

1 HB414
2 137003-1
3 By Representatives Farley, Treadaway, Weaver, Tuggle, Ball,
4 Johnson (W), McClurkin, Rich, Patterson, Baughn, Sessions,
5 Carns, Nordgren, Collins, Davis, Wood, Sanderford, Wren,
6 Wallace, Thomas, Greer, Henry, McClendon, Drake, Mask, Faust,
7 Brown, Baker, Buttram, Shiver, Hammon, McCutcheon, Love,
8 Bridges, Gaston, Galliher, Merrill, Moore (B), Chesteen, Lee,
9 Clouse, Vance, McMillan, Williams (D) and Fincher
10 RFD: Judiciary
11 First Read: 23-FEB-12

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8 SYNOPSIS: Under existing law, the maximum penalty for
9 the crime of promoting illegal gambling is a Class
10 A misdemeanor, the maximum penalty for the crime of
11 conspiracy to promote gambling is a Class A
12 misdemeanor, the crime of possession of illegal
13 gambling records in the first degree is a Class A
14 misdemeanor, and the maximum penalty for the crime
15 of possession of illegal gambling devices is a
16 Class A misdemeanor.

17 This bill would define the term person as an
18 individual or a corporation or other business
19 entity for purposes of certain gambling crimes.
20 This bill would make the penalty for the crime of
21 promoting illegal gambling a Class C felony, the
22 crime of conspiracy to promote illegal gambling a
23 Class C felony, the penalty for the crime of
24 possession of illegal gambling records in the first
25 degree a Class C felony, and possession of more
26 than 10 slot machines or gambling devices a Class C
27 felony.

1 This bill would allow law enforcement to
2 seize and condemn real property that is being used
3 for the purpose of illegal gambling.

4 This bill would provide that upon
5 conviction, the property of the defendant would
6 then be sold and the proceeds would go to the law
7 enforcement agencies that seized the property.

8 Amendment 621 of the Constitution of Alabama
9 of 1901, now appearing as Section 111.05 of the
10 Official Recompilation of the Constitution of
11 Alabama of 1901, as amended, prohibits a general
12 law whose purpose or effect would be to require a
13 new or increased expenditure of local funds from
14 becoming effective with regard to a local
15 governmental entity without enactment by a 2/3 vote
16 unless: it comes within one of a number of
17 specified exceptions; it is approved by the
18 affected entity; or the Legislature appropriates
19 funds, or provides a local source of revenue, to
20 the entity for the purpose.

21 The purpose or effect of this bill would be
22 to require a new or increased expenditure of local
23 funds within the meaning of the amendment. However,
24 the bill does not require approval of a local
25 governmental entity or enactment by a 2/3 vote to
26 become effective because it comes within one of the
27 specified exceptions contained in the amendment.

1
2 A BILL
3 TO BE ENTITLED
4 AN ACT
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6 To amend Sections 13A-12-20, 13A-12-22, 13A-12-23,
7 13A-12-24, and 13A-12-27, Code of Alabama 1975, relating to
8 gambling; to define person for purposes of certain gambling
9 crimes; to increase the penalties for certain crimes; to
10 authorize certain property used in gambling to be seized and
11 sold; and in connection therewith would have as its purpose or
12 effect the requirement of a new or increased expenditure of
13 local funds within the meaning of Amendment 621 of the
14 Constitution of Alabama of 1901, now appearing as Section
15 111.05 of the Official Recompilation of the Constitution of
16 Alabama of 1901, as amended.

17 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

18 Section 1. Sections 13A-12-20, 13A-12-22, 13A-12-23,
19 13A-12-24, and 13A-12-27, Code of Alabama 1975, are amended to
20 read as follows:

21 "§13A-12-20.

22 "The following definitions apply to this article:

23 "(1) ADVANCE GAMBLING ACTIVITY. A person "advances
24 gambling activity" if he engages in conduct that materially
25 aids any form of gambling activity. Conduct of this nature
26 includes but is not limited to conduct directed toward the
27 creation or establishment of the particular game, contest,

1 scheme, device or activity involved, toward the acquisition or
2 maintenance of premises, paraphernalia, equipment or apparatus
3 therefor, toward the solicitation or inducement of persons to
4 participate therein, toward the actual conduct of the playing
5 phases thereof, toward the arrangement of any of its financial
6 or recording phases or toward any other phase of its
7 operation. A person advances gambling activity if, having
8 substantial proprietary control or other authoritative control
9 over premises being used with his knowledge for purposes of
10 gambling activity, he permits that activity to occur or
11 continue or makes no effort to prevent its occurrence or
12 continuation.

13 "(2) BOOKMAKING. Advancing gambling activity by
14 unlawfully accepting bets from members of the public as a
15 business, rather than in a casual or personal fashion, upon
16 the outcome of future contingent events.

17 "(3) CONTEST OF CHANCE. Any contest, game, gaming
18 scheme or gaming device in which the outcome depends in a
19 material degree upon an element of chance, notwithstanding
20 that skill of the contestants may also be a factor therein.

21 "(4) GAMBLING. A person engages in gambling if he
22 stakes or risks something of value upon the outcome of a
23 contest of chance or a future contingent event not under his
24 control or influence, upon an agreement or understanding that
25 he or someone else will receive something of value in the
26 event of a certain outcome. Gambling does not include bona
27 fide business transactions valid under the law of contracts,

1 including but not limited to contracts for the purchase or
2 sale at a future date of securities or commodities, and
3 agreements to compensate for loss caused by the happening of
4 chance, including but not limited to contracts of indemnity or
5 guaranty and life, health or accident insurance.

6 "(5) GAMBLING DEVICE. Any device, machine,
7 paraphernalia or equipment that is normally used or usable in
8 the playing phases of any gambling activity, whether that
9 activity consists of gambling between persons or gambling by a
10 person involving the playing of a machine. However, lottery
11 tickets, policy slips and other items used in the playing
12 phases of lottery and policy schemes are not gambling devices
13 within this definition.

14 "(6) LOTTERY or POLICY. An unlawful gambling scheme
15 in which:

16 "a. The players pay or agree to pay something of
17 value for chances, represented and differentiated by numbers
18 or by combinations of numbers or by some other medium, one or
19 more of which chances are to be designated by the winning
20 ones; and

21 "b. The winning chances are to be determined by a
22 drawing or by some other fortuitous method; and

23 "c. The holders of the winning chances are to
24 receive something of value.

25 "(7) PARI-MUTUEL, MUTUEL or THE NUMBERS GAME. A form
26 of lottery in which the winning chances or plays are not
27 determined upon the basis of a drawing or other act on the

1 part of persons conducting or connected with the scheme, but
2 upon the basis of the outcome of a future contingent event or
3 events otherwise unrelated to the particular scheme.

4 "(8) PERSON. Any individual, corporation,
5 partnership, limited liability company, association, or other
6 organization that engages in any for-profit or not-for-profit
7 activities.

8 "(8)(9) PLAYER. A person who engages in any form of
9 gambling solely as a contestant or bettor, without receiving
10 or becoming entitled to receive any profit therefrom other
11 than personal gambling winnings, and without otherwise
12 rendering any material assistance to the establishment,
13 conduct or operation of the particular gambling activity.

14 "(9)(10) PROFIT FROM GAMBLING ACTIVITY. A person
15 "profits from gambling activity" if he accepts or receives
16 money or other property pursuant to an agreement or
17 understanding with any person whereby he shares or is to share
18 in the proceeds of gambling activity.

19 "(10)(11) SLOT MACHINE. A gambling device that, as a
20 result of the insertion of a coin or other object, operates,
21 either completely automatically or with the aid of some
22 physical act by the player, in such a manner that, depending
23 upon elements of chance, it may eject something of value. A
24 device so constructed or readily adaptable or convertible to
25 such use is no less a slot machine because it is not in
26 working order or because some mechanical act of manipulation
27 or repair is required to accomplish its adaptation, conversion

1 or workability. Nor is it any less a slot machine because
2 apart from its use or adaptability as such it may also sell or
3 deliver something of value on a basis other than chance.

4 "~~(11)~~(12) SOMETHING OF VALUE. Any money or property,
5 any token, object or article exchangeable for money or
6 property or any form of credit or promise directly or
7 indirectly contemplating transfer of money or property or of
8 any interest therein, or involving extension of a service
9 entertainment or a privilege of playing at a game or scheme
10 without charge.

11 "~~(12)~~(13) UNLAWFUL. Not specifically authorized by
12 law.

13 "§13A-12-22.

14 "(a) A person commits the crime of promoting
15 gambling if he knowingly advances or profits from unlawful
16 gambling activity otherwise than as a player.

17 "(b) Promoting gambling is a Class ~~A misdemeanor~~ C
18 felony.

19 "§13A-12-23.

20 "(a) A person commits the crime of conspiracy to
21 promote gambling if he conspires to advance or profit from
22 gambling activity otherwise than as a player.

23 "(b) "Conspire" means to engage in activity
24 constituting a criminal conspiracy as defined in Section
25 13A-4-3.

26 "(c) Conspiracy to promote gambling is a Class ~~A~~
27 misdemeanor C felony.

1 "§13A-12-24.

2 "(a) A person commits the crime of possession of
3 gambling records in the first degree if with knowledge of the
4 contents thereof, he possesses any writing, paper, instrument
5 or article:

6 "(1) Of a kind commonly used in the operation or
7 promotion of a bookmaking scheme or enterprise, and
8 constituting, reflecting or representing more than five bets,
9 or more than \$500.00; or

10 "(2) Of a kind commonly used in the operation,
11 promotion or playing of a lottery or mutuel scheme or
12 enterprise, and constituting, reflecting or representing more
13 than five plays or chances therein.

14 "(b) Possession of gambling records in the first
15 degree is a Class ~~A misdemeanor~~ C felony.

16 "§13A-12-27.

17 "(a) A person commits the crime of possession of a
18 gambling device if with knowledge of the character thereof he
19 manufactures, sells, transports, places or possesses, or
20 conducts or negotiates any transaction affecting or designed
21 to affect ownership, custody or use of:

22 "(1) A slot machine; or

23 "(2) Any other gambling device, with the intention
24 that it be used in the advancement of unlawful gambling
25 activity.

26 "(b) Possession of a gambling device is a Class A
27 misdemeanor.

1 "(c) Possession of 10 or more gambling devices is a
2 Class C felony."

3 Section 2. Although this bill would have as its
4 purpose or effect the requirement of a new or increased
5 expenditure of local funds, the bill is excluded from further
6 requirements and application under Amendment 621, now
7 appearing as Section 111.05 of the Official Recompilation of
8 the Constitution of Alabama of 1901, as amended, because the
9 bill defines a new crime or amends the definition of an
10 existing crime.

11 Section 3. This act shall become effective on the
12 first day of the third month following its passage and
13 approval by the Governor, or its otherwise becoming law.