

**Second Regular Session
Sixty-ninth General Assembly
STATE OF COLORADO**

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 14-1082.01 Duane Gall x4335

HOUSE BILL 14-1392

HOUSE SPONSORSHIP

Lawrence and Becker,

SENATE SPONSORSHIP

(None),

House Committees

Business, Labor, Economic, & Workforce Development

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/billsummaries>.)

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

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.*

public policy.

The bill creates a new misdemeanor criminal offense of offering or providing the use of a simulated gaming 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.

Violations are 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 CONTRARY TO THE PUBLIC POLICY OF THIS

1 STATE.

2 (b) UNLAWFUL GAMBLING AT INTERNET SWEEPSTAKES CAFÉS
3 INVOLVES INTENTIONALLY USING ANY ELECTRONIC GAMING MACHINE,
4 COMPUTER TERMINAL, OR SIMILAR DEVICE TO CONDUCT A BUSINESS, OR
5 DIRECTLY ASSISTING OR AIDING AND ABETTING IN THE CONDUCTING OF
6 ANY BUSINESS THAT INTENTIONALLY USES AN ELECTRONIC GAMING
7 MACHINE, COMPUTER TERMINAL, OR SIMILAR DEVICE IF THE ELECTRONIC
8 GAMING MACHINE, COMPUTER TERMINAL, OR SIMILAR DEVICE DOES OR
9 PURPORTS TO DO ANY OF THE FOLLOWING:

10 (I) CONDUCT A SWEEPSTAKES THROUGH THE USE OF A SIMULATED
11 GAMBLING DEVICE OR PROGRAM, INCLUDING THE ENTRY PROCESS OR THE
12 REVEALING OF A PRIZE; OR

13 (II) PROMOTE A SWEEPSTAKES THAT IS CONDUCTED THROUGH THE
14 USE OF A SIMULATED GAMBLING DEVICE OR PROGRAM, INCLUDING THE
15 ENTRY PROCESS OR THE REVEALING OF A PRIZE.

16 (c) THE GAMBLING OCCURRING AT INTERNET SWEEPSTAKES CAFÉS
17 HAS NONE OF THE PROTECTIONS THAT ARE AFFORDED TO PLAYERS AT
18 LEGAL GAMING SITES IN COLORADO. THIS ABSENCE OF UNIFORM
19 REGULATION AND ONGOING, GOVERNMENTAL OVERSIGHT PRESENTS A
20 DANGER TO CONSUMERS THROUGHOUT THE STATE OF COLORADO. THESE
21 SITES COMPLY WITH NONE OF THE REGULATORY REQUIREMENTS, SUCH AS
22 SURVEILLANCE AND TRACKING OF WAGERS AND PAYOUTS, TO ASSURE
23 CONSUMERS THAT GAMBLING IS BEING CONDUCTED FAIRLY AND
24 HONESTLY. THE GENERAL ASSEMBLY FINDS THAT THESE DANGERS ARE
25 PROFOUND, PUTTING AT RISK THE FINANCIAL RESOURCES OF VULNERABLE
26 PERSONS AND CUSTOMERS WHO ARE USED TO WAGERING BASED ON CLEAR
27 REGULATORY STANDARDS AND WHO HAVE OFFICIAL LINES OF AUTHORITY

1 TO WHICH THEY MAY APPEAL WHEN THERE ARE QUESTIONABLE OR
2 ILLEGAL PRACTICES USED BY ANY LICENSED GAMING OPERATOR.

3 (d) THE PROLIFERATION OF INTERNET SWEEPSTAKES CAFÉS
4 PRESENTS AN INCREASING RISK TO CONSUMERS, PARTICULARLY AS THESE
5 SWEEPSTAKES CAFÉS HAVE SPREAD TO SITES THROUGHOUT THE STATE AND
6 ARE CAPABLE OF OPERATING WITHOUT FACING ADVERSE CONSEQUENCES
7 FOR THEIR ILLEGAL, UNFAIR, OR UNREGULATED ACTS.

8 (e) THE DIVERSION OF CONSUMER DOLLARS TO THESE UNTAXED
9 GAMBLING ACTIVITIES NOT ONLY PRESENTS THE OPPORTUNITY FOR THEFT
10 BUT ALSO UNDERMINES STATE AND LOCAL PROGRAMS THAT ARE FUNDED
11 BY REVENUE DERIVED FROM LEGALIZED GAMBLING, INCLUDING PARKS
12 AND RECREATION, HISTORIC PRESERVATION, AND THE STATE'S GENERAL
13 FUND.

14 (f) THERE IS NO ADEQUATE LOCAL OR FEDERAL REGULATION OF
15 INTERNET SWEEPSTAKES CAFÉS, AND THE ABILITY OF THE OWNERS OF
16 THOSE FACILITIES TO OPERATE IN ANY COMMUNITY IN THE STATE OR TO
17 MOVE THEIR OPERATIONS FROM ONE PART OF THE STATE TO ANOTHER
18 WITHOUT NOTIFYING ANY REGULATORY BODY MAKES THIS AN ISSUE OF
19 STATEWIDE CONCERN, APPROPRIATE FOR ACTION BY THE GENERAL
20 ASSEMBLY.

21 (g) THE VOTERS OF COLORADO HAVE CAREFULLY CHOSEN THE
22 FORMS OF GAMBLING TO WHICH TO GIVE THEIR APPROVAL AND THE
23 CONDITIONS UNDER WHICH THOSE FORMS OF GAMBLING MAY BE
24 CONDUCTED. AT NO TIME HAS THE QUESTION OF LEGALIZATION OF
25 INTERNET SWEEPSTAKES CAFÉS BEEN PRESENTED TO THE VOTERS OF THIS
26 STATE. WITHOUT A VOTE OF THE PEOPLE, THE STATE OF COLORADO
27 CANNOT PERMIT THE OPERATION OF UNAUTHORIZED, UNREGULATED, AND

1 UNSUPERVISED GAMBLING OR LOTTERIES IN VIOLATION OF SECTIONS 2 AND
2 9 OF ARTICLE XVIII OF THE COLORADO CONSTITUTION.

3 **18-10.5-102. Definitions.** AS USED IN THIS ARTICLE, UNLESS THE
4 CONTEXT OTHERWISE REQUIRES:

5 (1) "ELECTRONIC GAMING MACHINE" MEANS A MECHANICALLY,
6 ELECTRICALLY, OR ELECTRONICALLY OPERATED MACHINE OR DEVICE THAT
7 DISPLAYS THE RESULTS OF A GAME ENTRY OR GAME OUTCOME TO A
8 PARTICIPANT ON A SCREEN OR OTHER MECHANISM AT A BUSINESS
9 LOCATION, INCLUDING A PRIVATE CLUB, THAT IS OWNED, LEASED, OR
10 OTHERWISE POSSESSED, IN WHOLE OR IN PART, BY ANY PERSON
11 CONDUCTING THE SWEEPSTAKES OR BY THAT PERSON'S PARTNERS,
12 AFFILIATES, SUBSIDIARIES, AGENTS, OR CONTRACTORS. THE TERM
13 INCLUDES AN ELECTRONIC GAMING MACHINE OR DEVICE THAT:

14 (a) USES A SIMULATED GAME TERMINAL AS A REPRESENTATION OF
15 THE PRIZES ASSOCIATED WITH THE RESULTS OF THE SWEEPSTAKES
16 ENTRIES;

17 (b) USES SOFTWARE THAT SIMULATES A GAME THAT INFLUENCES
18 OR DETERMINES THE WINNING OR VALUE OF THE PRIZE, OR APPEARS TO
19 INFLUENCE OR DETERMINE THE WINNING OR VALUE OF THE PRIZE;

20 (c) SELECTS PRIZES FROM A PREDETERMINED, FINITE POOL OF
21 ENTRIES;

22 (d) USES A MECHANISM THAT REVEALS THE CONTENT OF A
23 PREDETERMINED SWEEPSTAKES ENTRY;

24 (e) PREDETERMINES THE PRIZE RESULTS AND STORES THOSE
25 RESULTS FOR DELIVERY AT THE TIME THE SWEEPSTAKES ENTRY IS
26 REVEALED;

27 (f) USES SOFTWARE TO CREATE A GAME RESULT;

1 (g) REQUIRES A DEPOSIT OF ANY CURRENCY OR TOKEN OR THE USE
2 OF ANY CREDIT CARD, DEBIT CARD, PREPAID CARD, OR OTHER METHOD OF
3 PAYMENT TO ACTIVATE THE ELECTRONIC GAMING MACHINE OR DEVICE;

4 (h) REQUIRES DIRECT PAYMENT INTO THE ELECTRONIC GAMING
5 MACHINE OR DEVICE OR REMOTE ACTIVATION OF THE ELECTRONIC GAMING
6 MACHINE OR DEVICE UPON PAYMENT TO THE PERSON OFFERING THE
7 SWEEPSTAKES GAME;

8 (i) REQUIRES PURCHASE OF A RELATED PRODUCT WITH LEGITIMATE
9 VALUE IN ORDER TO PARTICIPATE IN THE SWEEPSTAKES GAME, OR MAKES
10 A RELATED PRODUCT AVAILABLE FOR NO COST BUT UNDER RESTRICTIVE
11 CONDITIONS;

12 (j) REVEALS A SWEEPSTAKES PRIZE INCREMENTALLY EVEN
13 THOUGH THE PROGRESS OF THE IMAGES ON THE SCREEN DOES NOT
14 INFLUENCE WHETHER A PRIZE IS AWARDED OR THE VALUE OF ANY PRIZE
15 AWARDED; OR

16 (k) DETERMINES AND ASSOCIATES THE PRIZE WITH AN ENTRY OR
17 ENTRIES AT THE TIME THE SWEEPSTAKES IS ENTERED.

18 (2) "ENTER" OR "ENTRY" MEANS THE ACT OR PROCESS BY WHICH
19 A PERSON BECOMES ELIGIBLE TO RECEIVE ANY PRIZE OFFERED IN A GAME
20 PROMOTION OR SWEEPSTAKES.

21 
22 (3) "PRIZE" MEANS ANY GIFT, AWARD, GRATUITY, GOOD, SERVICE,
23 CREDIT, OR ANYTHING ELSE OF VALUE THAT MAY BE TRANSFERRED TO A
24 PERSON, WHETHER OR NOT POSSESSION OF THE PRIZE IS ACTUALLY
25 TRANSFERRED OR PLACED ON AN ACCOUNT OR OTHER RECORD AS
26 EVIDENCE OF THE INTENT TO TRANSFER THE PRIZE. "PRIZE" DOES NOT
27 INCLUDE FREE OR ADDITIONAL PLAY OR ANY INTANGIBLE OR VIRTUAL

1 AWARD THAT CANNOT BE CONVERTED INTO MONEY OR MERCHANDISE.

2 (4) "SIMULATED GAMBLING DEVICE" MEANS A MECHANICALLY OR
3 ELECTRONICALLY OPERATED MACHINE, NETWORK, SYSTEM, PROGRAM, OR
4 DEVICE THAT DISPLAYS SIMULATED GAMBLING DISPLAYS ON A SCREEN OR
5 OTHER MECHANISM AT A BUSINESS LOCATION, INCLUDING A PRIVATE CLUB,
6 THAT IS OWNED, LEASED, OR OTHERWISE POSSESSED, IN WHOLE OR IN
7 PART, BY ANY PERSON CONDUCTING THE GAME OR BY THAT PERSON'S
8 PARTNERS, AFFILIATES, SUBSIDIARIES, AGENTS, OR CONTRACTORS. THE
9 TERM INCLUDES:

10 (a) A VIDEO POKER GAME OR ANY OTHER KIND OF VIDEO CARD
11 GAME;

12 (b) A VIDEO BINGO GAME;

13 (c) A VIDEO CRAPS GAME;

14 (d) A VIDEO KENO GAME;

15 (e) A VIDEO LOTTO GAME;

16 (f) A VIDEO ROULETTE GAME;

17 (g) A POT-OF-GOLD;

18 (h) AN EIGHT-LINER;

19 (i) A VIDEO GAME BASED ON OR INVOLVING THE RANDOM OR
20 CHANCE MATCHING OF DIFFERENT PICTURES, WORDS, NUMBERS, OR
21 SYMBOLS;

22 (j) A PERSONAL COMPUTER OF ANY SIZE OR CONFIGURATION THAT
23 PERFORMS ANY OF THE FUNCTIONS OF AN ELECTRONIC GAMING MACHINE
24 OR DEVICE AS DEFINED IN THIS SECTION;

25 (k) A SLOT MACHINE; AND

26 (l) A DEVICE THAT FUNCTIONS AS, OR SIMULATES THE PLAY OF, A
27 SLOT MACHINE.

1 (5) "SWEEPSTAKES" MEANS ANY GAME, ADVERTISING SCHEME OR
2 PLAN, OR OTHER PROMOTION THAT, WITH OR WITHOUT PAYMENT OF ANY
3 CONSIDERATION, ALLOWS A PERSON TO ENTER TO WIN OR BECOME
4 ELIGIBLE TO RECEIVE A PRIZE.

5 **18-10.5-103. Prohibition - penalties - exemptions.** (1) A
6 PERSON COMMITS UNLAWFUL OFFERING OF A SIMULATED GAMBLING
7 DEVICE IF THE PERSON OFFERS, FACILITATES, CONTRACTS FOR, OR
8 OTHERWISE MAKES AVAILABLE TO OR FOR MEMBERS OF THE PUBLIC OR
9 MEMBERS OF AN ORGANIZATION OR CLUB ANY SIMULATED GAMBLING
10 DEVICE WHERE:

11 (a) THE PAYMENT OF CONSIDERATION IS REQUIRED OR PERMITTED
12 FOR USE OF THE DEVICE, FOR ADMISSION TO PREMISES ON WHICH THE
13 DEVICE IS LOCATED, OR FOR THE PURCHASE OF ANY PRODUCT OR SERVICE
14 ASSOCIATED WITH ACCESS TO OR USE OF THE DEVICE; AND

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

18 (2) UNLAWFUL OFFERING OF A SIMULATED GAMBLING DEVICE IS A
19 CLASS 3 MISDEMEANOR.

20 (3) WITHOUT REGARD TO ANY PENALTY IMPOSED UNDER
21 SUBSECTION (2) OF THIS SECTION, THE ATTORNEY GENERAL AND EACH
22 DISTRICT ATTORNEY MAY APPLY TO THE DISTRICT COURT OF ANY DISTRICT
23 IN WHICH A PERSON WHO VIOLATES SUBSECTION (1) OF THIS SECTION IS
24 LOCATED, ADVERTISES FOR CUSTOMERS OR MEMBERS, OR DOES BUSINESS
25 FOR APPROPRIATE ADDITIONAL RELIEF, INCLUDING:

26 (a) INJUNCTIVE RELIEF, INCLUDING A TEMPORARY RESTRAINING
27 ORDER OR PRELIMINARY OR PERMANENT INJUNCTION, TO RESTRAIN AND

1 ENJOIN VIOLATIONS OF THIS SECTION;

2 (b) DAMAGES, UP TO AND INCLUDING THREE TIMES THE TOTAL
3 DOLLAR AMOUNT OF BUSINESS TRANSACTED OR FACILITATED BY ANY
4 PERSON WHO VIOLATES SUBSECTION (1) OF THIS SECTION, PAYABLE TO THE
5 LOCAL JURISDICTION IN WHICH THE PERSON IS LOCATED, ADVERTISES FOR
6 CUSTOMERS OR MEMBERS, OR DOES BUSINESS; AND

7 (c) SUCH OTHER AND FURTHER RELIEF AS THE DISTRICT COURT
8 DEEMS APPROPRIATE.

9 (4) ANY PERSON WHO SUFFERS ANY ASCERTAINABLE LOSS OF
10 MONEY OR OF ANY TANGIBLE OR INTANGIBLE PERSONAL PROPERTY AS A
11 RESULT OF ANY VIOLATION OF THIS SECTION AND WHO ALSO HOLDS A
12 LICENSE TO OFFER GAMBLING SERVICES UNDER COLORADO LAW MAY
13 APPLY TO THE DISTRICT COURT OF ANY DISTRICT WHERE THE PERSON WHO
14 VIOLATES SUBSECTION (1) OF THIS SECTION IS OR WAS LOCATED,
15 ADVERTISES FOR CUSTOMERS OR MEMBERS, OR DOES BUSINESS FOR
16 APPROPRIATE ADDITIONAL RELIEF, INCLUDING:

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

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

22 (c) REASONABLE ATTORNEY FEES AND COSTS; AND

23 (d) SUCH OTHER AND FURTHER RELIEF AS THE DISTRICT COURT
24 DEEMS APPROPRIATE.

25 (5) THE COURT MAY AWARD REASONABLE ATTORNEY FEES AND
26 COSTS TO A DEFENDANT FOR ANY ACTION FILED PURSUANT TO SUBSECTION
27 (4) OF THIS SECTION THAT WAS SUBSTANTIALLY GROUNDLESS,

1 SUBSTANTIALLY FRIVOLOUS, OR SUBSTANTIALLY VEXATIOUS.

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

6 (7) A CIVIL ACTION UNDER THIS SECTION MUST BE FILED, IF AT ALL,
7 WITHIN ONE YEAR AFTER THE ACT OR TRANSACTION GIVING RISE TO THE
8 CAUSE OF ACTION.

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

12 (9) NOTHING IN THIS SECTION:

13 (a) PROHIBITS, LIMITS, OR OTHERWISE AFFECTS ANY PURCHASE,
14 SALE, EXCHANGE, OR OTHER TRANSACTION RELATED TO STOCKS, BONDS,
15 FUTURES, OPTIONS, COMMODITIES, OR OTHER SIMILAR INSTRUMENTS OR
16 TRANSACTIONS OCCURRING ON A STOCK OR COMMODITIES EXCHANGE,
17 BROKERAGE HOUSE, OR SIMILAR ENTITY; ■

18 (b) LIMITS OR ALTERS IN ANY WAY THE APPLICATION OF THE
19 REQUIREMENTS FOR SWEEPSTAKES, CONTESTS, AND SIMILAR ACTIVITIES
20 THAT ARE OTHERWISE ESTABLISHED UNDER THE LAWS OF THIS STATE; OR

21 (c) PROHIBITS ANY ACTIVITY AUTHORIZED UNDER ARTICLE 35 OF
22 TITLE 24 OR ARTICLE 9, 47.1, OR 60 OF TITLE 12, C.R.S.

23 (10) THE PROVISION OF INTERNET OR OTHER ON-LINE ACCESS,
24 TRANSMISSION, ROUTING, STORAGE, OR OTHER COMMUNICATION-RELATED
25 SERVICES OR WEB SITE DESIGN, DEVELOPMENT, STORAGE, MAINTENANCE,
26 BILLING, ADVERTISING, HYPERTEXT LINKING, TRANSACTION PROCESSING,
27 OR OTHER SITE-RELATED SERVICES BY A TELEPHONE COMPANY, INTERNET

1 SERVICE PROVIDER, SOFTWARE DEVELOPER OR LICENSOR, OR OTHER PARTY
2 PROVIDING SIMILAR SERVICES TO CUSTOMERS IN THE NORMAL COURSE OF
3 ITS BUSINESS DOES NOT VIOLATE THIS SECTION EVEN IF THOSE CUSTOMERS
4 USE THE SERVICES TO CONDUCT A PROHIBITED GAME, CONTEST, LOTTERY,
5 OR OTHER ACTIVITY IN VIOLATION OF THIS ARTICLE; EXCEPT THAT THIS
6 SUBSECTION (10) DOES NOT EXEMPT FROM CRIMINAL PROSECUTION OR
7 CIVIL LIABILITY ANY SOFTWARE DEVELOPER, LICENSOR, OR OTHER PARTY
8 WHOSE PRIMARY PURPOSE IN PROVIDING SUCH SERVICE IS TO SUPPORT THE
9 OFFERING OF SIMULATED GAMBLING DEVICES.

10 **SECTION 2. Effective date.** This act takes effect July 1, 2014.

11 **SECTION 3. Safety clause.** The general assembly hereby finds,
12 determines, and declares that this act is necessary for the immediate
13 preservation of the public peace, health, and safety.