

Colorado Legislative Council Staff Fiscal Note

**STATE and LOCAL
FISCAL IMPACT**

Drafting Number: LLS 15-0630	Date: January 27, 2015
Prime Sponsor(s): Rep. Lawrence; Becker K. Sen. Grantham	Bill Status: House Business, Affairs & Labor
	Fiscal Analyst: Alex Schatz (303-866-4375)

BILL TOPIC: INTERNET SWEEPSTAKES CAFES SIMULATED GAMBLING

Fiscal Impact Summary*	FY 2015-2016	FY 2016-2017
State Revenue	<u><\$5,000</u>	<u><\$5,000</u>
Cash Funds	<\$5,000	<\$5,000
State Expenditures	Workload increase. See State Expenditures section.	
FTE Position Change		
Appropriation Required: None.		

* This summary shows changes from current law under the bill for each fiscal year.

Summary of Legislation

An internet sweepstakes café is an electronic machine, computer terminal, or similar device that simulates gambling conditions or gambling results through any one of a number of commercial pretexts identified in this bill. The bill creates the new class 3 misdemeanor crime of unlawful offering of a simulated gambling device.

Unlawful offering of a simulated gambling device occurs when a person offers, facilitates, contracts for, or otherwise makes available any simulated gambling device for money or other consideration, in which use of the device, admission to a café, or a related purchase creates the expectation of a prize.

District attorneys and the Attorney General's Office are empowered to prosecute cases and obtain injunctive relief. In addition, for one year after a violation, the bill provides a private right of action, including treble damages as relief, if the property interest of a gaming licensee has been injured as a result of unlawful offering of a simulated gambling device.

The bill does not apply to:

- gaming activities specifically authorized by Colorado law;
- the purchase of recognized financial instruments;
- existing legal requirements for sweepstakes; or
- the operations of telecommunications providers in the normal course of business.

Background

Internet sweepstakes cafés operate in Colorado. There are no current data on the number of operators in the state, though several states have confirmed hundreds of operators, and thousands of cafés are believed to operate across the United States.

Sweepstakes in Colorado are regulated under the Colorado Consumer Protection Act. If a person or company violates sweepstakes standards set forth in Section 6-1-803, C.R.S., district attorneys, the Attorney General, or private parties may seek recourse for deceptive trade practices in a civil action. Additional discussion of current law is found in the Comparable Crimes section.

State Revenue

Beginning in FY 2015-16, the bill results in less than \$5,000 in new state revenue each fiscal year. New state revenue is collected from criminal fines and civil filing fees.

Assumptions. The number of cases that will reach the judicial system each year based on unlawful offering of a simulated gambling device is unknown. In FY 2015-16 and FY 2016-17, the fiscal note assumes approximately 10 criminal cases will be prosecuted statewide. One civil case brought by a gaming industry private party is anticipated in any given year.

Criminal fines. Beginning in FY 2015-16, this bill is anticipated to increase state revenue from criminal fines by less than \$5,000 per year. Conviction of a class 3 misdemeanor results in a fine of between \$50 and \$750, up to six months in jail, or both. The judge in a criminal case has discretion to determine an appropriate sentence within the identified range. Criminal fines are credited to the Fines Collection Cash Fund in the Judicial Department.

Civil filing fees. A minimal amount of cash fund revenue to the Judicial Stabilization Cash Fund will be collected from private parties who file pleadings in civil court. For example, a plaintiff pays \$224 with the filing of a complaint in district court, and the defendant pays at least \$158 with the filing of an answer.

State Expenditures

In FY 2015-16 and future fiscal years, the bill increases workload in the Department of Public Safety (DPS), the Judicial Department, and the Department of Law.

Assumptions. Local law enforcement agencies will perform the bulk of investigation of internet sweepstakes cafés.

Department of Public Safety. The Investigative Services Unit in the Colorado Bureau of Investigation has responsibilities concerning gambling-related crime. Effective enforcement of the state's ban on unlawful offering of a simulated gambling device involves coordination with local law enforcement. No new appropriations are necessary for DPS to perform this role under the bill.

Judicial Department. Trial courts will hear additional cases related to internet sweepstakes cafés. Based on current caseload, criminal and civil dockets in the trial courts can address expected levels of cases brought by both prosecutors and private parties. If the bill leads to a slower judicial process overall, new resources for trial courts will be requested through the

annual budget process. Probation services in the Judicial Department may also experience a minimal increase in workload to supervise persons convicted under the bill. The bill has a negligible impact on the Office of the State Public Defender and Office of Alternate Defense Counsel, as few defendants under the bill, if any, are likely to meet indigency requirements.

Department of Law. The Attorney General's Office may initiate or assist with prosecutions associated with larger criminal activities. Case-by-case use of a special prosecutor is at the discretion of the Attorney General and will not require new appropriations.

Local Government Impact

The bill results in workload increase and potential costs for local agencies that include district attorneys, the Denver County Court, local police and sheriffs, and county jails.

District attorneys. District attorneys may require additional resources to maintain an appropriate level of criminal enforcement actions against internet sweepstakes cafés. Based on the level of prohibited activity under the bill, counties may allocate additional resources to district attorneys' offices.

Denver County Court. The bill results in an increase in workload for the Denver County Court, managed and funded by the City and County of Denver. The court will try misdemeanor cases under the bill where unlawful offering of a simulated gambling device takes place within Denver's jurisdiction.

Local law enforcement agencies. Local police and sheriffs will investigate and initiate criminal enforcement of unlawful offerings of simulated gambling devices, and may do so based on the resources of the local agency or as a locally-organized task force of multiple agencies.

County jail impacts. This bill impacts local governments by adding a class 3 misdemeanor for unlawful offering of a simulated gambling device. The penalty for a class 3 misdemeanor is up to 6 months in jail, a fine of \$50 to \$750, or both. Because the courts have the discretion of incarceration or imposing a fine, the precise impact at the local level cannot be determined. The cost to house an offender in county jails varies from about \$53 to \$114 per day. For the current fiscal year, the state reimburses county jails at a daily rate of \$52.74 to house state inmates. It is assumed that the impact of this bill will be minimal.

Comparable Crimes

Pursuant to Section 2-2-322 (2.5), C.R.S., Legislative Council Staff is required to include certain information in the fiscal note for any bill that creates a new crime, changes the classification of an existing crime, or changes an element of the existing crime that creates a new factual basis for the offense.

Unlawful possession of a simulated gambling device under the bill is similar to two offenses in the current Colorado Criminal Code:

- Engaging in professional gambling (Section 18-10-103 (2), C.R.S.), a class 1 misdemeanor, occurs when a person intends to profit by assisting another person in gambling. Seven cases in the past five years have included a charge under this statute.

- Possession of a gambling device (Section 18-10-105 (2), C.R.S.), a class 2 misdemeanor, occurs when a person makes available any device, machine, or equipment that is used for professional gambling activity without legal authorization. No recent cases have been charged under this statute.

Both current criminal statutes may be charged as a felony if the defendant has been previously convicted of a gambling offense.

In effect, the bill prohibits internet sweepstakes cafés and is anticipated to further deter this activity despite existing law that addresses gambling generally. There is insufficient data to quantify the effect of the new crime on operators of internet sweepstakes cafés. There is no known indication that operators or users of internet sweepstakes cafés follow any gender or minority trend.

Effective Date

The bill takes effect upon signature of the Governor, or upon becoming law without his signature.

State and Local Government Contacts

Judicial Department
Counties
Corrections
Municipalities
Law

Public Safety
District Attorneys
Revenue
Sheriffs
State

Local Affairs
Office of Information Technology
Personnel and Administration
Public Health and Environment
Regulatory Agencies