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An Act

HOUSE BILL 15-1047

BY REPRESENTATIVE(S) Lawrence and Becker K., Esgar, Fields, Kagan, Pabon, Rosenthal, Van Winkle;
also SENATOR(S) Grantham and Neville T., Crowder, Lambert, Cadman.

CONCERNING A PROHIBITION ON THE USE OF SIMULATED GAMBLING DEVICES.

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

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

ARTICLE 10.5 **Simulated Gambling Devices**

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

(a) RECENTLY, CERTAIN INDIVIDUALS AND COMPANIES HAVE DEVELOPED ELECTRONIC MACHINES, SYSTEMS, AND DEVICES TO ENABLE GAMBLING THROUGH PRETEXTUAL SWEEPSTAKES RELATIONSHIPS PREDICATED ON THE SALE OF INTERNET SERVICES, TELEPHONE CARDS, AND OTHER PRODUCTS AT BUSINESS LOCATIONS THAT ARE OR MAY BE

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

COMMONLY KNOWN AS INTERNET SWEEPSTAKES CAFÉS. THESE MACHINES, SYSTEMS, AND DEVICES, AS MORE FULLY DESCRIBED IN THIS ARTICLE, APPEAR DESIGNED TO EVADE THE EXISTING CONSTITUTIONAL AND STATUTORY REGULATIONS ON GAMBLING ACTIVITY IN COLORADO AND THEREFORE ARE DECLARED TO BE CONTRARY TO THE PUBLIC POLICY OF THIS STATE.

(b) THE GAMBLING OCCURRING AT INTERNET SWEEPSTAKES CAFÉS 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 GENERAL ASSEMBLY FINDS THAT THESE DANGERS ARE PROFOUND, PUTTING AT RISK THE FINANCIAL RESOURCES OF VULNERABLE PERSONS AND CUSTOMERS WHO ARE USED TO WAGERING BASED ON CLEAR REGULATORY STANDARDS AND WHO HAVE OFFICIAL LINES OF AUTHORITY TO WHICH THEY MAY APPEAL WHEN THERE ARE QUESTIONABLE OR ILLEGAL PRACTICES USED BY A LICENSED GAMING OPERATOR.

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

(d) 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;

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

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

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

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

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

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

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

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

(e) PREDETERMINES THE PRIZE RESULTS AND STORES THOSE RESULTS FOR DELIVERY WHEN THE SWEEPSTAKES ENTRY IS REVEALED;

(f) USES SOFTWARE TO CREATE A GAME RESULT;

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

(h) REQUIRES DIRECT PAYMENT INTO THE MACHINE OR DEVICE OR REMOTE ACTIVATION OF THE MACHINE OR DEVICE UPON PAYMENT TO THE PERSON OFFERING THE SWEEPSTAKES GAME;

(i) REQUIRES THE PURCHASE OF A RELATED PRODUCT AT ADDITIONAL COST IN ORDER TO PARTICIPATE IN THE SWEEPSTAKES GAME OR MAKES A RELATED PRODUCT AVAILABLE FOR NO COST BUT UNDER RESTRICTIVE CONDITIONS;

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

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

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

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

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

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

(6) "SIMULATED GAMBLING DEVICE" MEANS A MECHANICALLY OR ELECTRONICALLY OPERATED MACHINE, NETWORK, SYSTEM, PROGRAM, OR DEVICE THAT IS USED BY AN ENTRANT AND THAT DISPLAYS SIMULATED

GAMBLING DISPLAYS ON A SCREEN OR OTHER MECHANISM AT A BUSINESS LOCATION, INCLUDING A PRIVATE CLUB, THAT IS OWNED, LEASED, OR OTHERWISE POSSESSED, IN WHOLE OR IN PART, BY A PERSON CONDUCTING THE GAME OR BY THAT PERSON'S PARTNERS, AFFILIATES, SUBSIDIARIES, AGENTS, OR CONTRACTORS. THE TERM INCLUDES:

- (a) A VIDEO POKER GAME OR ANY OTHER KIND OF VIDEO CARD GAME;
 - (b) A VIDEO BINGO GAME;
 - (c) A VIDEO CRAPS GAME;
 - (d) A VIDEO KENO GAME;
 - (e) A VIDEO LOTTO GAME;
 - (f) A VIDEO ROULETTE GAME;
 - (g) A POT-OF-GOLD;
 - (h) AN EIGHT-LINER;
 - (i) A VIDEO GAME BASED ON OR INVOLVING THE RANDOM OR CHANCE MATCHING OF DIFFERENT PICTURES, WORDS, NUMBERS, OR SYMBOLS;
 - (j) AN ELECTRONIC GAMING MACHINE, INCLUDING A PERSONAL COMPUTER OF ANY SIZE OR CONFIGURATION THAT PERFORMS ANY OF THE FUNCTIONS OF AN ELECTRONIC GAMING MACHINE;
 - (k) A SLOT MACHINE; AND
 - (l) A DEVICE THAT FUNCTIONS AS, OR SIMULATES THE PLAY OF, A SLOT MACHINE.
- (7) "SWEEPSTAKES" MEANS ANY GAME, ADVERTISING SCHEME OR PLAN, OR OTHER PROMOTION THAT, WITH OR WITHOUT PAYMENT OF ANY CONSIDERATION, ALLOWS A PERSON TO ENTER TO WIN OR BECOME ELIGIBLE TO RECEIVE A PRIZE.

18-10.5-103. Prohibition - penalties - exemptions. (1) A PERSON

COMMITTS UNLAWFUL OFFERING OF A SIMULATED GAMBLING DEVICE IF THE PERSON OFFERS, FACILITATES, CONTRACTS FOR, OR OTHERWISE MAKES AVAILABLE TO OR FOR MEMBERS OF THE PUBLIC OR MEMBERS OF AN ORGANIZATION OR CLUB ANY SIMULATED GAMBLING DEVICE WHERE:

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

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

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

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

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

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

(c) OTHER RELIEF THE DISTRICT COURT DEEMS APPROPRIATE.

(4) A PERSON WHO SUFFERS ANY ASCERTAINABLE LOSS OF MONEY OR OF ANY TANGIBLE OR INTANGIBLE PERSONAL PROPERTY AS A RESULT OF A VIOLATION OF THIS SECTION AND WHO ALSO HOLDS A LICENSE TO OFFER GAMBLING SERVICES UNDER COLORADO LAW MAY APPLY TO THE DISTRICT

COURT OF ANY DISTRICT WHERE THE PERSON WHO VIOLATES SUBSECTION (1) OF THIS SECTION IS OR WAS LOCATED, ADVERTISES FOR ENTRANTS, OR DOES BUSINESS FOR APPROPRIATE ADDITIONAL RELIEF, INCLUDING:

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

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

(c) REASONABLE ATTORNEY FEES AND COSTS; AND

(d) OTHER RELIEF THE DISTRICT COURT DEEMS APPROPRIATE.

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

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

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

(8) CONDUCTING OR ASSISTING IN THE CONDUCT OF GAMING WAGERING ACTIVITIES AND LIVE OR SIMULCAST RACING AND PARIMUTUEL WAGERING ACTIVITIES OTHERWISE AUTHORIZED BY COLORADO LAW IS NOT A VIOLATION OF THIS SECTION.

(9) NOTHING IN THIS SECTION:

(a) PROHIBITS, LIMITS, OR OTHERWISE AFFECTS ANY PURCHASE, SALE, EXCHANGE, OR OTHER TRANSACTION RELATED TO STOCKS, BONDS, FUTURES, OPTIONS, COMMODITIES, OR OTHER SIMILAR INSTRUMENTS OR TRANSACTIONS OCCURRING ON A STOCK OR COMMODITIES EXCHANGE,

BROKERAGE HOUSE, OR SIMILAR ENTITY; OR

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

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

SECTION 2. Safety clause. The general assembly hereby finds,

determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Dickey Lee Hullinghorst
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Bill L. Cadman
PRESIDENT OF
THE SENATE

Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

Cindi L. Markwell
SECRETARY OF
THE SENATE

APPROVED _____

John W. Hickenlooper
GOVERNOR OF THE STATE OF COLORADO