

**MINUTES OF THE SPECIAL MEETING OF THE CITY COUNCIL FOR
THE CITY OF BRIGHTON, COUNTY OF ADAMS, STATE OF
COLORADO, HELD ON SEPTEMBER 23, 2014.**

1. CALL TO ORDER

Mayor McLean called the meeting to order at 7:25 p.m.

A. Roll Call.

Council present: Mayor McLean, Mayor Pro Tem Wallin, Councilmembers Baca, Bell, Edwards, Humbert, Kniss, Kreutzer and Martinez.

2. APPROVAL OF AGENDA

City Attorney Margaret Brubaker asked that the Agenda be amended to add General Business Item Appoint a Special Prosecutor for Municipal Court.

Motion by Mayor Pro Tem Wallin to approve the Agenda as amended, **second by Councilmember Humbert.**

Voting aye: All present.

3. EMERGENCY ORDINANCE

A. An Emergency Ordinance Pursuant to Section 5.10 of the City of Brighton Home Rule Charter Imposing a Temporary Six Month Moratorium on the Acceptance, Processing and Approval of any Application for a City of Brighton Permit or License Concerning the Operation of any Cyber Café, Sweepstakes Café, or Internet Sweepstakes Café, as those terms are used herein; Declaring the Intention of the City Council to Consider the Adoption of Appropriate Regulations Governing such Businesses to the Extent Allowed by Law; Directing the City Manager to Investigate the City's Authority to Regulate such Businesses and, if Deemed Appropriate, to Prepare Regulations for the City Council's consideration; and Setting Forth Other Details Related Thereto.

Mayor McLean read the title of the Ordinance into the record.

City Attorney Margaret Brubaker explained that cyber cafes including sweepstakes cafes and internet sweepstakes cafes have begun to appear across the country and on the front range of Colorado. They are generally storefront organizations with computer terminals that allow access to slot machine like games that dispense coupons for discounts on products or services. These cafes often advertise and sell a product for internet time or long distance telephone minutes and the user then receives supposed bonus entries in the internet sweepstakes. With these entries the user can participate in internet based games at the cafes on specially programmed personal computers. Based on a random allocation of winning and losing purchase entries the user may or may not win cash prizes through these games. Consumers are generally required to pay for the use of the computers and the internet access time or they can purchase telephone cards.

The existence of these cyber cafes has recently come to the attention of the City of Brighton. In order to get a general understanding of the scope of these businesses City staff and the City Attorney have reviewed various publications including a 2010 publication from the Regional Organized Crime Enforcement Center entitled "Internet Café Gaming Legal Fun or Illegal Gambling?", a document from the Lakewood Police Department entitled "White Paper on Cyber Cafes", and a general

compilation of information from the internet regarding internet sweepstakes parlors, these documents will be added to the record as Exhibits A, B and C.

Based on the information provided in these documents, it appears that cyber cafes tend to target low income and elderly consumers offering a gathering place and enticing consumers with the possibility of free or discounted goods or services. Although there have been legal challenges initiated in various parts of the country to date there is not a clear determination by the Courts or other governmental officials across the country on whether the activity conducted in these cyber cafes constitutes illegal gambling. Colorado officials including the Attorney General and the State Legislature have not yet taken any formal position on the legality of these businesses although some action is anticipated in the coming year. Legislation was introduced toward the end of the 2014 General Assembly of Colorado with bipartisan support and passed by a large margin by the House but it was then postponed indefinitely by the Senate. A copy of House Bill 14-1392 has been provided and will be included as part of the record as Exhibit D. Excerpts from House Bill 14-1392: *These machines, systems, and devices, ...appear designed to evade the existing constitutional and statutory regulations on gambling activity in Colorado and therefore are declared contrary to the public policy of this state. The gambling occurring at internet sweepstakes cafes has none of the protections that are afforded to players at legal gaming sites in Colorado. This absence of uniform regulation and ongoing, governmental oversight presents a danger to consumers throughout the state of Colorado. These sites comply with none of the regulatory requirements, such as surveillance and tracking of wagers and payouts, to assure consumers that gambling is being conducted fairly and honestly. The diversion of consumer dollars to these untaxed gambling activities not only presents the opportunity for theft but also undermines state and local programs that are funded by revenue derived from legalized gambling, including parks and recreation, historic preservation, and the state's general fund."*

The American Gaming Association issued a White Paper expressing concerns about cyber cafes including statements that the owners and principal managers are not licensed by any public agency and are therefore not subject to criminal background checks or investigation of their integrity. It also states that the games are not subject to oversight for fairness and the businesses do not pay any gaming taxes. There have been statements that cyber cafes have received scrutiny from law enforcement. The industry maintains that the business model and the systems used do not meet the legal definition of gaming in the United States because the prizes are predetermined and the chances are given without purchase. These sweepstakes parlors are often located in or adjacent to strip malls and the décor may consist of casino like motifs and complimentary snacks and non-alcoholic beverages are often provided to consumers. The software necessary to operate these cafes may be obtained from a number of different companies in return for which a percentage of the profits is typically paid.

These businesses are new to Brighton and there is no certainty at this time about the legality or illegality of these businesses, there are no regulations statewide or in Brighton to regulate these businesses. Because there is anticipation that the Attorney General will be issuing an opinion on this matter in the months to come, and there is an expectation that the General Assembly will take this matter up when it reconvenes for its next legislative session and because there are too many unanswered questions for the City to appropriately address any application for these businesses at this time, staff recommends that the City consider the legislation tonight. Included in the agenda packet is an Emergency Ordinance imposing a temporary six (6) month moratorium on the acceptance, processing and approval of any application for a permit or license concerning the operation of any cyber café, sweepstakes café, or internet sweepstakes café as those terms are defined in the Ordinance.

In order to give City staff time to research the extent and legality of these businesses, to investigate fully the potential impacts of these businesses on the citizens of Brighton, to research the authority of the City to regulate these businesses and to consider regulations governing these businesses, the six (6) month moratorium extends to March 18, 2015 unless extended or terminated by the City Council.

Cities across Colorado have routinely enacted moratoria of similar length with similar situations that require further research. City Attorney Brubaker feels that the emergency exists as provided in Section 5.10 of the City Charter and that this action is necessary for the immediate preservation of the public health, peace, safety and welfare of the citizens of Brighton and that the ordinance will be in full force and effect upon adoption. The City has not approved any applications for these types of businesses as of today and if the moratorium is imposed will not during the term of the moratorium.

Motion by Councilmember Martinez to approve Ordinance 2176 the title of which as read by Mayor McLean, **second by Councilmember Bell.**

Voting aye: All present.

4. GENERAL BUSINESS

A. Appoint a Special Prosecutor for Municipal Court.

City Attorney Brubaker explained that staff was informed that Prosecuting Attorney Adam Gollin has a conflict of interest and is unable to participate in a trial scheduled this Friday. It is required under the Charter and the Brighton Municipal Code that City Council is responsible for appointing attorneys as deemed necessary by the Council. City Attorney Brubaker recommends that it would be appropriate that a motion be made to appoint Brian McCoy as a Special Prosecutor in the Municipal Court to act in the stead of Adam Gollin if he is unable to perform his duties. A contract will be signed by the City Manager if this is approved. City Attorney Brubaker answered questions from Council regarding:

- This being a temporary contract.

Motion by Mayor Pro Tem Wallin, second by Councilmember Kreutzer to appoint Brian McCoy as a Special Prosecutor for the Municipal Court.

Voting aye: All present.

5. ADJOURNMENT

Motion by Councilmember Kreutzer, second by Councilmember Kniss to adjourn at 7:42 p.m.

Voting aye: All present.

CITY OF BRIGHTON, COLORADO

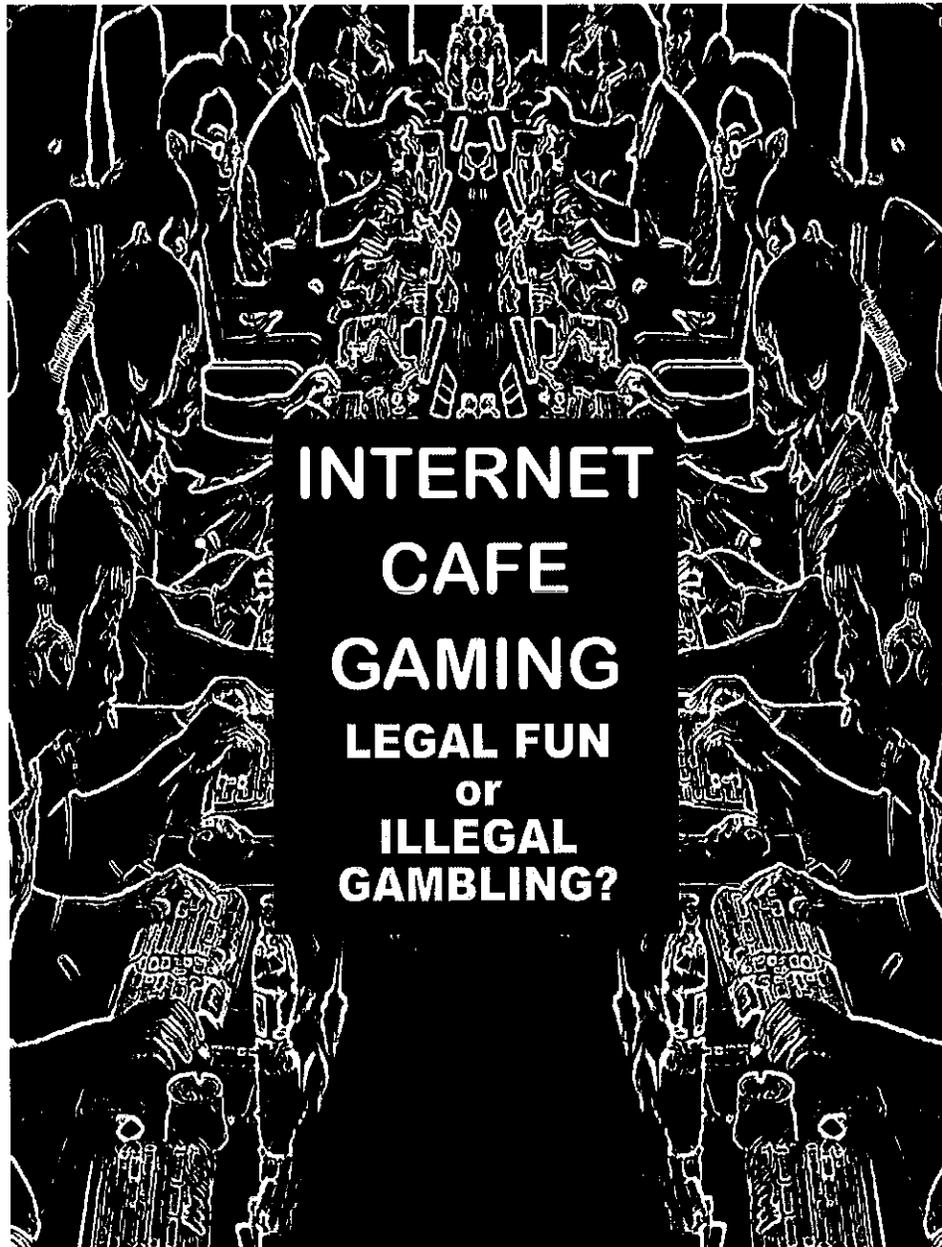
By: _____
Richard N. McLean, Mayor

ATTEST:

Natalie Hoel, City Clerk

Approval Date

**Regional Organized Crime Information Center
SPECIAL RESEARCH REPORT**



By ROCIC Publications Specialist Angela Adams

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DISSEMINATION RESTRICTED TO LAW ENFORCEMENT

Many customers go to Internet cafes looking for a place to catch up on email, read the latest news, or pay a bill. However, some Internet cafes have no visible computer towers, no keyboards, and no one is on the Internet at all. In these Internet cafes, customers are all playing mouse-controlled or touch screen computer games similar to slot machine games, and some customers are even getting money back before leaving the business. In fact, these Internet cafes may be illegal gambling fronts.

Although there are legitimate Internet cafes that sell Internet time and business services to customers, some Internet sweepstakes cafes such as the business described above are popping up all across the country, from California to Florida. Internet sweepstakes cafes claim to be selling Internet time or prepaid phone cards to walk-in consumers with an added chance to win prizes and/or cash by playing a “sweepstakes” game on the computer.

While all states have gambling legislation in place, it is unclear in some states whether Internet sweepstakes cafes are legal or illegal. “Activities like sweepstakes, promotions, and contests that appeal to the gambling instinct often have had a sordid legal history,” said Attorney Leanne Dodds of Lewis and Roca LLP in Arizona. “Most U.S. states have laws that generally prohibit gambling, but not all such activities are illegal. As long as the public has an unfulfilled demand for a gambling experience, entrepreneurs will continue to test the boundaries of legal sweepstakes and contests to meet these demands.”

Intelligence suggests that some Internet cafes are being used as fronts for illegal gambling and can create a higher potential for other crimes, such as embezzlement, fraud, identity theft, and robbery. Intelligence also suggests that, with a great amount of disposable income at hand, these Internet sweepstakes cafes may eventually (if not already) finance other crimes.

According to Forensic Examiner Deneen Hernandez, who examines gambling devices for the FBI Laboratory, “If these cafes remain in business, it may not be long until they are controlled by organized crime groups — the mob, motorcycle gangs, or terrorist organizations — who could use the money to fund drugs and weapons.”

Business Setup

Unlike bootlegging whiskey to back-room speakeasies, Internet sweepstakes cafe operators put their machines (computers equipped with a card reader and gaming software) up front and center in shopping centers and strip malls often situated in lower-income neighborhoods to target the poor.



Customers pay the machine operator for “Internet time” or “long-distance pre-paid phone cards,” and the money is loaded onto an encoded card (similar to a credit card). The customer then selects a computer terminal, swipes the card, and starts playing what appears to be a slot machine video game. Depending on the customer’s success in the game, he can win tokens or points on the card, which can later be exchanged at the end of game play for cash.

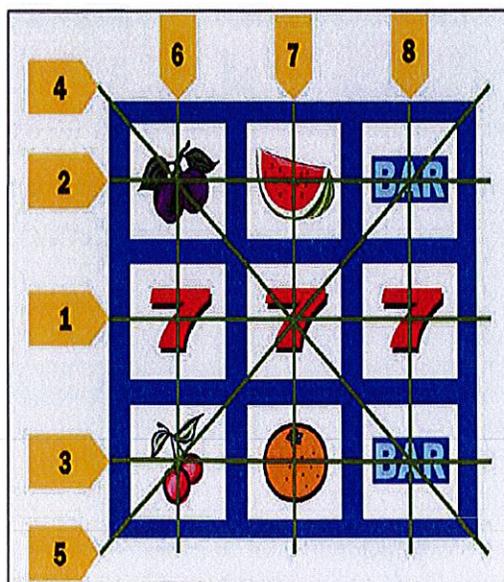
According to cafe owners and machine leasing companies (which lease and install the computers and gaming software), customers purchase the phone cards or Internet time and receive “free entries” in sweepstakes games. “This engaging sweepstakes business allows customers the thrill of potentially

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Internet Cafe Gaming: Legal Fun or Illegal Gambling?

"8-LINER" MACHINES

- Referred to as "Gray Area" Games
- Name derived from Cherry Master style games in 1980s
- Almost always have 8 win lines, but exceptions do exist
- Player is offered 8 win lines for betting purposes
- Machine layout strongly encourages player to wager on all 8 lines

- Most bonuses and pools are only available to the 8 line bettor



winning prizes,” according to machine leasing company Stuff About Games.

Unlike casinos, some Internet sweepstakes cafes tell patrons who win more than \$600 to take half the money now and half later. Any person winning more than \$600 is required to report the winnings to the IRS for tax purposes. Casinos give a W2G (an IRS form) to patrons to declare gambling winnings more than \$600. This is another way these sweepstakes cafes skirt law enforcement.

The National Council on Problem Gambling looked at the games featured at Internet sweepstakes cafes and deemed that they have the potential to be gambling games, which can be addictive. Patrons have lost hundreds, if not thousands, at these businesses.

Other concerns involve the potential for additional crimes. At some businesses, customers are asked to give personal information (e.g., a valid state driver’s license) before playing the games, which could potentially lead to identity theft. And because this business is cash intensive, there is an increased risk for embezzlement, robbery, and assault when patrons who lose want their money back. Some cafe owners have even

requested police protection and escorts to the bank.

The Industry

Many in the “industry” of Internet sweepstakes are luring investors to own storefronts due to the high volume these stores have brought in. On average, a cafe owner gets a 10 percent cut of the end-revenue, which can total \$20,000 to \$30,000 per week. The machine leasing company retains 25 to 35 percent of the net revenue after the customers’ winnings are paid.

All a cafe owner needs to get started is a \$15,000 to \$17,000 initial investment, which covers “software, equipment, installation, and administration costs,” according to Cash Out Gaming, LLC (<http://cashoutgaming.com>). In some locations, 15 machines are installed, with the possibility for more to be installed if the business performs well.

Once the business is operational, either an employee or the device itself records machine readings (which include credits going into and out of the machine) onto a pre-printed form provided by some leasing companies. The machine locations are also listed on the

Top Three Machine Leasing Companies

**Hest Technologies- North Carolina
World Touch Gaming- Georgia
Gametronics- Canada**

form. The completed form is placed inside an envelope along with the machine leasing company's cut of the money, and the money is either personally taken to the machine leasing company or deposited into their bank account.

Internet Gambling Cases

Six indicted in illegal gambling business operated throughout Texas

On Aug. 6, 2009, six individuals—Phillip D. Clark, Daniel P. Davis, Virginia Slaughter, Amirali Sumar, Mukahtiar Khuwaja, and Delores G. Ridens—were indicted and charged on four counts of operating an illegal gambling business, one count of conspiracy to operate an illegal gambling business, and three counts of money laundering in connection with their involvement in an illegal

gambling front. According to prosecutors, the investigation revealed a multi-million dollar gambling enterprise, which operated computerized gambling machines under the guise of Internet cafes and e-business centers. The businesses were located in Beaumont, Henderson, Port Arthur, and Nederland, Texas. The government is also seeking forfeiture of more than \$4.3 million in gambling proceeds. If proven guilty, this case could set a precedent for other states to follow in prosecuting those involved in running similar illegal gambling operations.

Four illegal gaming cafes targeted in Henry Co., Va.

One small restaurant and three Internet/photocopying businesses were the target of a 2009 case in Henry County, Va. All computer equipment was seized, and lab results regarding computer analysis is pending.

Cash seized, machines destroyed in Durham Co., N.C. gambling case

In 2008, an undercover operation on an Internet sweepstakes cafe in Durham Co., N.C. netted 15 defendants, 20 seized machines, and more than \$45,000 in cash.

CHARACTERISTICS OF GAMBLING DEVICES

Source: James Forshey and Daniel Olson, "Illicit Gambling." FBI- Racketeering Records Analysis Unit.

- The game's theme is similar to traditional gambling machines, such as slot, poker, and keno machines.
- The machine has a coin/paper/card acceptor that allows the player to initiate play of the game.
- The machine has the elements of consideration, chance, and reward (outlined in the Legislation section, see next page)
- If the machine does not dispense winnings, the machine has a feature that displays the accumulation of credits.
- If the machine does not dispense winnings, the machine has a device to eliminate winning credits. This is referred to as a "knock off" function.
- The machine accepts multiple wagers on a single game.
- The player cannot extend the duration of the game by virtue of skill.
- The player's skill has little or no effect on the outcome of the game.
- The machine has an electronic accounting system or similar device that tracks statistical information on the machine, such as the number of wagers placed and the payout made.

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Investigator Ray Richardson of the Durham County Alcoholic Beverage Control said that undercover agents entered Internet gaming stores, played the games, and later returned to make arrests. The defendants took a plea bargain, and the machines were destroyed.



A customer plays a sweepstakes game (below) at the EZ Access Internet sweepstakes cafe in Rocky Mount, N.C. (left).
(Source: The Rocky Mount Telegram)



Legislation

The U.S. has strict laws prohibiting private lotteries. Lotteries are promotions that have three elements:

- prizes
- winners chosen by chance
- consideration

Sweepstakes, such as the ones run at some Internet cafes, have prizes and arguably have winners chosen by chance. The biggest argument at Internet sweepstakes cafes involves consideration, which means that consumers have to pay or purchase a product to enter or improve odds in a sweepstakes.

In other words, legitimate sweepstakes award prizes solely by chance, and no fees or purchases increase the customer's odds of winning. Fraudulent sweepstakes, however, most always award prizes to "winners" after they've dipped into their pockets to enter a contest or collect their prize, which seems to be the case in many Internet gaming cafes.

To skirt law enforcement, the machine leasing companies say these games are part of a "sweepstakes," in which customers "reveal" what they have won by playing computer games, such as Blazing 7s or Keno, and asking the cashier to tell them their prize. The machine

A sign with a green background and a white border. At the top, it says "Get Connected" in a stylized font. Below that, it says "Welcome Get Connected Customers!" followed by "Please Pay Special Attention to the following:". The main text reads "You Are Not Gambling!". It then explains that the business sells prepaid long distance phone service and high speed internet access, and promotes these products with a promotional sweepstakes. It asks customers to read the official sweepstakes rules and states that they cannot purchase entries. It lists two ways to reveal prizes: a) at the Point of Sale, and b) by using the ten entertaining displays on one of their Participant Access Terminals. It notes that prizes are predetermined at the time of purchase or when an entry is issued without a purchase. It also states that the method chosen to reveal a prize does not affect the chance of winning. Finally, it says that the fun entertaining displays on the Participant Access Terminals do not affect the chance of winning a prize. The sign ends with "Have Fun!".

Internet cafe operators will typically post a sign, such as the one above, so that patrons don't think they are gambling.

Protecting Consumers from Phony Sweepstakes

Source: The Federal Trade Commission

Everyone loves to be a winner. A recent research poll showed that more than half of all American adults entered sweepstakes within the past year. However, consumers throughout the U.S. lose thousands of dollars every day in sweepstakes. Knowing the difference between legitimate and fraudulent activities is key.

- Legitimate sweepstakes don't require customers to pay for or buy something to enter or improve a customer's chances of winning. If customers have to pay to receive a prize, then it's not a prize at all.
- Sponsors of legitimate contests identify themselves prominently. For example, going to an Internet cafe where the business promotes AT&T or Comcast Internet. Fraudulent promoters are more likely to downplay their identities.
- Legitimate offers disclose the terms and conditions of the promotion clearly, including rules, entry procedures, and usually, the odds of winning.
- Fraudulent companies sometimes use a variation of an official or nationally recognized name to give customers confidence in their offers. It's illegal for a promoter to misrepresent an affiliation with or endorsement by a government agency or other well-known organization.
- Signing up for a sweepstakes at a public location, event, or online may subject customers to deceitful prize-promotion tactics. Customers may also run the risk of having personal information sold or shared with other marketers who later flood customers with offers and advertising.
- The Better Business Bureau and your local consumer protection office can help customers check out a sweepstakes promoter's reputation. Be aware that many questionable sweepstakes companies don't stay in one place long enough to establish a track record, and the absence of complaints doesn't necessarily mean the offer is legitimate.

leasing companies argue that "the computer games don't decide what a customer wins, which is different from outlawed video slot machines," and that they are simply revealing the sweepstakes wins and losses in an entertaining manner.

David Adinolfi, an assistant attorney general in North Carolina, believes differently. "Holding the sweepstakes out as free of charge (and appending a phone card to the scheme) is a transparent effort to dodge the strictures of the General Statutes ban on slot machines and video gaming machines," said Adinolfi (as quoted in the Greensboro (N.C.) *News and Record* newspaper). He also argued that the computers are being used as slot machines to dispense a prize in a game of chance, which makes it illegal.

One problem lies in the fact that the law is interpreted differently in each state and even local jurisdictions as to whether Internet sweepstakes cafes are legal or illegal. Internet sweepstakes cafes are so new that some states haven't considered statutes that are specific to them. Until they do, some prosecutors are apprehensive to prosecute using existing gambling statutes.

For example, there are currently no clear-cut laws in Virginia prohibiting or allowing Internet sweepstakes cafes, creating confusion about the legality of these businesses. Legislation attempting to further define illegal gambling to include these Internet sweepstakes cafes is in limbo as of March 2010.

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Inv. Richardson explained that prospective legislation in North Carolina may legalize these cafes so that the state will get a percentage of stores' revenue through taxation.

For information on Internet sweepstakes cafe legislation in your jurisdiction, contact your state's attorney, state attorney general's office, or your U.S. Attorney's Office.

Prosecutorial Aspects

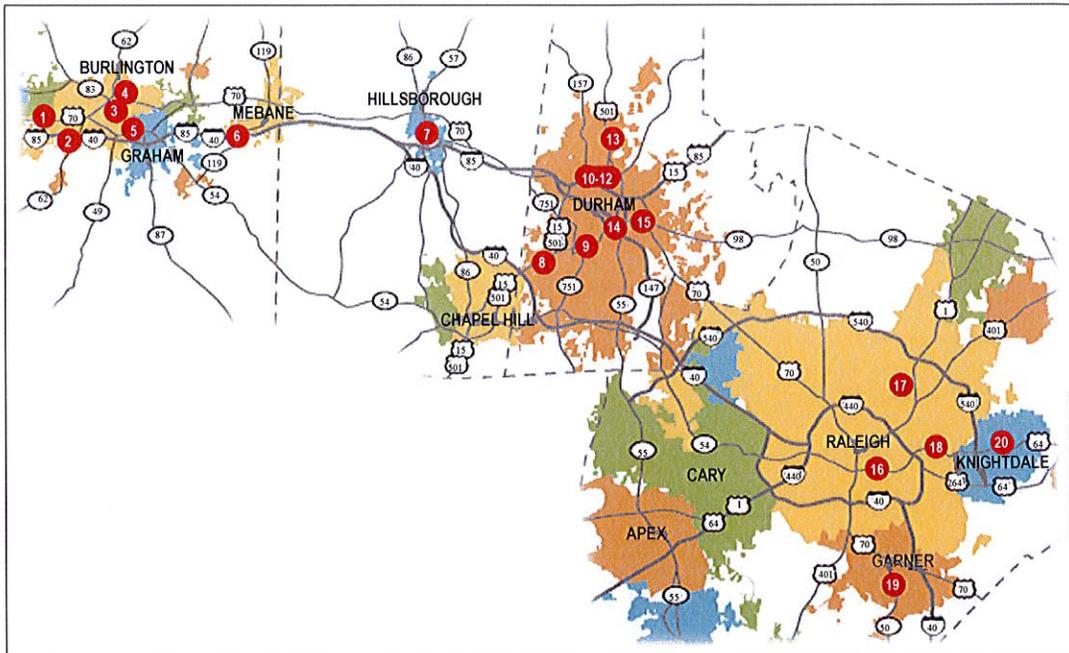
Machine leasing companies claim that Internet sweepstakes cafes are legitimate, and they provide policies and documents allegedly to that effect. For example, some leasing companies provide training booklets to employees, have drug-tolerance policies in place, and make employees clock in and out. Some companies also force employees to sign that they have read the employee manual/handbook. If these signed documents are seized, it can help the prosecution identify more defendants, helping to build a stronger case against the machine leasing company.

Keep in mind that the cafes are individually owned and operated and, therefore, are not connected with each other. However, they may be controlled by the same machine leasing company.

If and when the machines are seized in an investigation, the cafe owners are still required to pay for the leased machines. Most cafe owners sign a contract with the machine leasing company, agreeing to pay for the machines for a predetermined period of time regardless of where the machines are located—in the storefront or in police custody.

It is not uncommon for the machine leasing companies to produce prominent local attorneys and expert witnesses to represent their interests in local Internet cafe gaming prosecutions. In North Carolina, they successfully litigated to win injunctions from further law enforcement intervention.

According to the Virginia Fusion Center, there are several barriers to successfully prosecuting



Sweepstakes cafes in North Carolina have flourished, especially in the low-income areas pinpointed above.

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and shutting down illegal Internet gambling operations. For example, obtaining gambling information from a gambling machine seizure poses a challenge. Many machines have proven to be more technologically advanced than regular personal computers, which has made analysis of the machines difficult.

Another challenge is that the computer servers often reside at facilities in other states, meaning that they cannot be subpoenaed. Games are played entirely on the server, which retains the date and time the game was played, the serial number from the user's card, the amount wagered, and the amount won.

"The general use of more advanced technology by criminals is forecasted to increase," according to the Virginia Fusion Center. "Not only is basic technology itself advancing rapidly, but individuals and groups with ill intentions are also displaying innovation in applying programs, devices, and capabilities to meet their needs. Internet gambling appears to be one of these current trends. Law enforcement should be aware of the potential for seemingly innocuous business serving as fronts for illegal activity." Additionally, should law enforcement efforts falter, the overall criminal threat poised by these Internet cafes could rapidly expand, and much larger problems could arise.

The FBI Cryptanalysis and Racketeering Records Unit examines manually encrypted documents and records of illegal enterprises and provides expert testimony and other forensic assistance to further identify terrorism, foreign intelligence, and criminal activities in support of federal, state, local, and international law enforcement investigations and prosecutions. For their assistance in your Internet sweepstakes cafe prosecutions and/or investigations, contact the Unit at (703) 632-7334.

Investigative Aspects

Once legal aspects of these Internet

Items to Seize in Internet Sweepstakes Cafe Raid

One point-of-sale (POS) computer

One game terminal with associated tower(s)

Any magnetic-stripped or chip-encoded player cards

One money-loading machine (recharge kiosk)

Business documents to show payouts, contracts between owner and operator, user manuals, and/or money-collection reports

sweepstakes cafes in your state are determined, doing undercover work is the first step to investigating a potential illegal gambling business. This includes going to the business as many times as you can, playing the games, and either getting paid out more than what you put in or losing all of your money. You need to prove that you lost everything or that you got more than your initial investment.

Additionally, the undercover should be equipped with audio and video surveillance equipment to document everything. This includes talking with employees and patrons, showing the computer terminals and gaming devices, and documenting the wins and losses on the games. Moreover, in video surveillance or in court proceedings, do not state that the business is illegal, but explain how it operates makes it illegal. If you would like to borrow audio or video equipment, ROCIC can assist. Contact the ROCIC Technical Services Unit at (800) 238-7986 for more information.

An agency(s) can also set up an interdiction team(s) to follow the money trail. If money from an illegal activity is physically being

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taken across state lines by a courier, which is often the case when leasing companies are located in other states, interstate and foreign travel or transportation in aid of racketeering enterprises is occurring (18 USC 1952). If the money is being deposited through checks, trace the checks to see where they're going. You will often find the machine leasing company on the other end.

A Virginia Fusion Center report recommends the following when investigating Internet cafes potentially involved in illegal gambling:

- During a search warrant, attempt to seize both the gambling machine(s) and cash out machine(s)
- Indict owner, employees, and the corporate entity
- Contact the Internal Revenue Service to determine their willingness to be involved in the investigation.

If these investigative tactics don't work, you can enforce regulatory offenses, such as health or zoning codes, if nothing else. It may not be the straw that breaks their backs, but it will send the message that you have your eye on them.

Holden Beach, N.C. Mayor Alan Holden,

for example, said the town plans to "tighten ordinances, like limiting the number of electronic machines and whether a sweepstakes cafe can be built near a school or church, in hopes owners will choose to do business elsewhere."

Since Internet sweepstakes cafes are quickly popping up in many areas, law enforcement may become overwhelmed and/or uncomfortable with these cases. However, ROCIC is here to help. ROCIC's Analytical Unit can assist in the financial analysis of these cases through link analysis. The ROCIC Criminal Intelligence Unit can also assist in running intel on businesses, owners, operators, and articles of incorporation. In this manner, you might learn that your target is involved in activity in other jurisdictions, thus making a big case into an even bigger case. You can also post case information on RISSLeads, a nationwide electronic bulletin board that will allow you to communicate with other law enforcement agencies to "connect the dots."

For additional information on these and other ROCIC resources, please visit the ROCIC secure Intranet site, click on "Publications," and locate the ROCIC Services Resource Guide, or contact your Law Enforcement Coordinator.

24/7 Access to ROCIC Publications on Secure Intranet Web Site

RISSNET authorization allows you access to the secure ROCIC Intranet Web site, where you can view, download, and search more than 80 Special Research Reports (including the ROCIC Gang Report 2009 and the ROCIC Services Resource Guide), more than two dozen ROCIC Training and Information Sharing Conference Reports, and all monthly ROCIC Bulletins and articles for the past five years (more than 3,000 articles).

The site contains access to many other features, such as the RISSIntel intelligence databases, the RISSGang database, the RISSLeads electronic bulletin board, RISS ATIX (Automated Trusted Information Exchange), secure e-mail, law enforcement training announcements, and many more automated features.

Contact your ROCIC Law Enforcement Coordinator for more information on how to get connected with RISSNET.

Sources of Information

- Cabot, Tony and Leanne Dodds. "The Internet and Entrepreneurs: A Special Niche is Developing." Lewis and Roca, LLP; Arizona. <<http://www.lawcrossing.com/article/3264/The-Internet-and-Entrepreneurs-A-Special-Niche-is-Developing/>>
- Cash Out Gaming, LLC. "Internet Sweepstakes Cafe Setup." 2010. <http://cashoutgaming.com/how_to_setup_a_cafe.html>
- Federal Trade Commission, "Facts for Consumers." Jan. 15, 2010. <www.ftc.gov/bcp/edu/pubs/consumer/telemarketing/te117.shtm>
- Forshey, James and Daniel Olson. "Illicit Gambling." Federal Bureau of Investigation-Racketeering Records Analysis Unit. 2000.
- Hernandez, Deneen. Forensic Examiner, FBI Laboratory in Virginia. Personal interview.
- Hixenbaugh, Mike. "Sweepstakes on the rise in Rocky Mount." *The Rocky Mount Telegram*, Feb. 7, 2010. <<http://www.rockymounttelegram.com/news/sweepstakes-cafes-rise-16095>>
- "Internet Cafe Sweepstakes." <<http://stuffaboutgames.com/internet-cafe-sweepstakes.html>>
- Reistad, Brett. ROCIC Virginia Law Enforcement Coordinator. Personal interview.
- Richardson, Ray. Investigator, Durham County, N.C Alcoholic Beverage Control. Personal interview.
- Rutherford, Larry. "Internet Cafe Gambling Becoming Popular in Florida." <www.casinogamblingweb.com>
- Sandford, Jason. "A new breed of video poker machines in North Carolina; will they be challenged in Buncombe?" Mar. 23, 2008. <<http://ashvegas.squarespace.com>>
- Schwartz, Joe and Lisa Sorg. "Sweepstakes Cafes: Coming to your low-income neighborhood." Artwork, Feb. 2010. <<http://www.indyweek.com/gyrobase/Content?oid=oid%3A411565>>
- Virginia Fusion Center. "VFC Analyst Specialty Report: Internet Cafes as Fronts for Illegal Gambling in Virginia." 2010.
- Walston, Davilyn. "Six indicted in east Texas illegal gambling enterprise." Department of Justice press release. Aug. 6, 2009.
- WWAY News Channel 3. "Holden Beach hopes to avoid the growing number of internet cafes." Nov. 3, 2009. Wilmington, N.C. <http://www.wwaytv3.com/holden_beach_hopes_avoid_growing_number_internet_cafes/11/2009>

Special Research Reports by ROCIC Publications

Accessible to RISS member agencies on the ROCIC secure Intranet Web site. Complete listing of ROCIC Bulletins, Special Research Reports, User's Guides, and Training Conference Reports at <http://rocic.riss.net/publications.htm>

- Taken! Investigating Drug-Related and Financial Kidnappings
- Police Interviews: The Truth About Lies
- Hispanic Counterfeit Check Fraud
- NMVTIS: New Resource for Recovering Stolen Vehicles
- Media Relations: Maximizing Law Enforcement's Positive Image
- Moorish Nation: Sovereign Citizen Movement
- ROCIC Services Resource Guide: What Can ROCIC Do For You?
- Prescription Drug Abuse: Unsafe, Illegal, and Escalating
- Moonshine: On the Rise?
- ROCIC Gang Report 2009
- Suicide Bombers: Law Enforcement Preparing for the Worst Scenario
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- Specialized training and membership & information exchange
- Use of investigative funds
- On-site personal assistance by law enforcement coordinators



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Lakewood Police

White Paper on Cyber Cafes Submitted by Sergeant Donia Amick at the request of Chief Kevin Paletta

Overview/Background

Cyber Cafes (Internet Sweepstakes Cafes or Sweepstakes Cafes) can be found in many states throughout the United States. Connecticut, Florida, New York, Ohio and North Carolina either currently allow these cafes or are in the process of trying to remove them due to new bans. In Colorado, these cafes can be found in Pueblo, Colorado Springs, Fort Collins, Aurora and Denver. One of the numerous businesses marketing these cafes, Cyber GT, has contacted the City of Lakewood and has requested local ordinances to regulate these cafes. CyberGT claims they want regulations to ensure legitimate businesses open Cyber Cafes in Lakewood and throughout the metropolitan area.

The cafes have a number of computerized machines that resemble slot machines in design. The cafes are typically located in a strip mall and open with little or no fanfare, while in most cases provide limited free food and beverages during the use of the sweepstakes machines. These cafes advertise and sell products, usually Internet time or long distance telephone minutes.ⁱ The customer will typically receive a certain number of free entries into the sweepstakes to play on the machine. For example, each day the customer goes into the café he/she receives 100 free entries to use on the machine. The customer can also buy internet or phone time to receive additional entries. Usually one minute of time will give the customer 100 additional entries and the "opportunity" to win sweepstakes prizes. The games on the machine vary from games of skill and games of chance. The customer pushes a button to see if he/she has won the sweepstakes prize. The client can purchase additional entries from the kiosk on site. The client can cash out his/her winnings at the end of the session and may redeem winnings for cash or prizes at a kiosk in the center.

There are concerns that these cafes may be targeting poor and elderly people as they are social places to gather and interact with others. The American Gaming Association describes how they work - "The cafes prominently advertise "internet sweepstakes" to lure customers into their stores. "Entries" into the sweepstakes are obtained by purchasing internet access time or long-distance telephone time, but the purchase of these "products" is just a ruse to connect customers with the casino-like games that are offered on rows of computers installed for that purpose."ⁱⁱ

The American Gaming Association white paper cites the following concerns with Internet sweepstakes cafes:

- Their owners and principal managers are not licensed by any public agency, so they are not subject to criminal background checks or investigation as to their business integrity.
- Their games and programs are not subject to any meaningful public oversight to ensure that they are fair to customers. If a customer believes she has been cheated, there is generally no public agency to which she can complain.
- They are not regulated by local zoning ordinances, so in many communities they may locate in any retail or commercial district.
- They need not report their results to any public entities. They have no obligation to exclude underage customers from gambling.
- When customers have difficulty controlling their gambling, the cafes have no obligation to provide information about treatment options.
- They do not pay gaming tax at the level that a commercial casino or other publicly licensed business would have to pay.ⁱⁱⁱ

State Actions

Ohio, Florida and Mississippi passed laws in 2013 banning Internet sweepstakes cafes and similar bans are pending this year in Connecticut and California.^{iv} A Tampa Bay Times article states, "...Gov. Rick Scott signed a bill that banned Internet sweepstakes in **Florida** (on 04/10/13)."^v The same article goes on to say that local law enforcement will be enforcing the laws and gave the following examples; "A spokesperson for the Hillsborough County Sheriff's Office said deputies will give warnings before arresting anyone. The Clearwater Police Department will inspect any open cafes and tell owners what is legal before making any arrests."^{vi}

The Targeted News Service writes, "**Ohio** Attorney General...announced that his office would begin enforcement efforts for Ohio's new internet sweepstakes café regulation...House Bill 7 gives the Attorney General's Office regulatory authority over sweepstakes terminal devices used by internet sweepstakes cafes...cafes are required to obtain a certificate of registration from the Attorney General's office and file monthly reports...The...Attorney General's Bureau of Criminal Investigation(BCI) also now will have explicit authority to investigate gambling law violation alleged to occur at internet sweepstakes cafes."^{vii}

According to a USA Today article, "... **Mississippi** has worked with localities to seize and destroy 176 electronic video monitors along with 10 computer servers that run the games that authorities say are illegal under its 2013 law banning Internet sweepstakes cafes. "Getting rid of the machines is more effective than prosecution," State Attorney General Jim Hood said. **California** counties have been shutting down sweepstakes cafes ever since the California Bureau of Gaming Control declared them illegal in late 2012. Some argue a state law is still needed to close loopholes..^{viii} According the American Gaming Association "In June (2009), police in San Diego and Stockton, Calif. raided several Internet cafes , making two arrests and seizing over 200 computers that allegedly were being used for online gambling. Although the cafes claimed that they were offering legal sweepstakes games, California Attorney General

Jerry Brown called them a spreading form of “unregulated and illegal gambling parlors, operating Las Vegas-style games.”...^x

Michigan’s Attorney General, Bill Schuette, announced the Attorney General’s Alcohol and Gambling Enforcement Division has reached an agreement with Innovation Entertainment of Michigan that will halt operations at eight Internet sweepstakes cafes indefinitely... “Internet sweepstakes cafes that permit illegal gaming are nothing more than unregulated pop-up casinos and consumers should steer clear,” said Schuette.”^x

The Chicago Tribune wrote, “**Illinois** lawmakers promised years ago to finally get rid of video poker machines. In turn they legalized video gambling machines...this year lawmakers quietly approved a one-sentence change to the law—a move that may help usher in a new wave of slot like machines called ‘coupon kiosks’.”^{xi}

Court Rulings^{xii}:

Cyber Cafes viewed as lottery

State v. Vento 286 P.3d 627 **New Mexico** Court of Appeals (2012). The decision stated that a sweepstakes promotion, which was used to attract customers to defendant’s business was structured in the form of a “lottery;” the commercial gambling conviction that was potentially premised upon illegal betting was improper, as a matter of law, since defendant’s sweepstakes promotion was classified as a lottery; evidence was sufficient to support the necessary element of consideration, as required to establish that sweepstakes promotion was a lottery; and the State did not present sufficient evidence to establish that computer terminals used in defendant’s internet café met the definition of a “gambling device.”

US v. Davis 690 F.3d 330 **5th Circuit** Court of Appeals (2012). The decision stated that there is legally sufficient evidence from which a reasonable fact-finder could infer that the sale of internet time at the defendant’s cafes was an attempt to legitimize an illegal lottery. The main purpose and functions of Davis and Clark’s internet cafes was to induce people to play the sweepstakes, and that the internet time sold by the cafes—albeit at fair market value—was not the primary subject of the ***340** transaction, but instead a mere subterfuge. We therefore determine a reasonable trier of fact could conclude that consideration was established beyond a reasonable doubt, and affirm Davis’ and Clark’s convictions for illegal gambling and conspiring to commit illegal gambling.

F.A.C.E. Trading, Inc. v Department of Consumer and Industry Services 270 Mich.App.653 **Michigan** Court of Appeals (2006). The decision states that the actions taken by the company amounted to a promotion of a lottery; the company’s promotion of sales of tabs was not a permissible game promotion; and the company’s sale of tabs was not permitted “promotional activity” under statute providing exception to prohibition of promotion or operation of lottery.

Cyber Cafes viewed as illegal slot machines

Moore v. Mississippi Gaming Commission 64.S0.3d 537 Mississippi Court of Appeals (2011) The decision said that computer terminals seized from internet cafes were illegal "slot machines" under the Gaming Control Act.

Barber v. Jefferson County Racing Association 960 So.2d 599 **Alabama** State Court (2006). The decision stated that electronic readers together with computerized gaming network, constituted "slot machines"; and statutory definition of gambling was no unconstitutionally vague as applied.

Mississippi Gaming Commission v. Six Electronic Video Gambling Devices 793So.2d 321 **Mississippi** Court of Appeals (2001). The decision stated that a machine that was operated by the insertion of coins, that dispenses a telephone long distance calling card with each operation, and that also dispensed a game card that potentially awarded a prize in varying values was a "slot machine" within the meaning of the criminal statute prohibiting of such machines in areas not authorized for casinos; even assuming Gaming Control Act definition of slot machine was applicable, the machine was still a slot machine; and the owner was not entitled to return phone cards, which were integral to determination that machine was a slot machine.

People ex rel. Lockyer 82 Cal.App.4th 699 **California** Court of Appeals (2000). The decision held that machines, which gave users an opportunity to obtain prize money purely by chance as a result of inserting money to purchase a calling card, was an illegal slot machine.

Cyber Cafes viewed as illegal gambling devices/exploits definition of gambling

Hest Technologies, Inc. v State ex rel Perdue 366 N.C. 289 **North Carolina** State Court (2012). The decision stated that the statute had a rational basis of addressing a specific type of sweepstakes operation that exploited a loophole in the state's gambling laws but presented the same social evils as gambling, and, therefore, the statute was constitutional.

Allied Veterans of the World v. Seminole City, Florida 783 F.Supp.2d 1197 US District Court M.D. Florida (2011). The decision states that an ordinance banning simulated gambling devices did not violate First Amendment over breadth doctrine; did not violate the Equal Protection Clause; and did not violated the Due process Clause.

Sun-Light Prepaid Phonecard Co., Inc. v. State 600S.E.2d 61 **South Carolina** State Court (2004). The decision states that the phone cards and electronic phone card dispensers violated statute governing illegal gambling devices.

Pre-paid Solutions v. City of Little Rock 34 S.W 3d 360 **Arkansas** State Court (2001). The decision states that the court held that the lessor and lessee of telephone –card vending machines were actually illegal gambling devices.

Jester v. State 64 S.W.3d 533 **Texas** Court of Appeals (2001). The decision states that evidence was both legally and factually sufficient to infer that the main purpose of defendant's machines,

and his business, was to induce people to play games on his eight-liner machines, agreeing to gain or lose something of value at least partially by chance, rather than to promote telephone cards.

Colorado Position

State of Colorado Attorney General's Office—no official position at this time.

State of Colorado Bureau of Investigations—Has stated that this is a “gray area” and they are taking guidance from the Attorney General's office.

State of Colorado Division of Gaming—no official position at this time. They will take guidance from the Attorney General's office after the Attorney General's office has issued a position statement on the devices that may or may not determine if these machines are gambling devices.

State of Colorado Liquor Enforcement Division—will only give a position as to whether the devices are allowed in licensed liquor establishments. The Chief of Investigations has asked CyberGT, the group represented by Dan Corsentino, to request an official **Position Statement** from the liquor division. This request would require the liquor division to produce a position in 30 days as to whether the machines can lawfully reside in a licensed liquor facility. If the company does not agree with the position they can appeal to the state licensing authority in district court. At this time CyberGT has **not** requested a position statement. These machines are currently not allowed in licensed liquor establishments. The Liquor Enforcement Division Chief of Investigations said he does have a Declaratory Order on a similar machine called “Prize Farm” and that he would attempt to locate the position statement for that device.

Distributors/Manufactures/Investors/Vendors

The industry has maintained that the business model and the systems used do not meet the legal definition of gambling in the US. The federal definition characterizes gambling as meeting three criteria: consideration, prize, and chance. Sweepstakes cafe operators have contended that the prizes are predetermined, and therefore the system does not meet the criterion of chance. They have also held that chances are given even without purchase, and therefore the criterion of consideration is not met.^{xiii} The developers of the products claim the chance aspect of the game has been taken out and the winning/losing status of the game is predetermined therefore it is not gambling. They claim they can set up the machines to eliminate any chance thus making the machines no different from that of a sweepstakes game at McDonalds and that there are a set amount of prizes and no Random Number Generator (RNG) as typically seen in slot machines. Mr. Corsentino who is representing the groups as a private consultant has stated that a member of the legislature from Pueblo is going to introduce a bill next legislative session dealing with the regulation of these devises. The legislator wants to wait until next year given this year's session will soon come to a close. One of the vendors, Scott Brown from Scott Brown Enterprises said that if the state determines they do not want these machines in the Colorado to call him and he will come pick them up. He does not want his machines seized and is willing to work with the decision from the State of Colorado. This group has modified the

machines according to legal decisions throughout the United States and is working to apply the current legal decision to the machines.

Recommendation

After reviewing the previous information, it is my recommendation the City of Lakewood places a one-year moratorium on business licenses for any type of Internet Sweepstakes Café. First and foremost, this time frame will give the City of Lakewood time to analyze the legal opinions throughout the states and various municipalities. The 5th Circuit Court ruling has given a decision that is *persuasive*, but until the 10th Circuit Court gives a decision that is *binding* in Colorado there is room for additional interpretation. Secondly, A one-year moratorium will also give the state legislators time to introduce legislation and regulate these types of businesses if they chose to do so in next year's legislative session. And lastly, it will give the State of Colorado Attorney General's office and the applicable divisions time to study and provide Position Statements if requested.

An additional avenue is to contact the US Attorney's Office and ask for an official position on these cafes under code 18 USC section 1955 (a)(2) and 1953. Given the timeline of this assignment I was unable to follow up with Assistant United States Attorney Tim Neff.

If the cafes are considered legal by the State of Colorado I recommend staff from the City of Lakewood complete extensive backgrounds on the owners of the cafes and ensure they are monitored for any illicit activity with a fee structure that covers the costs of the application and background investigation.

ⁱ American Gaming Association White Paper Internet Sweepstakes Cafes: Unregulated Storefront Gambling in the Neighborhood David O. Stewart, Ropes & Gray, LLP p. 1

ⁱⁱ American Gaming Association (<http://www.americangaming.org>) Shut Them Down Global Gaming Business 3/28/14 Geoff Freeman

ⁱⁱⁱ American Gaming Association White Paper Internet Sweepstakes Cafes: Unregulated Storefront Gambling in the Neighborhood David O. Stewart, Ropes & Gray, LLP p. 1

^{iv} STATELING, The Daily News Service of the Pew Charitable Trusts, States Scramble to Stop Illegal Gambling at Internet Sweepstakes Cafes, 03/24/14, Pamela M. Prah

^v Tampa Bay Times Gov. Rick Scott signs Internet café ban into law. Mary Ellen, Danielle Paquette and Jimmy Geurts 4/10/13

^{vi} *ibid*

^{vii} Targeted News Service Attorney General DeWine Announces Enforcement Efforts Following New Internet Sweepstakes Law Dan Tierney 10/03/13

^{viii} USA TODAY, States battle illegal gambling at Internet Cafes, 03/24/14 Pamela M. Prah

^{ix} American Gaming Association Internet Gambling Cafes in California and Florida 6/1/09

^x Targeted News Service Schuette Announces Closure of Eight "Internet Sweepstakes Cafes" After Investigation Revealed Illegal Gambling Operations Joy Yearout 5/3/12

^{xi} Chicago Tribune Gaming Board calls influx of sweepstakes video games illegal Change in state law helping bolster cases for 'coupon kiosks' Joseph Ryan 12/30/13

^{xii} All cases researched and summarized by legal clerk for Attorney Janet Young, City of Lakewood, Colorado

^{xiii} Thompson, William N. (2001). *Gambling in America: an Encyclopedia of History, Issues, and Society*. Santa Barbara, Calif. [u.a.]: ABC-CLIO. pp. 416; 421.

9/16/14

INTERNET SWEEPSTAKES OUTLETS

Business model

A sweepstakes parlor sells a service or product, usually internet access or telephone cards. When a purchase is made, a number of chances to win prizes are given to the consumer. Proponents compare this practice to similar promotional giveaways by other businesses, such as McDonald's Monopoly game, which are legal in most areas.^[2] In one example of a sweepstakes parlor that sells phone cards, the operator gives away 100 chances for every dollar spent on a phone card.^[3] Chances may also be given without a purchase just for coming into the establishment.^[1]

Sweepstakes parlors are most often located in or adjacent to strip malls.^{[4][a]} Computer terminals are set up inside the parlors, where patrons can see if they have won a prize by playing a casino-style game, similar to a video slot machine. The decor of the cafes may also include casino-style elements and motifs.^[1] Complimentary snacks and non-alcoholic beverages are often provided to customers.

The software necessary to operate a sweepstakes parlor may be obtained from one of a number of companies; in return for providing the software, a percentage of the profits is typically paid. There are also installation companies that provide assistance in setting up cafes.^[1]

Legal challenges

Sweepstakes parlors have attracted scrutiny from law enforcement, and local and state legislators. In at least 20 states, the legality of the cafes has faced challenges in the form of criminal complaints, lawsuits, and bans.^[2]

The industry has maintained, at times successfully, that the business model and the systems used do not meet the legal definition of gambling in the US. The federal definition characterizes gambling as meeting three criteria: consideration, prize, and chance.^[6] Sweepstakes parlor operators have contended that the prizes are predetermined, and therefore the system does not meet the criterion of chance. They have also held that chances are given even without purchase, and therefore the criterion of consideration is not met.

Cases pertaining to the parlors have reached the state supreme courts of both Alabama and North Carolina. In Alabama, one operator's sweepstakes model was found to be in violation of state gambling laws.^{[7][b]} In North Carolina, the industry argued that a statute prohibiting sweepstakes from using an "entertaining display" violated their First Amendment rights, but the North Carolina Supreme Court disagreed.^[8] The sweepstakes industry is often prepared to respond to such obstacles. In Alabama, sweepstakes were restyled as bingo games.^[1] In North Carolina, "pre-reveal" software has been introduced that may allow parlors to comply with the statute by revealing the player's prize in plain text before the game is played.^[9]

The industry has formed lobbies to protect and promote their legal interests.^{[1][10]}

In 2013, sweepstakes parlors were banned in Florida, Ohio and several California municipalities.^[11]

Other opposition

Advocates for legal gaming also object to the parlors on the grounds that they are unregulated. They argue, among other things, that the sweepstakes parlors encroach on the business of state-run lotteries and licensed gambling, thus reducing the alleged benefits to public programs that get a portion of funds from legal gambling.^[12] In addition, in states where a compact exists under the Indian Gaming Regulatory Act, if sweepstakes parlors are not made illegal they may continue to conflict with the compact.

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MICHIGAN GAMING CONTROL BOARD

Internet Sweepstakes Cafes, Internet Cafes, and Cyber Cafes continue to generate considerable concern for governmental agencies and citizens with in the State of Michigan. Close consultation with the prosecutorial authority should always occur before and during investigations of these businesses.

For purposes of this guide, an Internet Sweepstakes Café, Internet Café, or Cyber Café is a business that offers customers internet access on computer terminals for a fee and provides games of chance for customers to play for a chance to win a prize. These establishments may be run under the false premise they are conducting legal promotional sweepstakes. But, there is no such exception for this type of gaming under Michigan law.

Unless authorized by statute, the Michigan Penal Code broadly prohibits any kind of gambling containing the elements of consideration, prize and chance.

There is, however, a very limited exception for certain promotional activity. Under MCL 750.372(2) a person may conduct a lottery or gift enterprise "as a promotional activity that is clearly occasional and ancillary to the primary business of that person." To fit within the exception, the activity must be calculated to promote the business, must not involve payment of money solely for the chance to win a prize, and must not involve purchase of a product or service for substantially more than fair market value.

The promotional lottery exception was addressed in a Court of Appeals decision involving illegal pull-tab games. *Face Trading Inc. v. Department of Consumer and Industry Services & Liquor Control Commission* 270 Mich App 653 (2006). The Court stated that for an activity to qualify for this exception, the activity must promote only one business or the products of that business, as opposed to promoting several businesses or products. The Court held that an activity is not clearly occasional and ancillary to the primary business of the person conducting the activity if the activity is conducted consistently and is a part of the primary business.

The term lottery is construed very broadly by Michigan courts with a view to declaring any such gaming illegal even when one of the three elements (i.e. consideration, prize and chance) may be missing. Attorney General v PowerPick Players Club of Michigan, LLC 287 Mich App 13 (2010). If the lottery or gaming is part of the business and cash or other payoffs to winners are regularly occurring, the activity is most likely illegal.

Second Regular Session
Sixty-ninth General Assembly
STATE OF COLORADO

REENGROSSED

*This Version Includes All Amendments
Adopted in the House of Introduction*

LLS NO. 14-1082.01 Duane Gall x4335

HOUSE BILL 14-1392

HOUSE SPONSORSHIP

Lawrence and Becker,

SENATE SPONSORSHIP

Grantham and Nicholson,

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.

HOUSE
3rd Reading Unamended
May 1, 2014

HOUSE
Amended 2nd Reading
April 30, 2014

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 (b) 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.