



## OLR BACKGROUNDER: INTERNET SWEEPSTAKES CAFES

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### QUESTION

This report provides an overview on (1) Internet sweepstakes cafe operations; (2) the concerns they raise; (3) the gambling legal framework, including Connecticut law and how other states are regulating these cafes; (4) how courts have ruled on their legality; and (5) recent events in Connecticut, including two introduced bills specifically banning these cafes.

### SUMMARY

Internet sweepstakes cafes are storefronts that sell products (e.g., phone cards or Internet time) that provide entries into a sweepstakes game that may yield cash prizes.

No states currently regulate these cafes, but some states prohibit them. Being unregulated may raise several concerns, including, among other things, (1) the fairness of the games offered, (2) underage customers, (3) lack of gambling counseling or treatment options, and (4) loss of tax and licensing revenue.

Gambling is regulated by both federal and state law. But for Internet sweepstakes cafes, it is state law that determines whether their activities are considered gambling. Connecticut law generally prohibits (1) gambling, unless it is specifically authorized and (2) possessing gambling devices.

Other states have varied greatly in how they regulate Internet sweepstakes cafes. Some have generally applicable anti-gambling laws and are able to prohibit the cafes under them. Others have passed specific laws prohibiting these operations or have done so through regulations.

There have been several state and federal court cases on the legality of these cafes. All of the appellate court decisions addressing the nature of the business have found the cafes to be running gambling operations rather than sweepstakes. Additionally, no final court decision has held that the laws specifically prohibiting these cafes violate the First Amendment on free speech grounds.

Recently in Connecticut, law enforcement officials have executed search warrants at two Internet sweepstakes cafes for conducting illegal gambling and possessing gambling devices. Additionally, in 2014, two bills ([SB 80](#) and [SB 102](#)) have been introduced in the General Assembly that seeks to specifically ban Internet sweepstakes cafes.

## **INTERNET SWEEPSTAKES CAFES**

Internet sweepstakes cafes are storefronts that provide slot-machine-like gambling under claims that they are running sweepstakes, much like consumer companies like McDonald's.

### ***Operations***

These cafes may vary in specific operations, but all generally function similarly. They usually have a (1) control area where their employees receive and dispense payments and (2) computer area where customers can sit and play their sweepstake entries. After a customer buys the product (e.g., phone card or Internet time), he or she is given a specified amount of entries into the sweepstakes. For example, buying a \$10 dollar phone card could give a customer 1,000 entries. (Customers may be able to request free entries, which the cafes provide so that they can adhere to the legal definition of a sweepstakes, which generally do not require purchase.)

A customer can determine if he or she won at once or playing a slot-like program. If a customer wants to find out if he or she won at once, he or she would do a "simple reveal." A customer would (1) ask an employee to determine if there was a winner in the entries or (2) personally check on the computer.

If a customer decides to play the slot-machine-like game, he or she can select the game type (e.g., traditional slot machine with spinning objects or ones dealing cards). Customers can also choose games that are "pseudo-interactive," because they interact with the game (e.g., press a button to stop a spinning wheel), but this action has no impact on winning or losing. Regardless of the type of game chosen, whether the customer wins or loses is determined by a random allocation of sweepstakes prizes generated by the computer program.

As a customer plays, he or she can win additional entries or points and continue to play. A customer who runs out of entries can purchase additional entries either from the computer or from the employee. If a customer decides to leave and has a positive balance, he or she can redeem these entries for cash.

## **LEGAL FRAMEWORK**

### ***Federal Law***

Gambling is subject to both state and federal regulation, though most federal law is associated with interstate, tribal, Internet gambling, or sports betting.

One federal law that cafes may violate is running an illegal gambling business. But this law requires (1) a violation of state law, (2) five or more people who conduct, manage, finance, or benefit financially from the business; and (3) a business that operates more than 30 days or has gross revenues of \$2,000 in any single day (18 USC § 1955). Violators are subject to up to five years imprisonment, up to \$25,000 fine, or both. (In order to be convicted of running an illegal gambling business, it must be proved that the cafe was operating illegal gambling operation under state law.)

### ***State Law***

Gambling is generally regulated at the state level, with individual states deciding what is legal and illegal. Each state can determine such things as what type of gambling is allowed, where it is located, and who may gamble (including minimum age for each gambling type).

### ***Connecticut Law***

Connecticut law prohibits gambling within the state unless it (1) is specifically authorized by state law or other legally binding state agreements (i.e., charitable gaming and Indian casino gaming) or (2) fits an exemption in the criminal laws. A violation of the gambling laws is a class B misdemeanor, punishable by up to six months imprisonment, up to a \$1,000 fine, or both (CGS § [53-278b](#)).

Additionally, Connecticut law generally prohibits anyone to knowingly own, possess, make, buy, sell, rent, lease, store, repair, or transport any gambling device (CGS § [53-278c](#)). A "gambling device" is any device that gives the right to money or something of value through the operation of chance. Any violator is subject to a class A misdemeanor, punishable by up to one year imprisonment, up to a \$2,000 fine, or both.

## **Other State Actions**

States have varied greatly in how they regulate Internet sweepstakes cafes. Some have generally applicable anti-gambling laws and are able to prohibit the cafes under them. Others have passed specific laws prohibiting these operations (e.g., Mississippi) or have done so through regulations (e.g., Massachusetts).

Additionally, though North Carolina passed a specific law attempting to ban these cafes, the cafes have changed their computer programs and have reopened.

**Mississippi.** In 2013, Mississippi's General Assembly passed a new law prohibiting Internet sweepstakes cafes. This law bars anyone from offering a "simulated gambling program" on an "electronic video monitor" in return for direct or indirect consideration "including consideration associated with a product, service or activity other than the simulated gambling program" (Miss. Code Ann. § 97-33-8). (For the text of the entire legislation, see

<http://billstatus.ls.state.ms.us/documents/2013/pdf/HB/0900-0999/HB0974IN.pdf>.)

**Massachusetts.** In 2011, the Massachusetts attorney general issued regulations providing that taking money for sweepstakes or games violated the Massachusetts Consumer Protection Act (Chapter 93A). The regulation states that it is an unfair and deceptive trade practice or act for a person to solicit or accept payment for a chance to win a prize or to engage in a business or transaction in which a gambling purpose predominates over the sale or service (940 Mass. Code Regs. 30.04).

**North Carolina.** In 2008 and 2010, the North Carolina General Assembly passed specific legislation that made it illegal to possess game terminals that simulate slot machines or display electronic sweepstakes (NC Gen. Stat. § 14-306.4). This law was litigated for violating the First Amendment, with the State Supreme Court reversing the Court of Appeals decision and upholding the law (see below for discussion on First Amendment).

Even after the law was upheld, some cafe owners have reopened with modified computer programs that reveal the winners in advance. The state attorney general has commented by saying these adaptations are just attempts by gambling software manufacturers to circumvent the law (For more information on these indictments, see <http://www.newsobserver.com/2014/01/08/3516800/three-people-indicted-on-charges.html>.) Local district attorneys have indicted some cafe owners, but it is unclear whether these indictments will lead to convictions.

## **COURT DECISIONS**

There have been several state and federal court cases on the legality of these cafes. All of the appellate court decisions addressing the nature of the business have found the cafes to be running gambling operations rather than sweepstakes. Additionally, cafe owners have also claimed their businesses are engaged in protected First Amendment speech. No final appellate decision has agreed with this argument.

### ***Gambling or Sweepstakes***

To determine if an activity is considered gambling, the courts generally look to see if a customer pays some sort of consideration in order for the chance of winning a prize.

Internet Sweepstakes Cafe owners argue that two of the three factors are not met. They argue that there is no (1) consideration for the entries because they are just extras added to the purchase of Internet time or phone cards and (2) role of chance because whether a customer wins or loses is already predetermined.

***Lack of Consideration.*** Internet sweepstakes café owners argue that that the entries are part of promotion to sell Internet time or phone cards, much like the McDonald's Monopoly game. As such, the entries are just a bonus for purchase. Under this argument, the Internet time or phone card that is sold is analogous to the hamburgers or fries. To further this argument, owners will say that they offer free entries when asked (usually having per day and per person limits) and thus there is no consideration for these entries.

The Fifth Circuit Court, like other state appellate courts, disagreed with this assessment and decided that, "the sale of Internet time at the defendants' cafes was an attempt to legitimize an illegal lottery. Customers' receipts indicating over 300,000 minutes of Internet time remaining were evidence that the customers did not value the Internet time they had purchased" (*U.S. v. Davis*, 690 F.3d 330, 338 (5th Cir. 2012)).

***Lack of Chance.*** As stated above, regardless of what customers do, whether they win or lose has been predetermined. This leads owners to say that it does not satisfy the chance element of gambling.

But the Mississippi Court of Appeals was not convinced by this argument and felt it had no merit. It concluded that “the element of chance is considered from the player’s point of view” (*Moore v. Mississippi Gaming Comm’n*, 64 So. 3d 537, 541 (Miss. Ct. App. 2011)). And since a customer does not know whether his or her entries contain winners at the time of sale, the requisite element of chance exists.

### ***First Amendment Free Speech***

Cafe owners in some states, including Florida, North Carolina, and Pennsylvania, have raised a First Amendment free speech argument. They argue that the laws enacted to ban Internet sweepstakes cafes do so by banning specific devices (e.g., video displays), which violates their free speech.

The Eleventh Circuit Court affirmed the District Court’s decision that these types of laws regulate conduct and not speech (*Allied Veterans of the World v. Seminole County*, 468 F. App’x 922 (11<sup>th</sup> Cir. 2012)).

## **RECENT CONNECTICUT DEVELOPMENTS**

### ***Recent Raids***

In February 2014, the Connecticut State Police Organized Crime Investigative Task Force executed search warrants at two establishments (one in Enfield and the other in Bloomfield) that were suspected of illegal gambling (<http://www.ct.gov/despp/cwp/view.asp?Q=539796&A=4226>). The investigation uncovered evidence that these businesses appeared to (1) violate the Connecticut gambling statutes and (2) possess gambling devices. During the search of the premises, the State Police seized additional evidence.

### ***Legislation***

In the 2014 session, there are two bills seeking to specifically prohibit Internet sweepstakes cafes.

**SB 80.** Senator Bartolomeo introduced proposed bill SB 80, An Act Prohibiting Internet Sweepstakes Cafes. The bill has been referred to the Public Safety and Security Committee which was drafted into a committee bill and is scheduled for a public hearing on March 4, 2014.

The committee bill would specifically ban Internet sweepstakes cafes, subject the computers to seizure, and treat the cafes as a gambling premises. Anyone who conducts or promotes these cafes will be guilty of a class A misdemeanor (punishable by up to one year imprisonment, up to a \$2,000 fine, or both). Additionally, anyone who knowingly maintains a gambling premises is guilty of a

class A misdemeanor and could be guilty of a class D felony (punishable by up to five years imprisonment, up to a \$5,000 fine, or both) if he or she tries to hide the location or has a warning system.

**SB 102.** The Public Safety and Security Committee raised SB 102, An Act Prohibiting Internet Sweepstakes Cafes. This bill would specifically ban Internet sweepstakes cafes and any violators would be subject to up to one year imprisonment, up to a \$2,000 fine, or both. The bill had a public hearing on February 18, 2014 and awaits further action from the committee.

## **RESOURCES**

Stewart, David O., "Internet Sweepstakes Cafes: Unregulated Storefront Gambling in the Neighborhood," *American Gaming Association White Paper*. Available at: [http://www.americangaming.org/sites/default/files/uploads/docs/whitepapers/inter\\_net\\_sweepstakes\\_white\\_paper\\_103013.pdf](http://www.americangaming.org/sites/default/files/uploads/docs/whitepapers/inter_net_sweepstakes_white_paper_103013.pdf)

Dunbar, Marc W. and Russell, Daniel R. (2012) "The History of Internet Cafés and the Current Approach to Their Regulation," *UNLV Gaming Law Journal*: Vol. 3: Iss. 2, Article 5. Available at: <http://scholars.law.unlv.edu/glj/vol3/iss2/5>

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