

KY ST s 238.505  
KRS § 238.505

TITLE XIX. PUBLIC SAFETY AND MORALS  
CHAPTER 238. CHARITABLE **GAMING**

Current through End of 1998 Reg. Sess.

238.505 DEFINITIONS FOR CHAPTER

As used in this chapter, unless the context requires otherwise:

(1) "Division" means the Division of Charitable **Gaming** within the Justice Cabinet;

(2) "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;

(3) "Charitable organization" means a nonprofit entity organized for charitable, religious, educational, literary, civic, fraternal, or patriotic purposes;

(4) "**Bingo**" means a specific **game** of **chance** in which participants use cards or paper sheets divided into horizontal and vertical spaces, each of which is designated by a letter and a number, and prizes are awarded on the basis of the letters and numbers on the card conforming to a predetermined and preannounced configuration of letters and numbers selected at random;

(5) "Charity **game** ticket" means a **game** of **chance** using a folded or banded paper ticket, or a paper card with perforated break-open tabs, the face of which is covered or otherwise hidden from view to conceal a number, letter, symbol, or set of numbers, letters, or symbols, some of which have been designated in advance as prize winners and shall include charity **game** tickets that utilize a seal card. Charity **game** ticket shall include pulltabs;

(6) "Seal card" means a board or placard used in conjunction with charity **game** tickets, that contains a seal or seals which, when removed or opened, reveal predesignated winning numbers, letters, or symbols;

(7) "**Raffle**" means a **game** of **chance** in which a participant is required to purchase a ticket for a **chance** to win a prize, with the winner to be determined by a random drawing;

(8) "Charity fundraising event" means a fundraising activity of limited duration at which **games of chance** approved by the division are conducted, and examples of which include fairs, festivals, carnivals, bazaars, and **wagering** on prerecorded horse races, KRS Chapter 230 notwithstanding;

(9) "Manufacturer" means a person who assembles from raw materials or subparts any charitable **gaming** equipment or supplies used in the conduct of charitable **gaming**, including a person who converts, modifies, and adds to or removes parts from, charitable **gaming** equipment and supplies. The term shall not include:

(a) Any person who services or repairs charitable **gaming** supplies and equipment, so long as that person replaces or repairs an incidental, malfunctioning, or nonfunctioning part with a similar or identical part; and

(b) Any distributor who cuts, collates, and packages for distribution any **gaming** supplies and equipment purchased in bulk;

(10) "Distributor" means a person who sells, markets, leases, or otherwise furnishes to a charitable organization charitable **gaming** equipment or supplies, or both, used in the conduct of charitable **gaming**. "Distributor" shall not include a resident printer who prints **raffle** tickets at the request of a licensed charitable organization;

(11) "Charitable **gaming** facility" means a person, including a licensed charitable organization, that owns or is a lessee of premises which are leased or otherwise made available to two (2) or more licensed charitable organizations during a one (1) year period for the conduct of charitable gaming;

(12) "Gross receipts" means all moneys collected or received from the conduct of charitable gaming;

(13) "Adjusted gross receipts" means gross receipts less all cash prizes and the amount paid for merchandise prizes purchased;

(14) "Net receipts" means adjusted gross receipts less all expenses, charges, fees, and deductions authorized under this chapter;

(15) "Charitable **gaming** supplies and equipment" means any material, device, apparatus, or paraphernalia customarily used in the conduct of charitable **gaming**, including **bingo** cards and paper, charity **game** tickets, and other apparatus or paraphernalia used in conducting **games of chance** at charity fundraising events subject to **regulation** under this chapter. The term shall not include any material, device, apparatus, or paraphernalia incidental to the **game**, such as pencils, daubers, playing cards, or other supplies that may be purchased from normal sources of

supply;

(16) "Door prize" means a prize awarded to a person based solely upon the person's attendance at an event or the purchase of a ticket to attend an event;

(17) "Special limited charitable **game**" means roulette; blackjack; poker; keno; money wheel; baccarat; pusher-type **games**; any dice **game** where the player competes against the house; and any other **game** of **chance** as identified, defined, and approved by administrative **regulation** of the division;

(18) "Special limited charity fundraising event" means any type of charity fundraising event, commonly known as and operated as a "**casino** night," "Las Vegas night," or "Monte Carlo night," at which the predominant number or types of **games** offered for play are special limited charitable **games**;

(19) "Session or **bingo** session" means a single gathering at which a **bingo game** or series of successive **bingo games** are played, including **bingo** held at a charity fundraising event;

(20) "Immediate family" means:

- (a) Spouse and **parents-in-law**;
- (b) Parents and grandparents;
- (c) Children and their spouses; and
- (d) Siblings and their spouses; and

(21) "Affiliate" means any corporation, partnership, association, or other business or professional entity or any natural person that directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with a licensed manufacturer, distributor, or charitable gaming facility.

#### CREDIT(S)

HISTORY: 1998 c 232, § 1, eff. 4-1-98

1996 c 331, § 2, eff. 4-10-96; 1994 c 66, § 2, eff. 3-16-94

<General Materials (GM) - References, Annotations, or Tables>

#### PRACTICE AND STUDY AIDS

Abramson, West's Kentucky Practice, Vol. 10, Substantive Criminal Law 21.39, n 1, 21.39, n 1.5

#### CROSS REFERENCES

Definitions for 500 KAR Chapter 11, 500 KAR 11:001

Charity fundraising event, 500 KAR 11:080

Special limited charitable games, 500 KAR 11:090

Keno, 500 KAR 11:110

#### NOTES OF DECISIONS AND OPINIONS

971 SW(2d) 810 (Ky App 1997), Com. v Louisville Atlantis Community/Adapt, Inc, rehearing denied, review denied. Provision of Charitable Gaming Act defining terms to be used in rest of Act and providing that such definitions would not apply if context required otherwise did not limit participants in charitable gaming to use of paper forms of games.

OAG 95-23. Raffles where the winner is determined by the outcome of a live or videotaped sporting event rather than by a random drawing would not fall within the type of raffle authorized by the Charitable Gaming Act.

KRS § 238.505

KY ST § 238.505

KY ST s 528.010

KRS § 528.010

#### TITLE L. KENTUCKY PENAL CODE CHAPTER 528. GAMBLING

Current through End of 1998 Reg. Sess.

#### 528.010 DEFINITIONS FOR CHAPTER

The following definitions apply in this chapter unless the context otherwise requires:

(1) "Advancing gambling activity" -- A person "advances gambling activity" when, acting other than as a player, he engages in conduct that materially aids any form of gambling activity. The conduct shall include, but is not limited to, conduct directed toward the establishment of the particular game, contest, scheme, device, or activity involved; toward the acquisition or maintenance of premises, paraphernalia, equipment, or apparatus therefor; toward the solicitation or inducement of persons to participate therein; toward the actual conduct of the playing

phases thereof; toward the arrangement of any of its financial or recording phases or toward any other phase of its operation. A person who **gambles** at a social **game** of **chance** on equal terms with other participants does not otherwise advance **gambling** activity by performing acts, without remuneration or fee, directed toward the arrangement or facilitation of the **game** as inviting persons to play, permitting the use of premises therefor and supplying equipment used therein.

(2) "Bookmaking" means advancing **gambling** activity by unlawfully accepting **bets** upon the outcome of future contingent events from members of the public as a business.

(3)(a) "**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**.

(b) **Gambling** shall not mean charitable **gaming** which is licensed and **regulated** under the provisions of KRS Chapter 238.

(4) "**Gambling** device" means:

(a) Any so-called slot machine or any other machine or mechanical device an essential part of which is a drum or reel with insignia thereon, and which when operated may deliver, as a result of the application of an element of chance, any money or property, or by the operation of which a person may become entitled to receive, as the result of the application of an element of chance, any money or property; or

(b) Any other machine or any mechanical or other device, including but not limited to roulette wheels, gambling tables and similar devices, designed and manufactured 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, or by the operation of which a person may become entitled to receive, 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 dispensing or selling combination or French pools on licensed, regular racetracks during races on said tracks.

2. Electro-mechanical pinball machines specially designed, constructed, set up, and kept to be played for amusement only. Any pinball machine shall be made to receive and react only to

the deposit of coins during the course of a game. The ultimate and only award given directly or indirectly to any player for the attainment of a winning score or combination on any pinball machine shall be the right to play one (1) or more additional games immediately on the same device at no further cost. The maximum number of free games that can be won, registered, or accumulated at one (1) time in operation of any pinball machine shall not exceed thirty (30) free games. Any pinball machine shall be made to discharge accumulated free games only by reactivating the playing mechanism once for each game released. Any pinball machine shall be made and kept with no meter or system to preserve a record of free games played, awarded, or discharged. Nonetheless, a pinball machine shall be a gambling device if a person gives or promises to give money, tokens, merchandise, premiums, or property of any kind for scores, combinations, or free games obtained in playing the pinball machine in which the person has an interest as owner, operator, keeper, or otherwise.

3. Devices used in the conduct of charitable gaming.

(5) "Lottery and gift enterprise" means:

(a) A gambling scheme in which:

1. The players pay or agree to pay something of value for chances, represented and differentiated by numbers or by combinations of numbers or by some other media, one (1) 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.

(b) A gift enterprise or referral sales plan which meets the elements of a lottery listed in paragraph (a) of this subsection is to be considered a lottery under this chapter.

(6) "Mutuel" or "the numbers games" means a form of lottery in which the winning chances or plays are not determined upon the basis of a drawing or other act on the part of persons conducting or connected with the scheme, but upon the basis of the outcome or outcomes of a future contingent event or events otherwise unrelated to the particular scheme.

(7) "Player" means a person who engages in any form of gambling solely as a contestant or bettor, without receiving or becoming entitled to receive any profit therefrom other than personal gambling winnings, and without otherwise rendering any material assistance to the establishment, conduct, or operation of the particular gambling activity. A person who engages in

"bookmaking" as defined in subsection (2) of this section is not a "player." The status of a "player" shall be a defense to any prosecution under this chapter.

(8) "Profiting from gambling activity" -- A person "profits from gambling activity" when, other than as a player, he accepts or receives or agrees to accept or receive money or other property pursuant to an agreement or understanding with any person whereby he participates or is to participate in the proceeds of gambling activity.

(9) "Something of value" means any money or property, any token, object, or article exchangeable for money or property, or any form of credit or promise directly or indirectly contemplating transfer of money or property or of any interest therein, or involving extension of a service, entertainment, or a privilege of playing at a game or scheme without charge.

(10) "Charitable gaming" means games of chance conducted by charitable organizations licensed and regulated under the provisions of KRS Chapter 238.

#### CREDIT(S)

HISTORY: 1994 c 66, § 19, eff. 3-16-94

1992 c 254, § 1, eff. 7-14-92; 1990 c 469, § 1; 1988 c 423, § 1; 1980 c 188, § 307, c 267, § 9; 1978 c 321, § 5; 1974 c 406, § 240

<General Materials (GM) - References, Annotations, or Tables>

#### COMMENTARY

Kentucky Crime Commission/LRC

1974:

The principal concept of the entire **gambling** chapter is to punish those who make a business or profession of **gambling** rather than the player who makes the business possible. Subsection (1), advancing **gambling**, and subsection (8), profiting from **gambling**, define the basic proscribed **gambling** activities. "Advancing **gambling** activity" refers to the activities of the operator of a **gambling** enterprise as well as the person who sets up a **game**, furnishes equipment, provides facilities for **gambling** or entices others to patronize **gambling** activities. A "player" as defined in subsection (7), does not advance **gambling** activity. "Profiting from **gambling** activity" is intended to reach the entrepreneurs who receive money or other profit, other than as a player, pursuant to an understanding or agreement to that effect.

The definition of "**gambling** device" in subsection (4) limits the application of the term to mechanical items used only for the

purpose of **gambling** such as slot machines and roulette wheels. Devices used to dispense tickets at licensed race tracks and certain pinball machines are expressly excepted from the definition.

Subsection (5) **states** the three essential elements of a **lottery**: consideration, **chance** and prize. A gift enterprise or referral sales plan which meets the elements of a **lottery** as listed in subsection (5)(a) is to be considered a **lottery**. This is in accord with pre-existing **law**. Commonwealth v Allen, 404 SW(2d) 464 (Ky 1966). This definition is substantially simpler than the definition of a **lottery** and gift enterprise contained in the pre-existing **law**, KRS 436.360.

The mechanics of a "number **game**" as defined in subsection (6) are described in Gilley v Commonwealth, 312 Ky 584, 229 SW(2d) 60 (1950).

"Something of value," as defined in subsection (9), is the standard used for that which is exchanged in the course of any **gambling** activity, **lottery** or gift enterprise, mutuel or numbers **game**.

#### PRACTICE AND STUDY AIDS

Abramson, West's Kentucky Practice, Vol. 10, Substantive Criminal **Law** 10.11, n 0.3, 10.11, n 0.6, 10.11, n 25, 10.12, n 9, 10.12, n 11, 10.12, n 12, 10.12, n 13

#### CROSS REFERENCES

**Pari-mutuel wagering** exempt from KRS Ch 528, 436.480

#### LIBRARY REFERENCES

**Gambling**, generally. 38 Am Jur 2d, **Gambling** § 1 to 9

#### NOTES OF DECISIONS AND OPINIONS

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#### 1. Construction and interpretation

494 SW(2d) 726 (Ky 1973), LeGrande v Com. KRS 436.200 is not a lesser offense than that set out in KRS 436.230. (Annotation from



former KRS 436.200.)

136 Ky 303, 124 SW 327 (Ky 1910), Williams Commission Co.'s Assignee v W.A. Shirley & Bro. Where one gambles with a bucket shop on the rise and fall of the market price, putting up a margin to secure the shop, and loses, an agreement of the shop to pay him back the money is not void under this section. (See also Timmons v Timmons, 145 Ky 259, 140 SW 164 (1911).) (Annotation from former KRS 436.230.)

25 KLR 1924, 116 Ky 812, 79 SW 201 (Ky 1904), City of Louisville v Wehmoff. Act of pool selling or betting by buyers on pools is not a game within the above section. (Annotation from former KRS 436.250.)

18 KLR 515, 100 Ky 1, 37 SW 152 (Ky 1896), Cheek v Commonwealth. To engage in a wager of any kind is a "hazard" within the meaning of the offense of gambling, which prohibits engaging in any game or hazard on which money or property is bet, won, or lost. (Annotation from former KRS 436.200.) (See also Com v Davis, 102 SW 327, 31 KLR 405 (1907).)

10 Ky Opin 308 (1879), Wilson v Com. Offense of this section may be committed though nothing has been won or lost. (Annotation from former KRS 436.230.)

66 Ky 1 (Ky 1867), Commonwealth v Branham. Betting on any game of chance is now a statutory offense. (Annotation from former KRS 436.200.)

1956 OAG 39173. It would appear 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 KRS 436.200.)

## 2. Permitting or promoting gambling

453 SW(2d) 736 (Ky 1970), Hahn v Com. A card room adjacent to the licensed premises is on the premises of the owner. (Annotation from former KRS 436.250.)

453 SW(2d) 736 (Ky 1970), Hahn v Com. It is not necessary to prove that money was won or lost, or that the accused had knowledge of betting on his premises. (Annotation from former KRS 436.250.)

287 Ky 582, 154 SW(2d) 543 (Ky 1941), Dills v Commonwealth. Persons simply engaged in a game of chance are not punishable under this section. (Annotation from former KRS 436.230.)

240 Ky 175, 41 SW(2d) 936 (Ky 1931), Palmer v Commonwealth. An indictment charging that a crap game was operated for compensation held sufficient and evidence held to substantiate

the charge in the indictment although the accused did not receive a takeout or any part of the stakes. (Annotation from former KRS 436.230.)

117 Ky 80, 77 SW 682 (1903), Miller v Com. An indictment charging a defendant with setting up a faro-bank and "other machines and contrivances for betting" was sufficient but only charged the one offense of setting up a faro- bank. (Annotation from former KRS 436.230.)

17 KLR 1245, 98 Ky 664, 34 SW 17 (Ky 1896), Commonwealth v Lansdale. One who sells to another a machine ordinarily used for betting is guilty of the offense denounced by this section, but it must be charged in the indictment that the machine was actually used for gaming, and that defendant had knowledge of the purpose for which it was to be used. (Annotation from former KRS 436.230.)

14 KLR 163, 93 Ky 290, 19 SW 737 (Ky 1892), Harper v Commonwealth. The jury may infer that the defendant received compensation for running a game where the evidence showed the game took place in a room set up for gambling, the defendant was generally present, took charge of the game, acted as banker and occasionally took chips when certain hands were played which paid for refreshments. (Annotation from former KRS 436.230.)

11 KLR 777, 13 SW 108 (Ky 1890), Commonwealth v Kammerer. Under the statute, it is a felony to "set up, carry on, or conduct, or aid and assist in setting up, carrying on, or conducting, a keno-bank, faro-bank, or other machine or contrivance used in betting ... ;" the court held that dice used in the game of "oontz" are not machines or contrivances under the statute. (Annotation from former KRS 436.230.)

8 KLR 249, 84 Ky 276, 1 SW 480 (Ky 1886), Waddell v Commonwealth. An indictment which alleges that defendant did unlawfully set up, exhibit and keep for himself a faro-bank is sufficient without explanatory language; there is no need to charge that money or property was either won or lost. (Annotation from former KRS 436.230.)

8 KLR 74, 84 Ky 52 (Ky 1886), Vowells v Commonwealth. An indictment which charges that the defendant did unlawfully set up, exhibit and keep for himself and another a faro-bank is sufficient and charges but one offense. (Annotation from former KRS 436.230.)

7 KLR 176, 83 Ky 193 (Ky 1885), Vowells v Commonwealth. Where one is a mere spectator rendering occasional assistance, he cannot be convicted of setting up a faro-bank, unless it appears that he was connected to the bank as proprietor or employee. (Annotation from former KRS 436.230.)

69 Ky 301 (Ky 1869), Commonwealth v Monarch. An indictment for the offense of setting up and keeping a faro-bank committed by M. on a specific date and on divers days since, etc., is sufficient; it is not necessary that the indictment allege that it was a banking game or contrivance ordinarily used for gambling purposes. (Annotation from former KRS 436.230.)

69 Ky 298 (Ky 1869), Commonwealth v Monarch. An indictment alleging that accused "suffered or permitted any games at which money or property was bet to be played" is sufficient. (Annotation from former KRS 436.230.)

34 Ky 518 (Ky 1836), Hinkle v Com. Setting up and keeping a gambling table, and inducing others to bet on it are two separate offenses and require two separate indictments when committed by two different people; but where one has committed both acts at the same time, only one indictment is necessary for the combined act, as for one offense. (Annotation from former KRS 436.230.)

27 Ky 177 (Ky 1830), Commonwealth v Burns. One who has no interest in a gambling table or agency in the game played does not violate this section if he renders momentary or occasional assistance to the dealer. (Annotation from former KRS 436.230.)

OAG 83-207. This opinion discusses the offenses of permitting gambling (KRS 528.070) and promoting gambling (KRS 528.030), and the defense of being a player (KRS 528.010(7)).

### 3. Device

494 SW(2d) 726 (Ky 1973), LeGrande v Com. KRS 436.230 includes point- spread cards. (Annotation from former KRS 436.230.)

429 SW(2d) 391 (Ky 1968), A. B. Long Music Co. v Com. A pinball machine can be a gambling device or an illegal lottery. (Annotation from former KRS 436.230.) (See also Beets v Com, 437 SW(2d) 496 (Ky 1969); A.B. Long Music Co v Com, 398 F(2d) 929 (6th Cir Ky 1968).)

363 SW(2d) 219 (Ky 1962), Meader v Com. The operator of a dice game called beat-the-dealer is operating a contrivance used in betting. (Annotation from former KRS 436.230.)

287 Ky 282, 152 SW(2d) 937 (Ky 1941), Rader v Commonwealth. In an indictment for setting up a machine or contrivance not mentioned in a statute prohibiting such devices, it must be alleged that the table or contrivance was such as is ordinarily used for gambling for money or property. (Annotation from former KRS 436.230.) (See also Com v Estes, 121 SW 423 (Ky 1909).)

180 Ky 446, 202 SW 884 (Ky 1918), Commonwealth v Gritten. A slot machine in which a player who deposits money always receives gum but, in addition, may or may not receive redeemable chips, is a

gambling device. (Annotation from former KRS 436.230.)

158 Ky 444, 165 SW 423 (Ky 1914), Com. v Nance. Pool table is similar to a pigeon-hole table. (Annotation from former KRS 436.310.)

3 KLR 380, 79 Ky 618 (Ky 1881), Commonwealth v Simonds. Machine known as "French pool" or "Paris Mutuel," used in betting on horse races, is a "contrivance used in betting" within the meaning of this statute. (Annotation from former KRS 436.230.)

57 Ky 35 (Ky 1857), Ritte v Commonwealth. To convict under this section, it should appear that the table, machine or contrivance was such as is ordinarily used in gambling for money or property, and not for amusement. (Annotation from former KRS 436.230.) (See also Com v Burns, 27 Ky 177 (1830).)

OAG 84-187. 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 KRS 520.010(4)(b).

OAG 75-41. An electro-mechanical pinball machine made to receive and react to the deposit of a quarter for which the player receives (or plays) one or two games is a gambling device; other non-pinball electro-mechanical machines must be examined in light of KRS 528.010(4) to determine whether or not such machines are gambling devices.

OAG 66-72. Pinball machine which offers no replays or thing of value is not gambling device. (Annotation from former KRS 436.230.)

#### 4. Lottery or gift enterprise

OAG 81-259. A planned McDonald's promotional scheme is not a lottery and therefore is not in violation of Const § 226 and KRS Ch 528. The determinative factor is that McDonald's has made it possible for non-purchasers as well as purchasers to participate in the scheme.

OAG 81-146. That some of the participants in a promotional scheme in fact make purchases of the sponsor's product does not, in and of itself, constitute consideration supporting a **lottery**, where **chances** to participate in the scheme are also freely given away on a reasonably equal basis.

OAG 81-139. Discussion of what constitutes **gambling** where a tour operator offers **games** of **chance** involving money and the auction of prizes.

#### 5. Profit

363 SW(2d) 219 (Ky 1962), Meader v Com. The remuneration derived from the operation of a blackjack **game** is compensation for operating the **game**. (Annotation from former KRS 436.230.)

## 6. Value

369 SW(2d) 6 (Ky 1963), Trowbridge v Com. It is a violation of this statute when the player of a pinball machine is paid cash for each free game won. (Annotation from former KRS 436.230.)

291 Ky 554, 164 SW(2d) 977 (Ky 1942), Steely v Commonwealth. The evidence disclosed that in playing a machine called a "pinball machine," the element of skill played but a very small part in successful results which depended almost entirely on chance; the only reward for success was the right of replay; held such right came within the term "or other thing" in this section and the maintenance of the machine within its forbidding provisions. (Annotation from former KRS 436.230.)

267 Ky 602, 102 SW(2d) 382 (Ky 1936), Commonwealth v Bowman. Operator of a pinball machine which if player made a high score paid back to player a sum far in excess of that paid by him to operate such machine, the machine being maintained daily in such fashion, held to have violated this section. (Annotation from former KRS 436.240.)

179 Ky 125, 200 SW 371 (Ky 1918), Welch v Commonwealth. Every person who dropped a nickel in a certain slot machine received therefor a package of chewing gum, and sometimes also checks exchangeable for merchandise; the person so dropping the nickel knew in advance from a dial what he would receive, but could still play the machine in the hopes that the next amount set on the dial, after the player's initial play, would be for a large amount of checks; the slot machine was a **gambling** machine. (Annotation from former KRS 436.230.)

46 Ky 44 (Ky 1846), Ashlock v Commonwealth. The **betting** of checks or counters at a faro-bank which are understood by the parties to represent money or bank notes will sustain the charge of keeping a faro-table at which money and bank notes are **bet**. (Annotation from former KRS 436.230.)

1959 OAG 42953. A pinball machine which is designed to award free **games** to winning players, but which is actually used for **gambling** in that the keeper of the machine pays players money for each free **game** won, may be seized and under judgment of the court be confiscated and destroyed. (Annotation from former KRS 436.230.)

1956 OAG 37886. If pinball machines pay off only in free **games**, they are prima facie legal and may be kept and operated in any establishment, and there is no prohibition against operation of the machines in a school area. (Annotation from former KRS

436.230.)

## 7. Charitable **gaming**

OAG 81-138. KRS 528.010(10)(a) and (b) which seeks to exempt charitable **gaming** from prosecution violates Const § 226. Thus, a publisher or owner of a newspaper or magazine could be convicted under KRS 436.420 for advertising charitable **gaming** which is defined as a "**lottery**" in KRS 528.010(10)(a).

OAG 80-408. Absent an amendment to Ky Const §226, any attempt on the part of the General Assembly to legitimize or "decriminalize" **lotteries** or gift enterprises, whether it be by exempting certain classes of **lotteries** from criminal sanctions, or by seeking actively to license the operation of certain forms of **lotteries**, including attempts to exempt "charitable **gaming**" from prosecution, is unconstitutional and void insofar as it seeks to decriminalize **bingo** or other **lotteries** or gift enterprises operated by charitable or religious organizations or institutions.

## 8. Races

238 Ky 739, 38 SW(2d) 987 (Ky 1931), Commonwealth v Kentucky Jockey Club. Exemption of **pari-mutuel betting** from the provisions of this section created by this section is constitutional. (Annotation from former KRS 436.230.)

213 Ky 648, 281 SW 826 (Ky 1926), Erlanger Kennel Club v Daugherty, affirmed 48 S Ct 158, 275 US 509, 72 LEd 398. 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. (Annotation from former KRS 436.230.)

150 Ky 343, 150 SW 364 (Ky 1912), Nicholson v Alvey. Where a plaintiff sued to recover money lost in betting on horseraces in a poolroom to which racing information was furnished by telegraph and telephone companies, but it did not appear that either of such companies won any of the money or received any of the plaintiff's losses, they were not liable to the plaintiff under this section. (Annotation from former KRS 436.230.)

110 SW 247, 33 KLR 287 (1908), Grinstead v Kirby. Neither the selling nor buying of combination or French pools on any regular race track during the races thereon is illegal. (Annotation from former KRS 436.200.)

110 SW 247, 33 KLR 287 (1908), Grinstead v Kirby. French pools at race tracks allowable. (Annotation from former KRS 436.230.)

18 KLR 515, 100 Ky 1, 37 SW 152 (Ky 1896), Cheek v Commonwealth. Betting on a horse race is an offense within the meaning of this

section. (Annotation from former KRS 436.200.)

9. Jury instructions

144 Ky 287, 137 SW 1079 (Ky 1911), Johnson v Commonwealth. It was error for the court to instruct the jury that a "bird cage" was a gambling device; that question should have been left to the jury. (Annotation from former KRS 436.230.)

117 Ky 80, 77 SW 682 (1903), Miller v Com. In a prosecution for setting up a faro-bank, the court did not err in instructing the jury that a defendant could be convicted even though the game was baccarat, if the game was played under substantially the same rules as faro. (Annotation from former KRS 436.230.)

KRS § 528.010

KY ST § 528.010

KY Const s 226  
Const § 226

CONSTITUTION OF THE COMMONWEALTH OF KENTUCKY  
GENERAL PROVISIONS

Current through End of 1998 Reg. Sess.

KY CONST § 226 **STATE LOTTERY; CHARITABLE LOTTERIES AND CHARITABLE GIFT ENTERPRISES; OTHER LOTTERIES AND GIFT ENTERPRISES FORBIDDEN**

(1) The General Assembly may establish a Kentucky **state lottery** and may establish a **state lottery** to be conducted in cooperation with other **states**. Any **lottery** so established shall be operated by or on behalf of the Commonwealth of Kentucky.

(2) The General Assembly may by general **law** permit charitable **lotteries** and charitable gift enterprises and, if it does so, it shall:

(a) Define what constitutes a charity or charitable organization;

(b) Define the types of charitable **lotteries** and charitable gift enterprises which may be engaged in;

(c) Set standards for the conduct of charitable **lotteries** and charitable gift enterprises by charitable organizations;

(d) Provide for means of accounting for the amount of money raised by **lotteries** and gift enterprises and for assuring its expenditure only for charitable purposes;

(e) Provide suitable penalties for violation of statutes relating to charitable **lotteries** and charitable gift enterprises; and

(f) Pass whatever other general **laws** the General Assembly deems necessary to assure the proper functioning, honesty, and integrity of charitable **lotteries** and charitable gift enterprises, and the charitable purposes for which the funds are expended.

(3) Except as provided in this section, **lotteries** and gift enterprises are forbidden, and no privileges shall be granted for such purposes, and none shall be exercised, and no schemes for similar purposes shall be allowed. The General Assembly shall enforce this section by proper penalties. All lottery privileges or charters heretofore granted are revoked.

#### CREDIT(S)

HISTORY: 1992 c 113, § 1, amendment approved 11-3-92

1988 c 116, § 1, amendment approved 11-8-88; adopted eff. 9-28-1891

#### PRACTICE AND STUDY AIDS

Frank, Kentucky Real Estate Professionals and the Law, Text 2.09(B)

#### CROSS REFERENCES

Criminal syndicate defined, 506.120

Lottery and gift enterprise defined, 528.010

#### NOTES OF DECISIONS AND OPINIONS

971 SW(2d) 810 (Ky App 1997), Com. v Louisville Atlantis Community/Adapt, Inc, rehearing denied, review denied. Provision of Charitable **Gaming** Act imposing fee on charitable **gaming** in amount of one-half of one percent of gross receipts did not violate provision of **State** Constitution generally requiring General Assembly to assure that money raised by **lotteries** and gift enterprises be expended only for charitable purposes, but rather was authorized by another provision of Constitution allowing **laws** necessary to assure proper functioning of charitable **gaming**.

971 SW(2d) 810 (Ky App 1997), Com. v Louisville Atlantis Community/Adapt, Inc, rehearing denied, review denied. Provision of **State** Constitution requiring that money raised by charitable **gaming** be expended only for charitable purposes would be



interpreted as requiring that net proceeds be expended only for charitable purposes rather requiring all receipts be spent for charitable purposes so as to preclude statutory requirement that charities spend portion of receipts for regulatory fee.

476 SW(2d) 626 (Ky 1971), *Otto v Kosofsky*, certiorari denied 93 Sct 227, 409 US 912, 34 LEd(2d) 173. **Bingo** is a **lottery**.

429 SW(2d) 391 (Ky 1968), *A. B. Long Music Co. v Com.* Elements of "**lottery**" are a prize, award thereof by **chance**, and a consideration and the term embraces all schemes for distribution of prizes by **chance** for consideration including **bingo**, **beano**, **keno**, and **lotto**.

404 SW(2d) 464 (Ky 1966), *Com. v Allen*. Referral selling included "**chance**" and was within inhibition of statute proscribing **lottery** or gift enterprise.

240 SW(2d) 95 (Ky 1951), *Hardy v St. Matthew's Community Center*. Where statute imposed felony penalty upon person conducting **lottery**, statute imposing misdemeanor penalty upon purchaser of **lottery** ticket would not place purchaser in *pari delicto* with person conducting **lottery** so as to prevent purchaser's enforcement of **lottery** contract, since purchaser is a victim rather than collaborator in the prohibited transaction.

293 Ky 531, 169 SW(2d) 596 (Ky 1943), *Commonwealth v Malco-Memphis Theatres*. The statutory amendment, providing that words "**lottery** or gift enterprise" in original statute, providing penalty for operating **lottery**, shall not apply to gift of money or property awarded by lot or drawing by theaters to their patrons, without charging any price or collecting fees, other than regular admission prices, for privilege of participating in drawing, is void as exempting theaters from constitutional prohibition of "**lotteries**".

279 Ky 712, 131 SW(2d) 923 (Ky 1939), *Worden v City of Louisville*. 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.

262 Ky 640, 90 SW(2d) 1001 (Ky 1936), *Leake v Isaacs*. Alleged illegality of **lottery** plan under which automobile was **raffled** off at picnic held not available as defense to parties to whom automobile had been delivered, in action against them for possession of such automobile by buyer of winning ticket who, being unable to personally attend picnic, had appointed such parties as his agents to represent him at picnic.

238 Ky 739, 38 SW(2d) 987 (Ky 1931), *Commonwealth v Kentucky Jockey Club*. The **pari-mutuel** system of **betting** on horse races is

not a **lottery** within the meaning of that term in this section of the constitution.

OAG 93-58. **Casino gambling** is a **lottery**, and is forbidden in this **state** by Ky Const §226; the **state lottery** authorized by this section can not be construed to include **casino gambling**.

OAG 92-127. A **lottery game** based on horse races in which the odds of winning are one in 35,000,000 is a permissible **lottery**.

OAG 81-290. The Boone County Jaycees' attempt to **raffle** off the farm of a local resident is prohibited as being a **lottery**. The Jaycees and the farm owner would be subject to criminal penalties if they proceeded with the **raffle**.

OAG 81-146. That some of the participants in a promotional scheme in fact make purchases of the sponsor's product does not, in and of itself, constitute consideration supporting a **lottery**, where **chances** to participate in the scheme are also freely given away on a reasonably equal basis.

OAG 81-138. KRS 528.010(10)(a) and 528.010(10)(b) which seeks to exempt charitable **gaming** from prosecution violates Ky Const §226.

OAG 63-419. Where all automobile license numbers in certain counties are placed in a drawing for prizes and no consideration is required for eligibility, the drawing is not a **lottery**; the prohibition against **lottery** tickets prevents the distribution of sweepstakes tickets as prizes.

JE-46 (July 1983). A judicial candidate's campaign committee may not sponsor a **raffle** to raise campaign funds, as a **raffle** falls within the definition in KRS 528.010(5) of a **lottery** and gift enterprise which is forbidden by Ky Const §226.

Const § 226

KY Const § 226

KY ST s 528.020

KRS § 528.020

TITLE L. KENTUCKY PENAL CODE  
CHAPTER 528. GAMBLING

Current through End of 1998 Reg. Sess.

528.020 PROMOTING GAMBLING IN THE FIRST DEGREE

(1) A person is guilty of promoting gambling in the first degree when he knowingly advances or profits from unlawful gambling

activity by:

(a) Engaging in bookmaking to the extent that he employs or utilizes three or more persons in a bookmaking activity and receives or accepts in any one day bets totaling more than \$500; or

(b) Receiving in connection with a lottery or mutuel scheme or enterprise:

1. Money or written records from a person other than a player whose chances or plays are represented by such money or records; or

2. More than \$500 in any one day of money played in the scheme or enterprise; or

(c) Setting up and operating a gambling device.

(2) Promoting gambling in the first degree is a Class D felony.

CREDIT(S)

HISTORY: 1974 c 406, § 241, eff. 1-1-75

<General Materials (GM) - References, Annotations, or Tables>

COMMENTARY

Kentucky Crime Commission/LRC

1974:

KRS 528.020 and 528.030 are included to provide criminal penalties for those who exploit the popular urge to **gamble**. As indicated by the definition of "advancing **gambling** activity" and the definition of "player" the mere contestant or bettor or the person who arranges a social **game** of **chance** is not subject to criminal liability. The objective is to penalize the person who knowingly profits from or advances **gambling** activity. The situations contemplated by KRS 528.020 and 528.030 involve activity beyond anything that a player might do. The penalized conduct, basically advancing and profiting from **gambling** as those terms are defined in KRS 528.010 constitutes a Class A misdemeanor under KRS 528.030, promoting **gambling** in the second degree. However, when the **gambling** enterprise involved is large-scale, as described in KRS 528.020(1)(a), (b) and (c), the promotion of the activity constitutes a Class D felony, promotion of **gambling** in the first degree. The felony penalty is available when the **gambling** activity is: a bookmaking enterprise operated by three or more persons which takes in **bets** totaling more than \$500 in any one day of operation; a **lottery** or mutuel scheme or enterprise receiving money or records from someone not a player

or receiving more than \$500 in any one day of operation; or setting up and operating a **gambling** device.

The \$500 figure in KRS 528.020(1)(a) and (b)(ii) is an arbitrary one; however, the sum is considered indicative of accepting **bets** as a business and distinguishes the felony offense from the misdemeanor offense. This figure is relatively consistent with those used in other modern codes. Michigan uses the \$500 standard (proposed Michigan Revised Criminal Code § 6105 (1967)) while New York fixes \$5000 for bookmaking and \$500 for **lotteries** as the dividing point between large and small-scale bookmaking and **lottery** activities (N.Y. Penal **Law** § 225.10 (McKinney 1967)).

KRS 528.020(1)(b)(i) is directed against the **lottery** operator who uses "bag men" to bring in money or records, also indicating a business operation on a large scale. Persons engaged in bookmaking or **lottery** operations, but not to the extent set out in KRS 528.020, are guilty of promoting **gambling** in the second degree under KRS 528.030.

#### Relationship to Pre-existing **Law**

With the exception of **lottery** and bookmaking activities, grading of **gambling** offenses by the Code is substantially the same as under former **law**. KRS 436.230 made the operator of a "keno bank" (a **game** similar to lotto or **bingo**), a "faro bank" (where players **bet** on what card will be drawn), and "other machine or contrivance" relating to **gambling**, guilty of a felony, punishable by a fine of \$500 and confinement in the penitentiary for one to three years. The penalty applied whether the operator conducted the **game** "with or without compensation." If the **game** were craps or cards, the operator must receive compensation or a cut before he was subject to the same penalty. Meader v Commonwealth, 363 SW(2d) 219 (Ky 1962). KRS 436.240 and KRS 436.250 imposed a fine of \$200 to \$500 on a person permitting gambling on his premises. KRS 436.260 imposed a fine of \$50 to \$500 for persuading another person to visit a gambling house. KRS 436.310 imposed a fine of \$25 to \$200 for permitting betting on a pool or billiard game. These offenses are classified as promoting gambling in the second degree and are punishable as misdemeanors under KRS 528.030.

The Code grades bookmaking activities according to the extent of the operation. Regardless of their extent, bookmaking activities are treated the same under prior law. A person who kept or used premises for bookmaking was subject to a fine of \$1000 to \$5000 and imprisonment for six to twelve months. The lessor of the premises could have been similarly fined, but not imprisoned, under KRS 436.440. An agent or employee of such a person could have been imprisoned, but not fined, under KRS 436.450. All persons assembled on the premises were subject to imprisonment for ten to thirty days. KRS 436.480. A person who "wagers" money on horse races or takes bets thereon could have been imprisoned for one to twelve months. KRS 436.490.

Under prior law, the operator of a lottery was subject to a fine of \$500 to \$5000 and confinement in the penitentiary for two to five years under KRS 436.360 regardless of the extent of the operation. A person permitting premises owned, occupied or controlled by him to be used for **lottery** purposes was subject to a like penalty under KRS 436.370. In the Code, such use of premises is treated as advancing **gambling** activity and punishable as a Class A misdemeanor under KRS 528.030. Advertising or distribution of printed matter concerning **lotteries**, misdemeanor offenses under KRS 436.420 and KRS 436.430 are considered to advance **gambling** activity under the revision and are punishable as Class A misdemeanors under KRS 528.030.

#### LIBRARY REFERENCES

**Gaming** k64.1.

C.J.S. **Gaming** § 84 et seq.

**Gambling** generally. 38 Am Jur 2d, **Gambling** § 1 et seq.

Forfeiture of property used in connection with **gaming** before trial of individual offender. 3 ALR2d 751

Entrapment to commit offense with respect to **gambling** or **lotteries**. 31 ALR2d 1212

Admissibility, in prosecution for **gambling** or **gaming** offense, of evidence of other acts of **gambling**. 64 ALR2d 823

Participation in **gambling** activities as bar to action for personal injury or death. 77 ALR2d 961

Coin-operated pinball machine or similar device, played for amusement only or confining reward to privilege of free replays, as prohibited or permitted by antigambling **laws**. 89 ALR2d 815

Bridge as within **gambling laws**. 97 ALR2d 1420

Paraphernalia or appliances used for recording **gambling** transactions or receiving or furnishing **gambling** information as **gaming** "devices" within criminal statute or ordinance. 1 ALR3d 726

Constitutionality of statutes providing for destruction of **gambling** devices. 14 ALR3d 366

**Gambling** in private residence as prohibited or permitted by antigambling **laws**. 27 ALR3d 1074

**Law** of forum against **wagering** transactions as precluding enforcement of claim based on **gambling** transactions valid under applicable foreign **law**. 71 ALR3d 178

Retaking of money lost at **gambling** as robbery or larceny. 77 ALR3d 1363

Criminal liability of member or agent of private club or association, or of owner or lessor of its premises, for violation of **state** or local liquor or **gambling laws** thereon. 98 ALR3d 694

What is a "taxable **wager**" within the meaning of the federal statute (26 USC § 4401 et seq.) imposing a tax on **wagers**. 1 ALR Fed 794

Validity and construction of statute (18 USC § 1084(a)) making transmission of **wagering** information a criminal offense, 5 ALR

Fed 166

Validity, construction, and application of 18 USCS § 1955 prohibiting illegal **gambling** businesses. 21 ALR Fed 708

What is an "enterprise," as defined at 18 USCS § 1961(4), for purposes of the Racketeer Influenced and Corrupt Organization (RICO) statute (18 USCS §§ 1961 et seq.). 52 ALR Fed 818

Requirement of 18 USCS § 1955, prohibiting illegal gambling businesses, that such businesses involve five or more persons. 55 ALR Fed 778

#### NOTES OF DECISIONS AND OPINIONS

844 SW(2d) 385 (Ky 1992), Com. v Preece, certiorari denied 114 Sct 66, 510 US 816, 126 LEd(2d) 36. A conviction for promoting gambling will be supported by evidence that the defendant received almost \$1.7 million in profit from supposedly charitable bingo games.

474 SW(2d) 885 (Ky 1971), Duke v Com. Under statute authorizing inspection of any premises where alcoholic beverages are manufactured, sold, stored or otherwise trafficked in without first obtaining search warrant, warrantless search of downstairs "apartment" by agents of Alcoholic Beverage Control Board and other **law** enforcement officers who entered apartment in downstairs portion of supper club by forcing open door and who found illegal **gambling** devices therein, was reasonable as incident to right of inspection.

437 SW(2d) 496 (Ky 1969), Beets v Com. Evidence was sufficient to support finding that pinball machine was "**gambling** device".

406 SW(2d) 730 (Ky 1966), Com. v Campbell. Indictment charging that defendant conducted, managed or promoted a certain business which was a **lottery** or gift enterprise **stated** offense within statute proscribing **lottery** or gift enterprise.

404 SW(2d) 464 (Ky 1966), Com. v Allen. Referral selling included "**chance**" and was within inhibition of statute proscribing **lottery** or gift enterprise.

369 SW(2d) 6 (Ky 1963), Trowbridge v Com. Subsection of statute prohibiting keeping or conducting of **gambling** devices, excluding from statute's operation pinball machines paying off only in free **games**, applies only where free payoff is limited to rewards given by machine itself, and where proprietor pays players in cash for each free **game** won, his conduct is in violation of statute.

363 SW(2d) 219 (Ky 1962), Meader v Com. Operator of dice **game** called beat-the-dealer is operating "contrivance" within statute proscribing operation of contrivance used in **betting** whereby money or anything of value may be won or lost.

249 SW(2d) 144 (Ky 1952), Three One-Ball Pinball Machines v Com.

Where pinball machines were allegedly designed merely to reward winner with free **games** but machines required no skill on part of player and were in fact used by keeper and owner to pay winners at rate of nickel for each **game** won, machines were properly confiscated under statutes authorizing such confiscation of **gambling** machines, regardless of proviso in statute excepting machines which only give a free **game** for the skill of the player.

243 SW(2d) 909 (Ky 1951), Com. v Welch. In prosecution for engaging in the occupation of receiving and transmitting **wagers** on horse races response of Commonwealth to direction that Commonwealth supply a bill of particulars fairly advised defendants that Commonwealth would offer testimony that within a period **stated** defendants had operated a handbook at a place named, and that various persons made **bets** on horse races, and fairly apprised defendants of what Commonwealth expected to prove and was sufficient.

240 SW(2d) 95 (Ky 1951), Hardy v St. Matthew's Community Center. Where statute imposed felony penalty upon person conducting **lottery**, statute imposing misdemeanor penalty upon purchaser of **lottery** ticket would not place purchaser in pari delicto with person conducting **lottery** so as to prevent purchaser's enforcement of **lottery** contract, since purchaser is a victim rather than collaborator in the prohibited transaction.

239 SW(2d) 491 (Ky 1951), City of Newport v Nier. A conviction or acquittal under either city ordinance making it unlawful to possess a gambling device or under statute forbidding any person to keep a gambling device would constitute a bar to a prosecution under the other.

313 Ky 291, 231 SW(2d) 79 (Ky 1950), Willoughby v Com. Where police officers without authority or a warrant entered defendant's premises by force, and through open door into another room observed a counter, on which were a telephone and betting slips with several men gathered around, and defendant replied upon questioning that he operated handbook, and defendant was then arrested and racing forms and betting slips were seized as evidence, evidence was incompetent in prosecution for receiving, making, transmitting or negotiating bets on race horses, and since without this evidence there was not enough to take case to jury, defendant should have been acquitted.

312 Ky 584, 229 SW(2d) 60 (Ky 1950), Gilley v Com. The "numbers game", which is played by the operators selling to players through his agents, three numbers on slips of paper, and the player winning a cash prize if his slip contains three numbers in sequence as they appear in a predetermined large number published daily in the press, with amount of prize depending upon amount paid for the slip, is a "lottery" within statute prohibiting lotteries.

312 Ky 584, 229 SW(2d) 60 (Ky 1950), Gilley v Com. Duplicate "numbers slips" were a gambling "contrivance" which could be seized under statute authorizing seizure of a gambling contrivance used for carrying on a prohibited gambling game.

310 Ky 57, 219 SW(2d) 966 (Ky 1949), Com. v Sloan. Evidence that slot machine covered with dust and mud was found behind a clock in bedroom near room where defendant conducted his business was insufficient as a matter of law on which to convict defendant under statute denouncing setting up, keeping, managing and operating a slot machine in a place of business.

305 Ky 477, 204 SW(2d) 806 (Ky 1947), Beierle v City of Newport. City officials were without authority to pass proposed ordinance levying occupation tax on operators of gambling slot machines and on bookmakers or takers of bets on horse races, and hence citizen could not initiate such an ordinance, in view of statutes making operation of gambling slot machines and bookmaker's place illegal.

291 Ky 554, 164 SW(2d) 977 (Ky 1942), Steely v Commonwealth. "Gambling", within meaning of statute punishing one who permits any game or machine on which money or other thing may be won or lost to be maintained on his premises, is an engagement whereby some sort of prize or stake possessing value to the player may be won or lost through manipulation by the player, and is distinguishable from the playing of such contrivance as an automatic piano player operated by dropping a nickel in a slot.

283 Ky 81, 140 SW(2d) 841 (Ky 1940), Hickerson v Commonwealth. Under statute providing for the forfeiture of devices used or intended to be used for the purpose of gaming, a gaming device need not be set up, operated, or otherwise used as a prerequisite to a forfeiture of the device.

279 Ky 712, 131 SW(2d) 923 (Ky 1939), Worden v City of Louisville. 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.

267 Ky 439, 102 SW(2d) 385 (Ky 1936), Smith v Harris. Pinball machine whereby player deposited a nickel in a slot and received 10 balls for playing, and whereby player, if he won, was entitled to some amount in merchandise or other thing of value, held a "**gambling** machine" within prohibition of statute, notwithstanding there was question of skill in operation of machine, where elements of hazard and **chance** still remained.

238 Ky 739, 38 SW(2d) 987 (Ky 1931), Commonwealth v Kentucky Jockey Club. Legislature possesses power to prohibit all forms of **gambling**, which includes power to **regulate** as well as right to



prohibit in part and **regulate** in part, provided all persons in like situations are treated alike.

238 Ky 739, 38 SW(2d) 987 (Ky 1931), Commonwealth v Kentucky Jockey Club. Statute creating offense of **gaming**, and providing that it shall not include **pari mutuel** system of **betting** on horse races within inclosures while races are being run, held not forbidden by Constitution prohibiting passage of local or special act.

25 KLR 995, 116 Ky 812, 76 SW 876 (Ky 1903), City of Louisville v Wehmhoff, rehearing overruled 25 KLR 1924, 116 Ky 812, 79 SW 201. Louisville City Ordinance, § 4, making it unlawful for any telegraph company to furnish to any owner, agent, or employee of any poolroom maintained in the city any communication concerning any horse races in or out of the city is not invalid as an unauthorized interference with the legitimate business of a common carrier to contract to deliver messages.

116 Sct 1114, 517 US 44, 134 LEd(2d) 252 (1996), Seminole Tribe of Florida v Florida. Indian commerce clause, congressional abrogation of states' sovereign immunity, suits in federal court to compel states to negotiate towards a gaming compact with Indian tribes.

KRS § 528.020

KY ST § 528.020

KY ST s 230.361

KRS § 230.361

TITLE XIX. PUBLIC SAFETY AND MORALS  
CHAPTER 230. RACING  
**PARI-MUTUEL WAGERING**

230.361 **REGULATION OF PARI-MUTUEL WAGERING; AUTHORIZED OPERATION NOT GROUNDS FOR REVOCATION OR SUSPENSION OF TEMPORARY ALCOHOLIC BEVERAGE LICENSE; TICKETS PRESUMED ABANDONED; LICENSE FOR SPECIAL CHARITABLE EVENTS**

(1) The commission shall promulgate administrative **regulations** governing and **regulating** mutuel **wagering** on horse races under what is known as the **pari- mutuel** system of **wagering**. The **wagering** shall be conducted only by a person licensed under this chapter to conduct a race meeting and only upon the licensed premises. The **pari-mutuel** system of **wagering** shall be operated only by a totalizator or other mechanical equipment approved by the commission. The commission shall not require any particular make of equipment.

(2) The operation of a **pari-mutuel** system for **betting** where authorized by **law** shall not constitute grounds for the revocation or suspension of any license issued and held under KRS 230.350.

(3) All reported but unclaimed **pari-mutuel** winning tickets held in this **state** by any person or association operating a **pari-mutuel** or similar system of **betting** at horse race meetings shall be presumed abandoned if not claimed by the person entitled to them within one (1) year from the time the ticket became payable.

(4) The commission may issue a license to conduct **pari-mutuel wagering** on steeple chases or other racing over jumps; if all proceeds from the **wagering**, after expenses are deducted, is used for charitable purposes. If the dates requested for such a license have been granted to a track within a forty (40) mile radius of the race site, the commission shall not issue a license until it has received written approval from the affected track. **Pari-mutuel wagering** licensed and approved under this subsection shall be limited to four (4) days per year. All racing and **wagering** authorized by this subsection shall be conducted in accordance with applicable administrative **regulations** promulgated by the commission.

#### CREDIT(S)

HISTORY: 1998 c 237, § 6, eff. 7-15-98

1992 c 109, § 25, eff. 3-30-92; 1988 c 376, § 8; 1986 c 214, § 6; 1982 c 100, § 6; 1978 c 307, § 1; 1974 c 403, § 7; 1960 c 184, § 14

<General Materials (GM) - References, Annotations, or Tables>

#### HISTORICAL AND STATUTORY NOTES

Note: 230.361, formerly compiled as 230.340, renumbered by the Reviser of Statutes (1978).

#### PENALTY

Penalty: 230.990(4)

#### CROSS REFERENCES

Tax on **pari-mutuel betting**, 138.510

Unclaimed **pari-mutuel** tickets from quarter horse or appaloosa race tracks, 393.095

Steeplechase racing, 810 KAR 1:050

#### LIBRARY REFERENCES

Pools. 38 Am Jur 2d, **Gambling** § 49 to 51

NOTES OF DECISIONS AND OPINIONS

253 Ky 314, 69 SW(2d) 363 (Ky 1933), Dade Park Jockey Club v Commonwealth, by Auditor of Public Accounts. Evidence held to show that funds attached were funds provided for **betting** through the **pari-mutuels** and hence were not exempt as moneys contributed for prizes, premiums or stakes. (Annotation from former KRS 230.060.)

OAG 95-23. **Raffles** where the winner is determined by the outcome of a live or videotaped sporting event rather than by a random drawing would not fall within the type of **raffle** authorized by the Charitable **Gaming** Act.

OAG 83-330. KRS 230.361(3) requires that a portion of the gross revenues received from inter-track pari-mutual **wagering** be applied to the purses of the association conducting the **wagering**.

OAG 82-4. A teletrack system of **wagering**--opening licensed racetracks for the purpose of **wagering** on televised races conducted by a different licensed association--is prohibited by Rule XI of the Kentucky Rules of Racing, 810 KAR 1:011 § 1 and 11(1). Rule XI limits the **wagering** to the association holding the race and to the grounds where the race is being held.

OAG 82-4. KRS 230.361 limits **pari-mutuel** racing to races being conducted on the licensed premises of a licensed association. KRS 528.110 prohibits **pari-mutuel wagering** from being conducted except within the enclosure of the racetrack where the race is being held. KRS 528.120 effectively prohibits any person from accepting money to be **wagered** with a licensed **pari-mutuel** enterprise in a place outside the grounds of the licensee.

KRS § 230.361

KY ST § 230.361

TITLE XX. ALCOHOLIC BEVERAGES  
CHAPTER 243. ALCOHOLIC BEVERAGES; LICENSES AND TAXES  
LICENSES TO TRAFFIC IN ALCOHOLIC BEVERAGES

243.500 CAUSES FOR WHICH LICENSES MUST BE REVOKED OR SUSPENDED

Any license issued under KRS 243.020 to 243.670 may be revoked or suspended for the following causes:

(1) Conviction of the licensee or his agent or employee for selling any illegal beverages on the licensed premises.

(2) Making any false, material statements in an application for a

license or supplemental license.

(3) Violation of the provisions of KRS 243.670.

(4) Conviction of the licensee or any of his clerks, servants, agents, or employees of:

(a) Two (2) violations of the terms and provisions of KRS Chapter 241, 243, or 244 or any act regulating the manufacture, sale, and transportation of alcoholic beverages within two (2) consecutive years;

(b) Two (2) misdemeanors directly or indirectly attributable to the use of intoxicating liquors within two (2) consecutive years; or

(c) Any felony.

(5) Failure or default of a licensee to pay an excise tax or any part of the tax or any penalties imposed by or under the provisions of any statutes, ordinances, or acts of Congress relative to taxation, or for a violation of any administrative **regulations** promulgated by the Revenue Cabinet made in pursuance thereof.

(6) Revocation of any license or permit provided in KRS 243.060, 243.070, 243.600, and 243.610, or granted under any act of Congress relative to the **regulation** of the manufacture, sale, and transportation of alcoholic beverages. Any license issued under KRS 243.020 to 243.670 shall be revoked or suspended if the licensee sells the alcoholic beverages at a price in excess of the price set by federal or **state regulations**.

(7) Setting up, conducting, operating, or keeping, on the licensed premises, any **gambling game**, device, machine, contrivance, **lottery**, gift enterprise, handbook, or facility for **betting** or transmitting **bets** on horse races; or permitting to be set up, conducted, operated, kept, or engaged in, on the licensed premises, any such **game**, device, machine, contrivance, **lottery**, gift enterprise, handbook, or facility. This section shall not apply to contests in which eligibility to participate is determined by **chance** and the ultimate winner is determined by skill and the licensee has no direct interest, or to the sale of **lottery** tickets sold under the provisions of KRS Chapter 154A.

(8) Conviction of the licensee, his agents, servants, or employees for:

(a) The sale or use upon the licensed premises of those items described in KRS 218A.050 to 218A.130 as controlled substances;

(b) Knowingly permitting the sale or use by patrons upon the licensed premises of those items described in KRS 218A.050 to

218A.130 as controlled substances; or

(c) Knowingly receiving stolen property upon the licensed premises.

#### CREDIT(S)

HISTORY: 1998 c 522, § 13, eff. 7-15-98

1992 c 254, § 2, eff. 7-14-92; 1988 ex s, c 1, § 26; 1978 c 194, § 18; 1974 c 11, § 1; 1952 c 111, § 1; 1944 c 154, § 19; 1942 c 168, § 4, 13, c 208, § 1; KS 2554b-134, 2554b-141

<General Materials (GM) - References, Annotations, or Tables>

#### HISTORICAL AND STATUTORY NOTES

Legislative Research Commission Note: (1988): Although references to the sale of "shares" were deleted in the Senate committee substitute, due to a clerical error, such reference was not deleted in subsection (7) of this section. The Reviser of Statutes, pursuant to KRS 7.136, has removed the words "or shares" to conform.

#### PRACTICE AND STUDY AIDS

Bardenwerper, West's Kentucky Practice, Methods of Practice 30.27, 30.29, n 6

#### CROSS REFERENCES

**Gambling** defined, 528.010

Persons holding federal **gambling** stamps not to be granted license, 804 KAR 5:050

#### LIBRARY REFERENCES

Termination, revocation, or suspension of licenses. 45 Am Jur 2d, Intoxicating Liquors § 183 to 194

Revocation or suspension of liquor license because of drinking or drunkenness on part of licensee or business associates. 36 ALR3d 1301

Sale or use of narcotics or dangerous drugs on licensed premises as ground for revocation or suspension of liquor license. 51 ALR3d 1130

#### NOTES OF DECISIONS AND OPINIONS

553 SW(2d) 694 (Ky 1977), Com., Alcoholic Beverage Control Bd. v Lexington Johnnie's, Inc. No person convicted of a felony or an individual convicted of a misdemeanor involving the use of intoxicating liquors may be employed in an establishment licensed

to sell alcoholic beverages within two years subsequent to the date of conviction. (But see OAG 83-80, construing the amendment to KRS 244.090(1)(a) by 1978 H 1 [1978 Acts Ch 194], § 19, eff. 6-17-78.)

459 SW(2d) 80 (Ky 1970), Fisher v Kentucky Alcoholic Beverage Control Bd. Zoning laws are not appropriate matters for consideration by alcoholic beverage control board.

451 SW(2d) 647 (Ky 1970), Brey v Alcoholic Beverage Control Bd. One sale to minor is sufficient to sustain license revocation.

442 SW(2d) 566 (Ky 1969), Brown v Carey. Conviction of a misdemeanor involving traffic in alcoholic beverages, if more than two years old, would not be a ground requiring the refusal of a license under KRS 243.100 or the revoking of a license under KRS 243.500.

273 SW(2d) 570 (Ky 1954), Alcoholic Beverage Control Bd. v Coghill. Substantial evidence failed to establish **gambling** on premises licensed for the retail sale of beer and liquor so as to justify revocation of license where handbook was found in garage, and garage and tavern were but 15 feet apart but there was no entrance connecting them, nor was it shown that person operating the handbook had any interest in the operation of the tavern nor that the person doing business under the name of the tavern had any interest in the handbook.

301 Ky 315, 191 SW(2d) 235 (Ky 1945), Brown v Baumer. Where wholesaler's liquor license upon conviction of violating OPA regulations was suspended rather than revoked, such action was not res judicata of board's right to renew license for following year.

301 Ky 315, 191 SW(2d) 235 (Ky 1945), Brown v Baumer. Suspension, revocation, or denial of renewal of a license is in no sense in nature of punishment.

301 Ky 315, 191 SW(2d) 235 (Ky 1945), Brown v Baumer. Board's refusal to renew wholesaler's license after suspension of license for twenty-five days for violating OPA regulations, was not arbitrary where evidence indicated other violations not shown at time of suspension.

279 Ky 272, 130 SW(2d) 821 (Ky 1939), Keller v Kentucky Alcoholic Beverage Control Bd. Acquittal in criminal proceedings for illegal sale of alcoholic beverages does not bar board from revoking license to sell such beverages.

152 F(2d) 760 (Em.App. 1946), Collins v Bowles. KRS 243.490, 243.500 and 244.230 are clearly indicative of **state** legislature's intent that its enactment should not conflict with Acts of Congress.

OAG 81-139. Discussion of what constitutes **gambling** where a tour operator offers **games** of **chance** involving play money and the auction of prizes.

KRS § 243.500

KY ST § 243.500

TITLE XXX. CONTRACTS  
CHAPTER 372. CONTRACTS AGAINST PUBLIC POLICY

372.010 **GAMBLING** TRANSACTIONS VOID

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.

CREDIT(S)

HISTORY: 1942 c 208, § 1, eff. 10-1-42

KS 1955

<General Materials (GM) - References, Annotations, or Tables>

CROSS REFERENCES

Lotteries and gift enterprises forbidden, Ky Const §226

LIBRARY REFERENCES

Agreement against public policy. 17 Am Jur 2d, Contracts § 165, 174, 177, 179

Right to recover money lent for gambling purposes. 53 ALR2d 345

NOTES OF DECISIONS AND OPINIONS

Void transactions 1

Enforceable contracts 2

1. Void transactions

317 SW(2d) 899 (Ky 1958), Webb v Martin. In a suit by a wife which could be treated as either one to recover property her husband lost in gambling, for which recovery is authorized by KRS 372.010 and 372.020, or treated as a suit to recover property he improperly disposed of while acting as an agent, in both

instances the result is the same: the wife will prevail.

242 SW(2d) 605 (Ky 1951), Dobbs v Holder. A check for amount of gambling loss to payee being void under statute, maker, who stopped payment of check before it could be cashed by payee, who subsequently endorsed it to automobile sales firm, which became innocent holder for value, could recover from such firm amount of its check, on which it stopped payment, to maker of original check, for purchase price of another automobile, without deduction of amount of original check.

240 SW(2d) 582 (Ky 1951), Tyler v Goodman. In action to recover money alleged to have been lost by betting on horse races in handbook operated by defendants evidence that one defendant operated the handbook in the rear of a newsstand operated by other defendant with his consent and acquiescence did not warrant a recovery against defendant operating the newsstand.

309 Ky 549, 218 SW(2d) 395 (Ky 1949), Craig v Curd. This section does not cover **bets** upon elections. Such **bets** are **regulated** by KRS 436.330.

241 Ky 666, 44 SW(2d) 587 (Ky 1931), Bass v Simon. "**Gaming** contract" defined.

191 Ky 290, 230 SW 291 (Ky 1921), John L. Dunlap & Co. v Perry. A certain contract as to purchase of grain for future delivery, was within this section.

188 Ky 413, 222 SW 515 (Ky 1920), Levy v Doerhoefer's Ex'r. A note given for a **gambling** debt is void in the hands of an indorsee for value before maturity.

130 Ky 805, 114 SW 273 (Ky 1908), McDevitt v Thomas. A loan for **betting** on a horse race cannot be collected although it is not "**gaming**" within this section.

29 KLR 1212, 123 Ky 677, 97 SW 353 (Ky 1906), Geo. Alexander & Co. v Hazelrigg. As the above section makes all **gambling** contracts void, Acts 1904, p. 225, c. 102, § 57, does not authorize one holding in due course a note given for a **gambling** debt to enforce such note.

18 KLR 892, 100 Ky 367, 38 SW 495 (Ky 1897), White v Wilson's Adm'rs. A corporation cannot be legally organized to conduct a **gaming** business, and the members of a corporation engaged in such a business are personally liable.

18 KLR 892, 100 Ky 367, 38 SW 495 (Ky 1897), White v Wilson's Adm'rs. One who has any amount of interest in the winnings cannot recover money that was advanced to pay losses of a player. Likewise, where there is a "takeout" in a game operated by a club, a member who is interested in the game cannot recover money



that was advanced to pay losses of a player. (See also *Stapp v Mason*, 114 Ky 900, 72 SW 11 (1903) and notes to KRS 372.020 (KS 1956).)

12 KLR 211, 90 Ky 280, 13 SW 1076 (Ky 1890), *Lyons v Hodgen*. Gambling contracts: This section embraces gambling in "futures." The process by which money is won and lost is a "wager" within the meaning of this section, which was designed to embrace every species of wagering, whether practiced at the time the statute was enacted, or since devised. (See also *Sawyer, Wallace & Co v Taggart*, 77 Ky 727 (1879); *Boyd Commission Co v Coates*, 69 SW 1090, 24 KLR 730 (1902).)

76 Ky 447 (Ky 1877), *Reed v Reeves' Adm'r*. Gaming contract in part renders the whole contract void. Where part of the consideration received by an executor for the assignment of a note due to him was a gambling debt, the assignment of the note was void, and the title did not pass to the assignee. (See also *Brittain v Duling*, 54 Ky 138 (1854); *Bevil v Hix*, 51 Ky 140 (1851); *Standeford v Shultz & Co*, 44 Ky 581 (1845).)

67 Ky 40 (Ky 1868), *Alfriend v Hughes*. Money loaned for the purpose of **betting** on a horse race to a person actually engaged in such **betting** may not be recovered, as such a contract is void.

19 Ky 247 (1826), *Roberts v Tennell*. A contract for a loan of money at a time and place where **gambling** is taking place to a person actually engaged in such activity is void, and the money loaned cannot be recovered.

11 Ky 134 (1822), *Lyon v Respass*. Money loaned for **gambling** purposes may not be recovered.

7 Ky 552 (Ky 1817), *Colyer v Ransom*. A note given for **lottery** tickets to be used as a **betting** stake, although not given for money, is nonetheless void.

116 Sct 1114, 517 US 44, 134 LEd(2d) 252 (1996), *Seminole Tribe of Florida v Florida*. Indian commerce clause, congressional abrogation of **states'** sovereign immunity, suits in federal court to compel **states** to negotiate towards a **gaming compact** with Indian tribes.

## 2. Enforceable contracts

313 Ky 321, 231 SW(2d) 42 (Ky 1950), *Elizabethtown Lincoln Mercury v Jones*. An agreement for sale of new automobile, wherein buyer agreed not to sell automobile during period of twelve months without first offering automobile to dealer at the price at which it was sold less a handling charge of 10% and dealer agreed that in event of repurchase of automobile he would not sell automobile above current delivered price, with provision for liquidated damages in amount of 25% of invoice price in event of

breach of agreement by either party, was not invalid as against public policy.

285 Ky 675, 149 SW(2d) 11 (Ky 1941), Griffith's Adm'x v Miller. Purchase and sale of stock on margin held under the facts of this case not to be a gaming transaction.

243 Ky 256, 47 SW(2d) 1010 (Ky 1932), Garvin v Steen. Option lasting fifteen days to purchase royalty interest under an oil and gas lease is not a gaming contract though person taking option took it with expectation that its value would be proved within its life by test development then going on.

238 Ky 739, 38 SW(2d) 987 (Ky 1931), Commonwealth v Kentucky Jockey Club. Statute creating offense of **gaming**, and providing that it shall not include **pari mutuel** system of **betting** on horse races within inclosures while races are being run, held not forbidden by Constitution prohibiting passage of local or special act.

224 Ky 598, 6 SW(2d) 1048 (Ky 1928), Johnson v John F Clark & Co. Evidence held to fail to establish that certain contracts in cotton futures fell within the prohibition of this section.

197 Ky 59, 246 SW 157 (Ky 1922), Dowell v Pumphrey. A certain contract was a contract of indemnity and not a gaming contract.

156 Ky 161, 160 SW 792 (Ky 1913), Holzbog v Bakrow. If a maker of a note induces a person to purchase it from the payee, assuring him that it is valid and will be paid, the maker cannot avail himself of the invalidity designated by this section.

136 Ky 303, 124 SW 327 (Ky 1910), Williams Commission Co.'s Assignee v W.A. Shirley & Bro. Where a bucket shop agrees to pay back money lost on margins the contract is not void.

26 KLR 1062, 83 SW 144 (Ky 1904), Paducah Commission Co. v Boswell. An instruction that if defendant M. was agent for defendants A. and G. in a transaction of business in which plaintiff bought and sold stock, grain, etc., on a margin, and at the time of any such sale or purchase the delivery of the articles was not contemplated by the parties thereto, or their agent, the jury should find for plaintiff, as against A. and G., such amount of money as he lost in such transactions with M., while acting as agent for A. and G., if he did act as such agent, properly submitted the propositions therein enumerated.

53 Ky 313 (Ky 1854), Heironimus v Harris. Where two persons entered into an agreement whereby, in the event a certain candidate was elected president, one of them was to pay for two watches, and the other to have them, the vendor of the watches, although he knew of and assented to the agreement, could recover the price of the watches from the loser of the bet.

49 Ky 141 (Ky 1850), English v Young. A loan of money to pay a gambling debt is recoverable. (See also McKinney v Pope, 42 Ky 93 (1842); Greathouse v Throckmorton, 30 Ky 17 (1831).)

KRS § 372.010

TITLE XXI. AGRICULTURE AND ANIMALS  
CHAPTER 247. PROMOTION OF AGRICULTURE AND HORTICULTURE  
FAIRS

247.155 **GAMBLING** DEVICES OR **GAMES** OF **CHANCE** NOT TO BE OPERATED;  
EXCEPTION

It shall be unlawful for any person to open, cause to be opened, carry on, conduct or operate as owner, proprietor or employee any **gambling** device or **game** of **chance** within the confines of the grounds of the Kentucky **state** fair. Any person who violates any provision of this section shall be fined not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500) for each offense. Each day in which a **gambling** device or **game** of **chance** is so operated shall be considered a separate offense. This section shall not apply to the sale of **lottery** tickets sold under the provisions of KRS Chapter 154A.

CREDIT(S)

HISTORY: 1988 ex s, c 1, § 27, eff. 12-15-88

1944 c 118, § 1

<General Materials (GM) - References, Annotations, or Tables>

HISTORICAL AND STATUTORY NOTES

Legislative Research Commission Note: (1988): Although references to the sale of "shares" were deleted in the Senate committee substitute, due to a clerical error, such reference was not deleted in this section. The Reviser of Statutes, pursuant to KRS 7.136, has removed the words "or shares" to conform.

CROSS REFERENCES

**Gambling**, prohibition against, Ch 528

NOTES OF DECISIONS AND OPINIONS

310 Ky 607, 221 SW(2d) 435 (Ky 1949), Kentucky **State** Fair Bd. v Fowler. The title under which this section was enacted limits it to **gambling** when the **state** fair is in progress.

KRS § 247.155

TITLE L. KENTUCKY PENAL CODE  
CHAPTER 528. **GAMBLING**

COMMENTARY

Kentucky Crime Commission/LRC

1974:

Pre-existing statutory **regulation** of **gambling** consisted of approximately thirty sections divided into three general categories: **gambling** in general, **lotteries** and bookmaking. The Penal Code reduces the number of sections from thirty to ten. This reduction results primarily from defining the terms common to the various forms of **gambling**.

This chapter makes only one major change in pre-existing **law**. Under the Kentucky Penal Code, no criminal sanctions are imposed against the player. The controversial proposition, not peculiar to Kentucky, making every person who **gambles** in any manner whatsoever subject to a criminal penalty, unless he **gambles** within the confines of a licensed racetrack, is eliminated. Previously, KRS 436.270 imposed criminal sanctions against the card or dice player as well as the player of other **gambling** devices, and KRS 436.200 made it a crime for a person to engage "in any hazard or **game** on which money or property is **bet**, won or lost . . . ." Thus, players at a church or charitable **bingo game** and players of wheels at a social picnic or county fair are subject to criminal penalties. Such activity is commonplace and there is in actuality no widespread condemnation of the conduct. Recognition of these facts is the principal reason for excluding the player from criminal liability.

Under the Code, testimony of a player would not be subject to the objection of incrimination nor to the showing of alleged motives affecting his testimony such as a promise of immunity in consideration of his testimony previously available under KRS 436.510. Exempted from criminal liability, the player would be available as a witness against the prime target of **gambling laws**, the professional gambler engaged in **gambling** activity for a profit.

The provisions of this chapter do not affect the provisions authorizing **pari- mutuel wagering** at licensed race tracks contained in KRS Ch 230.

PRACTICE AND STUDY AIDS

Billingsley and Zevely, Kentucky Driving Under the Influence **Law**,

Text 1.09(A)

CROSS REFERENCES

Charitable **gaming, law** not affecting prosecution of **gambling** offenses, 230.995

**Pari-mutuel wagering** exempt from KRS Ch 528, 436.480

Shock probation in felony conviction, procedure, exercise of authority, 439.265

Shock probation in misdemeanor convictions, procedure, exercise of authority, 439.267

Criminal syndicate defined, **gambling** offenses, 506.120

NOTES OF DECISIONS AND OPINIONS

OAG 81-290. The Boone County Jaycees' attempt to **raffle** off the farm of a local resident is prohibited as being a **lottery**. The Jaycees and the farm owner would be subject to criminal penalties if they proceeded with the **raffle**.

KRS T. L, Ch. 528, Refs & Annos

KY ST T. L, Ch. 528, Refs & Annos

KY ST s 154A.063

KRS § 154A.063

TITLE XII. CONSERVATION AND **STATE** DEVELOPMENT  
CHAPTER 154A. **STATE LOTTERY**

154A.063 PROHIBITED **LOTTERY GAMES**

(1) The corporation shall not utilize amateur athletics for any purpose including, but not limited to, advertising, promoting, conducting a **lottery**, or as a basis for a **lottery**.

(2) The corporation shall not approve and operate any **casino** or similar **gambling** establishment and shall not approve or operate any **game** played with playing cards, dice, dominos, slot machines, roulette wheels, or where winners are determined by the outcome of a sports contest.

(3) This section shall not be construed to prohibit the corporation from advertising the **lottery** at, during, or in connection with a sports contest.

CREDIT(S)

HISTORY: 1990 c 470, § 75, eff. 7-1-90

HISTORICAL AND STATUTORY NOTES

Note: 1991 1st ex s, c 8, § 1 and 2, eff. 5-24-91, read:

Section 1. That Section 75(1) of 1990 House Bill 814 [KRS 154A.063(1)], as enacted, was and is clearly intended to prohibit any amateur athletics sports contest from being used as the basis of a **lottery game** by the Kentucky **Lottery** Corporation.

Section 2. That it was the intent of the General Assembly in enacting Section 75(3) of 1990 House Bill 814 [KRS 154A.063(3)] to limit the type of sports contests which are available for advertising by the Kentucky **Lottery** Corporation to those conducted at the college level or greater, except that Kentucky **Lottery** Corporation advertising by means of signs, banners, posters, and placards displayed at sports contests shall be prohibited.

LIBRARY REFERENCES

Prohibited **lotteries**. 38 Am Jur 2d, **Gambling** § 61

KRS § 154A.063

KY ST § 154A.063

KY ST s 238.545

KRS § 238.545

TITLE XIX. PUBLIC SAFETY AND MORALS  
CHAPTER 238. CHARITABLE **GAMING**

238.545 RESTRICTIONS ON FREQUENCY, PRIZES, AND PARTICIPANTS FOR VARIOUS TYPES OF CHARITABLE **GAMING**; SPECIAL LIMITED LICENSE

(1) A licensed charitable organization shall be limited by the following:

(a) In the conduct of **bingo**, to two (2) sessions per week, for a period not to exceed five (5) consecutive hours in any day and not to exceed ten (10) total hours per week. No licensed charitable organization shall conduct **bingo** at more than one (1) location during the same twenty-four (24) hour period. No licensed charitable organization shall award prizes for **bingo** that exceed five thousand dollars (\$5,000) in fair market value per twenty-four (24) hour period, including the value of door prizes. No person under the age of eighteen (18) shall be permitted to purchase **bingo** supplies or play **bingo**. A

charitable organization may permit persons under age eighteen (18) to play **bingo** for noncash prizes if they are accompanied by a parent or legal guardian and only if the value of any noncash prize awarded does not exceed ten dollars (\$10);

(b) Charity **game** tickets shall be sold only at the address of the location designated on the license to conduct charitable **gaming**;

(c) Charity **game** tickets may be sold, with prior approval of the division:

1. At any authorized special charity fundraising event conducted by a licensed charitable organization at any off-site location; or

2. By a licensed charitable organization possessing a special limited charitable **gaming** license at any off-site location; and

(d) An automated charity **game** ticket dispenser may be utilized by a licensed charitable organization, with the prior approval of the division, only at the address of the location designated on the license to conduct charitable **gaming**, and only during **bingo** sessions. The division shall promulgate administrative **regulations regulating** the use and control of approved automated charity **game** ticket dispensers.

(2) No prize for an individual charity **game** ticket shall exceed five hundred ninety-nine dollars (\$599) in value, not including the value of cumulative or carryover prizes awarded in seal card **games**. Cumulative or carryover prizes in seal card **games** shall not exceed two thousand four hundred dollars (\$2,400). Information concerning rules of the particular **game** and prizes that are to be awarded in excess of fifty dollars (\$50) in each separate package or series of packages with the same serial number and all rules governing the handling of cumulative or carryover prizes in seal card games shall be posted prominently in an area where charity game tickets are sold. A legible poster that lists prizes to be awarded, and on which prizes actually awarded are posted at the completion of the sale of each separate package shall satisfy this requirement. Any unclaimed money or prize shall return to the charitable organization. No charity game ticket shall be sold in the Commonwealth of Kentucky that does not conform to the standards for opacity, randomization, minimum information, winner protection, color, and cutting established by the division. No person under the age of eighteen (18) shall be permitted to purchase, or open in any manner, a charity **game** ticket.

(3) Tickets for a **raffle** shall be sold separately, and each ticket shall constitute a separate and equal **chance** to win. All **raffle** tickets shall be sold for the price **stated** on the ticket, and no person shall be required to purchase more than one (1)

ticket or to pay for anything other than a ticket to enter a **raffle**. **Raffle** tickets shall have a unique identifier for the ticket holder. Winners shall be drawn at random at a date, time, and place announced in advance or printed on the ticket. All prizes for a **raffle** shall be identified in advance of the drawing and all prizes identified shall be awarded.

(4) No licensed charitable organization shall conduct a charity fundraising event or a special limited charity fundraising event unless they have a license for the respective event issued by the division. No special license shall be required for any wheel game, such as a cake wheel, that awards only noncash prizes the value of which does not exceed one hundred dollars (\$100). Except for state, county, city fairs, and special limited charity fundraising events, a charity fundraising event license issued under this section shall not exceed seventy-two (72) consecutive hours. A licensed charitable organization shall not be eligible for more than four (4) total charity fundraising event licenses per year, including two (2) special limited charity fundraising event licenses. No person under eighteen (18) years of age shall be allowed to play or conduct any special limited charitable **game**. The division shall have broad authority to **regulate** the conduct of special limited charity fundraising events in accordance with the provisions of KRS 238.547.

(5) Presentation of false, fraudulent, or altered identification by a minor shall be an affirmative defense in any disciplinary action or prosecution that may result from a violation of age restrictions contained in this section, if the appearance and character of the minor were such that his or her age could not be reasonably ascertained by other means.

#### CREDIT(S)

HISTORY: 1998 c 232, § 9, eff. 4-1-98

1996 c 331, § 9, eff. 4-10-96; 1994 c 66, § 10, eff. 3-16-94

<General Materials (GM) - References, Annotations, or Tables>

#### PENALTY

Penalty: 238.995

#### PRACTICE AND STUDY AIDS

Abramson, West's Kentucky Practice, Vol. 10, Substantive Criminal Law 21.39, n 1

#### CROSS REFERENCES

Definitions for 500 KAR Chapter 11, 500 KAR 11:001



Charity game ticket standards, 500 KAR 11:030

Charity fundraising event, 500 KAR 11:080

#### NOTES OF DECISIONS AND OPINIONS

971 SW(2d) 810 (Ky App 1997), Com. v Louisville Atlantis Community/Adapt, Inc, rehearing denied, review denied. Provisions of Charitable **Gaming** Act limiting charitable **gaming** sessions to one **gaming** session per week, and limiting amount of individual prizes were valid exercise of **state's** police power, as there was rational relation between requirements and **state's** legitimate interest in insuring that **games** would remain charitable, rather than commercial, enterprises.

OAG 95-23. **Raffles** where the winner is determined by the outcome of a live or videotaped sporting event rather than by a random drawing would not fall within the type of **raffle** authorized by the Charitable **Gaming** Act.

KRS § 238.545

KY ST § 238.545

#### TITLE XIX. PUBLIC SAFETY AND MORALS CHAPTER 230. RACING GENERAL PROVISIONS

230.280 REQUIREMENT OF LICENSE FOR RACE MEETING; QUALIFICATIONS OF APPLICANTS

(1) No person shall hold or conduct any horse race meeting for any stake, purse, or reward within the Commonwealth of Kentucky without securing the required license from the commission.

(2) The commission shall investigate the qualifications of each applicant for a license to conduct a horse race meeting or the renewal of a license to conduct a horse race meeting. The commission may issue or renew a license unless the commission determines that:

(a) The track location, traffic flow, facilities for the public, and facilities for racing participants and horses do not meet **state** code or are otherwise inadequate to protect the public health and safety;

(b) The racing dates and times requested conflict with another race meeting of the same breed of horse;

(c) The financing or proposed financing of the entire operation is not adequate for the operation or is from an unsuitable source;

(d) The applicant or licensee has failed to disclose or has

misstated information or otherwise attempted to mislead the commission with respect to any material fact contained in the application for the issuance or renewal of the license;

(e) The applicant has knowingly failed to comply with the provision of this chapter or any administrative **regulations** promulgated thereunder;

(f) Any of the principals of the applicant or licensee is determined to be unsuitable because he or she has:

1. Been convicted of any crime of moral turpitude, embezzlement, or larceny, or any violation of any **law** pertaining to illegal **gaming** or **gambling**, or any crime that is inimical to the declared policy of the Commonwealth of Kentucky with **regard** to horse racing and **pari-mutuel wagering** thereon;

2. Been convicted in any jurisdiction within ten (10) years preceding initial licensing or license renewal of any crime that is or would be a felony or class A misdemeanor in the Commonwealth of Kentucky;

3. Been identified in the published reports of any federal or **state** legislative or executive body as being a member or associate of organized crime, or of being of notorious or unsavory reputation;

4. Been placed and remains in the custody of any federal, **state**, or local **law** enforcement authority;

5. Had a racing or **gaming** license revoked in another jurisdiction on grounds that would have been grounds for revoking the license in Kentucky; or

6. Engaged in any other activities that would pose a threat to the public interest or to the effective **regulation** of horse racing and **wagering** in Kentucky, or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in the conduct of racing and **wagering** or in the operation of the business and financial arrangements incidental thereto; or

(g) The applicant or licensee has had a racing or **gaming** license denied or revoked in another jurisdiction on grounds that would be grounds for license denial or revocation in Kentucky.

CREDIT(S)

HISTORY: 1998 c 237, § 4, eff. 7-15-98

1992 c 109, § 18, eff. 3-30-92; 1960 c 184, § 8

<General Materials (GM) - References, Annotations, or Tables>

CROSS REFERENCES

Licensing thoroughbred racing, 810 KAR 1:025

LIBRARY REFERENCES

Licenses. 51 Am Jur 2d, Licenses and Permits § 1

KRS § 230.280

KY ST § 230.280

TITLE XIX. PUBLIC SAFETY AND MORALS

CHAPTER 238. CHARITABLE GAMING

238.535 LICENSING OF CHARITABLE ORGANIZATIONS CONDUCTING CHARITABLE GAMING; EXEMPTIONS; QUALIFICATIONS

(1) Any charitable organization conducting charitable gaming in the Commonwealth of Kentucky shall be licensed by the division. A charitable organization qualifying under subsection (8) of this section but not exceeding the limitations provided in this subsection shall be exempt from the licensure requirements when conducting the following charitable **gaming** activities:

(a) **Bingo** in which the gross receipts do not exceed a total of fifteen thousand dollars (\$15,000) per year;

(b) A **raffle** or **raffles** for which the gross receipts do not exceed fifteen thousand dollars (\$15,000) per year; and

(c) A charity fundraising event or events that do not involve special limited charitable **games** and the gross **gaming** receipts for which do not exceed fifteen thousand dollars (\$15,000) per year.

However, at no time shall a charitable organization's total limitations under this subsection exceed fifteen thousand dollars (\$15,000).

(2) Any charitable organization exempt from the process of applying for a license under subsection (1) of this section, shall notify the division in writing, on a form issued by the division, of its intent to engage in exempt charitable gaming and the address at which the gaming is to occur. Any charitable organization exempt from the process of applying for a license under subsection (1) of this section, shall comply with all other provisions of this chapter, except:

(a) Payment of the fee imposed under the provisions of KRS 238.570; and

(b) The reporting requirements imposed under the provisions of KRS 238.550(2), unless the exempt charitable organization

obtains a retroactive license pursuant to subsection (5) of this section.

(3) If an organization exceeds the limit imposed by any subsection of this section it shall:

(a) Report the amount to the division; and

(b) Apply for a retroactive charitable **gaming** license.

(4) Upon receipt of a report and application for a retroactive charitable **gaming** license, the division shall investigate to determine if the organization is otherwise qualified to hold the license.

(5) If the division determines that the applicant is qualified, it shall issue a charitable **gaming** license retroactive to the date on which the exemption limit was exceeded. The retroactive charitable **gaming** license shall be issued in the same manner as regular charitable **gaming** licenses.

(6) If the division determines that the applicant is not qualified it shall deny the license and take enforcement action, if appropriate.

(7) Once a retroactive or regular **gaming** license is issued to an organization, that organization shall not be eligible for exempt status in the future and shall maintain a charitable **gaming** license if it intends to continue charitable **gaming** activities, unless the charitable organization has not exceeded the exemption limitations of subsection (1) of this section for a period of two (2) years prior to its exemption request.

(8) In order to qualify for licensure, a charitable organization shall:

(a) 1. Possess a tax exempt status under 26 U.S.C. secs. 501(c)(3), 501(c)(4), 501(c)(8), 501(c)(10), or 501(c)(19), or be covered under a group ruling issued by the Internal Revenue Service under authority of those sections; or

2. Be organized within the Commonwealth of Kentucky as a common school as defined in KRS 158.030, as an institution of higher education as defined in KRS 164A.305, or as a state college or university as provided for in KRS 164.290;

(b) Have been established and continuously operating within the Commonwealth of Kentucky for charitable purposes, other than the conduct of charitable gaming, for a period of three (3) years prior to application for licensure;

(c) Have been actively engaged in charitable activities during the three (3) years immediately prior to application for

licensure and be able to demonstrate, to the satisfaction of the division, reasonable progress in accomplishing its charitable purposes during this period. As used in this paragraph, "accomplishing its charitable purposes" means relief of poverty, advancement of education, protection of health, relief from disease, relief from suffering or distress, protection of the environment, conservation of wildlife, advancement of civic, governmental, or municipal purposes, or advancement of those purposes delineated in KRS 238.505(3); and

(d) Have maintained an office or place of business, other than for the conduct of charitable gaming, for one (1) year in the county in which charitable gaming is to be conducted. The office or place of business shall be a separate and distinct address and location from that of any other licensee of the division; except that up to three (3) licensed charitable organizations may have the same address if they legitimately share office space. For the conduct of a **raffle**, the county in which charitable **gaming** is to be conducted shall be the county in which the **raffle** drawing is to be conducted. Any charitable organization that was registered with the county clerk to conduct charitable **gaming** in a county on or before March 31, 1992, shall satisfy this requirement if it maintained a place of business or operation, other than for the conduct of charitable **gaming**, for one (1) year prior to application in a Kentucky county adjoining the county in which they were registered. Any licensed charitable organization that qualifies to conduct charitable **gaming** in an adjoining county under this paragraph, shall be permitted to conduct in its county of residence a charity fund raising event.

(9) In applying for a license, the information to be submitted shall include, but not be limited to, the following:

(a) The name and address of the charitable organization;

(b) The date of the charitable organization's establishment in the Commonwealth of Kentucky and the date of establishment in the county in which charitable gaming is to be conducted;

(c) A statement of the charitable purpose or purposes for which the organization was organized. If the charitable organization is incorporated, a copy of the articles of incorporation shall satisfy this requirement;

(d) A statement explaining the organizational structure and management of the organization. For incorporated entities, a copy of the organizations bylaws shall satisfy this requirement;

(e) A detailed accounting of the charitable activities in which the charitable organization has been engaged for the three (3) years preceding application for licensure;

(f) The names, addresses, dates of birth, and Social Security

numbers of all officers of the organization;

(g) The names, addresses, dates of birth, and Social Security numbers of all employees and members of the charitable organization who will be involved in the management and supervision of charitable gaming. No fewer than two (2) employees or members of the charitable organization who are involved in the management and supervision of charitable gaming, along with the chief executive officer or the director of the applicant organization, shall be designated as chairpersons;

(h) The address of the location at which charitable gaming will be conducted and the name and address of the owner of the property, if it is owned by a person other than the charitable organization;

(i) A copy of the letter or other legal document issued by the Internal Revenue Service to grant tax-exempt status;

(j) A statement signed by the presiding or other responsible officer of the charitable organization attesting that the information submitted in the application is true and correct and that the organization agrees to comply with all applicable **laws** and administrative **regulations regarding** charitable **gaming**;

(k) An agreement that the charitable organization's records may be released by the federal Internal Revenue Service to the division; and

(l) Any other information the division deems appropriate.

(10) The division may issue a license for a specified period of time, based on the type of charitable gaming involved and the desired duration of the activity.

(11) The division shall charge a fee for each license issued and renewed, not to exceed three hundred dollars (\$300). Specific fees to be charged shall be prescribed in a graduated scale promulgated by administrative regulations and based on type of license, type of charitable gaming, actual or projected gross receipts, or other applicable factors, or combination of factors.

#### CREDIT(S)

HISTORY: 1998 c 232, § 6, eff. 4-1-98; 1998 c 434, § 4, eff. 7-15-98

1996 c 331, § 7, eff. 4-10-96; 1994 c 66, § 8, eff. 3-16-94

<General Materials (GM) - References, Annotations, or Tables>

#### HISTORICAL AND STATUTORY NOTES

Legislative Research Commission Note: (7-15-98): This section was amended by 1998 Ky. Acts chs. 232 and 434 which do not appear to be in conflict and have been codified together.

#### PENALTY

Penalty: 238.995

#### PRACTICE AND STUDY AIDS

Abramson, West's Kentucky Practice, Vol. 10, Substantive Criminal Law 21.39, n 1

#### CROSS REFERENCES

Definitions for 500 KAR Chapter 11, 500 KAR 11:001

Exempt activities, 500 KAR 11:070

Charity fundraising event, 500 KAR 11:080

Special limited charitable games, 500 KAR 11:090

Keno, 500 KAR 11:110

#### NOTES OF DECISIONS AND OPINIONS

971 SW(2d) 810 (Ky App 1997), Com. v Louisville Atlantis Community/Adapt, Inc, rehearing denied, review denied. Provisions of Charitable **Gaming** Act exempting from licensing requirement any charitable organization whose gross receipts did not exceed \$5,000 per year but imposing strict limitations on other charitable organizations with higher gross receipts did not constitute arbitrary exercise of **state** power but rather was founded upon substantial distinction derived from legislature's determination that more substantial risks presented by larger charitable **gaming** enterprises were not presented if gross receipts were below specified annual amount.

971 SW(2d) 810 (Ky App 1997), Com. v Louisville Atlantis Community/Adapt, Inc, rehearing denied, review denied. Provision of Charitable **Gaming** Act requiring applicants for charitable **gaming** license to have been actively engaged in charitable activities for three years before filing application was not unreasonable or unconstitutional as arbitrary exercise of **state** power, in light of rational relationship between requirement and legitimate **state** interest in insuring that charitable **gaming** receipts would benefit only organizations which actively were involved in charitable works.

971 SW(2d) 810 (Ky App 1997), Com. v Louisville Atlantis Community/Adapt, Inc, rehearing denied, review denied. Charitable **Gaming** Act's requirement that organization must have maintained

office or place of business or operation, other than for conduct of charitable **gaming**, for one year in county in which charitable **gaming** is to be conducted in order to qualify for charitable **gaming** licensure was not unconstitutional as arbitrary exercise of **state** power, but rather was rationally related to legitimate **state** objective of preventing illegitimate, "fly-by-night" organizations from running charitable **gaming** operations.

971 SW(2d) 810 (Ky App 1997), Com. v Louisville Atlantis Community/Adapt, Inc, rehearing denied, review denied. Charitable organizations lacked standing to raise commerce clause challenge to requirement of Charitable **Gaming** Act that organizations must have been established in **state** for three years before applying for charitable **gaming** license, in light of fact that all charitable organizations raising claim satisfied Act's residency requirement.

OAG 95-ORD-107 (7-24-95). The charitable **gaming** division fails to sustain its burden of proof in showing that records confidentially disclosed for the grant or review of a license to do business were generally recognized as confidential or proprietary under KRS 61.878(1)(c).

KRS § 238.535

KY ST § 238.535

TITLE XII. CONSERVATION AND STATE DEVELOPMENT  
CHAPTER 154A. STATE LOTTERY

154A.010 DEFINITIONS FOR CHAPTER

As used in this chapter, unless the context requires otherwise:

(1) "Amateur athletics" means any interscholastic athletics in which the participating athletes are elementary or secondary school students of any public or private institution of learning; any intercollegiate athletics in which the participating athletes are students of any public or private institution of higher education; or any athletics sponsored or **regulated** by the following amateur athletic associations including, but not limited to:

- (a) United **States** Olympic Committee;
- (b) National Collegiate Athletic Association;
- (c) National Association of Intercollegiate Athletics;
- (d) Kentucky High School Athletic Association;
- (e) Kentucky Amateur Athletics Union;
- (f) Bluegrass **State Games**;



- (g) Little League Baseball;
  - (h) Amateur Softball Association;
  - (i) Babe Ruth Leagues of Kentucky;
  - (j) American Legion Baseball;
  - (k) Kentucky Youth Soccer Association; or
  - (l) Kentucky Special Olympics;
- (2) "Corporation" means the Kentucky **Lottery** Corporation;
- (3) "**Lottery**" means any **game** of **chance** approved by the corporation and operated pursuant to this chapter, except for **games** prohibited by the General Assembly as provided for in KRS 154A.063;
- (4) "Major **lottery**-specific procurement" means any **gaming** product or service including, but not limited to, major advertising contracts, annuity contracts, prize payment agreements, consulting services, personal service contracts, equipment, tickets, and all other products and services unique to the operation of the corporation in its **lottery** activities, but not including materials, supplies, equipment, and services common to the ordinary operations of a corporation;
- (5) "President" means the president of the Kentucky **Lottery** Corporation who shall also serve as chief executive officer of the corporation;
- (6) (a) With respect to an individual, "related entity" means any spouse, child, brother, sister, or parent residing as a member of the same household in the principal place of abode of the individual, and any entity with respect to which the individual, or spouse, child, brother, sister, or parent of the individual has a financial interest of five percent (5%) or more, or is an officer, director, employee, or partner; and
- (b) With respect to any partnership, corporation, joint venture, or other entity, "related entity" means any officer, director, employee, partner, or owner of a financial interest of five percent (5%) or more of the total value thereof; any parent, subsidiary, or brother corporation; and any other entity with which the given entity has an identity of ownership of fifty percent (50%) or more.
- (7) "Retailer" means any person with whom the corporation has contracted to sell **lottery** tickets to the public;
- (8) "Security" means the protection of information that would

provide an unfair advantage to any individual or other entity involved or seeking involvement in the operation of the **lottery** or the supply of major **lottery**-specific procurement items to the corporation, and the protection of:

(a) Information that relates to detection or deterrence of, or could assist in the perpetration of, crimes against the corporation or its retailers, their locations, or their employees; or

(b) Information which could impair or adversely impact the ability of the corporation or its retailers to protect the integrity of the **lottery** or protect **lottery** equipment, supplies, or proceeds;

(9) "Sports contest" means any professional or amateur sport, athletic **game** or contest, or race or contest involving machines, persons, or animals, except horses, that is viewed by the public; and

(10) "Vendor" means any person who has entered into a major **lottery**-specific procurement contract with the corporation.

#### CREDIT(S)

HISTORY: 1994 c 170, § 1, eff. 7-15-94

1990 c 470, § 74, eff. 7-1-90; 1988 ex s, c 1, § 1

#### PRACTICE AND STUDY AIDS

Abramson, West's Kentucky Practice, Vol. 10, Substantive Criminal **Law** 16.54, n 4, 16.55, n 3

#### LIBRARY REFERENCES

**Lotteries** generally. 38 Am Jur 2d, **Gambling** § 5 to 9

KRS § 154A.010

KY ST § 154A.010

#### TITLE XX. ALCOHOLIC BEVERAGES

##### CHAPTER 243. ALCOHOLIC BEVERAGES; LICENSES AND TAXES

##### LICENSES TO TRAFFIC IN ALCOHOLIC BEVERAGES

243.505 OPERATION OF **PARI-MUTUEL BETTING** SYSTEM OR CONDUCT OF LICENSED CHARITABLE **GAMING** NOT GROUNDS FOR REVOCATION OR SUSPENSION OF LICENSE

The operation of a **pari-mutuel** system for **betting**, where authorized by **law**, or the conduct of charitable **gaming** by a charitable organization licensed and **regulated** under the provision of KRS Chapter 238, shall not constitute grounds for the revocation or suspension of any license issued under KRS

Chapter 243.

CREDIT(S)

HISTORY: 1994 c 66, § 17, eff. 3-16-94  
1952 c 223, § 1, eff. 3-26-52

<General Materials (GM) - References, Annotations, or Tables>

KRS § 243.505

KY ST § 243.505

TITLE XXI. AGRICULTURE AND ANIMALS  
CHAPTER 247. PROMOTION OF AGRICULTURE AND HORTICULTURE  
FAIRS

247.160 CONTROL OF CONCESSIONS AND EXHIBITS; EXCEPTION; LIEN ON  
PROPERTY; SALE TO SATISFY LIEN

(1) The **state** fair board shall have exclusive control of concessions, exhibitions, shows, entertainments and attractions at any place on the **state** fairgrounds and exhibition center and may, in the discretion of the board, operate any or all of such concessions, exhibitions, shows, entertainments and attractions, but the board shall not allow the operation of any **gambling** device or **game of chance** therein. It may delegate such control or operation to any of its employees or agents, or to an executive committee. This section shall not apply to the sale of **lottery** tickets sold under the provisions of KRS Chapter 154A.

(2) The **state** fair board shall have a prior lien upon the property of any concessionaire, exhibitor or person, immediately upon its coming or being brought on the grounds, or the center, to secure existing or future indebtedness.

(3) Any designated employee or agent of the **state** fair board may sell the property to satisfy the indebtedness after giving ten (10) days' notice to the owner or agent of the owner or, if notice cannot be given to the owner, after a notice is posted for ten (10) days in the office of the **state** fair board on the grounds, announcing that the property is to be sold. The **state** fair board, through its designated agent, may bid and buy in the property offered for sale for the use and benefit of the **state** fair.

CREDIT(S)

HISTORY: 1988 ex s, c 1, § 28, eff. 12-15-88

1974 c 154, § 3; 1952 c 156, § 4; 1944 c 118, § 2; 1942 c 208, §  
1; KS 4618i-9

<General Materials (GM) - References, Annotations, or Tables>

#### HISTORICAL AND STATUTORY NOTES

Legislative Research Commission Note: (1988): Although references to the sale of "shares" were deleted in the Senate committee substitute, due to a clerical error, such reference was not deleted in subsection (1) of this section. The Reviser of Statutes, pursuant to KRS 7.136, has removed the words "or shares" to conform.

#### CROSS REFERENCES

Conduct and operation of concessions and exhibits, 303 KAR 1:075

#### NOTES OF DECISIONS AND OPINIONS

310 Ky 607, 221 SW(2d) 435 (Ky 1949), Kentucky **State** Fair Bd. v Fowler. The title under which this section was enacted limits it to concessions, etc., when the **state** fair is in progress.

309 Ky 132, 216 SW(2d) 912 (Ky 1949), Hargett v Kentucky **State** Fair Bd. A lease of portion of **state** fair grounds to a private person for a period extending beyond term of members of **State** Fair Board which would not interfere with proper operation of **state** fair would be valid, but validity of such public contracts depends upon their reasonableness and must be construed in light of powers vested in public agency making them.

OAG 82-165. **Regulation** of the Kentucky **state** fair board which restricts the distribution of pamphlets and leaflets promoting commercial activity does not violate US Const Am 1 or Ky Const §1.

1957 OAG 40,485. KRS 247.160(1) confers upon the **state** fair board authority to **regulate** any concessions operated on the **state** fairground, and we are therefore of the opinion that any local statutes of the city in conflict with the **regulations** set forth by the board would be superseded.

KRS § 247.160

KY ST § 247.160

#### TITLE L. KENTUCKY PENAL CODE

##### CHAPTER 528. **GAMBLING**

##### 528.050 POSSESSION OF **GAMBLING** RECORDS IN THE FIRST DEGREE

(1) A person is guilty of possession of **gambling** records in the first degree when, with knowledge of the contents thereof, he possesses any writing, paper, instrument or article of a kind commonly used:

(a) In the operation or promotion of a bookmaking scheme or enterprise and constituting, reflecting or representing **bets** totaling more than \$500; or

(b) In the operation, promotion or playing of a **lottery** or mutuel scheme or enterprise and constituting, reflecting or representing more than 500 plays or **chances** therein.

(2) It shall be a defense to any prosecution under this section that:

(a) The writing, paper, instrument or article possessed by the defendant constituted, reflected or represented **bets** of the defendant himself in a number not exceeding ten (10); or

(b) The writing, paper, instrument or article possessed by the defendant was neither used nor intended to be used in the operation or promotion of a bookmaking scheme or enterprise, or in the operation, promotion, or playing of a **lottery** or mutuel scheme or enterprise.

(3) Possession of **gambling** records in the first degree is a Class D felony.

#### CREDIT(S)

HISTORY: 1974 c 406, § 244, eff. 1-1-75

<General Materials (GM) - References, Annotations, or Tables>

#### COMMENTARY

Kentucky Crime Commission/LRC

1974:

KRS 528.050 and 528.060 are necessary in order to further the suppression of bookmaking and **lottery** activities. It is an offense for a person to have in his possession **gambling** records under the proscribed circumstances. The purpose is to do away with the necessity of showing live bookmaking or **lottery** activities in order to establish an offense.

The item possessed must relate to bookmaking or **lottery** activities in the sense that it is "commonly used" for the purpose. The defendant must be shown to have knowledge of the content of the item, but possession is prima facie evidence of such knowledge as provided in KRS 528.090.

The provisions of KRS 528.050(2) and 528.060(2) are in keeping with the policy of exempting the actual player from criminal responsibility and afford a defense that the records possessed were neither used nor intended to be used for the indicated

criminal purpose.

#### LIBRARY REFERENCES

Bookmaking, generally. 38 Am Jur 2d, **Gambling** § 49 to 51

#### NOTES OF DECISIONS AND OPINIONS

OAG 79-222. The 500 "plays or **chances**" may be accumulated by counting the number of different **bets** offered by the bookmaker at a single time or by counting the **chances** offered over a period of time.

KRS § 528.050

KY ST § 528.050

#### TITLE XI. REVENUE AND TAXATION

##### CHAPTER 138. EXCISE TAXES

##### **PARI-MUTUEL BETTING**

138.510 TAXES ON **PARI-MUTUEL**, ACCOUNT, AND INTERTRACK **WAGERING**; USES

(1) Except for the conduct of harness racing at a county fair, an excise tax is imposed on all tracks conducting **pari-mutuel** racing under the jurisdiction of the Kentucky Racing Commission. For each track with a daily average handle of one million two hundred thousand dollars (\$1,200,000) or above, the tax shall be in the amount of three and one-half percent (3.5%) of all money wagered during the fiscal year. A fiscal year as used in this subsection and subsection (2) shall begin at 12:01 a.m. July 1 and end at 12 midnight June 30. For each track with a daily average handle under one million two hundred thousand dollars (\$1,200,000) the tax shall be an amount equal to one and one-half percent (1.5%) of all money wagered during the fiscal year. For the purposes of this subsection, the daily average handle shall be computed from the amount wagered only at the host track on live racing and shall not include money wagered:

- (a) At a receiving track;
- (b) At a simulcast facility;
- (c) On telephone account wagering; or

(d) At a track participating as a receiving track or simulcast facility displaying simulcasts and conducting interstate wagering as permitted by KRS 230.3771 and 230.3773.

Money shall be deducted from the tax paid by host tracks and deposited to the respective development funds in the amount of three-quarters of one percent (0.75%) of the live racing handle for thoroughbred racing and one percent (1%) of the live handle

for harness racing.

(2) An excise tax is imposed on:

(a) All licensed tracks conducting telephone account wagering;

(b) All tracks participating as receiving tracks in intertrack wagering under the jurisdiction of the Kentucky Racing Commission; and

(c) All tracks participating as receiving tracks displaying simulcasts and conducting interstate wagering thereon.

(3) The tax imposed in subsection (2) of this section shall be in the amount of three percent (3%) of all money wagered under subsection (2) of this section during the fiscal year.

(4) An amount equal to two percent (2%) of the amount wagered shall be deducted from the tax imposed in subsection (2) of this section and deposited as follows:

(a) If the money is deducted from taxes imposed under subsection (2)(a) and (b) of this section, it shall be deposited in the thoroughbred development fund if the host track is conducting a thoroughbred race meeting or the Kentucky standardbred, quarter horse, Appaloosa, and Arabian development fund, if the host track is conducting a harness race meeting; or

(b) If the money is deducted from taxes imposed under subsection (2)(c) of this section, to the thoroughbred development fund if interstate **wagering** is conducted on a thoroughbred race meeting or to the Kentucky standardbred, quarter horse, Appaloosa, and Arabian development fund, if interstate **wagering** is being conducted on a harness race meeting.

(5) Two-tenths of one percent (0.2%) of the total amount **wagered** on live racing in Kentucky shall be deducted from the **pari-mutuel** tax levied in subsection (1) of this section, and one-twentieth of one percent (0.05%) of the total amount **wagered** on intertrack **wagering** shall be deducted for the **pari-mutuel** tax levied in subsection (2) of this section, and allocated to the equine industry program trust and revolving fund to be used for funding the equine industry program at the University of Louisville.

(6) One-tenth of one percent (0.1%) of the total amount **wagered** in Kentucky shall be deducted from the **pari-mutuel** tax levied in subsections (1), (2), and (3) of this section and deposited to a trust and revolving fund to be used for the construction, expansion, or renovation of facilities or the purchase of equipment for equine programs at **state** universities. These funds shall not be used for salaries or for operating funds for teaching, research, or administration. Funds allocated under this subsection shall not replace other funds for capital purposes or

operation of equine programs at **state** universities. The Kentucky Council on Postsecondary Education shall serve as the administrative agent and shall establish an advisory committee of interested parties, including all universities with established equine programs, to evaluate proposals and make recommendations for the awarding of funds. The Kentucky Council on Postsecondary Education may by administrative regulation establish procedures for administering the program and criteria for evaluating and awarding grants.

#### CREDIT(S)

HISTORY: 1997 1st ex s, c 1, § 43, eff. 5-30-97

1994 c 438, § 5, c 114, § 1, c 272, § 2, eff. 7-15-94; 1992 c 194, § 1, eff. 7-14-92; 1992 c 109, § 7, eff. 3-30-92; 1990 c 159, § 2; 1988 c 376, § 5; 1986 c 215, § 1, c 296, § 1; 1984 c 240, § 2; 1982 c 100, § 8; 1978 c 190, § 2; 1976 c 343, § 2; 1970 c 258, § 1; 1956 c 13, § 1; 1954 c 76, § 1; 1948 c 35, § 1

<General Materials (GM) - References, Annotations, or Tables>

#### HISTORICAL AND STATUTORY NOTES

Legislative Research Commission Note: (7-14-92): This section was amended by two 1992 Acts. Where those Acts are not in conflict, they have been compiled together. Where a conflict exists, the Act which was last enacted by the General Assembly prevails, pursuant to KRS 446.250.

#### PENALTY

Penalty: 138.540

#### CROSS REFERENCES

**Pari-mutuel** tax revenue to be credited to general fund, 47.012

Kentucky equine drug research council, funding, 230.265

Application of thoroughbred racing **laws**, 230.360

**Regulation** of **pari-mutuel wagering, wagering** on racing conducted at another licensed association, 230.361

Agreements between tracks for simulcasting and intertrack **wagering**, 230.377

Establishment of simulcast facilities for horse racing, 230.380

Maximum commission allowed in harness races, 230.750

#### LIBRARY REFERENCES



Necessity of legislative determination of subjects to tax. 71 Am Jur 2d, State and Local Taxation § 192

LAW REVIEW AND JOURNAL COMMENTARIES

78 Ky L J 435 (1989-90). Thoroughbred Racing--Getting Back on Track, Thomas H. Meeker.

NOTES OF DECISIONS AND OPINIONS

Out of **state** wagering 1

1. Out of **state** wagering

OAG 91-125. **Wagers** placed on a nationwide "pick seven" breeders' cup contest, if placed in **states** other than Kentucky, are not subject to the excise tax in KRS 138.510.

OAG 84-182. Proceeds from interstate agreements between Churchill Downs Inc and **out-of-state** entities whereby Churchill Downs is paid by those entities for permission to accept **wagering** on the Kentucky Derby are not subject to the Kentucky excise tax imposed on **pari-mutuel wagers** made within the **state**.

KRS § 138.510

KY ST § 138.510

TITLE L. KENTUCKY PENAL CODE  
CHAPTER 528. **GAMBLING**

528.110 HORSE RACES, MESSENGER **BETTING** PROHIBITED; EXCEPTION

(1) Any person who, either for himself or as agent or employee of another, **wagers** money or anything of value on a horse race run or about to be run or advertised, posted or reported as being run at any race track in or out of this **state**, or who engages in the occupation of receiving, making, transmitting or negotiating, either in person or by messenger, telephone or telegraph, **wagers** on horse races run or about to be run or advertised, posted or reported as being run or about to be run at any race track in or out of the **state**, shall, except in the case of **wagers** made within the enclosure of a race track licensed by the **state** racing commission during an authorized race meeting at that track, or an enclosure during regular meetings in which running, trotting or pacing races are being conducted by associations regularly organized for that purpose, be guilty of a Class A misdemeanor.

(2) In any prosecution under subsection (1) of this section, the **state** need not prove that the horse race upon which the **wager** was placed was actually run. Proof that the **wager** was made upon what purported to be or what was advertised, reported or understood to be a horse race shall be sufficient to establish a prima facie

case for the **state**.

CREDIT(S)

HISTORY: 1976 ex s, c 31, § 1, eff. 3-19-77

<General Materials (GM) - References, Annotations, or Tables>

LIBRARY REFERENCES

**Betting** on horseraces, generally. 38 Am Jur 2d, **Gambling** § 44 to 48

Propriety of exclusion of persons from horseracing tracks for reasons other than color or race. 90 ALR3d 1361

Liability for injury or death of participant in automobile or horserace at public track. 13 ALR4th 623

NOTES OF DECISIONS AND OPINIONS

563 SW(2d) 491 (Ky App 1978), *Thomas v Com.* A messenger **betting** service operating outside a racetrack premises which accepts money to be **wagered** for a messenger fee, and places the **wager** at a **pari-mutuel** window in an authorized racetrack enclosure is not in violation of this statute.

OAG 82-4. KRS 230.361 limits **pari-mutuel** racing to races being conducted on the licensed premises of a licensed association. KRS 528.110 prohibits **pari- mutuel wagering** from being conducted except within the enclosure of the racetrack where the race is being held. KRS 528.120 effectively prohibits any person from accepting money to be **wagered** with a licensed **pari-mutuel** enterprise in a place outside the grounds of the licensee.

KRS § 528.110

TITLE XIX. PUBLIC SAFETY AND MORALS

CHAPTER 230. RACING

PARI-MUTUEL WAGERING

230.3615 LIMITATION ON COMMISSION OF OPERATOR OF THOROUGHBRED RACE TRACK; BREAKS; PAYMENT TO BACKSIDE IMPROVEMENT FUND

(1) The commission, including the tax levied in KRS 138.510, deducted from the gross amount **wagered** by the association which operates a race track under the jurisdiction of the Kentucky Racing Commission and conducts the thoroughbred racing at which **betting** is conducted through a **pari-mutuel** or other similar system, in races where the patron is required to select one (1) horse, and the breaks, which breaks shall be made and calculated to the dime, shall not be more than sixteen percent (16%) at the discretion of those tracks averaging over one million two hundred thousand dollars (\$1,200,000) in on-track pari-mutuel handle per day of live racing conducted by the association. The commission at those tracks averaging one million two hundred thousand

dollars (\$1,200,000) or less in on-track pari-mutuel handle per day of live racing conducted by the association, at the discretion of such track, shall not be more than seventeen and one-half percent (17.5%) in races where the patron is required to select one (1) horse, and the breaks, which breaks shall be made and calculated to the dime.

(2) The commission at those tracks averaging over one million two hundred thousand dollars (\$1,200,000) in on track **pari-mutuel** handle per day of live racing conducted by the association, including the tax levied in KRS 138.510, deducted from the gross amount **wagered** by the person, corporation, or association which operates a race track under the jurisdiction of the Kentucky Racing Commission and conducts thoroughbred racing at which **betting** is conducted through a **pari-mutuel** or other similar system shall not exceed nineteen percent (19%) of the gross handle in races where the patron is required to select two (2) or more horses, and the breaks, which breaks shall be made and calculated to the dime. The commission, at those tracks averaging one million two hundred thousand dollars (\$1,200,000) or less in on track **pari-mutuel** handle per day of live racing conducted by the association, including the tax levied in KRS 138.510, deducted from the gross amount **wagered** by the association which operates a race track under the jurisdiction of the Kentucky Racing Commission and conducts thoroughbred racing at which **betting** is conducted through a **pari-mutuel** or other similar system shall not exceed twenty-two percent (22%) of the gross handle in races where the patron is required to select two (2) or more horses, and the breaks, which breaks shall be made and calculated to the dime.

(3) The minimum **wager** to be accepted by any licensed association may be one dollar (\$1). The minimum pay-off on a one dollar (\$1) **wager** shall be one dollar and ten cents (\$1.10); but, in the event of a minus pool, the minimum pay-off for a one dollar (\$1) **wager** shall be one dollar and five cents (\$1.05).

(4) Each association conducting thoroughbred racing and averaging one million two hundred thousand dollars (\$1,200,000) or less in on-track **pari-mutuel** handle per day of live racing conducted by the association shall pay to the backside improvement fund an amount equal to one-half of one percent (0.5%) of its on-track **pari-mutuel wagers**.

CREDIT(S)

HISTORY: 1992 c 109, § 8, eff. 3-30-92

<General Materials (GM) - References, Annotations, or Tables>

HISTORICAL AND STATUTORY NOTES

Note: 230.3615, formerly compiled as 138.515, repealed,

reenacted, and amended by 1992 c 109, § 8, eff. 3-30-92; 1990 c 159, § 3; 1986 c 296, § 2, c 214, § 1; 1980 c 343, § 1; 1978 c 233, § 41; 1970 c 258, § 2; 1954 c 76, § 2.

#### PENALTY

Penalty: 230.990(4)

#### CROSS REFERENCES

**Pari-mutuel** tax, overpayment, interest rate, 131.183

Report of mutuel handle for each day of race meeting, 137.180

Backside Improvement Commission and fund, 230.218

**Wagers** at receiving track; commission of receiving track; certain deductions inapplicable; exemption from tax and license fee, 230.378

**Wagers** at simulcast facilities for horse racing, 230.380

#### LIBRARY REFERENCES

Necessity of legislative determination of subjects to tax. 71 Am Jur 2d, **State** and Local Taxation § 192

KRS § 230.3615

#### TITLE L. KENTUCKY PENAL CODE

##### CHAPTER 528. GAMBLING

##### 528.070 PERMITTING GAMBLING

(1) A person is guilty of permitting gambling when, 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.

(2) Permitting gambling is a Class B misdemeanor.

#### CREDIT(S)

HISTORY: 1974 c 406, § 246, eff. 1-1-75

<General Materials (GM) - References, Annotations, or Tables>

#### COMMENTARY

Kentucky Crime Commission/LRC

1974:

This section gives the prosecution an alternative in cases where the only promoting of gambling activity is the use of premises. It includes a reasonable period of time provision for halting or abating such use.

#### CROSS REFERENCES

Causes for which licenses must be revoked or suspended, 243.500

**Gambling** devices or **games** of **chance** not to be operated at fair, 247.155

Liability to owner, controller, or occupier of premises for **gambling** there without his consent, 411.090

#### LIBRARY REFERENCES

Keeping common **gaming** house. 24 Am Jur 2d, Disorderly Houses § 3  
Keeping or permitting **gambling** place. 38 Am Jur 2d, **Gambling** § 118 to 128

Criminal liability of member or agent of private club or association, or of owner or lessor of its premises, for violation of **state** or local liquor or **gambling laws** thereon. 98 ALR3d 694  
Validity, construction, and application of 18 USCS § 1955 prohibiting illegal **gambling** businesses. 21 ALR Fed 708

What is an "enterprise," as defined at 18 USCS § 1961(4), for purposes of the Racketeer Influenced and Corrupt Organization (RICO) statute (18 USCS §§ 1961 et seq.). 52 ALR Fed 818

Requirement of 18 USCS § 1955, prohibiting illegal gambling businesses, that such businesses involve five or more persons. 55 ALR Fed 778

#### LAW REVIEW AND JOURNAL COMMENTARIES

26 U Tol L Rev 387 (Winter 1995). Riverboat Gambling in the Great Lakes Region: A Pot of Gold at the End of the Rainbow or Merely "Fool's Gold"?, Lori Chapman.

#### NOTES OF DECISIONS AND OPINIONS

453 SW(2d) 736 (Ky 1970), Hahn v Com. Evidence, including fact that room, wherein police officers observed a card **game** in progress with money on the table, was adjacent to and entered from defendant's licensed premises, was sufficient to sustain defendant's conviction of violating statute prohibiting a person from permitting **gambling** on premises in his occupation or "under his control."

312 Ky 584, 229 SW(2d) 60 (Ky 1950), Gilley v Com. Where defendant was indicted under statute prohibiting the operation of a **lottery**, and defendant pleaded guilty to permitting **gambling** on his premises, defendant by pleading guilty did not admit violation of statute prohibiting the operation of a **gambling**

**game**, for which statute provides **gambling** paraphernalia and money or other things staked or exhibited to allure persons to **wager** may be seized.

306 Ky 275, 207 SW(2d) 27 (Ky 1947), *Montgomery v Com. ex rel. Dummit*. Judgment enjoining maintenance of a public nuisance because of **gambling** activities carried thereon was proper as against lessors of premises who claimed they were without knowledge of **gambling** activities where, in a period of less than seven years, there were 37 raids or arrests for such activities, many of which were given newspaper notoriety.

291 Ky 554, 164 SW(2d) 977 (Ky 1942), *Steely v Commonwealth*. "Gambling", within meaning of statute punishing one who permits any game or machine on which money or other thing may be won or lost to be maintained on his premises, is an engagement whereby some sort of prize or stake possessing value to the player may be won or lost through manipulation by the player, and is distinguishable from the playing of such contrivance as an automatic piano player operated by dropping a nickel in a slot.

267 Ky 602, 102 SW(2d) 382 (Ky 1936), *Commonwealth v Bowman*. Commonwealth held entitled to move for appeal from judgment entered in conformity with directed verdict of not guilty in prosecution for permitting gambling machine on premises and upon reversal to have a new trial.

221 Ky 205, 298 SW 680 (Ky 1927), *Allison v Commonwealth*. In a prosecution under this section an instruction must submit to the jury the issue whether the betting was done with the knowledge of the defendant. (Annotation from former KRS 436.250.)

221 Ky 205, 298 SW 680 (Ky 1927), *Allison v Commonwealth*. 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 KRS 436.250. (Annotation from former KRS 436.300.)

149 Ky 442, 149 SW 942 (1912), *Lancaster Hotel Co v Com.* The manager of a hotel owned by a corporation who has full control of the hotel is within this section punishing one who shall suffer gaming on premises under his control. (Annotation from former KRS 436.250.)

149 Ky 442, 149 SW 942 (1912), *Lancaster Hotel Co v Com.* To convict a hotel owner of suffering gambling on the premises there must be evidence that he knowingly permitted the gambling, but actual presence of the owner at the gambling scene need not be shown, and knowledge may be inferred from the circumstances, such as the length of time the game continued, the frequency of games, and the number of people who passed in and out of the hotel attending the games. (Annotation from former KRS 436.250.)

141 Ky 585, 133 SW 219 (Ky 1911), Ruh v Commonwealth. There is sufficient evidence to convict a defendant of suffering gambling at a premises in his occupation or under his control where, although the gambling took place in a room owned by defendant's wife and rented to another man, a bar operated by defendant opened directly into the gambling room, the players used chips from the gambling for drinks in the bar, defendant later redeeming the chips, defendant was frequently in the gambling room, and defendant collected the rent on the room without accounting to his wife. (Annotation from former KRS 436.250.)

32 KLR 755, 127 Ky 848, 107 SW 227 (Ky 1908), Jarboe v Commonwealth. An indictment charging the defendant with allowing a "table, bank, machine, or contrivance" to be used for gambling, which describes the device and how and where it was used, and which describes the device as being constructed for the purpose of gambling and as a device ordinarily used in gambling, is sufficient to charge the offense of permitting a gambling device. (Annotation from former KRS 436.240.)

28 KLR 1131, 91 SW 666 (Ky 1906), Herr v Commonwealth. Under this section, KRS 436.240 a person is indictable for suffering a game of craps to be played on premises within his control, although he receives no compensation, percentage or commission for so permitting the game to be played. (Annotation from former KRS 436.240.)

26 KLR 508, 118 Ky 624, 82 SW 238 (Ky 1904), Commonwealth v Schatzman. An indictment for permitting gambling devices on a premises, specifically a slot machine, is sufficient if the facts alleged are sufficient to inform a person of ordinary intelligence that the slot machine was being used as a gambling device, even though it is not specifically stated that the machine was used for gambling for money or property. (Annotation from former KRS 436.240.)

23 KLR 1900, 112 Ky 635, 66 SW 505 (Ky 1902), Louisville & N.R. Co. v Com. Railroad company may be indicted for permitting gaming in its cars. (Annotation from former KRS 436.250.)

23 KLR 1900, 112 Ky 635, 66 SW 505 (Ky 1902), Louisville & N.R. Co. v Com. Prosecution for violation of this section may be by penal action. (Annotation from former KRS 436.250.)

18 KLR 515, 100 Ky 1, 37 SW 152 (Ky 1896), Cheek v Commonwealth. An indictment for keeping a disorderly house, charging the participants were engaging in wagers on horse races, was sufficient to support a conviction. (Annotation from former KRS 436.240.)

17 KLR 1183, 98 Ky 635, 33 SW 1111 (Ky 1896), Commonwealth v Enright. An indictment for a nuisance must state the facts constituting the offense charged but need not include the

language: "to the common nuisance of all good citizens of the Commonwealth residing in the neighborhood or passing by" to be sufficient. (Annotation from former KRS 436.240.)

17 KLR 1122, 98 Ky 574, 35 SW 553 (Ky 1896), *Bollinger v Commonwealth*. In addition to punishment of an \$800 fine for maintaining a gambling house, the court may abate the gambling house as a nuisance by an order of prohibition, but the court has no authority to jail defendant before he has violated such order. (Annotation from former KRS 436.240.) (See also *Sharp v Com*, 98 Ky 574, 35 SW 553 (1896).)

17 KLR 357, 97 Ky 498, 30 SW 1012 (Ky 1895), *Commonwealth v Bessler*. An indictment is insufficient if it charges accused with keeping a disorderly house but does not charge repetition or frequency of the acts of disorder. (Annotation from former KRS 436.240.)

15 KLR 176, 94 Ky 359, 22 SW 446 (Ky 1893), *Kneffer v Commonwealth*. 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 KRS 436.240.)

13 KLR 468, 92 Ky 197, 17 SW 442 (Ky 1891), *Commonwealth v Pulaski County Agricultural & Mechanical Ass'n*. An incorporated fair company may be indicted and fined for permitting gaming on its premises. (Annotation from former KRS 436.240.)

8 KLR 249, 84 Ky 276, 1 SW 480 (Ky 1886), *Waddell v Commonwealth*. In an indictment for permitting a gambling device where the device is one of those named in the statute, it is sufficient to simply allege that the device was set up, exhibited, and kept, but where the device is not one of those named, it is necessary to allege that the device was one whereby money or property could be won or lost, or some equivalent description. (Annotation from former KRS 436.240.)

2 KLR 339, 79 Ky 359 (Ky 1881), *Cheek v Commonwealth*. Where defendant sells pools based on horse races in his house, he is guilty of keeping a disorderly house; a pool-seller is simply a stakeholder and is not indictable for suffering **gambling** under this section. (Annotation from former KRS 436.240.)

10 Ky Opin 330 (1879), *Hottsinger v Com*. One who does not know that money or a thing of value is **bet** on a **game**, is not guilty of permitting **gaming**. (Annotation from former KRS 436.240.)

70 Ky 387 (Ky 1870), *Stahel v Commonwealth*. Where appellant permitted card **games** for liquor and cigars in a coffee house, he was found guilty under this section and the judgment was



affirmed; treats of liquor were not voluntary, but staked on hazards of **game**. (Annotation from former KRS 436.250.)

69 Ky 326 (Ky 1869), McDaniel v Commonwealth. Throwing dice to determine who shall pay for whiskey or treats is an offense under this section. (Annotation from former KRS 436.250.)

68 Ky 325 (Ky 1869), Commonwealth v Fraize. An indictment charging the defendant with being the owner, occupier, and controller of a ten-pin alley where **games** were played and money **bet**, won, and lost by his permission sufficiently charges the offense of permitting a **gambling** device. (Annotation from former KRS 436.240.)

66 Ky 1 (Ky 1867), Commonwealth v Branham. Indictment charging the defendant with permitting "a **game** of change called pigeon table" to be played for "green backs" in his house clearly imports a violation of **law** and is sufficient. (Annotation from former KRS 436.250.)

63 Ky 408 (Ky 1866), Commonwealth v Watson. Tavern-keeper who rents a room in his house in good faith to be used as a bedroom, and who has no control over it, is not responsible if it is used, without his consent, by a lessee of his tenant for operation of a faro-bank. (Annotation from former KRS 436.240.)

57 Ky 485 (Ky 1857), Marston v Commonwealth. The owner of a coffee house who permits the playing of euchre, rounce, or kossuth for "treats" of liquor, cigars, money or property upon winning or losing, subjects himself to the penalties of this section. (Annotation from former KRS 436.250.)

53 Ky 24 (Ky 1853), Buford v Commonwealth. After proof that a faro-bank was set up in a house over which the defendant had control, the **law** presumes that it was set up with his permission. (Annotation from former KRS 436.240.)

33 Ky 466 (Ky 1835), Commonwealth v Crupper. Indictment must charge in direct terms that the **gaming** was permitted by the defendant; an allegation that he kept a house in which **games** of cards were played is not sufficient. (Annotation from former KRS 436.250.)

7 Ky 261 (Ky 1815), Commonwealth v Lampton. Indictment for suffering **gaming** need not give the names of those engaged in the **game**. (Annotation from former KRS 436.250.) (See also Montee v Com, 26 Ky 132 (1830).)

OAG 83-207. This opinion discusses the offenses of permitting **gambling** (KRS 528.070) and promoting **gambling** (KRS 528.030), and the defense of being a player (KRS 528.010(7)).

KRS § 528.070

TITLE XIX. PUBLIC SAFETY AND MORALS  
CHAPTER 230. RACING

TROTTING AND HARNESS RACING

230.750 MAXIMUM ALLOWABLE COMMISSION FOR HARNESS TRACK;  
ALLOCATION OF PORTION OF COMMISSION

The commission, including the tax levied in KRS 138.510, deducted from the gross amount **wagered** by the person, corporation, or association which operates a harness horse track under the jurisdiction of the commission at which **betting** is conducted through a **pari-mutuel** or other similar system shall not exceed eighteen percent (18%) of the gross amount handled on straight **wagering** pools and twenty-five percent (25%) of the gross amount handled on multiple **wagering** pools, plus the breaks, which shall be made and calculated to the dime. Multiple **wagering** pools shall include daily double, perfecta, double perfecta, quinella, double quinella, trifecta, and other types of exotic **betting**. An amount equal to three percent (3%) of the total amount **wagered** and included in the commission of a harness host track shall be allocated by the harness host track in the following manner. Two percent (2%) shall be allocated to the host for capital improvements, promotions, including advertising, or purses, as the host track shall elect. Three-quarters of one percent (3/4 of 1%) shall be allocated to overnight purses. One-quarter of one percent (1/4 of 1%) shall be allocated to the Kentucky standardbred, quarterhorse, Appaloosa, and Arabian development fund. This allocation shall be made after deduction from the commission of the **pari-mutuel** tax but prior to any other deduction, allocation or division of the commission.

CREDIT(S)

HISTORY: 1992 c 109, § 34, eff. 3-30-92

1990 c 159, § 11; 1988 c 376, § 11; 1986 c 296, § 18; 1980 c 83, § 1; 1976 c 343, § 3; 1974 c 346, § 15

<General Materials (GM) - References, Annotations, or Tables>

CROSS REFERENCES

Authorized track deductions from **pari-mutuel wagering**, 811 KAR 1:195

KRS § 230.750

KY ST § 230.750

TITLE L. KENTUCKY PENAL CODE

CHAPTER 528. **GAMBLING**

528.120 OFF-TRACK ACCEPTANCE OF MONEY FOR **PARI-MUTUEL WAGERING**

(1) No person, as a business or for any compensation, shall directly or indirectly, accept any thing of value to be **wagered** or to be transmitted or delivered for **wager** to any **pari-mutuel wagering** enterprise, or participate in any such transmission.

(2) As used herein, "person" shall mean and include any individual, partnership, association, joint stock association or trust, corporation, or other business entity, whether incorporated or not.

(3) Any person violating any of the provisions of this section shall be guilty of a Class A misdemeanor.

#### CREDIT(S)

HISTORY: 1978 c 321, § 3, eff. 3-30-78

<General Materials (GM) - References, Annotations, or Tables>

#### LIBRARY REFERENCES

**Pari-mutuel** method of **betting** on horses. 38 Am Jur 2d, **Gambling** § 47

Propriety of exclusion of persons from horseracing tracks for reasons other than color or race. 90 ALR3d 1361

Liability for injury or death of participant in automobile or horserace at public track. 13 ALR4th 623

#### LAW REVIEW AND JOURNAL COMMENTARIES

22 N Ky L Rev 405 (1995). Kentucky Division, Horsemen's Benevolent & Protective Association, Inc. v. Turfway Park Racing Association, Inc.: Controlling the Stakes of Kentucky Horseracing, Susan Zeller Dunn.

#### NOTES OF DECISIONS AND OPINIONS

20 F(3d) 1406 (6th Cir Ky 1994), Kentucky Div., Horsemen's Benev. & Protective Ass'n, Inc. v Turfway Park Racing Ass'n, Inc. Congress, by **regulating** interstate off-track **wagering** through enactment of Interstate Horseracing Act, was not implicitly **regulating** simulcasting of horseraces, and, thus, Act did not implicate First Amendment, since interstate off-track **wagering** may occur without simulcasting, and simulcasting may occur without interstate off-track **wagering**.

20 F(3d) 1406 (6th Cir Ky 1994), Kentucky Div., Horsemen's Benev. & Protective Ass'n, Inc. v Turfway Park Racing Ass'n, Inc. Interstate Horseracing Act, which governs interstate **wagering** on horseracing, did not violate separation of power principles or Mistretta nondelegation doctrine, even if Act effected "delegation" of legislative power to the **states**.

20 F(3d) 1406 (6th Cir Ky 1994), Kentucky Div., Horsemen's Benev. & Protective Ass'n, Inc. v Turfway Park Racing Ass'n, Inc. Interstate Horseracing Act, which governs interstate **wagering** on horseracing, does not unconstitutionally delegate legislative power to private parties, even though, under Act, approval of host horsemen's association is required for off-track **wagering**.

20 F(3d) 1406 (6th Cir Ky 1994), Kentucky Div., Horsemen's Benev. & Protective Ass'n, Inc. v Turfway Park Racing Ass'n, Inc. Interstate Horseracing Act, which governs interstate **wagering** on horseracing, does not **regulate** commercial speech, and, thus, does not implicate First Amendment.

20 F(3d) 1406 (6th Cir Ky 1994), Kentucky Div., Horsemen's Benev. & Protective Ass'n, Inc. v Turfway Park Racing Ass'n, Inc. Interstate Horseracing Act, which governs interstate **wagering** on horseracing, constitutes economic legislation **regulating** a very narrow subject matter, and, thus, "less strict vagueness test" is applicable to Act's provisions.

20 F(3d) 1406 (6th Cir Ky 1994), Kentucky Div., Horsemen's Benev. & Protective Ass'n, Inc. v Turfway Park Racing Ass'n, Inc. Congress, by enacting Interstate Horseracing Act, intended to preserve the traditional relationships that existed in horseracing industry between track and horsemen by limiting the emerging interstate off-track **wagering** industry.

20 F(3d) 1406 (6th Cir Ky 1994), Kentucky Div., Horsemen's Benev. & Protective Ass'n, Inc. v Turfway Park Racing Ass'n, Inc. Permissible interpretation of Interstate Horseracing Act suggests that racetrack obtain horsemen's consent to off-track **wagering** during regular contract negotiations with trade association that horsemen choose to represent them, and that if racetrack did not previously negotiate with representative trade association, racetrack would be required to obtain consent directly from owners, and, thus, Act was not unconstitutionally vague in violation of substantive due process.

20 F(3d) 1406 (6th Cir Ky 1994), Kentucky Div., Horsemen's Benev. & Protective Ass'n, Inc. v Turfway Park Racing Ass'n, Inc. Under Interstate Horseracing Act, which requires permission of host racing association for interstate off-track wagering, racetrack that routinely negotiates racing contracts with horsemen's associations may not abandon that practice when contract negotiations stall.

20 F(3d) 1406 (6th Cir Ky 1994), Kentucky Div., Horsemen's Benev. & Protective Ass'n, Inc. v Turfway Park Racing Ass'n, Inc. Racetrack accepted interstate off-track **wager**, and, thus, district court could exercise subject matter jurisdiction pursuant to Interstate Horseracing Act, which creates civil liability for those who accept interstate **wagers** in contravention of Act, where off-track **wagers** were placed in host racetrack's

**parimutuel** pool when track entered into agreement to simulcast races to off-track facility.

OAG 82-4. KRS 230.361 limits **pari-mutuel** racing to races being conducted on the licensed premises of a licensed association. KRS 528.110 prohibits **pari- mutuel wagering** from being conducted except within the enclosure of the racetrack where the race is being held. KRS 528.120 effectively prohibits any person from accepting money to be **wagered** with a licensed **pari-mutuel** enterprise in a place outside the grounds of the licensee.

TITLE XII. CONSERVATION AND STATE DEVELOPMENT  
CHAPTER 154A. STATE LOTTERY  
RETAILERS

154A.400 STATEWIDE NETWORK OF LOTTERY RETAILERS; CRITERIA FOR SELECTION; UNIFORM FEES; SUSPENSION, REVOCATION OR TERMINATION OF CONTRACT; PURCHASE OR LEASE OF ON-LINE EQUIPMENT; CONTRACTS NOT TRANSFERABLE OR ASSIGNABLE; CERTIFICATES; GENERAL ASSEMBLY MEMBERS NOT PROHIBITED FROM BEING RETAILERS; PAYMENT OF PRIZE; SALES TAX EXEMPTION

(1) (a) The General Assembly hereby recognizes that to conduct a successful lottery, the corporation must develop and maintain a statewide network of lottery retailers that will serve the public convenience or promote the sale of tickets, while insuring the integrity of the lottery.

(b) To govern the selection of lottery retailers, the board shall, by administrative regulation, develop a list of objective criteria upon which the selection of lottery retailers shall be based. Separate criteria shall be developed to govern the selection of retailers of instant tickets and on-line retailers. In developing these criteria the board shall consider such factors as the applicant's financial responsibility, security of the applicant's place of business or activity, integrity, and reputation; however, the board shall not consider political affiliation, activities, or monetary contributions to political organizations or candidates for any public office. The criteria shall include, but not be limited to the following:

1. The applicant shall be current in payment of all taxes, interest and penalties owed to any taxing subdivision where the lottery retailer will sell lottery tickets;

2. The applicant shall be current in filing all applicable tax returns and in payment of all taxes, interest and penalties owed to the Commonwealth of Kentucky, excluding items under formal appeal pursuant to applicable statutes;

3. No person, partnership, unincorporated association, corporation, or other business entity shall be selected as a

**lottery** retailer for the sale of instant tickets or on-line **games** who:

a. Has been convicted of a felony related to the security or integrity of the **lottery** in this or any other jurisdiction, unless at least ten (10) years have passed since satisfactory completion of the sentence or probation imposed by the court for each felony;

b. Has been convicted of any illegal **gambling** activity in this or any other jurisdiction, unless at least ten (10) years have passed since satisfactory completion of the sentence or probation imposed by the court for each conviction;

c. Has been found to have violated the provisions of this chapter or any administrative regulation adopted hereunder, unless at least ten (10) years have passed since the violation;

d. Is a vendor or an employee or agent of any vendor doing business with the corporation;

e. Resides in the same household as an officer of the corporation; or

f. Has made a statement of material fact to the corporation, knowing such statement to be false, unless at least ten (10) years have passed since the statement was made.

4. Retailers shall be afforded the same exceptions to disqualification as provided for vendors in KRS 154A.600(4)(a) and (b) or (c).

5. In addition to the provisions of subsection (3) of this section, no person, partnership, unincorporated association, corporation, or other business entity shall be selected as an on-line lottery retailer who:

a. Has been denied a license to sell instant tickets on the basis of objective criteria established by the board, or any provision of this chapter; or

b. Has failed to sell sufficient instant tickets to indicate that the location of an on-line **game** at his outlet would be of economic benefit to him or the **lottery** corporation.

6. The applicant shall not be engaged exclusively in the sale of **lottery** tickets. However, this paragraph does not preclude the corporation from contracting for the sale of **lottery** tickets with nonprofit, charitable organizations or units of local government in accordance with the provisions of this chapter.

(c) Persons applying to become **lottery** retailers shall be charged a uniform application fee for each **lottery** outlet.

Retailers chosen to participate in on-line **games** shall be charged a uniform annual fee for each on-line outlet.

(d) Any **lottery** retailer contract executed pursuant to this section may, for good cause, be suspended, revoked, or terminated by the president if the retailer is found to have violated any of the objective criteria established by the board as provided in subsection (1) of this section. Review of such action shall be in accordance with the procedures outlined in KRS 154A.090. All **lottery** retailer contracts shall be renewable annually after issuance unless sooner canceled or terminated.

(2) (a) A retailer who has been denied an on-line **game** for reasons other than financial responsibility, security, or integrity shall be permitted to purchase or lease the equipment necessary to operate such a **game** from the corporation in a manner consistent with the corporation's manner of acquisition. A retailer need not file an appeal before being permitted to purchase or lease on-line equipment.

(b) After one (1) year of operation, any retailer who purchased or leased on-line equipment pursuant to paragraph (a) of this subsection and whose sales are equal to or greater than the statewide average of sales of on-line retailers, shall be reimbursed the cost of the purchase or lease by the corporation. The board may purchase the terminals of other retailers who purchased their equipment if the board determines that such purchase is in the best interest of the **lottery**.

(3) No **lottery** retailer contract awarded under this section shall be transferable or assignable. No **lottery** retailer shall contract with any person for **lottery** goods or services except with the approval of the board.

(4) Each **lottery** retailer shall be issued a **lottery** retailer certificate which shall be conspicuously displayed at the place where the **lottery** retailer is authorized to sell **lottery** tickets. **Lottery** tickets shall only be sold by the retailer at the location **stated** on the **lottery** retailer certificate.

(5) A member of the General Assembly who meets the same requirements as any other applicant to be a retailer may be granted a retail contract to sell **lottery** tickets or participate in any other **lottery game** operations. No member of the General Assembly shall be entitled to preference over any other applicant for a contract.

(6) For the convenience of the public, all retailers shall be authorized to pay winners up to six hundred dollars (\$600) after the retailer performs validation procedures appropriate to the **lottery game** involved. **Lottery** tickets shall be exempt from the Kentucky sales tax.

CREDIT(S)

HISTORY: 1988 ex s, c 1, § 9, eff. 12-15-88

PENALTY

Penalty: 154A.990(11)

PRACTICE AND STUDY AIDS

Abramson, West's Kentucky Practice, Vol. 10, Substantive Criminal Law 16.53, n 6

CROSS REFERENCES

Imposition of sales tax, 139.200

Retailer administrative regulation, 202 KAR 3:030

LIBRARY REFERENCES

Public contracting. 56 Am Jur 2d, Municipal Corporations, Counties and Other Political Subdivisions § 493 to 501  
Validity of state statute prohibiting award of government contract to person or business entity previously convicted of bribery or attempting to bribe state public employee. 7 ALR4th 1202

KRS § 154A.400

KRS § 372.050

BALDWIN'S KENTUCKY REVISED STATUTES ANNOTATED  
TITLE XXX. CONTRACTS  
CHAPTER 372. CONTRACTS AGAINST PUBLIC POLICY

Current through End of 1998 Reg. Sess.

372.050 RETURN OF MONEY OR PROPERTY HELD BY STAKEHOLDER

The stakeholder of any money or other thing staked on any **bet** or **wager** shall, when notified to do so, return the stake to the person who deposited it. If he fails to do so, the person aggrieved may recover from him the amount or value of the stake.

CREDIT(S)

HISTORY: 1942 c 208, § 1, eff. 10-1-42

KS 1959

<General Materials (GM) - References, Annotations, or Tables>



NOTES OF DECISIONS AND OPINIONS

267 Ky 339, 102 SW(2d) 10 (Ky 1936), City of Louisville v Churchill Downs. Proprietor of **pari mutuel** machines, after deducting his percentage, held bailee or agent in holding balance for bettors, and hence gross receipts tax, as applied to corporation operating race track and such machines, should be imposed only on corporation's percentage and not on gross sums **wagered**.

136 Ky 303, 124 SW 327 (Ky 1910), Williams Commission Co.'s Assignee v W.A. Shirley & Bro. Where a bucket shop agrees to pay back money lost on margins the contract is not void.

21 KLR 1414, 107 Ky 647, 55 SW 210 (Ky 1900), Turner v Thompson. Under a statute requiring a stakeholder to return any money or other thing staked on a **bet** when notified to do so, the notice need not be in any technical form, and any words which sufficiently inform the stakeholder not to pay the **bet's** winner are enough to revoke the **bet** and require the stakeholder to return the money **bet** to the loser. (See also Gardner v Ballard, 114 Ky 93, 70 SW 196 (1902).)

13 KLR 413, 92 Ky 123, 17 SW 195 (Ky 1891), Donohue v McDonald. The action against the stakeholder must be brought in the name of the principal; one who has acted merely as an agent in depositing money and making **bet** cannot maintain the action.

7 Ky Opin 559 (Ky 1873), Laudeman v Gallagher. The provisions of the corresponding section of the revised statutes were held to apply to all **betting** or **wagering**, whether upon a **game**, sport, pastime, or an election.

54 Ky 634 (Ky 1855), Conner v Ragland. A statute requiring a stakeholder, on request, to return any money or other thing staked on a **bet** or **wager** is to be interpreted broadly so as to include any type of **betting** or **wagering**; failure to return the stake makes the stakeholder liable for the amount lost. (See also Hutchings & Co v Stillwell, 57 Ky 776 (1857).)

KRS § 372.050

TITLE XIX. PUBLIC SAFETY AND MORALS  
CHAPTER 238. CHARITABLE **GAMING**

238.010 DEFINITIONS--REPEALED

CREDIT(S)

HISTORY: 1984 c 111, § 199, eff. 7-13-84

1970 c 60, § 2

<General Materials (GM) - References, Annotations, or Tables>

NOTES OF DECISIONS AND OPINIONS

476 SW(2d) 626 (Ky 1971), *Otto v Kosofsky*, certiorari denied 93 Sct 227, 409 US 912, 34 LEd(2d) 173. 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.

KRS § 238.010

TITLE XXX. CONTRACTS  
CHAPTER 372. CONTRACTS AGAINST PUBLIC POLICY

372.020 RECOVERY OF GAMBLING LOSSES FROM WINNER OR HIS TRANSFEREE

If any person loses to another at one (1) time, or within twenty-four (24) hours, five dollars (\$5) or more, or anything of that value, and pays, transfers or delivers it, the loser or any of his creditors may recover it, or its value, from the winner, or any transferee of the winner, having notice of the consideration, by action brought within five (5) years after the payment, transfer or delivery. Recovery may be had against the winner, although the payment, transfer or delivery was made to the endorsee, assignee, or transferee of the winner. If the conveyance or transfer was of real estate, or the right thereto, in violation of KRS 372.010, the heirs of the loser may recover it back by action brought within two (2) years after his death, unless it has passed to a purchaser in good faith for valuable consideration without notice.

CREDIT(S)

HISTORY: 1942 c 208, § 1, eff. 10-1-42

KS 1956

<General Materials (GM) - References, Annotations, or Tables>

LIBRARY REFERENCES

Recovery back of money lost. 17 Am Jur 2d, Contracts § 221, 222, 235

NOTES OF DECISIONS AND OPINIONS

317 SW(2d) 899 (Ky 1958), Webb v Martin. In a suit by a wife which could be treated as either one to recover property her husband lost in gambling, for which recovery is authorized by KRS 372.010 and 372.020, or treated as a suit to recover property he improperly disposed of while acting as an agent, in both instances the result is the same: the wife will prevail.

286 SW(2d) 515 (Ky 1956), Gumer v Sailor. Under statute permitting recovery of treble the amount of money lost in **gaming** transactions, amount which plaintiff paid bookmaker to be turned over to federal government under federal **wagering** act was not 'lost', and could not be recovered.

242 SW(2d) 605 (Ky 1951), Dobbs v Holder. A check given to pay a **gambling** debt is void in the hands of a holder in due course and without notice.

240 SW(2d) 582 (Ky 1951), Tyler v Goodman. In action to recover money alleged to have been lost by **betting** on horse races in handbook operated by defendants evidence that one defendant operated the handbook in the rear of a newsstand operated by other defendant with his consent and acquiescence did not warrant a recovery against defendant operating the newsstand.

309 Ky 549, 218 SW(2d) 395 (Ky 1949), Craig v Curd. The statutes providing that **betting, gaming or wagering** contracts are void, and permitting third persons to recover amounts lost on a **bet** if loser or creditors fail to bring suit do not authorize an informer to bring action against winner of election **bet**.

285 Ky 675, 149 SW(2d) 11 (Ky 1941), Griffith's Adm'x v Miller. In action on note against deceased maker's estate, defendants could not escape liability on ground that note resulted from **gambling** transaction, in that note was given for indebtedness arising out of stock transactions in which stocks were bought and sold on margin, since buying of stock on "margin" simply means that purchaser paid part of purchase price and the stock certificates are issued and held by seller as collateral for the unpaid balance, and is not prohibited as a "gaming transaction".

216 Ky 703, 288 SW 702 (Ky 1926), Thompson v First State Bank of Irvington. A bank which cashes for the payee a check void under this section may recover the amount of the check from the payee.

188 Ky 652, 223 SW 1098 (Ky 1920), Peirano v Shapiro. In an action upon this section proof that would authorize a recovery in an action under KRS 436.260 (KS 1969) will not authorize a recovery.

150 Ky 343, 150 SW 364 (Ky 1912), Nicholson v Alvey. Telegraph company which transmits information of horse races does not violate this section.

148 Ky 50, 146 SW 2 (Ky 1912), Lilienthal v Carpenter, Baggott & Co. This section applies to gambling in futures, and the principal is jointly liable with the agent under the statute; all persons concerned in winning the money are liable.

145 Ky 259, 140 SW 164 (Ky 1911), Timmons v Timmons. One who acts as agent for another in making investments with a bucket shop concern and who receives commissions from the bucket shop concern on the investment so made, is liable to the person for whom he acted for all sums lost on such investments by such person.

132 Ky 83, 116 SW 297 (Ky 1909), Cartwright v McElwain. One who receives a portion of the money lost at gambling at a certain place is liable to the loser for the entire sum lost.

132 Ky 83, 116 SW 297 (Ky 1909), Cartwright v McElwain. Where a saloon owner allows his agents to operate the business, and they conduct a **gambling** operation on the premises with the owner sharing in the profits, the owner is liable for **gambling** losses, although he did not personally participate in the **gambling** operation and was not aware that the profits were from **gambling**.

131 Ky 10, 114 SW 341 (Ky 1908), Roberts v Respass. In an action to recover money lost at **gambling**, it is immaterial whether the **game** was conducted fairly, and evidence as to the **game's** unfairness is thus properly excluded.

23 KLR 1905, 112 Ky 606, 66 SW 421, 99 Am.St.Rep. 317 (Ky 1902), Central Trust & Safe Deposit Co. v Respass. A partner in the business of racing horses is not entitled in a settlement to credit by money lost and paid by him on a bet made for the firm.

17 KLR 659, 98 Ky 91, 32 SW 288 (Ky 1895), Wemhoff v Rutherford. The loser cannot recover of the winner under this section, and also of the person who induced him to play, under KRS 436.360 (KS 1969) on account of the same loss.

13 KLR 798, 92 Ky 569, 18 SW 454 (Ky 1892), Elias v Gill. Persons who engage in gaming by means of selling pools on horse races cannot recover from the winner under this section; where one seeks to recover of pool-sellers money they have won from him, they are entitled to deduct from the amount he claims the sums which he has won from them.

12 KLR 661, 91 Ky 30, 14 SW 948 (Ky 1890), Triplett v Seelbach. The proprietor of a gaming house who receives a certain per cent of the winnings of each game called the "take out," is a "winner" in the meaning of this section, and the loser may recover from him what he has lost. (See also Stapp v Mason, 114 Ky 900, 72 SW 11 (1903) and notes to KRS 372.010 (KS 1955).)

12 KLR 211, 90 Ky 280, 13 SW 1076 (Ky 1890), Lyons v Hodgen. Where there is lost at a wager as much as five dollars at one time, the right of the loser to recover it from the winner exists, and he may sue therefor, or for the aggregate amount so lost during a given period without regard to when the bet was made, or how long it was pending and undetermined.

6 KLR 58, 82 Ky 187, 56 Am.Rep. 889 (Ky 1884), Moore v Settle. Who may sue if loser or creditor does not: The wife cannot sue under this section to recover money lost by her husband.

77 Ky 538, 29 Am.Rep. 416 (Ky 1879), Brown v Thompson. A person who sets up or is interested in a faro-bank cannot recover money from those who **bet** against the bank and win.

7 Ky Opin 591 (Ky 1873), Waddell v Comar. Right of discovery includes as well the names of the persons interested in the **game** at which money is lost as the amount lost.

65 Ky 446 (Ky 1867), Caldwell v Caldwell. Where money is lost at **gaming** any creditor of the loser, who chooses to assert his right to recover it, may do so.

65 Ky 263 (Ky 1867), Cain v McHarry. A wife, pending her suit for alimony and divorce, may to the extent of the alimony adjudged to her, recover from persons the money won from her husband **betting** on a horse race.

44 Ky 581 (Ky 1845), Standeford's Adm'r v Shultz. The assignment of a note lost at **gaming** does not deprive the assignor of the right to collect the amount due from obligor in note.

KRS § 372.020

TITLE XII. CONSERVATION AND **STATE** DEVELOPMENT  
CHAPTER 154A. **STATE LOTTERY**

154A.050 DUTIES OF BOARD

(1) The board of directors shall provide the president with private-sector perspectives on the operation of a large marketing enterprise. The board shall:

(a) Approve, disapprove, amend, or modify the budget recommended by the president for the operation of the corporation;

(b) Approve, disapprove, amend, or modify the terms of major **lottery** procurements recommended by the president;

(c) Serve as a board of appeal for any denial, revocation, or cancellation by the president of a contract with a **lottery**

retailer; and

(d) Adopt, from time to time, administrative **regulations** which shall be subject to the provisions of KRS Chapter 13A, as may be necessary to carry out and implement its powers and duties, the operation of the corporation, the conduct of **lottery games** in general, and any other matters necessary or desirable for the efficient and effective operation of the **lottery** or convenience of the public. The board may adopt, without recourse to the administrative **regulation** process unless it so desires, rules for the conduct of specific **lottery games**, including but not limited to, rules specifying:

1. The types of **games** to be conducted;
2. The sale price of tickets;
3. The number and amount of prizes;
4. The method and location of selecting or validating winning tickets;
5. The frequency and the means of conducting drawings which shall be open to the public;
6. The manner of payment of prizes;
7. The frequency of **games** and drawings;
8. The manner and amount of compensation to **lottery** retailers, except all compensation shall be uniform; and
9. Any other matters necessary or desirable for the efficient and effective operation of the **lottery** or for the convenience of the public.

(2) In all other matters, the board shall advise and make recommendations. However, the board shall:

(a) Conduct hearings upon complaints charging violations of this chapter or of administrative **regulations** adopted by the corporation and shall conduct such other hearings as may be provided by administrative **regulation**;

(b) Review the performance of the corporation and:

1. Advise the president and make recommendations to him **regarding** operations of the corporation; and
2. Identify potential improvements in this chapter, the administrative **regulations** of the corporation, and the management of the corporation;

(c) Request from the corporation any information the board determines to be relevant to its duties; and

(d) Report to the president of the corporation, the Governor, the President of the Senate, and the Speaker of the House of Representatives **regarding** its findings and recommendations.

CREDIT(S)

HISTORY: 1994 c 486, § 25, eff. 7-15-94

1990 c 470, § 77, eff. 7-1-90; 1988 ex s, c 1, § 5

CROSS REFERENCES

Internal audit procedures, 202 KAR 3:040

LIBRARY REFERENCES

Powers and functions. 2 Am Jur 2d, Administrative **Law** § 52 et seq.

Powers and duties, generally. 56 Am Jur 2d, Municipal Corporations, Counties and Other Political Subdivisions § 339

KRS § 154A.050

TITLE L. KENTUCKY PENAL CODE  
CHAPTER 528. **GAMBLING**

528.090 PRIMA FACIE PROOF

(1) Proof of possession of any **gambling** device or any **gambling** record specified in KRS 528.050, 528.060 and 528.080 is prima facie evidence of possession thereof with knowledge of its character or contents.

(2) In any prosecution under this chapter in which it is necessary to prove the occurrence of a sporting event, a published report of its occurrence in any daily newspaper, magazine or other periodically printed publication of general circulation or evidence that a description of some aspect of the event was written, printed or otherwise noted at the place in which a violation of this chapter is alleged to have been committed shall be admissible in evidence and shall constitute prima facie proof of the occurrence of the event.

CREDIT(S)

HISTORY: 1974 c 406, § 248, eff. 1-1-75

<General Materials (GM) - References, Annotations, or Tables>

COMMENTARY

Kentucky Crime Commission/LRC

1974:

As strict liability is not imposed, the **state** must show knowledge by the defendant of the results or objectives of the **gambling** activity involved. In promoting **gambling** activity, the act imports the required knowledge as a matter of common experience. However, possession of a **gambling** device presents a special problem of proof and therefore proof of possession of the article in question establishes the required knowledge as prima facie proof.

Where proof of a particular sporting event is required, newspaper published reports or information posted at the **betting** location of the event suffice.

LIBRARY REFERENCES

Possession of **gambling** devices as offense. 38 Am Jur 2d, **Gambling** § 84, 105

Forfeiture of property used in connection with **gaming** before trial of individual offender. 3 ALR2d 751

Validity of criminal legislation making possession of **gambling** or **lottery** devices or paraphernalia presumptive or prima facie evidence of other incriminating facts. 17 ALR3d 491

KRS § 528.090

KY ST § 528.090

TITLE XL. CRIMES AND PUNISHMENTS  
CHAPTER 436. OFFENSES AGAINST MORALITY

436.480 **PARI-MUTUEL WAGERING** EXEMPT FROM KRS CH. 528

KRS Chapter 528 shall not apply to **pari-mutuel wagering** authorized under the provisions of KRS Chapter 230.

CREDIT(S)

HISTORY: 1976 c 183, § 7, eff. 6-19-76

1974 c 406, § 327; 1942 c 208, § 1; KS 3914b-6

<General Materials (GM) - References, Annotations, or Tables>

NOTES OF DECISIONS AND OPINIONS



309 Ky 132, 216 SW(2d) 912 (Ky 1949), Hargett v Kentucky **State** Fair Bd. Lease of portion of **state** fair ground by **State** Fair Board to private person for purposes of carrying on "horse racing and related general purposes" would include **betting** on horse races and did not meet specific requirements of statute permitting only certain form of **gambling** on horse races on any regular race track or enclosures in which horse racing was being conducted under license from **state** racing commission and was void where lease did not define enclosures wherein racing would be conducted and permitted horse racing while **state** fair was in progress.

305 Ky 644, 205 SW(2d) 326 (Ky 1947), Goose v Com. ex rel. Dummit. By statute, all forms of **gambling** and promotion thereof are condemned except **betting** through **parimutuel** machines at race courses under license by the **state**.

238 Ky 739, 38 SW(2d) 987 (Ky 1931), Commonwealth v Kentucky Jockey Club. Statutes permitting **pari mutuel** system of **betting** on horse races within inclosures of regular race track while races are being run held not constitutional.

213 Ky 648, 281 SW 826 (Ky 1926), Erlanger Kennel Club v Daugherty, affirmed 48 SCT 158, 275 US 509, 72 LEd 398. 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.

KRS § 436.480

KY ST § 436.480

TITLE XI. REVENUE AND TAXATION  
CHAPTER 137. LICENSE TAXES

137.170 TENTATIVE **STATE** LICENSE TAX ON RACE MEETINGS

(1) Every person engaged in the business of conducting a race meeting at which live horse races are run for stakes, purses, or prizes, under the jurisdiction of the Kentucky Racing Commission, shall pay a tentative license tax to the **state**, as provided in subsection (2) of this section.

(2) Any race track for any year commencing December 1 and ending the following November 30 for the days upon which races are actually conducted for any stake, purse, or prize, shall pay a license tax based on the average daily mutuel handle for the preceding year as follows:

Average Daily Mutuel Handle	License Tax
\$0 - \$25,000	\$ 0
\$25,000 - \$250,000	\$ 175
\$250,001 - \$450,000	\$ 500
\$450,001 - \$700,000	\$ 1,000
\$700,001 - \$800,000	\$ 1,500
\$800,001 - \$900,000	\$ 2,000
\$900,001 and above	\$ 2,500

(3) As used in subsection (2) of this section the term "daily mutuel handle" shall mean the total gross amount of money **bet** or **wagered** by a race track's patrons by means of **pari-mutuel**, combination, or French pools on live races conducted by the track.

#### CREDIT(S)

HISTORY: 1994 c 272, § 1, c 65, § 6, eff. 7-15-94

1992 c 109, § 4, eff. 3-30-92; 1984 c 240, § 1; 1958 c 33, § 1, 2; 1942 c 208, § 1; KS 4223b-6, 4223b-7

<General Materials (GM) - References, Annotations, or Tables>

#### HISTORICAL AND STATUTORY NOTES

Legislative Research Commission Note: (7-15-94): This section was amended by 1994 Ky. Acts chs. 65 and 272 which do not appear to be in conflict and have been codified together.

#### PENALTY

Penalty: 137.990(3)

#### CROSS REFERENCES

**State** tax on race track admissions, 138.480

Taxes on **pari-mutuel**, account, and intertrack **wagering** at running and trotting horse tracks, exemptions, 138.510

Suspension or revocation of race track license, 138.550

Racing, Ch 230

Application of thoroughbred racing **laws**, 230.360

Horse racing simulcast facilities, exemption, 230.380

#### NOTES OF DECISIONS AND OPINIONS

Deduction 1

1. Deduction

297 Ky 835, 181 SW(2d) 398 (Ky 1944), Churchill Downs-Latonia, Inc. v Reeves. Where taxpayer, which made its income tax returns upon cash receipt and disbursement basis, refused to pay license taxes on two race tracks operated by it during years 1934 and 1935 until in 1937 after adverse decision in litigation contesting legality of the taxes, at which time taxpayer was also required to pay interest on the delinquent taxes, taxpayer, though not entitled to deduction for amount of license taxes paid in computing 1937 **state** income taxes because license taxes should have been paid during years prior to effective date of **state** income tax **law**, was entitled to a deduction for amount of interest required to be paid on the license taxes.

KRS § 137.170

KY ST § 137.170

KY ST s 238.350

KRS § 238.350

TITLE XIX. PUBLIC SAFETY AND MORALS  
CHAPTER 238. CHARITABLE **GAMING**

238.350 COMMISSIONER TO STUDY **BINGO LAW** IN THIS, OTHER **STATES**--REPEALED

CREDIT(S)

HISTORY: 1984 c 111, § 199, eff. 7-13-84

1970 c 60, § 9, 10

<General Materials (GM) - References, Annotations, or Tables>

KRS § 238.350

KY ST § 238.350

END OF DOCUMENT

KY ST s 436.510

KRS § 436.510

BALDWIN'S KENTUCKY REVISED STATUTES ANNOTATED  
TITLE XL. CRIMES AND PUNISHMENTS  
CHAPTER 436. OFFENSES AGAINST MORALITY

#### 436.510 WITNESSES IN INVESTIGATION OR PROSECUTION FOR **GAMBLING**

(1) In any prosecution or any investigation by an examining court or grand jury of **gambling** violations, it shall be no exemption for a witness that his testimony may incriminate himself.

(2) It shall be no exemption for the buyer of a **lottery** ticket, in any prosecution against the seller of a **lottery** ticket, that his testimony may incriminate himself.

(3) No testimony given in the proceedings **stated** in subsections (1) and (2) of this section shall be used against the testifying witness in any prosecution except for false swearing.

(4) Except as provided in subsection (3) of this section, a witness testifying in any prosecution against the seller of a **lottery** ticket, shall be discharged from all liability for any offense necessarily disclosed in his testimony.

(5) A witness testifying in any prosecution for **gambling** shall be discharged from all liability for **gambling** disclosed in his testimony.

(6) No person against whom a witness testifies in any prosecution for **gambling** shall testify as to any **gambling** by the witness.

#### CREDIT(S)

HISTORY: 1974 c 406, § 334, eff. 1-1-75

1942 c 208, § 1; KS 1328a, 1973, 2579

<General Materials (GM) - References, Annotations, or Tables>

#### HISTORICAL AND STATUTORY NOTES

Note: 436.510 contains provisions analogous to former 436.400, repealed by 1974 c 406, § 336, eff. 1-1-75.

#### CROSS REFERENCES

Gambling offenses, 528.010 to 528.100

#### LIBRARY REFERENCES

Government's privilege against disclosure of identity of informer. 38 Am Jur 2d, Gambling § 162 to 166

#### NOTES OF DECISIONS AND OPINIONS

619 SW(2d) 699 (Ky 1981), Com. v Brown. Absent statutory or constitutional provisions to the contrary, prosecutor has no

inherent power to grant immunity to witness in order to compel his testimony.

312 Ky 395, 227 SW(2d) 895 (Ky 1950), Kindt v Murphy. Statute providing that no witness may refuse to testify in any prosecution for gambling on ground that his testimony may incriminate him but that no such testimony shall be used against him in any prosecution except for false swearing is confined to any prosecution, preliminary examination or inquiry conducted by the Commonwealth.

305 Ky 221, 203 SW(2d) 16 (Ky 1947), Freeman v Com. In prosecution for setting up and operating a **game of chance** and for aiding others in setting up and operating a poker **game**, introduction of those others as witnesses had the effect of exempting them from prosecution with defendant under the joint indictment.

274 Ky 51, 118 SW(2d) 140 (Ky 1938), Taylor v Com. That, in an individual application, a guilty man should escape or the administration of justice be delayed, is better than that the fundamental personal right of a witness not to incriminate himself should be violated.

233 Ky 250, 25 SW(2d) 393 (Ky 1930), Bromfield v Board of Com'rs of City of Lexington. Policeman was tried by the board of commissioners of the city of Lexington for misconduct in making **bets** through handbooks and was convicted on his confession; he later testified before the grand jury, which resulted in indictments against the operators of the handbooks; thereafter, the policeman appealed from the judgment of the commissioners to the circuit court and then relied on the immunity granted by this section as applied to the testimony he gave before the grand jury; it was held the provisions of this section did not protect him.

194 Ky 166, 238 SW 395 (Ky 1922), Gordon v Tracy. Question of the constitutionality of this statute does not arise on contempt proceedings against a witness who refuses to answer questions of the grand jury as to the names of persons to whom from time to time he sold a certain paper.

181 Ky 319, 204 SW 74 (Ky 1918), Commonwealth v Collier. A **bet** on an election is within this section.

143 Ky 503, 136 SW 896 (Ky 1911), Bentler v Commonwealth. The immunity granted by this section applies to testimony given before a grand jury; therefore, an indictment must be quashed where it is based on testimony given before the grand jury only after the accused was assured that his testimony would not be used against him.

141 Ky 247, 132 SW 423 (Ky 1910), Boyd v Commonwealth.

Accomplice in a felony case is one of several equally concerned in the commission of the felony, or one connected in some way with the crime charged.

KRS § 436.510

KY ST § 436.510

KY ST s 154A.060

KRS § 154A.060

TITLE XII. CONSERVATION AND **STATE** DEVELOPMENT  
CHAPTER 154A. **STATE LOTTERY**

154A.060 CONDUCT AND ADMINISTRATION OF **LOTTERY GAMES**; POWERS AND DUTIES OF CORPORATION; AUTHORIZED CONTRACTS

(1) The corporation shall conduct and administer **lottery games** which will result in maximization of revenues to the Commonwealth of Kentucky while at the same time provide entertainment to its citizens. It shall be the duty of the corporation, its employees, and the members of the board to provide for the effective operation of **lottery games** which insure the integrity of the **lottery** and maintain the dignity of the Commonwealth and the general welfare of its citizens. The corporation, in pursuit of the attainment of the objectives and the purposes of this chapter, may:

- (a) Sue and be sued in its corporate name;
- (b) Adopt a corporate seal and a symbol;
- (c) Hold copyrights, trademarks, and service marks, and enforce its rights with respect thereto;
- (d) Appoint agents upon which process may be served;
- (e) Enter into written agreements with one (1) or more other **states** for the operation, marketing, and promotion of a joint **lottery** or joint **lottery games**;
- (f) Acquire real property and make improvements thereon. These acquisitions shall be reported to the Capital Projects and Bond Oversight Committee for its review and determination in accordance with KRS 45.750 to 45.810; and
- (g) Make, execute, and effectuate any and all agreements or contracts including:

1. Contracts for the purchase of such goods and services as are necessary for the operation and promotion of the state lottery. Proposed purchases of major items of equipment estimated to cost one hundred thousand dollars (\$100,000) or more and

proposed purchases of items of equipment where the estimated contract price for all the items of equipment taken together is four hundred thousand dollars (\$400,000) or more shall be reported to the Capital Projects and Bond Oversight Committee for its review and determination in accordance with the provisions of KRS 45.750 to 45.810. A contract shall not be artificially divided to cause an estimated contract price to fall below the four hundred thousand dollar (\$400,000) threshold. Contracts for personal service shall be reviewed in accordance with KRS 45A.690 to 45A.725.

2. Contracts to incur debt in its own name and enter into financing agreements with the Commonwealth, its own agencies, or with a commercial bank, excluding the authority to issue bonds.

(2) The corporation shall:

(a) Supervise and administer the lottery in accordance with the provisions of this chapter and the administrative regulations adopted by the board;

(b) Submit monthly and annual reports to the Governor, the President of the Senate, and the Speaker of the House of Representatives containing financial statements which include, but are not limited to, disclosure of gross revenues, expenses, and net proceeds for the period;

(c) Adopt by administrative regulation a system of continuous internal audits;

(d) Maintain weekly or more frequent records of lottery transactions, including distribution of tickets to lottery retailers, revenues received, claims for prizes, prizes paid, and all other financial transactions of the corporation;

(e) Adopt by administrative regulation a code of ethics for officers and employees of the corporation to carry out the standards of conduct established by the provisions of this chapter; and

(f) Include capital projects, as defined in KRS 45.750(1)(f), which exceed the thresholds set forth in KRS 154A.060(1)(g)1. in the budget unit request submitted by the corporation to the Finance and Administration Cabinet pursuant to KRS 48.050. In the budget unit request submitted by the corporation, a contingency item for acquisition of the on-line central system, all related equipment, and any other equipment owned by vendors of the corporation relating to computer-generated **lottery games** from the corporation's vendors shall be **stated** separately from all other equipment. Further, if the identification of specific projects requiring the acquisition of equipment in the nature of computer systems, communications equipment and related peripheral devices, and operating system software cannot be ascertained with absolute

certainty at the time the corporation is required to submit its budget unit request, the corporation shall be entitled to submit a general request for the equipment without individually identifying specific projects, together with a maximum amount to be allocated for the equipment, in the budget unit request.

CREDIT(S)

HISTORY: 1996 c 77, § 1, eff. 7-15-96

1994 c 31, § 5, c 486, § 26, eff. 7-15-94; 1990 c 496, § 45, c 507, § 22, eff. 7-13-90; 1988 ex s, c 1, § 6

PENALTY

Penalty: 154A.990(3)

CROSS REFERENCES

Procurement procedures, 202 KAR 3:020

Internal audit procedures, 202 KAR 3:040

LIBRARY REFERENCES

Conduct of **lotteries**. 38 Am Jur 2d, **Gambling** § 58, 59

KRS § 154A.060

KY ST § 154A.060

KY ST s 411.090

KRS § 411.090

BALDWIN'S KENTUCKY REVISED STATUTES ANNOTATED  
TITLE XXXVI. STATUTORY ACTIONS AND LIMITATIONS  
CHAPTER 411. RIGHTS OF ACTION AND SURVIVAL OF ACTIONS

411.090 LIABILITY OF PERSON **GAMING** ON PREMISES WITHOUT PERMISSION OF OWNER

If any person shall, in any house, boat, float or premises, without the permission of the owner, controller or occupier, engage in any hazard or **game** in which money or property is **bet**, won or lost, he shall be liable to the owner, controller or occupier for all damages and costs, legal and extraordinary, sustained in consequence thereof.

CREDIT(S)

HISTORY: 1942 c 208, § 1, eff. 10-1-42

KS 1976



<General Materials (GM) - References, Annotations, or Tables>

LIBRARY REFERENCES

**Gambling** in private residence is prohibited or permitted by **anti-gambling laws**. 27 ALR3d 1074

KRS § 411.090

KY ST § 411.090

KY ST s 154A.110

KRS § 154A.110

TITLE XII. CONSERVATION AND STATE DEVELOPMENT  
CHAPTER 154A. STATE LOTTERY

154A.110 PRIZES TAXABLE; WITHHOLDINGS FROM PRIZE; VERIFICATION RULES AND PRIZE PAYMENTS, EXCEPTIONS; UNCLAIMED PRIZE MONEY; CORPORATION'S LIABILITY; INELIGIBILITY TO PURCHASE TICKETS AND RECEIVE PRIZES

(1) Proceeds of lottery prizes shall be subject to Kentucky state income tax. Any attachments, garnishments, or executions authorized and issued pursuant to statute shall also be withheld if served upon the process agent of the corporation. This section shall not apply to a retailer.

(2) The board shall adopt rules to establish a system of verifying the validity of tickets claimed to win prizes and to effect payment of such prizes, except that:

(a) No prize, nor any portion of a prize, nor any right of any person to a prize awarded shall be assignable. Any prize, or portion thereof, remaining unpaid at the death of a prize winner shall be paid to the estate of such deceased prize winner or to the trustee under a revocable living trust established by the deceased prize winner as settlor, provided that a copy of such a trust has been filed with the corporation along with a notarized letter of direction from the settlor and no written notice of revocation has been received by the corporation prior to the settlor's death. Following such a settlor's death and prior to any payment to such a successor trustee, the corporation shall obtain from the trustee and each trust beneficiary a written agreement to indemnify and hold the corporation harmless with respect to any claims that may be asserted against the corporation arising from payment to or through the trust. Notwithstanding any other provisions of this section, any person, pursuant to an appropriate judicial order, shall be paid the prize to which a winner is entitled.

(b) No ticket shall knowingly be sold to any person under the

age of eighteen (18), but this section does not prohibit the purchase of a ticket by a person eighteen (18) years of age or older for the purpose of making a gift to any person of any age. In such case, the corporation shall direct payment to an adult member of the person's family or the legal guardian of the person on behalf of such person. The person named as custodian shall have the same powers and duties as prescribed for a custodian pursuant to the Uniform Transfers to Minors Act.

(c) No prize shall be paid arising from claimed tickets that are stolen, counterfeit, altered, fraudulent, unissued, produced or issued in error, unreadable, not received or not recorded by the corporation within applicable deadlines, lacking in captions that conform and agree with the play symbols as appropriate to the **lottery game** involved, or not in compliance with such additional specific rules and public or confidential validation and security tests of the corporation appropriate to the particular **lottery game** involved.

(d) No particular prize in any **lottery game** shall be paid more than once, and in the event of a binding determination that more than one claimant is entitled to a particular prize, the sole remedy of such claimants is the award to each of them of an equal share in the prize.

(e) A holder of a winning cash ticket from a Kentucky **lottery game** shall claim a prize within three hundred sixty-five (365) days (for a ticket issued before January 1, 1995), and within one hundred eighty (180) days (for a ticket issued on or after January 1, 1995), or for a multistate **lottery game** within one hundred eighty (180) days, after the drawing in which the prize was won. In any Kentucky **lottery game** in which the player may determine instantly if he has won or lost, he shall claim a prize within three hundred sixty-five (365) days (for **lottery games** commenced or tickets printed or reprinted before January 1, 1995), and within one hundred eighty (180) days (for **lottery games** commenced or tickets printed or reprinted on or after January 1, 1995), or for a multistate **lottery game** within one hundred eighty (180) days, after the end of the **lottery game** as announced by the corporation. However, a holder of a pull-tab **lottery** ticket shall claim a prize within the time period and in the manner printed on the ticket. If a valid claim is not made for a prize within the applicable period, the prize shall constitute an unclaimed prize for purposes of subsection (3) of this section.

(f) No prize shall be paid upon a ticket purchased or sold in violation of this chapter. Any such prize shall constitute an unclaimed prize for purposes of subsection (3) of this section.

(3) Any unclaimed prize money may be retained by the corporation and added to the pool from which future prizes are to be awarded or used for special prize promotions, or may be appropriated by

the General Assembly directly from the corporation for any public purpose. For fiscal years 1998-99 and 1999-00, any unclaimed prize money in excess of six million dollars (\$6,000,000) shall be transferred to the affordable housing trust fund established by KRS 198A.710.

(4) The corporation is discharged of all liability upon payment of a prize.

(5) No ticket shall be purchased by and no prize shall be paid to any of the following persons:

(a) Any member of the board of directors, officers, or employees of the corporation;

(b) Any vendors or related entities, or any member of the board of directors, officers, employees of, partners in, or owners of any vendors or related entities to the vendors; or

(c) Any spouse, child, brother, sister, or parent residing as a member of the same household in the principal place of abode of any such person.

#### CREDIT(S)

HISTORY: 1998 c 215, § 1, eff. 7-15-98

1994 c 170, § 6, eff. 7-15-94; 1988 ex s, c 1, § 16, eff. 12-15-88

#### HISTORICAL AND STATUTORY NOTES

Legislative Research Commission Note: (1988): Although references to the sale of "shares" were deleted in the Senate committee substitute, due to a clerical error, such reference was not deleted in subsection (2)(e) of this section. The Reviser of Statutes, pursuant to KRS 7.136, has removed the words "or share" to conform.

#### PENALTY

Penalty: 154A.990(1)(2)(3)

#### CROSS REFERENCES

Uniform Transfers to Minors Act, Ch 385

#### LIBRARY REFERENCES

**Lottery** prize. 38 Am Jur 2d, **Gambling** § 8  
Property and interests subject to tax. 71 Am Jur 2d, **State** and  
Local Taxation § 191, 194 to 200  
**State lotteries:** actions by ticketholders against **state** or

contractor for **state**. 40 ALR4th 662.

## NOTES OF DECISIONS AND OPINIONS

Payment method 1

### 1. Payment method

862 SW(2d) 888 (Ky 1993), Kentucky Lottery Corp. v Casey. Accord and satisfaction did not bar lottery winner's suit against Lottery Commission contesting whether liquidated and undisputed amount could be discounted to present value, even though winner negotiated check which reduced amount to present value of what winner would have received in 20 equal installment payments over 20 years.

862 SW(2d) 888 (Ky 1993), Kentucky Lottery Corp. v Casey. Contestant who was one of multiple grand prize winners in Kentucky lottery was entitled to payment of full value of winning ticket in single cash payment rather than amount of his share of award reduced to present value upon his demand for payment in cash.

862 SW(2d) 888 (Ky 1993), Kentucky **Lottery** Corp. v Casey. **State** providing that **lottery** corporation was discharged of all liability upon payment of prize did not preclude **lottery** winner, who negotiated his check, from contesting method of payment.

KRS § 154A.110

KY ST § 154A.110

KY ST s 154A.070

KRS § 154A.070

## TITLE XII. CONSERVATION AND **STATE** DEVELOPMENT CHAPTER 154A. **STATE LOTTERY**

### 154A.070 POWERS AND DUTIES OF CORPORATION'S PRESIDENT

(1) The president, as chief executive officer of the corporation, shall direct and supervise all administrative and technical activities in accordance with the provisions of this chapter and with the administrative **regulations** adopted by the board. It shall be his duty to:

(a) Supervise and administer the operation of the **lottery games**;

(b) Employ and direct such personnel as may be necessary to carry out the purposes of this chapter and utilize such services, personnel, or facilities of the corporation as he may deem necessary. He may employ by personal service contract pursuant to

KRS 45A.690 to 45A.725 and compensate such consultants and technical assistants as may be required to carry out the provisions of this chapter. The president may, by agreement, secure information and services as he may deem necessary from any department, agency, or unit of **state** government, and shall compensate such department, agency, or unit of **state** government for its services. Such agencies, departments, or units of **state** government shall cooperate with the corporation and provide such information and services as may be required by the corporation to assure the integrity of the **lottery** and the effective operation of the **lottery games**;

(c) Contract in accordance with the administrative **regulations** of the corporation with persons to sell **lottery** tickets at retail. The president shall require a bond or bank letter of credit from **lottery** retailers in an amount provided by administrative **regulations** issued by the board;

(d) Make available for inspection by the board or any member of the board, upon request, all books, records, files, and other information and documents of his office and to advise the board and recommend such administrative **regulations** and other matters he deems necessary and advisable to improve the operation and administration of the **lottery**;

(e) Enter into any contract pursuant to KRS Chapters 45 and 45A or administrative **regulations** promulgated by the board, and pursuant to KRS 154A.120, with any person, firm, or corporation for the promotion and any operation of the **lottery**, or for the performance of any of the functions as provided in this chapter;

(f) Attend meetings of the board or appoint a designee to attend on his behalf; and

(g) On the first day of the Regular Session of the General Assembly in 1990 and biennially thereafter, submit the proposed biennial budget of the corporation to the Appropriations and Revenue Committee of the House of Representatives for review and comment. The budget shall be submitted to the Director of the Legislative Research Commission within five (5) days of adoption by the board for distribution to the Appropriations and Revenue Committee of the House of Representatives for review.

(2) The president, with the approval of the board, may amend or modify the budget at any time in any manner deemed necessary for the proper operation of the corporation; however, each change shall be reported in writing to the board and to the director of the Legislative Research Commission, who shall transmit a copy of the change to the Appropriations and Revenue Committee of the House of Representatives.

(3) Following his confirmation, and during his entire term of office, the president shall reside in Kentucky.

(4) The president, and the board, may conduct an ongoing study of the operation and administration of **lotteries** in other **states** or countries, of available literature on the subject, of federal **laws** and **regulations** which may affect the operation of the **lottery**, and of the reaction of citizens of this **state** to existing or proposed features of **lottery games**, with a view toward implementing improvements that will tend to serve the purposes of this chapter.

(5) The president also may:

(a) Require bond from corporate employees with access to corporate funds or **lottery** funds, in such an amount as provided in the administrative **regulations** of the board. The president may also require bond from other employees as he deems necessary; and

(b) For good cause, suspend, revoke, or refuse to renew any contract entered into in accordance with the provisions of this chapter or the administrative regulations of the board.

#### CREDIT(S)

HISTORY: 1994 c 170, § 4, eff. 7-15-94

1990 c 496, § 46, eff. 7-13-90; 1988 ex s, c 1, § 7

#### LIBRARY REFERENCES

Powers and authority of corporate president. 18B Am Jur 2d, Corporations § 1534 to 1536

KRS § 154A.070

KY ST § 154A.070

KY ST s 230.380

KRS § 230.380

#### TITLE XIX. PUBLIC SAFETY AND MORALS CHAPTER 230. RACING SIMULCASTING AND INTERTRACK **WAGERING**

230.380 SIMULCAST FACILITIES; RESTRICTIONS AND PROHIBITIONS; TAX IMPLICATIONS; PERCENTAGE OF **WAGERS** TO LOCAL ECONOMIC DEVELOPMENT; COMMISSIONS; REPORT ON MONEY EXPENDED

(1) Any track licensed by the commission to conduct horse racing and desiring to establish a simulcast facility shall apply for and may receive approval from the commission for each simulcast facility. Prior to considering an application for approval of a simulcast facility, the commission shall notify by regular mail, each state senator, state representative, county judge/executive,

and mayor in the jurisdiction in which the proposed simulcast facility is located, at least ten (10) days in advance of the commission meeting at which the application is to be considered or voted upon. Consideration of an application shall be based on criteria contained in administrative regulations promulgated under KRS 230.300. Approval, if granted, shall be granted for a term of one (1) calendar year.

(2) A track or tracks may proceed with the establishment of a simulcast facility unless, within sixty (60) days of the date on which the commission approved the facility, the governing body of the local government jurisdiction in which the facility is to be located votes, by simple majority of those voting, to disapprove the establishment of the simulcast facility. For the purposes of this section, "governing body" means, in an incorporated area, the board of aldermen, city council or board of commissioners; in a county, the fiscal court; in an urban-county government, the urban-county council, or in a charter county, the legislative body created in accordance with KRS 67.825 to 67.875.

(3) The commission shall not approve the establishment of any simulcast facility within a radius of fifty (50) miles of a licensed track. The commission may approve the establishment of one (1) simulcast facility within a radius of greater than fifty (50) miles but less than seventy-five (75) miles of a licensed track, but the facility shall not be approved to operate without the prior written consent of the licensed track within whose seventy-five (75) mile radius the facility is located.

(4) The commission may promulgate administrative **regulations** as it deems appropriate to protect the integrity of **pari-mutuel wagering** at any simulcast facility.

(5) Licensed tracks conducting horse racing may enter into joint agreements to establish or operate one (1) or more simulcast facilities, on terms and conditions as the participating tracks may determine. Any agreements respecting these arrangements shall be filed with the commission, and applications for simulcast facilities shall be filed by and licenses may be issued to, these licensed tracks by the commission.

(6) A simulcast facility may be established and operated on property that is owned or leased and which is not used solely for the operation of a simulcast facility; provided however, that a simulcast facility may not be established on the premises of a lottery vendor.

(7) A simulcast facility shall not be subject to and shall not pay any excise tax imposed pursuant to KRS 138.510, any license tax imposed under KRS 137.170, or any admission tax imposed under KRS 138.480.

(8) One percent (1%) of all moneys **wagered** at a simulcast

facility shall be dedicated for local economic development and shall be allocated as follows:

(a) If a simulcast facility is located in an incorporated area, seventy-five percent (75%) shall be allocated to the governing body of the city in which the facility is located, and twenty-five percent (25%) to the governing body of the county in which the facility is located.

(b) If a simulcast facility is located in an unincorporated area, all moneys shall be allocated to the governing body of the county or charter county in which the facility is located.

(9) (a) After the deduction of moneys under subsection (8), simulcast facility shall deduct a commission allowed under KRS 230.3615 with respect to all **wagers** made at the simulcast facility. The commission, less moneys allocated in subsection (8) of this section, shall be split as follows:

1. Thirty percent (30%) shall be allocated to the host track;

2. Forty-six and one-half percent (46.5%) to the purse program at the host track;

3. Thirteen and one-half percent (13.5%) to be retained by the track or tracks owning the simulcast facility for the purpose of application to expenses incurred in connection therewith;

4. Six percent (6%) to be allocated to the Kentucky Thoroughbred Owners and Breeders, Inc., to be expended as follows:

a. Up to three percent (3%) for capital improvements and promotion of off-track **betting**; and

b. The remainder for marketing and promoting the Kentucky thoroughbred industry; and

5. Four percent (4%) to be allocated to the commission to be used for purses at county fairs in Kentucky licensed and approved by the commission, and for the standardbred sires stakes program established under KRS 230.770.

(b) The commission of a simulcast facility derived from interstate wagering shall be reduced by any amounts required to be paid by contract to the host track or track conducting the live race before it is divided as set forth in this section. No simulcast facility may receive any interstate simulcast except with the approval of the live Kentucky host track.

(c) The Kentucky Thoroughbred Owners and Breeders, Inc., shall annually report to the commission on all money expended in accordance with subsection (9)(a)4. of this section. The report



shall be in the form required, and provide all information required by the commission.

CREDIT(S)

HISTORY: 1998 c 237, § 1, eff. 7-15-98

1992 c 109, § 2, eff. 3-30-92

<General Materials (GM) - References, Annotations, or Tables>

HISTORICAL AND STATUTORY NOTES

Legislative Research Commission Note: (7-15-98): Under KRS 7.136(1)(e), a reference to the former KRS 138.515 in subsection (9)(a) of this statute has been changed to KRS 230.3615 because of 1992 Ky. Acts ch. 109, sec. 8.

KRS § 230.380

KY ST § 230.380

KY ST s 372.040

KRS § 372.040

TITLE XXX. CONTRACTS

CHAPTER 372. CONTRACTS AGAINST PUBLIC POLICY

372.040 SUIT BY THIRD PERSON WHERE LOSER OR CREDITOR DOES NOT SUE

If the loser or his creditor does not, within six months after its payment or delivery to the winner, sue for the money or thing lost, and prosecute the suit to recovery with due diligence, any other person may sue the winner, and recover treble the value of the money or thing lost, if suit is brought within five years from the delivery or payment.

CREDIT(S)

HISTORY: 1942 c 208, § 1, eff. 10-1-42

KS 1958

<General Materials (GM) - References, Annotations, or Tables>

NOTES OF DECISIONS AND OPINIONS

286 SW(2d) 515 (Ky 1956), Gumer v Sailor. In an action brought under a statute allowing for the recovery of money lost **gambling**, money paid to the bookmaker to be turned over to the federal government under the federal **wagering** act has not been "lost" **gambling** and is thus not recoverable.

285 SW(2d) 143 (Ky 1955), Tabet v Morris. In action seeking treble damages based on **gambling** losses of plaintiff's minor son, brought under statute permitting suit for recovery of **gambling** losses by third person where loser or creditor does not sue, there was no prejudicial error, and judgment for plaintiff was affirmed.

252 SW(2d) 25 (Ky 1952), Veterans Service Club v Sweeney. Where club chartered as nonprofit corporation was used by incorporators to cover their illegal acts of **gambling** and to shield them from consequences of those acts, incorporators were "winners" within purview of statute authorizing recovery of **gambling** losses from "winners".

312 Ky 395, 227 SW(2d) 895 (Ky 1950), Kindt v Murphy. In action to recover treble the amount of **gambling** losses, defendants could not be compelled to give self-incriminating testimony.

309 Ky 549, 218 SW(2d) 395 (Ky 1949), Craig v Curd. The statutes providing that **betting, gaming** or **wagering** contracts are void, and permitting third persons to recover amounts lost on a **bet** if loser or creditors fail to bring suit do not authorize an informer to bring action against winner of election **bet**.

61 Ky 114 (Ky 1862), Barnes v Turner. The loser or his creditor has the exclusive right to sue for money lost at **gaming** within six months after payment; after that time any other person may sue. (See also Conner v Ragland, 54 Ky 634 (1855).)

101 FSupp 396 (ED Ky 1951), Scott v Curd. In view of KRS 446.080, this section must be liberally construed and it is not limited to actions by citizens or residents of Kentucky.

94 FSupp 279 (ED Ky 1950), Hartlieb v Carr. A complaint under a statute allowing for the recovery of **gambling** losses must **state** on what approximate dates the losses occurred or be dismissed for being too vague and indefinite.

94 FSupp 279 (ED Ky 1950), Hartlieb v Carr. A statute allowing third persons to recover treble the amount lost in **gambling** where the loser or creditor does not sue within a certain time is both remedial and penal and is thus not unenforceable under the rule that one sovereignty will not enforce the penal **laws** of another.

82 FSupp 25 (ED Ky 1949), Salonen v Farley. Actions to recover under this section may be brought in the federal courts.

KRS § 372.040

KY ST § 372.040

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