

First Regular Session
Seventieth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 15-0630.01 Duane Gall x4335

HOUSE BILL 15-1047

HOUSE SPONSORSHIP

Lawrence and Becker K.,

SENATE SPONSORSHIP

(None),

House Committees
Business Affairs and Labor

Senate Committees

A BILL FOR AN ACT

101 CONCERNING A PROHIBITION ON THE USE OF SIMULATED GAMBLING
102 DEVICES.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/bills/summaries>.)

The bill declares that internet sweepstakes cafés and similar establishments in which simulated gambling devices are used to award prizes to customers do not comply with existing constitutional and statutory requirements for the conduct of licensed gambling activity in Colorado and, therefore, the operation of these businesses is contrary to public policy.

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

The bill creates a new misdemeanor criminal offense of offering or providing the use of a simulated gambling device in exchange for any type of consideration, whether the consideration is technically classified as the price of using the device, the price of admission to premises on which the device is located, or the purchase price for an associated product or service.

A violation is punishable as a class 3 misdemeanor or by civil penalties and remedies including private damages of up to 3 times the losses suffered by an individual or licensed competitor, injunctions, and attorney fees. Internet service providers and others who only supply equipment, web design, or connectivity to an internet sweepstakes café are exempt unless their primary purpose is to support the conduct of gambling as a business.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, **add** article 10.5 to
3 title 18 as follows:

4 **ARTICLE 10.5**

5 **Simulated Gambling Devices**

6 **18-10.5-101. Legislative declaration.** (1) THE GENERAL
7 ASSEMBLY FINDS, DETERMINES, AND DECLARES THAT:

8 (a) RECENTLY, CERTAIN INDIVIDUALS AND COMPANIES HAVE
9 DEVELOPED ELECTRONIC MACHINES, SYSTEMS, AND DEVICES TO ENABLE
10 GAMBLING THROUGH PRETEXTUAL SWEEPSTAKES RELATIONSHIPS
11 PREDICATED ON THE SALE OF INTERNET SERVICES, TELEPHONE CARDS, AND
12 OTHER PRODUCTS AT BUSINESS LOCATIONS THAT ARE OR MAY BE
13 COMMONLY KNOWN AS INTERNET SWEEPSTAKES CAFÉS. THESE MACHINES,
14 SYSTEMS, AND DEVICES, AS MORE FULLY DESCRIBED IN THIS ARTICLE,
15 APPEAR DESIGNED TO EVADE THE EXISTING CONSTITUTIONAL AND
16 STATUTORY REGULATIONS ON GAMBLING ACTIVITY IN COLORADO AND
17 THEREFORE ARE DECLARED TO BE CONTRARY TO THE PUBLIC POLICY OF
18 THIS STATE.

1 (b) THE GAMBLING OCCURRING AT INTERNET SWEEPSTAKES CAFÉS
2 HAS NONE OF THE PROTECTIONS THAT ARE AFFORDED TO PLAYERS AT
3 LEGAL GAMING SITES IN COLORADO. THIS ABSENCE OF UNIFORM
4 REGULATION AND ONGOING, GOVERNMENTAL OVERSIGHT PRESENTS A
5 DANGER TO CONSUMERS THROUGHOUT THE STATE OF COLORADO. THESE
6 SITES COMPLY WITH NONE OF THE REGULATORY REQUIREMENTS, SUCH AS
7 SURVEILLANCE AND TRACKING OF WAGERS AND PAYOUTS, TO ASSURE
8 CONSUMERS THAT GAMBLING IS BEING CONDUCTED FAIRLY AND
9 HONESTLY. THE GENERAL ASSEMBLY FINDS THAT THESE DANGERS ARE
10 PROFOUND, PUTTING AT RISK THE FINANCIAL RESOURCES OF VULNERABLE
11 PERSONS AND CUSTOMERS WHO ARE USED TO WAGERING BASED ON CLEAR
12 REGULATORY STANDARDS AND WHO HAVE OFFICIAL LINES OF AUTHORITY
13 TO WHICH THEY MAY APPEAL WHEN THERE ARE QUESTIONABLE OR
14 ILLEGAL PRACTICES USED BY A LICENSED GAMING OPERATOR.

15 (c) THE PROLIFERATION OF INTERNET SWEEPSTAKES CAFÉS
16 PRESENTS AN INCREASING RISK TO CONSUMERS, PARTICULARLY AS THESE
17 SWEEPSTAKES CAFÉS HAVE SPREAD TO SITES THROUGHOUT THE STATE AND
18 ARE CAPABLE OF OPERATING WITHOUT FACING ADVERSE CONSEQUENCES
19 FOR THEIR ILLEGAL, UNFAIR, OR UNREGULATED ACTS;

20 (d) THE DIVERSION OF CONSUMER DOLLARS TO THESE UNTAXED
21 GAMBLING ACTIVITIES NOT ONLY PRESENTS THE OPPORTUNITY FOR THEFT
22 BUT ALSO UNDERMINES STATE AND LOCAL PROGRAMS THAT ARE FUNDED
23 BY REVENUE DERIVED FROM LEGALIZED GAMBLING, INCLUDING PARKS
24 AND RECREATION, HISTORIC PRESERVATION, AND THE STATE'S GENERAL
25 FUND;

26 (e) THERE IS NO ADEQUATE LOCAL OR FEDERAL REGULATION OF
27 INTERNET SWEEPSTAKES CAFÉS, AND THE ABILITY OF THE OWNERS OF

1 THOSE FACILITIES TO OPERATE IN ANY COMMUNITY IN THE STATE OR TO
2 MOVE THEIR OPERATIONS FROM ONE PART OF THE STATE TO ANOTHER
3 WITHOUT NOTIFYING ANY REGULATORY BODY MAKES THIS AN ISSUE OF
4 STATEWIDE CONCERN, APPROPRIATE FOR ACTION BY THE GENERAL
5 ASSEMBLY;

6 (f) THE VOTERS OF COLORADO HAVE CAREFULLY CHOSEN THE
7 FORMS OF GAMBLING TO WHICH TO GIVE THEIR APPROVAL AND THE
8 CONDITIONS UNDER WHICH THOSE FORMS OF GAMBLING MAY BE
9 CONDUCTED. AT NO TIME HAS THE QUESTION OF LEGALIZATION OF
10 INTERNET SWEEPSTAKES CAFÉS BEEN PRESENTED TO THE VOTERS OF THIS
11 STATE. WITHOUT A VOTE OF THE PEOPLE, THE STATE OF COLORADO
12 CANNOT PERMIT THE OPERATION OF UNAUTHORIZED, UNREGULATED, AND
13 UNSUPERVISED GAMBLING OR LOTTERIES IN VIOLATION OF SECTION 2 OF
14 ARTICLE XVIII OF THE COLORADO CONSTITUTION.

15 **18-10.5-102. Definitions.** AS USED IN THIS ARTICLE, UNLESS THE
16 CONTEXT OTHERWISE REQUIRES:

17 (1) "ELECTRONIC GAMING MACHINE" MEANS AN ELECTRICALLY OR
18 ELECTRONICALLY OPERATED MACHINE OR DEVICE THAT IS INTENDED TO
19 BE USED BY A SWEEPSTAKES ENTRANT AND THAT DISPLAYS THE RESULTS
20 OF A GAME ENTRY OR GAME OUTCOME TO A PARTICIPANT ON A SCREEN OR
21 OTHER MECHANISM AT A BUSINESS LOCATION, INCLUDING A PRIVATE CLUB,
22 THAT IS OWNED, LEASED, OR OTHERWISE POSSESSED, IN WHOLE OR IN
23 PART, BY A PERSON CONDUCTING THE SWEEPSTAKES OR BY THAT PERSON'S
24 PARTNERS, AFFILIATES, SUBSIDIARIES, AGENTS, OR CONTRACTORS. THE
25 TERM INCLUDES A MACHINE OR DEVICE THAT:

26 (a) USES A SIMULATED GAME TERMINAL AS A REPRESENTATION OF
27 THE PRIZES ASSOCIATED WITH THE RESULTS OF THE SWEEPSTAKES

- 1 ENTRIES;
- 2 (b) USES SOFTWARE THAT SIMULATES A GAME THAT INFLUENCES
3 OR DETERMINES THE WINNING OR VALUE OF THE PRIZE, OR APPEARS TO
4 INFLUENCE OR DETERMINE THE WINNING OR VALUE OF THE PRIZE;
- 5 (c) SELECTS PRIZES FROM A PREDETERMINED, FINITE POOL OF
6 ENTRIES;
- 7 (d) USES A MECHANISM THAT REVEALS THE CONTENT OF A
8 PREDETERMINED SWEEPSTAKES ENTRY;
- 9 (e) PREDETERMINES THE PRIZE RESULTS AND STORES THOSE
10 RESULTS FOR DELIVERY WHEN THE SWEEPSTAKES ENTRY IS REVEALED;
- 11 (f) USES SOFTWARE TO CREATE A GAME RESULT;
- 12 (g) REQUIRES A DEPOSIT OF ANY CURRENCY OR TOKEN OR THE USE
13 OF ANY CREDIT CARD, DEBIT CARD, PREPAID CARD, OR OTHER METHOD OF
14 PAYMENT TO ACTIVATE THE MACHINE OR DEVICE;
- 15 (h) REQUIRES DIRECT PAYMENT INTO THE MACHINE OR DEVICE OR
16 REMOTE ACTIVATION OF THE MACHINE OR DEVICE UPON PAYMENT TO THE
17 PERSON OFFERING THE SWEEPSTAKES GAME;
- 18 (i) REQUIRES THE PURCHASE OF A RELATED PRODUCT AT
19 ADDITIONAL COST IN ORDER TO PARTICIPATE IN THE SWEEPSTAKES GAME
20 OR MAKES A RELATED PRODUCT AVAILABLE FOR NO COST BUT UNDER
21 RESTRICTIVE CONDITIONS;
- 22 (j) REVEALS A SWEEPSTAKES PRIZE INCREMENTALLY EVEN
23 THOUGH THE PROGRESS OF THE IMAGES ON THE SCREEN DOES NOT
24 INFLUENCE WHETHER A PRIZE IS AWARDED OR THE VALUE OF ANY PRIZE
25 AWARDED; OR
- 26 (k) DETERMINES AND ASSOCIATES THE PRIZE WITH AN ENTRY OR
27 ENTRIES AT THE TIME THE SWEEPSTAKES IS ENTERED.

1 (2) "ENTER" OR "ENTRY" MEANS THE ACT OR PROCESS BY WHICH
2 A PERSON BECOMES ELIGIBLE TO RECEIVE A PRIZE OFFERED IN A
3 SWEEPSTAKES.

4 (3) "ENTRANT" MEANS A PERSON WHO IS OR SEEKS TO BECOME
5 ELIGIBLE TO RECEIVE A PRIZE OFFERED IN A SWEEPSTAKES.

6 (4) "LOCAL JURISDICTION" MEANS A TOWN, CITY, CITY AND
7 COUNTY, OR THE UNINCORPORATED AREA OF A COUNTY.

8 (5) "PRIZE" MEANS A GIFT, AWARD, GRATUITY, GOOD, SERVICE,
9 CREDIT, OR ANYTHING ELSE OF VALUE THAT MAY BE TRANSFERRED TO A
10 PERSON, WHETHER OR NOT POSSESSION OF THE PRIZE IS ACTUALLY
11 TRANSFERRED OR PLACED ON AN ACCOUNT OR OTHER RECORD AS
12 EVIDENCE OF THE INTENT TO TRANSFER THE PRIZE. "PRIZE" DOES NOT
13 INCLUDE FREE OR ADDITIONAL PLAY OR ANY INTANGIBLE OR VIRTUAL
14 AWARD THAT CANNOT BE CONVERTED INTO MONEY, GOODS, OR SERVICES.

15 (6) "SIMULATED GAMBLING DEVICE" MEANS A MECHANICALLY OR
16 ELECTRONICALLY OPERATED MACHINE, NETWORK, SYSTEM, PROGRAM, OR
17 DEVICE THAT IS INTENDED TO BE USED BY AN ENTRANT AND THAT
18 DISPLAYS SIMULATED GAMBLING DISPLAYS ON A SCREEN OR OTHER
19 MECHANISM AT A BUSINESS LOCATION, INCLUDING A PRIVATE CLUB, THAT
20 IS OWNED, LEASED, OR OTHERWISE POSSESSED, IN WHOLE OR IN PART, BY
21 A PERSON CONDUCTING THE GAME OR BY THAT PERSON'S PARTNERS,
22 AFFILIATES, SUBSIDIARIES, AGENTS, OR CONTRACTORS. THE TERM
23 INCLUDES:

24 (a) A VIDEO POKER GAME OR ANY OTHER KIND OF VIDEO CARD
25 GAME;

26 (b) A VIDEO BINGO GAME;

27 (c) A VIDEO CRAPS GAME;

- 1 (d) A VIDEO KENO GAME;
- 2 (e) A VIDEO LOTTO GAME;
- 3 (f) A VIDEO ROULETTE GAME;
- 4 (g) A POT-OF-GOLD;
- 5 (h) AN EIGHT-LINER;
- 6 (i) A VIDEO GAME BASED ON OR INVOLVING THE RANDOM OR
- 7 CHANCE MATCHING OF DIFFERENT PICTURES, WORDS, NUMBERS, OR
- 8 SYMBOLS;
- 9 (j) AN ELECTRONIC GAMING MACHINE, INCLUDING A PERSONAL
- 10 COMPUTER OF ANY SIZE OR CONFIGURATION THAT PERFORMS ANY OF THE
- 11 FUNCTIONS OF AN ELECTRONIC GAMING MACHINE;
- 12 (k) A SLOT MACHINE; AND
- 13 (l) A DEVICE THAT FUNCTIONS AS, OR SIMULATES THE PLAY OF, A
- 14 SLOT MACHINE.

15 (7) "SWEEPSTAKES" MEANS ANY GAME, ADVERTISING SCHEME OR
16 PLAN, OR OTHER PROMOTION THAT, WITH OR WITHOUT PAYMENT OF ANY
17 CONSIDERATION, ALLOWS A PERSON TO ENTER TO WIN OR BECOME
18 ELIGIBLE TO RECEIVE A PRIZE.

19 **18-10.5-103. Prohibition - penalties - exemptions.** (1) A
20 PERSON COMMITS UNLAWFUL OFFERING OF A SIMULATED GAMBLING
21 DEVICE IF THE PERSON OFFERS, FACILITATES, CONTRACTS FOR, OR
22 OTHERWISE MAKES AVAILABLE TO OR FOR MEMBERS OF THE PUBLIC OR
23 MEMBERS OF AN ORGANIZATION OR CLUB ANY SIMULATED GAMBLING
24 DEVICE WHERE:

- 25 (a) THE PAYMENT OF CONSIDERATION IS REQUIRED OR PERMITTED
- 26 FOR USE OF THE DEVICE, FOR ADMISSION TO PREMISES ON WHICH THE
- 27 DEVICE IS LOCATED, OR FOR THE PURCHASE OF ANY PRODUCT OR SERVICE

1 ASSOCIATED WITH ACCESS TO OR USE OF THE DEVICE; AND

2 (b) AS A CONSEQUENCE OF, IN CONNECTION WITH, OR AFTER THE
3 PLAY OF THE SIMULATED GAMBLING DEVICE, AN AWARD OF A PRIZE IS
4 EXPRESSLY OR IMPLICITLY MADE TO A PERSON USING THE DEVICE.

5 (2) UNLAWFUL OFFERING OF A SIMULATED GAMBLING DEVICE IS A
6 CLASS 3 MISDEMEANOR.

7 (3) WITHOUT REGARD TO ANY PENALTY IMPOSED UNDER
8 SUBSECTION (2) OF THIS SECTION, THE ATTORNEY GENERAL AND EACH
9 DISTRICT ATTORNEY MAY APPLY TO THE DISTRICT COURT OF A DISTRICT IN
10 WHICH A PERSON WHO VIOLATES SUBSECTION (1) OF THIS SECTION IS
11 LOCATED, ADVERTISES FOR ENTRANTS, OR DOES BUSINESS FOR
12 APPROPRIATE ADDITIONAL RELIEF, INCLUDING:

13 (a) INJUNCTIVE RELIEF, INCLUDING A TEMPORARY RESTRAINING
14 ORDER OR PRELIMINARY OR PERMANENT INJUNCTION, TO RESTRAIN AND
15 ENJOIN VIOLATIONS OF THIS SECTION;

16 (b) DAMAGES, UP TO AND INCLUDING THREE TIMES THE TOTAL
17 DOLLAR AMOUNT OF BUSINESS TRANSACTED OR FACILITATED BY ANY
18 PERSON WHO VIOLATES SUBSECTION (1) OF THIS SECTION, PAYABLE TO THE
19 LOCAL JURISDICTION IN WHICH THE PERSON IS LOCATED, ADVERTISES FOR
20 ENTRANTS, OR DOES BUSINESS; AND

21 (c) OTHER RELIEF THE DISTRICT COURT DEEMS APPROPRIATE.

22 (4) A PERSON WHO SUFFERS ANY ASCERTAINABLE LOSS OF MONEY
23 OR OF ANY TANGIBLE OR INTANGIBLE PERSONAL PROPERTY AS A RESULT
24 OF A VIOLATION OF THIS SECTION AND WHO ALSO HOLDS A LICENSE TO
25 OFFER GAMBLING SERVICES UNDER COLORADO LAW MAY APPLY TO THE
26 DISTRICT COURT OF ANY DISTRICT WHERE THE PERSON WHO VIOLATES
27 SUBSECTION (1) OF THIS SECTION IS OR WAS LOCATED, ADVERTISES FOR

1 ENTRANTS, OR DOES BUSINESS FOR APPROPRIATE ADDITIONAL RELIEF,
2 INCLUDING:

3 (a) INJUNCTIVE RELIEF, INCLUDING A TEMPORARY RESTRAINING
4 ORDER OR PRELIMINARY OR PERMANENT INJUNCTION, TO RESTRAIN AND
5 ENJOIN VIOLATIONS OF THIS SECTION;

6 (b) DAMAGES UP TO AND INCLUDING THREE TIMES THE ACTUAL
7 DAMAGES SUSTAINED AS A RESULT OF VIOLATIONS OF THIS SECTION;

8 (c) REASONABLE ATTORNEY FEES AND COSTS; AND

9 (d) OTHER RELIEF THE DISTRICT COURT DEEMS APPROPRIATE.

10 (5) THE COURT MAY AWARD REASONABLE ATTORNEY FEES AND
11 COSTS TO A DEFENDANT FOR ANY ACTION FILED PURSUANT TO SUBSECTION
12 (4) OF THIS SECTION THAT WAS SUBSTANTIALLY GROUNDLESS, FRIVOLOUS,
13 OR VEXATIOUS.

14 (6) A CRIMINAL CONVICTION AGAINST A NAMED DEFENDANT
15 UNDER SUBSECTION (2) OF THIS SECTION IS PRIMA FACIE EVIDENCE OF THE
16 LIABILITY OF THAT NAMED DEFENDANT IN AN ACTION BROUGHT UNDER
17 SUBSECTION (3) OR (4) OF THIS SECTION.

18 (7) A CIVIL ACTION UNDER THIS SECTION MUST BE FILED WITHIN
19 ONE YEAR AFTER THE ACT OR TRANSACTION GIVING RISE TO THE CAUSE OF
20 ACTION.

21 (8) CONDUCTING OR ASSISTING IN THE CONDUCT OF GAMING
22 ACTIVITIES OTHERWISE AUTHORIZED BY COLORADO LAW IS NOT A
23 VIOLATION OF THIS SECTION.

24 (9) NOTHING IN THIS SECTION:

25 (a) PROHIBITS, LIMITS, OR OTHERWISE AFFECTS ANY PURCHASE,
26 SALE, EXCHANGE, OR OTHER TRANSACTION RELATED TO STOCKS, BONDS,
27 FUTURES, OPTIONS, COMMODITIES, OR OTHER SIMILAR INSTRUMENTS OR

1 TRANSACTIONS OCCURRING ON A STOCK OR COMMODITIES EXCHANGE,
2 BROKERAGE HOUSE, OR SIMILAR ENTITY; OR

3 (b) LIMITS OR ALTERS THE APPLICATION OF THE REQUIREMENTS
4 FOR SWEEPSTAKES, CONTESTS, AND SIMILAR ACTIVITIES THAT ARE
5 OTHERWISE ESTABLISHED UNDER THE LAWS OF THIS STATE.

6 (10) THE PROVISION OF INTERNET OR OTHER ON-LINE ACCESS,
7 TRANSMISSION, ROUTING, STORAGE, OR OTHER COMMUNICATION-RELATED
8 SERVICES OR WEB SITE DESIGN, DEVELOPMENT, STORAGE, MAINTENANCE,
9 BILLING, ADVERTISING, HYPERTEXT LINKING, TRANSACTION PROCESSING,
10 OR OTHER SITE-RELATED SERVICES BY A TELEPHONE COMPANY, INTERNET
11 SERVICE PROVIDER, SOFTWARE DEVELOPER OR LICENSOR, OR OTHER PARTY
12 PROVIDING SIMILAR SERVICES TO CUSTOMERS IN THE NORMAL COURSE OF
13 ITS BUSINESS DOES NOT VIOLATE THIS SECTION EVEN IF THOSE CUSTOMERS
14 USE THE SERVICES TO CONDUCT A PROHIBITED GAME, CONTEST, LOTTERY,
15 OR OTHER ACTIVITY IN VIOLATION OF THIS ARTICLE; EXCEPT THAT THIS
16 SUBSECTION (10) DOES NOT EXEMPT FROM CRIMINAL PROSECUTION OR
17 CIVIL LIABILITY A SOFTWARE DEVELOPER, LICENSOR, OR OTHER PARTY
18 WHOSE PRIMARY PURPOSE IN PROVIDING SUCH SERVICE IS TO SUPPORT THE
19 OFFERING OF SIMULATED GAMBLING DEVICES.

20 **SECTION 2. Safety clause.** The general assembly hereby finds,
21 determines, and declares that this act is necessary for the immediate
22 preservation of the public peace, health, and safety.