

# International Comparative Legal Guides



## Gambling 2020

A practical cross-border insight into gambling law

**Sixth Edition**

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**Group Publisher**  
Rory Smith

**Associate Publisher**  
James Strode

**Senior Editors**  
Caroline Oakley  
Rachel Williams

**Sub Editor**  
Amy Norton

**Creative Director**  
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# Gambling 2020

**Sixth Edition**

**Contributing Editor:**

**Jason Chess**  
Wiggin LLP

**Strategic Partners**



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# Introductory Chapter

- 1** **Shaping the Future of Gaming Law**  
Jamie Nettleton & Marc Ellinger, International Masters of Gaming Law

## Expert Chapters

- 3** **The U.S. Government's Appeal Leaves the Scope of the Wire Act in Doubt**  
Mark Hichar & Erica L. Okerberg, Greenberg Traurig, LLP
- 7** **A Global Overview on the Evolution of Payment Services**  
Bas Jongmans & Xavier Rico, Gaming Legal Group
- 11** **Globalisation vs. AML Regulation in the Gambling Industry**  
Andrew Tait & Michelle Walsh, Ince
- 16** **Cyber Security in the Remote Gambling Industry**  
Nick Nocton, Joe Hancock, Mike Owen & Mark Tibbs, Mishcon de Reya LLP

## Q&A Chapters

- 21** **Australia**  
Senet Legal Pty Ltd: Julian Hoskins & Anne Tucker
- 30** **Austria**  
Brandl & Talos Attorneys at Law: Thomas Talos & Nicholas Aquilina
- 36** **Belgium**  
Sirius Legal: Bart Van den Brande
- 41** **Brazil**  
LenziAdvocacia / BetConsult: Edgar Lenzi & Marcelo Munhoz da Rocha
- 47** **Canada**  
Miller Thomson LLP: Danielle Bush
- 54** **Cyprus**  
National Betting Authority of Cyprus: Filippos Kamenos & Spyros Tsakonitis
- 59** **Denmark**  
Mazanti-Andersen Korsø Jensen Advokatpartnerselskab: Nina Henningsen
- 66** **Estonia**  
Gabnys Law Firm: Andrius Gabnys
- 71** **France**  
KGA Avocats: Laurent Badiane & Matthieu Bourgeois
- 76** **Germany**  
Melchers Law Firm: Dr. Joerg Hofmann, Dr. Matthias Spitz & Jessica Maier, LL.M
- 84** **Gibraltar**  
Hassans International Law Firm: Andrew Montegriffo & Louise Lugaro
- 90** **Greece**  
Kyriakides Georgopoulos Law Firm: John C. Kyriakides & John Broupis
- 95** **Hungary**  
DLA Piper Hungary: Viktor Radics, Attila Jákói, Dániel Élő & András Nemescsó
- 101** **India**  
Nishith Desai Associates: Gowree Gokhale, Ranjana Adhikari, Tanisha Khanna & Inika Serah Charles
- 111** **Ireland**  
Matheson: Chris Bollard, Deirdre Kilroy & Matthew Broadstock
- 117** **Isle of Man**  
Appleby (Isle of Man) LLC: Claire Milne & Sophie Corkish
- 124** **Israel**  
Herzog Fox & Neeman Law Office: Liran Barak
- 129** **Italy**  
Sbordoni & Partners: Stefano Sbordoni
- 135** **Japan**  
Nagashima Ohno & Tsunematsu: Masayuki Fukuda
- 141** **Lithuania**  
Gabnys Law Firm: Andrius Gabnys
- 146** **Macau**  
Rato, Ling, Lei & Cortés – Advogados e Notários: Pedro Cortés & Óscar Alberto Madureira
- 152** **Malta**  
GTG Advocates in collaboration with Afilexion Alliance: Reuben Portanier & Dr. Terence Cassar
- 157** **Mexico**  
Creel, García-Cuellar, Aiza y Enríquez, S.C.: Begoña Cancino & Sofía Castañón
- 162** **Netherlands**  
Kalff Katz & Franssen: Dr. Alan Littler & Erik van Hoorn
- 169** **Norway**  
Brækhus Advokatfirma DA: Brede A. Haglund & Alexander Mollan
- 176** **Poland**  
WH Partners: Ewa Lejman-Widz & Kamila Spalińska
- 182** **Portugal**  
Luiz Gomes & Associados, Sociedade de Advogados, SP, RL: Gonçalo Afonso Proença

- 188** **Romania**  
Nestor Nestor Diculescu Kingston Petersen: Alina Tace (formerly Dumitru) & Lucian Barbu
- 196** **Spain**  
LOYRA Abogados: Patricia Lalanda Ordóñez & Fernando A. Martín Martín
- 203** **Sweden**  
Nordic Gambling: Maria McDonald
- 210** **Switzerland**  
MME Legal | Tax | Compliance: Dr. Andreas Glarner & Dr. Alexandra Körner
- 215** **United Kingdom**  
Wiggin LLP: Jason Chess & Chris Elliott
- 220** **USA – Florida**  
Dean Mead Attorneys at Law: Marc W. Dunbar & Daniel R. Russell
- 224** **USA – Illinois**  
Taft Stettinius & Hollister LLP: Paul T. Jenson & Erin Lynch Cordier
- 231** **USA – Indiana**  
Faegre Baker Daniels: Elizabeth K. Cierznik & Mindy Westrick
- 237** **USA – Iowa**  
Butler Snow LLP: Sean McGuinness
- 241** **USA – Mississippi**  
Balch & Bingham LLP: Scott E. Address
- 246** **USA – Nevada**  
Lewis Roca Rothgerber Christie LLP: Karl F. Rutledge & Glenn J. Light
- 252** **USA – Pennsylvania**  
Ballard Spahr LLP: Michael D. Fabius & Adrian R. King, Jr.

# USA – Mississippi

Balch &amp; Bingham LLP



Scott E. Address

## 1 Relevant Authorities and Legislation

### 1.1 Which entities regulate what type of gambling and social/skill gaming activity in your jurisdiction?

Relevant Product		Who regulates it in digital form?	Who regulates it in land-based form?
Gaming	Casino gaming (including slots and casino table games such as roulette & blackjack)	Not permissible in Mississippi.	Mississippi Gaming Commission.
	Poker		
	Bingo	Not permissible in Mississippi.	Mississippi Gaming Commission, Charitable Gaming Division.
Betting	Betting	Not permissible in Mississippi.	
	Sports/horse race betting (if regulated separately to other forms of betting)	Mississippi Gaming Commission.	
	Fantasy betting (payment to back a 'league' or 'portfolio' selection over a period of time, for example in relation to sport or shares)		
Lotteries	Not permissible in Mississippi.	Mississippi Lottery Corporation.	

Relevant Product	Who regulates it in digital form?	Who regulates it in land-based form?	
Social/Skill arrangements	"Social" gaming with no prize in money or money's worth	Not regulated in Mississippi.	Not regulated in Mississippi.
	Skill games and competitions with no element of chance		

### 1.2 Specify: (i) the law and regulation that applies to the Relevant Products in your jurisdiction; and (ii) – in broad terms – whether it permits or prohibits the offer of Relevant Products to persons located in your jurisdiction.

Mississippi permits casino gambling, poker and race book and sports pool wagering in accordance with the laws, rules, and regulations pursuant to the Mississippi Gaming Control Act of 1990. See, e.g., Miss. Code Ann. §75-76-1 *et seq.* However, these are not the only forms of gaming that the State regulates. Mississippi also regulates charitable raffle and bingo games pursuant to Miss. Code Ann. §§97-33-50 and 97-33-49, respectively. The State's statutory code includes provisions that regulate daily fantasy sports operations as well. See Miss. Code Ann. §97-33-301 *et seq.* Regulations governing each of these forms of gaming are found at Title 13 of the Mississippi Administrative Code.

The Mississippi Gaming Commission is the primary regulatory body that oversees casino activity (including race books and sports pools), charitable bingo, and daily fantasy sports, but other governmental authorities regulate gambling in the State of Mississippi as well. The Mississippi Department of Revenue assists the Commission with these regulatory efforts. Also, the Commission restricts unsanctioned gambling activity with the help of local police forces.

The State expressly outlaws Internet sweepstake cafés under Miss. Code Ann. §97-33-8, and sections of the Mississippi criminal code enforce criminal penalties against those who do not comply with the Gaming Control Act under Miss. Code Ann. §97-33-1 *et seq.* Mobile and iGaming are not authorised forms of gambling under the



Gaming Control Act; however, Internet-based daily fantasy sports contests and on-premises mobile race book and sports pool wagering are permissible.

In August 2018, Mississippi passed “The Alyce G. Clarke Mississippi Lottery Law”, codified at Miss. Code Ann. §§27-115-1 *et seq.*, thereby creating the Mississippi Lottery Corporation and authorising the establishment and operation of a state lottery. Regulations promulgated by the Lottery Corporation governing matters of a state lottery may be found on the Lottery Corporation’s website, [www.mslotteryhome.com](http://www.mslotteryhome.com), under the “Policies” tab.

## 2 Application for a Licence and Licence Restrictions

### 2.1 What regulatory licences, permits, authorisations or other official approvals (collectively, “Licences”) are required for the lawful offer of the Relevant Products to persons located in your jurisdiction?

Mississippi law provides for three different licences associated with casino gaming: (1) a gaming operator licence; (2) a licence to manufacture gaming devices or associated equipment; and (3) a licence to distribute such devices/equipment. Anyone, either an individual person or an entity, may obtain these licences to conduct activities related to gaming activities. State law also provides for a “finding of suitability” status that permits an individual or an entity to own, control, direct or engage in business with a licensee.

If a person or entity desires to operate a casino or manufacture/sell gaming devices and materials in Mississippi, that person or entity must apply to the Mississippi Gaming Commission for the appropriate licence. Gaming operator licences permit the holders of these licences to conduct gaming operations on particular sites that are unique to each licence. Likewise, manufacturer and distributor licences allow the holders of such licences to engage in the manufacture or trade of gaming devices and materials that have been specifically approved by the Gaming Commission, including the provision of race book and sports pool wagering platforms. The Gaming Commission may limit or broaden the scope of these licences as it sees fit.

Similar licensing and approval requirements apply to charitable bingo and daily fantasy sports operations. Those who operate and/or supply either of these types of operations must apply for the appropriate licences from the Gaming Commission.

Other activities related to the gaming industry require approval by the Gaming Commission as well.

Lottery vendors and retailers are subject to investigation and approval by the Mississippi Lottery Corporation.

### 2.2 Where Licences are available, please outline the structure of the relevant licensing regime.

Corporate officers and directors of a licensee entity or its holding companies must apply to the Commission for a finding of suitability to associate with the licensee. Gaming employees of any operation regulated for gaming activities must seek work permits from the Commission. In addition, game testing labs and junket representatives must obtain approval from the Commission to operate.

The Commission has also decided to require owners of at least 5% of the voting securities of a licensee or a holding company of a licensee to apply to the Commission for a finding that the person or entity is suitable to associate with the licensee. In addition to this finding of suitability, such person or entity holding over 50% of a licensee, directly or indirectly, must register as a publicly traded company or as a holding company of the licensee.

However, there is an exception for “institutional investors” who own, directly or indirectly, more than 5%, but no more than 25%,

of the voting securities of the licensed entity. For this exception to apply, the investor must hold these securities in the ordinary course of business as an institutional investor for investment purposes only. That means that the investor cannot use the securities to alter either the membership of the entity’s board of directors or influence the corporate policies of the licensee, but the investor can vote on issues on which fellow stockholders vote, as well as participate in all other activities that are consistent with the duties and concerns of an institutional investor. An institutional investor owning more than 10% of a licensed entity (but no greater than 25%) must obtain a waiver from the Commission to maintain the exception and avoid the triggering of a finding of suitability requirement.

The State does not permit people or entities with particular criminal backgrounds to obtain either a licence or a finding of suitability. If one has been convicted of a felony by a Mississippi, federal, or other state court, the person or entity cannot obtain a licence or a finding of suitability. The same is true if that person or entity committed any crime according to either federal law or the law of another state that would constitute a felony in Mississippi. Finally, conviction of a misdemeanour related to gambling, the sale of alcohol to minors, prostitution, or the inducement of others to engage in prostitution will disqualify a person or entity from obtaining a licence or a finding of suitability. Similar requirements restrict those people or entities seeking to contract with the Mississippi Lottery Corporation.

### 2.3 What is the process of applying for a Licence for a Relevant Product?

The Mississippi Gaming Commission provides the applications to obtain gaming licences, findings of suitability, and daily fantasy sports and charitable bingo licences on the Gaming Commission’s website. The website provides addenda forms that are specific to each type of application. The Commission may charge licensing and/or application fees depending on the type of application submitted, and applicants must also pay an investigative fee deposit before the Commission will consider their applications. In addition to the relevant addenda, any natural person who applies for a finding of suitability to associate with a licensee must complete the International Association of Gaming Regulators’ Multi-Jurisdictional Personal History Disclosure Form which the Commission provides on its website, and two fingerprint cards. The filing of an application triggers a Commission request for various categories of supporting documentation.

The Commission has the power to accept or deny any application for any reason it deems appropriate, and Mississippi courts do not have the power to review these decisions unless the Commission is found to have exceeded its statutory authority. The Investigations Division of the Commission reviews all applications and files findings and reports to the entire Commission for approval. During these investigations, the Investigations Division conducts background checks and interviews applicants and/or representatives of applicants to determine their suitability. The Corporate Securities Division reviews corporate documents and financial statements. The entire investigation process typically takes at least four to six months to complete, but can last even longer depending on the nature and complexity of the applicant and the proposed project. Once the investigation is complete, the applicant or a representative of the applicant must appear at a scheduled meeting before the Commission for its final consideration of the application.

The Commission’s investigative and review powers extend beyond the application process. The Commission has the power to require a licensee or its holding company to disassociate from persons or entities who fail to complete the appropriate applications or are found unsuitable to affiliate with any licensee. The Commission can also order a licensee or its holding company to suspend or fire board members, executives, and employees for the same reasons. Those

persons filling positions requiring a finding of suitability have 30 days from the date they begin to perform their duties in which to file an application.

Vendors seeking to do business with the Mississippi Lottery Corporation must adhere to the requirements of the Lottery Act, the Lottery Corporation's Procurement Policies, and the terms of the particular Request for Proposals or advertisement for bids. Retailers seeking to sell lottery products must adhere to the requirements of the Lottery Act and the Lottery Corporation's Retailer Rules and Regulations, and complete and submit a Retailer Application Packet, found under the "Lottery Retailers" tab on the Lottery Corporation's website.

#### 2.4 Are any restrictions placed upon licensees in your jurisdiction?

Mississippi allows essentially all forms of traditional casino games and devices, as well as on-premises race book and sports pool wagering. New games must be approved by the Mississippi Gaming Commission before being offered for play in a casino. The minimum age for gaming in Mississippi is 21. The State does not restrict the number of gaming licences. However, licences are not perpetual. Gaming licences are issued for a maximum of three years, and findings of suitability to associate with licensees are issued for a maximum of nine years.

All licensees and those found suitable to associate with licensees must comply with all requirements pursuant to the Mississippi Gaming Control Act and all regulations imposed by the Mississippi Gaming Commission, and any dispute involving a gaming licence must be adjudicated in Mississippi. The Act only permits gaming in the 14 counties that border either the Gulf Coast or the Mississippi River. Voters in each of these counties have the right by local option to allow gaming if they so choose. Currently, nine of the 14 counties allow gaming, and seven of those counties currently have at least one gaming operation carrying out gaming activities.

Mississippi does not restrict the hours that a gaming operation may conduct gaming activities, the number of games it offers, or the amount of space that it may dedicate toward gaming activities. However, the Commission does restrict where structures with gaming activities may be located. For structures within counties that border the Mississippi River, the majority of the gaming floor must be situated over an elevation under the Mississippi River's "bank full" (or flood stage) elevation. Structures that host gaming activities and are within counties bordering the Gulf Coast may reside completely on shore so long as the gaming floor does not extend more than 800 feet beyond the 19-year mean high water line of the Mississippi Sound, St. Louis Bay, or Biloxi Bay. Harrison County, which borders the Gulf Coast, has a special exception that allows the structure to extend past the 19-year mean high water line up to Highway 90.

The Commission also requires licensees to provide certain amenities for its customers. These regulations apply to all new casinos and those that have been previously closed and later acquired for renewed gaming activities. The gaming floor of the operation must have at least 40,000 square feet of space, and the operation must have some amenity that is unique from all other gaming operations. However, the requirements touch more than just the gaming experience. The operation must also include a dining area with a minimum capacity of 200 seats as well as a restaurant that can seat at least 75 guests. In addition, the operation must include a "three diamond" or equivalently rated hotel with at least 300 rooms, and a parking facility that can hold at least 500 motor vehicles. These requirements are designed to encourage economic development and tourism in the area of the casino.

The Mississippi Lottery Corporation is authorised to offer instant (scratch-off) lottery tickets and draw games throughout Mississippi, including multijurisdictional games such as Powerball and Mega

Millions, but may not permit any lottery game to be played or lottery ticket to be purchased utilising a video lottery terminal, any mobile or Internet-based or monitor-based interactive game, any simulated casino-style game, or any personal computer, tablet, smartphone, mobile device or other similar equipment or type of device. The minimum age for purchasing a lottery ticket or claiming a prize is 21. There are few limits on the types of businesses that may qualify as retailers to sell lottery tickets. Casino licensees are expressly permitted to sell lottery tickets.

#### 2.5 Please give a summary of the following features of any Licences: (i) duration; (ii) vulnerability to review, suspension or revocation.

The standard term for gaming licences is three years, and findings of suitability are typically granted for nine years. Charitable bingo operator licences are issued for a maximum term of three years, while those for charitable bingo manufacturers and distributors are issued for a maximum term of one year. The term of a fantasy contest operator licence is three years. The licence renewal process is identical to that for an initial licence.

All licences, findings of suitability, and registrations are subject to the Mississippi Gaming Control Act and all regulations promulgated by the Gaming Commission. The Commission may revoke or suspend licences and findings of suitability for failure to comply with these laws and regulations. Any adverse disciplinary action may occur only after the accused has been given notice of the charges and a fair hearing to contest the charges. Any person aggrieved by the final decision of the Commission may appeal such decision to the circuit court of the county in which he resides or has his principal place of business. Regardless, violations typically result in settlement agreements, with financial penalties paid to the Commission.

Any person or entity contracting with the Mississippi Lottery Corporation is subject to the Lottery Act and the Lottery's Corporation's Rules and Regulations. The Lottery Corporation has the power to revoke or suspend a contract for failure to adhere to these requirements. All disputes related to actions of the Lottery Corporation are considered by its Board of Directors pursuant to the Lottery Corporation's Dispute Resolution Policies, the decision of whom is subject to judicial review by the Chancery Court of Rankin County, Mississippi.

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

The Gaming Commission currently does not place significant restrictions on a licensee's ability to advertise or promote its business, although the Mississippi Department of Banking prohibits advertisements offering cheque cashing services unless licensed as a cheque casher thereby. Gaming licensees may only acquire gaming equipment and certain associated equipment from manufacturers and vendors with the appropriate licences. For all other goods and services that do not fall under those categories, licensees may acquire those goods and services from unlicensed manufacturers and vendors. However, the Commission has the power and authority to require such unlicensed manufacturers and vendors, and indeed anyone connected or doing business with a licensee, to obtain a finding of suitability to be associated therewith.

There are no restrictions on advertising undertaken by the Mississippi Lottery Corporation. Further, the Lottery Corporation may permit the placement of commercial advertising on lottery tickets, except those for tobacco or alcohol products.

### 2.7 What are the tax and other compulsory levies?

Mississippi imposes a flat annual licensing fee of \$5,000 on all gaming operator licences. The State also levies a tax of up to 8% on all gross gaming revenue, which the gaming operator may use as a credit against Mississippi State income tax liability. Cities and counties may also, and typically do, levy an additional tax of up to 4% on gross gaming revenue.

In addition, gaming operators must pay an annual investigative fee of up to \$300,000, depending on the number of games on the gaming floor, and an annual licensing fee equalling \$81,200 for the first 35 games plus \$100 for every additional game on the gaming floor. The State permits cities and counties to impose similar licensing fees on these games.

Licensed fantasy contest operators pay a fee to the State equivalent to 8% of that portion of the operator's net revenue attributable to play originating within Mississippi.

The 6% commission on the sale of lottery products earned by retailers is set off by weekly \$20 per location service fees payable to the Mississippi Lottery Corporation.

### 2.8 What are the broad social responsibility requirements?

The Mississippi Gaming Control Act does not impose strict social responsibility requirements. The Act does implore both the Commission and gaming operators to employ as many Mississippi residents as possible. By regulation, the Commission itself requires casino licence applicants, both initial and renewal, to demonstrate their good faith efforts to ensure that preferential treatment is given to Mississippi vendors in the awarding of contracts, and to demonstrate their efforts to provide Mississippians with an adequate number and quality of employment and promotion opportunities. The Commission has also set regulations to address gaming-related issues such as gambling addiction and underage gambling. The Commission administers a self-exclusion programme for problem gamblers. The minimum age for gaming in Mississippi is 21, except for off-premises online fantasy contests, which requires a minimum age of 18.

The Lottery Act requires the Mississippi Lottery Corporation to place, on all lottery tickets and at each retailer location, contact information for an organisation providing information and referral services regarding compulsive or problem gambling. Further, on all prizes won of \$600 or above, the Lottery Corporation is required to withhold therefrom any delinquent amounts owed by a prize claimant for child support or state or local taxes, or to a state agency. The minimum age for purchasing a lottery ticket or claiming a prize is 21.

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

Gaming patrons may not use either credit cards or virtual currencies for gaming purposes. Casino licensees may offer credit to casino patrons, and may place ATMs on the casino floor for cash withdrawals. Casinos are subject to federal AML restrictions and reporting.

Lottery retailers are not permitted to extend credit to the purchaser of lottery tickets, and cannot accept checks, EBT cards, food stamps or WIC vouchers for the purchase of a ticket. Retailers may accept only cash, credit cards, debit cards and prepaid debit/credit cards for the purchase of a lottery ticket.

## 3 Online/Mobile/Digital/Electronic Media

### 3.1 How does local law/regulation affect the provision of the Relevant Products in online/mobile/digital/electronic form, both from: (i) operators located inside your jurisdiction; and (ii) operators located outside your jurisdiction?

Gaming within the State of Mississippi is illegal unless conducted within the confines of licensed premises, i.e., a casino. Accordingly, online gaming is impermissible in Mississippi, with the limited exception of daily fantasy sports contests. Race book and sports pool wagering on mobile devices is allowed, but only within licensed premises.

No lottery game may be played or lottery ticket purchased utilising a video lottery terminal, any mobile or Internet-based or monitor-based interactive game, any simulated casino-style game, or any personal computer, tablet, smartphone, mobile device or other similar equipment or type of device.

### 3.2 What other restrictions have an impact on Relevant Products supplied via online/mobile/digital/electronic means?

Online and mobile gaming, with the limited exceptions described above, is prohibited in Mississippi.

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

An unlimited number of slot machines, video poker machines, electronic table games and race book and sports pool wagering terminals are permitted within licensed casino premises. Up to 15 electronic pull-tab machines are permitted within licensed charitable gaming locations, i.e., bingo halls.

## 4 Enforcement and Liability

### 4.1 Who is liable under local law/regulation?

The State of Mississippi heavily regulates and restricts gaming devices and materials that are available for play outside of a licensed gaming premises or have been manufactured or distributed without the appropriate licensing, as well as the use of unlicensed or illegal gaming devices and materials.

Those persons manufacturing, distributing, possessing or offering for play illegal gaming devices and materials, or conducting gaming activity outside of a licensed location, are subject to prosecution. Players of such gaming devices and materials are rarely, if ever, prosecuted.

Anyone other than the Mississippi Lottery Corporation conducting lottery games within the State of Mississippi is subject to prosecution. The Lottery Act imposes criminal penalties and fines on anyone who possesses an illegal lottery device; skims lottery proceeds; purchases a lottery ticket while under the age of 21, or sells a lottery ticket to such person; counterfeits a lottery ticket; or improperly influences the winning of a lottery prize.

### 4.2 What form does enforcement action take in your jurisdiction?

The Gaming Commission has exclusive authority to regulate gaming licences according to the Mississippi Gaming Control Act and



regulations issued by the Gaming Commission. However, both local law enforcement officers and agents of the Mississippi Gaming Commission have the authority to enforce the laws and regulations that restrict unsanctioned gaming activities in Mississippi. Criminal and forfeiture actions are typically pursued in instances of the use of illegal gaming devices or materials or the occurrence of gaming activities outside of a licensed location.

Although the Mississippi Lottery has yet to begin operations, it is expected that agents of the Mississippi Lottery Corporation, in conjunction with local law enforcement officers, will enforce the criminal provisions of the Lottery Act.

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

No other non-national laws impact upon liability and enforcement.

#### 4.4 Are gambling debts enforceable in your jurisdiction?

Mississippi permits licensed gaming operators to enforce gaming debts by the appropriate legal processes. Any gambling contracts not expressly legal under the laws of the State of Mississippi are void.

#### 4.5 What appetite for and track record of enforcement does your local regulatory authority have? Have fines, licence renewals or other sanctions been enforced in your jurisdiction?

The Mississippi Gaming Commission has demonstrated a willingness to discipline those licensees found, following investigation and an “order to show cause” process, to have violated the provisions of the Mississippi Gaming Control Act and/or the Commission’s Regulations. Fines typically take the form of a “settlement”, which historically have ranged between \$5,000 and \$200,000. The Commission has yet to revoke a licence as the result of a disciplinary action.

## 5 Anticipated Reforms

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

Recent discussion has focused on amending the Mississippi Gaming Control Act to allow state-wide mobile and internet-based race book and sports pool wagering, although prior legislative attempts in such regard have gained little traction.



**Scott E. Address** possesses extensive experience as a corporate and transactional attorney, with a focus on gaming law. Since the infancy of the Mississippi gaming industry, he has represented its interests, counselling his clients in areas of permitting and approvals, regulatory compliance, transactional and lending matters, and site legality and patron dispute litigation. His work has garnered respect among gaming regulatory agencies, and he has served on the Board of Trustees of the International Association of Gaming Advisors. Scott is also skilled in general corporate and transactional work, including business organisation, corporate governance, mergers and acquisitions, debt and equity financing transactions, and commercial real estate. Scott regularly represents: privately owned and publicly traded casino operators and developers; foreign and domestic gaming equipment manufacturers and distributors; sports betting and lottery providers; commercial lenders and equity investors (banks, private equity management, and investment banking firms); owners of qualifying gaming sites; and the Mississippi Lottery Corporation.

**Balch & Bingham LLP**  
188 East Capitol Street  
Suite 1400  
Jackson, MS 39201  
USA

Tel: +1 601 965 8160  
Email: sandress@balch.com  
URL: www.balch.com

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Fintech  
Foreign Direct Investment Regimes  
Franchise  
Gambling  
Insurance & Reinsurance  
International Arbitration  
Investor-State Arbitration  
Lending & Secured Finance  
Litigation & Dispute Resolution  
Merger Control  
Mergers & Acquisitions  
Mining Law

Oil & Gas Regulation  
Outsourcing  
Patents  
Pharmaceutical Advertising  
Private Client  
Private Equity  
Product Liability  
Project Finance  
Public Investment Funds  
Public Procurement  
Real Estate  
Sanctions  
Securitisation  
Shipping Law  
Telecoms, Media & Internet Laws  
Trade Marks  
Vertical Agreements and Dominant Firms