Constitution of Alabama of 1901, Local Amendments, Russell County § 1;
- 14) St. Clair County – Official Recompilation of the Constitution of Alabama of 1901, Local Amendments, St. Clair County § 2;
- 15) Walker County – Official Recompilation of the Constitution of Alabama of 1901, Local Amendments, Walker County § 1;
- 16) City of Jasper – Official Recompilation of the Constitution of Alabama of 1901, Local Amendments, Walker County § 12;
- 17) Town of White Hall – Official Recompilation of the Constitution of Alabama of 1901, Local Amendments, Lowndes County § 3; and
- 18) Town of White Hall – Official Recompilation of the Constitution of Alabama of 1901, Local Amendments, Lowndes County § 4 (this section has been declared void as improperly ratified by the Lowndes County Circuit Court).

In addition to the local amendments, the legislature has passed local legislation in support of some of the constitutional amendments. These local laws further define, clarify and restrict the bingo operations in those specific jurisdictions. The state is still in the process of codifying the local laws for each County. The Counties that have been completed are as follows:

- 1) Calhoun County – Section 45-8-150, *et seq.*, Code of Alabama;
- 2) Covington County – Section 45-20-150, *et seq.*, Code of Alabama;

- 3) Etwoah County – Section 45-28-150, *et seq.*, Code of Alabama;
- 4) Greene County – Section 45-32-150, *et seq.*, Code of Alabama; and
- 5) Houston County – Section 45-35-150, *et seq.*, Code of Alabama.

Currently, attempts have been made to test the scope of bingo games that may be offered in some of the locations. Several jurisdictions have attempted to offer bingo in an electronic format, similar to the electronic bingo devices utilised in many Class II Native American facilities. In 2009, the Alabama Supreme Court issued an opinion restricting the characteristics of bingo to include the following:

- “1. Each player uses one or more cards with spaces arranged in five columns and five rows, with an alphanumeric or similar designation assigned to each space.
2. Alphanumeric or similar designations are randomly drawn and announced one by one.
3. In order to play, each player must pay attention to the values announced; if one of the values matches a value on one or more of the player’s cards, the player must physically act by marking his or her card accordingly.
4. A player can fail to pay proper attention or to properly mark his or her card, and thereby miss an opportunity to be declared a winner.
5. A player must recognize that his or her card has a “bingo,” i.e., a predetermined pattern of matching values, and in turn announce to the other players and the announcer that this is the case before any other player does so.
6. The game of bingo contemplates a group activity in which multiple players compete against each other to be the first to properly mark a card with the predetermined winning pattern and announce that fact.”

Barber v. Cornerstone Community Outreach, Inc., 42 So.3d 65, 86 (Ala. 2009). This test applies to whether bingo may be played on an electronic device under the various amendments.

Pari-Mutuel Wagering

In 1971, the Alabama Supreme Court determined that pari-mutuel wagering on horse and dog races did not violate the constitutional ban on lotteries. *Opinion of the Justices No. 205*, 251 So.2d 751 (Ala. 1971). Following this declaration, the state passed laws establishing the parameters for the creation of local racing commissions, establishing horse and dog racing facilities, and the limitations for conducting pari-mutuel wagering activities. These laws have been codified into Section 11-65-1, *et seq.*, of the Code of Alabama.

Games of Skill

Section 13A-12-76 of the Code of Alabama regulates the operation and transportation of devices used to play skill-based games, referred to as “*bona fide* coin operated amusement machines”. This section is commonly referred to as the “Chuck-E-Cheese Law”. Under this section, only games in which skill predominates over chance may be operated. Further, prizes must be limited to non-cash merchandise whose wholesale value is not more than \$5, or for free replays, not to exceed 25 free replays.

Criminal Statutes

Section 13A-12-20, *et seq.* of the Code of Alabama defines gambling and gambling devices, and provides the criminal statutes concerning gambling in Alabama. Under Alabama law, it is illegal both to conduct gambling operations and to participate in gambling operations. The possession of gambling devices and gambling records is prohibited, and such devices are subject to forfeiture.

Slot machines are specifically prohibited, and the definition of a slot machine includes any device that is “readily adaptable or convertible” to a slot machine, even it is not working. Ala. Code §13A-12-20(10). Additionally, any vehicles used to transport illegal gambling devices, and any money obtained through illegal gambling activities, are subject to forfeiture.

Illegal gambling activity includes all forms of gambling activity, including non-house banked card games. A player is subject to criminal charges for participating in illegal gambling activity, but the player may assert a defence to simple gambling if the player was engaged in a social game in a private place. Ala. Code §13A-12-21(b).

2 Application for a Licence and Licence Restrictions

2.1 Who can apply for a licence to supply gambling facilities?

Any person, firm or corporation may apply for a licence to supply a pari-mutuel facility.

2.2 Who or what entity must apply for a licence or authorisations and which entities or persons, apart from an operator, need to hold a licence? Are personal and premises licences needed? Do key suppliers need authorisation?

Operators must obtain a licence to conduct the horse or dog racing, and must obtain a separate licence to operate the pari-mutuel wagering operation. Apart from operators, permits issued by the local racing commission are required for any person, firm, or corporation seeking to enter the racetrack enclosure, other than as a spectator. This includes horse owners, greyhound owners, trainers, jockeys, exercise boys, groomers, stable foremen, kennel foremen, valets, veterinarians, agents, pari-mutuel employees, concessionaires or employees thereof, or employees of the operator. To obtain these permits, the person, firm, or corporation must submit an application from the appropriate local racing commission, on forms approved by that commission. The commissions are allowed to charge a fee for such application in the amount up to \$1,000 per year for corporations or firms, and up to \$50 per year for individuals. Additionally, stewards and judges of races must obtain a licence from the local racing commission.

Each bingo operator must obtain a licence or permit to conduct a bingo game within the local jurisdiction.

2.3 What restrictions are placed upon any licensee?

Alabama law establishes state licensing requirements for operators to conduct onsite pari-mutuel wagering and to conduct onsite and simulcast horse and dog races. Licensees are restricted to conducting pari-mutuel activities only at the facility authorised under the licence. All offsite activities are permitted.

Bingo licences or permits vary widely from jurisdiction to jurisdiction. Generally the restrictions include date, time and location restrictions on operations, who is permitted to conduct the bingo operations, and what percentage of the funds must be submitted to the charitable organisation.

2.4 What is the process of applying for any gambling licence or regulatory approval?

There are four types of licences for pari-mutuel facilities: a horse racing facility licence; a dog racing facility licence; an operator's licence for pari-mutuel wagering on horse races; and an operator's licence for pari-mutuel wagering on dog races.

The facility licences require application to the appropriate local racing commission. The application fee is \$15,000 and requires the following information:

- 1) the name and address of such person; if a corporation, the state of its incorporation and the full name and address of each officer and director thereof; if a foreign corporation, whether it is qualified to do business in the state; and if a partnership or joint venture, the name and address of each general partner thereof;
- 2) the name, and every address for the period of five years immediately preceding the date of such application, of each stockholder or member of such corporation, or each general partner of such partnership or joint venture, and of each person who has contracted for a financial interest in the applicant or the horse racing facility to be licensed, whether such interest will be an ownership or a security interest, and the nature and value of such interest, and the name and address of each person who has agreed to lend money to the applicant; provided that if the applicant proposes to arrange further financing, subsequent to the award of a horse racing facility licence, through a sale of stock, partnership interests, or other equity interests, the issuance of debt securities, the entering into of financing leases, or otherwise borrowing money, then, in such case, such commission may grant a horse racing facility licence which sets forth conditions to be met in arranging such further financing, or which reserves to such commission the right to approve any or all aspects of such further financing;
- 3) such information as the commission deems appropriate regarding the character and responsibility of the applicant and the members, partners, stockholders, officers, and directors of the applicant;
- 4) with respect to any racing facility that is not at the time subject to a horse racing facility licence, the location and description of the horse racing facility for which the applicant proposes to obtain a licence; provided that the commission may require such information about such facility and the location thereof, including preliminary architectural plans, as it deems necessary and appropriate to determine whether such facility is suitable and complies with the standards established by the commission pursuant to this chapter, and whether the conduct of horse racing and pari-mutuel wagering thereon at such location would be in the best interests of the people of the state;
- 5) such information relating to the financial responsibility of the applicant as the commission deems appropriate;
- 6) if the horse racing facility to be licensed, or any part thereof, is to be leased or the use thereof to be made available to any person other than the applicant under a contract or other legal arrangement, the terms of such lease, contract, or other legal arrangement; and
- 7) any other information which the commission in its discretion deems appropriate.

Ala. Code §11-65-15. The licence to operate pari-mutuel wagering at a racing facility requires application to the appropriate local racing commission. The application fee is \$10,000 and requires the following information:

- 1) a statement identifying the kind of licence for which application is being made, whether for horse racing and

pari-mutuel wagering thereon or greyhound racing and pari-mutuel wagering thereon, which statement may simply result from the use of the application form prescribed by the commission for the licence in question;

- 2) the name and address of the applicant; if a corporation, the state of its incorporation and the full name and address of each officer and director thereof; if a foreign corporation, whether it is qualified to do business in the state; and if a partnership or joint venture, the name and address of each general partner thereof;
- 3) the name and every address for the period of five years immediately preceding the date of such application, of each stockholder or member of such corporation, or each general partner of such partnership or joint venture, and of each person who has contracted for a financial interest in the applicant or the racing facility where the racing and wagering activities of the applicant will be conducted, whether such interest will be an ownership or a security interest, and the nature and value of such interest, and the name and address of each person who has agreed to lend money to the applicant; provided that if the applicant proposes to arrange further financing, subsequent to the award of an operator's licence, through a sale of stock, partnership interests, or other equity interest, the issuance of debt securities, the entering into of financing leases, or otherwise borrowing money, then, in such case, the commission may grant an operator's licence which sets forth conditions to be met in arranging such further financing or which reserves to such commission the right to approve any or all aspects of such further financing;
- 4) such information as the commission deems appropriate regarding the character and responsibility of the applicant and the members, partners, stockholders, officers, and directors of the applicant;
- 5) the location and description of the racing facility where the applicant proposes to conduct the activity covered by the operator's licence for which application is being made; provided that the commission may require such information about such facility and the location thereof, including preliminary architectural plans, as it deems necessary and appropriate to determine whether such facility is suitable and complies with the standards established by the commission pursuant to this chapter, and whether the conduct of horse racing and pari-mutuel wagering thereon or greyhound racing and pari-mutuel wagering thereon, as the case may be, at such location would be in the best interests of the people of the state;
- 6) such information relating to the business experience and financial responsibility of the applicant as the commission deems appropriate; and
- 7) any other information which the commission in its discretion deems appropriate.

Ala. Code §11-65-18. For bingo operations, each local governmental entity charged with regulating bingo operations has specific requirements for obtaining a licence.

2.5 Please give a summary of applicable time limits and potential for expiry, review revocation and nullification.

A licence to operate a pari-mutuel facility exists for twenty (20) years, with the commission reviewing the licence annually. These licences may be suspended or revoked or a fine of up to \$5,000 levied for any violation of the commission's regulations. Any suspension, revocation or fine requires a hearing before the commission.

Permits required by all persons, firms, or corporations must be issued by the local racing commissions within 30 days. The permits are subject to review by the local racing commission and may be

suspended, revoked, or a fine of up to \$1,000 may be levied for any violation of the statutes or the commission's regulations.

Bingo licences and permits vary widely from jurisdiction to jurisdiction.

2.6 By product, what are the key limits on providing services to customers? Please include in this answer the material promotion and advertising restrictions.

This is not applicable in Alabama.

2.7 What are the tax and other compulsory levies?

Pari-mutuel facilities are required to pay state wagering fees, commission wagering fees, and racetrack admission fees. The state wagering fee for horse races is 1% of the horse racing handle. This fee is paid monthly to the Alabama Department of Revenue. The commission wagering fee is (i) 2% of the horse racing handle to the extent the handle does not exceed \$150,000,000, and (ii) 4% for the amount over \$150,000,000 for the calendar year. For dog racing, the greyhound wagering fee during the first 10 years of operation is (i) 2% of the greyhound racing handle for the first \$150,000,000 of the greyhound racing handle, and (ii) 4% for the amount over \$150,000,000 per calendar year. After 10 years, greyhound wagering fee changes to (i) 2% of the greyhound racing handle for the first \$150,000,000 of the greyhound racing handle, (ii) 6% for the amount over \$150,000,000 but not exceeding \$300,000,000, and (iii) 4% for the portion that exceeds \$300,000,000 per calendar year. The racetrack admission fee is \$0.25 per person paying for admission to any daily performance.

There are no taxes on the bingo operations as these operations are restricted to charitable entities.

2.8 What are the broad social responsibility requirements?

There are no broad social responsibility requirements in Alabama.

2.9 How do any AML, financial services regulations or payment restrictions restrict or impact on entities supplying gambling? Does your jurisdiction permit virtual currencies to be used for gambling and are they separately regulated?

There are no regulations or restrictions under Alabama law specific to gambling or gambling suppliers.

3 The Restrictions on Online Supply/Technology Support/Machines

3.1 Does the law restrict, permit or prohibit certain online activity and, if so, how?

Online gambling activity is prohibited under the general prohibition against gambling. Further, pari-mutuel wagering is restricted to onsite wagering, and no wagering is allowed to be conducted offsite. The Alabama criminal laws prohibit both the operation of a gambling facility and the act of gambling itself. In addition, the state has specific laws against promoting gambling.

3.2 What other restrictions have an impact on online supplies?

Online gambling activity is prohibited under the general prohibition against gambling. Further, pari-mutuel wagering is restricted to onsite wagering, and no wagering is allowed to be conducted offsite. The Alabama criminal laws prohibit both the operation of a gambling facility and the act of gambling itself. In addition, the state has specific laws against promoting gambling.

3.3 What terminal/machine-based gaming is permitted and where?

There is no terminal/machine-based gaming permitted in Alabama.

4 Enforcement and Liability

4.1 Who is liable for breaches of the relevant gambling legislation?

Under Alabama's criminal laws, both the player and the promoter/operator are liable. Players can be charged for simple gambling, and promoters can be charged with multiple violations including possession of a gambling device, and promoting gambling.

4.2 What is the approach of authorities to unregulated supplies?

Alabama takes an aggressive stance against gambling and gambling devices. Slot machines are *per se* illegal, and possession of a slot machine is a violation the criminal statutes. In addition, possession of any gambling device or gambling records is also prohibited. Several actions have been filed by the state against manufactures located in the state for producing gambling devices. Additionally, Alabama has reported to other states' gaming commissions alleged violations of Alabama's gambling laws by national and international gambling machine manufacturers.

4.3 Do other non-national laws impact upon liability and enforcement?

No, there are no non-national laws that impact upon enforcement.

4.4 Are gambling debts enforceable in your jurisdiction?

No. Gambling contracts are void under Alabama law; see § 8-1-150. A person who has paid under a gambling contract can seek to recoup the funds, if the action is filed within six months of the loss.

5 Anticipated Reforms

5.1 What (if any) intended changes to the gambling legislation/regulations are being discussed currently?

Due to budgetary restraints, political leaders are currently discussing the formation of a state lottery. Any change in approving any type of gambling will require amending the state constitution. Amendments to the Alabama Constitution require approval by popular vote. This would most likely take a minimum of 12–18 months.

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Mr. Reid has worked closely with Alabama's gaming laws in both the state and federal courts, representing both gaming facilities and gaming machine manufacturers.



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Jones Walker's gaming practice, the largest in the Southeastern United States, provides full-spectrum legal counsel to clients on gaming law. The firm represents all participants in the industry, including casinos, tribes, product manufacturers and suppliers, pari-mutuels, sweepstakes and charities. The firm also represents other parties – such as investors, lenders and vendors – that have gaming-related interests.

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