



## Gaming and Internet Sweepstakes

By Jeanette Chapman

Gambling is defined in Colorado law as “risking any money, credit, deposit, or other thing of value for gain contingent in whole or in part upon lot, chance, the operation of a gambling device, or the happening outcome of an event, including a sporting event, over which the person taking a risk has no control.”<sup>1</sup> According to the Division of Gaming within the Colorado Department of Revenue, in practical terms this is defined more succinctly as: payment, luck, and the receipt of prizes. If one of these criteria is not present, an activity does not meet the definition of gambling.

Article XVIII, Section 2, of the Colorado Constitution prohibits lotteries and other games of chance, with an exception for charitable games such as bingo and raffles and state-sponsored lottery. In 1990, Colorado voters approved a referred amendment to the constitution permitting limited gaming in localities that authorize it through a local vote. Under current law, the use of slot machines, blackjack, poker, roulette, and craps may occur in the commercial districts of Central City, Black Hawk, and Cripple Creek.

Legal gaming in Colorado includes the state lottery, as well as scratch tickets and multi-state lotteries including Powerball. This *issue brief* discusses other types of gaming, including limited gaming, live and off-track betting on dog and horse races, charity gaming, and “social” gambling in which participants have a bona fide relationship outside of the game and no profit motive. It also discusses recent legislation addressing state restrictions on internet sweepstakes and online gaming.

### Limited Gaming

Under Colorado law, gaming is “limited” by:

- the \$100 maximum amount per bet;
- the games that are eligible for betting, which include slot machines, blackjack, poker, craps, and roulette;
- the location at which such gaming can take place, currently the historic districts of Central City, Black Hawk, and Cripple Creek; and
- the size of a gaming facility, which is a maximum of 35 percent of the total square footage of the premises and less than 50 percent of a single floor.

### Racing

Horse and greyhound racing, as well as pari-mutuel or pooled wagering on such races, has been legal in Colorado since 1948. Individuals may wager on local live or simulcast horse races; however, House Bill 14-1146 prohibited live greyhound racing in the state. Wagers on broadcasts of live greyhound races in other states at Colorado racetracks and simulcast venues are still permitted.

### Charity Gaming

Nonprofit organizations may use games of chance, including bingo or lotto, to raise money for charity. Games of chance award prizes based on designated numbers or symbols on a card conforming to numbers or symbols selected at random, and include raffles where prizes are allotted by chance and where shares, tickets, or the right to participate in such games is sold.

<sup>1</sup>Section 18-10-102 (2), C.R.S.

Under the state constitution, any bona fide chartered branch, lodge, or chapter of a national or state organization or any bona fide religious, charitable, labor, fraternal, educational, voluntary firefighter, or veterans' organization that operates without profit to its members may apply for a license from the Colorado Secretary of State to conduct games of chance. Charitable organizations are also permitted to sponsor gambling events at the licensed casinos in Central City, Black Hawk, and Cripple Creek.

## Social Gambling

Individuals with an already established relationship may participate in gambling activities under the social gambling exception. According to the Division of Gaming, the already established relationship must be based on a common interest other than gambling, for example, monthly poker games among friends or college basketball tournament pools. In addition, the gambling must have no profit motive, which means that no one other than the players of the game may receive any type of profit from the gambling.

## Online Gaming and Internet Sweepstakes

In 2013, the Colorado Attorney General's Office issued a legal opinion finding that online gaming is not limited gaming and is not legal under state law. The opinion determined that online gambling does not fall within the plain language of state law that permits traditional, casino-style gaming involving physically present patrons at specified, permitted locations. Further, the opinion concluded that an amendment to the Colorado Constitution would be required to authorize any online or internet-based gaming in the state.

One year later, the Attorney General's Office issued an opinion clarifying that the activities of sweepstakes cafés, in which the café nominally sells a product such as a telephone calling card or internet time that includes an entry to a sweepstakes, are also unlawful in Colorado. The opinion found that in most cases, "patrons choose to reveal their entry's 'winning' status via computer terminals that, to varying degrees,

simulate, look, sound, and operate like casino slot machines."<sup>2</sup> The opinion concluded that such "sweepstakes" include all three elements that define gambling in Colorado: payment, luck, and the receipt of prizes, and as a result such activities are illegal in the state. The opinion again asserted that an amendment to the state constitution would be required to authorize these types of gaming activities.

## Recent Legislation

In 2015, the General Assembly passed House Bill 15-1047, which banned internet sweepstakes cafés and other similar establishments in which simulated gambling devices are used to award prizes to customers. Offering or providing the use of a simulated gambling device in exchange for any type of consideration is punishable as a class 3 misdemeanor or by civil penalties and remedies. The bill exempts internet service providers and other suppliers from penalty unless their primary purpose is to support the conduct of gambling as a business.

The following year, House Bill 16-1404 established a registration process for small fantasy contest operators and licensure of all other large fantasy contest operators through the Division of Professions and Occupations in the Department of Regulatory Agencies. The bill defines a fantasy contest operator as an entity that offers a fantasy contest with an entry fee and cash prize to the public. Fantasy contests are season-long fantasy sports contests in which an individual manages a fantasy team for the duration of the season or daily fantasy sports contests in which an individual selects a fantasy team for a single day. The fantasy team's performance is based on the actual statistical performance of athletes during real-world games.

Under HB 16-1404, fantasy contests may not include university, college, high school, or youth sporting events, or utilize video or other depictions of slot machines, poker, blackjack, craps, or roulette. Fantasy contests may be conducted at a licensed gaming establishment, class B horse racing tracks, or licensed facilities at which pari-mutuel wagering occurs.

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<sup>2</sup>Formal Opinion of John W. Suthers, Attorney General, No. 14-03, October 9, 2014.