

## **COLORADO**

### **I. Definition of Gambling**

1. **"Gambling" is defined in Colo. Rev. Stat. § 18-10-102(2) (2009) as the following:**

The risking of money or other thing of value for gain contingent in whole or in part upon lot, chance, or the happening of an event over which the person taking the risk has no control.

Gambling includes physical contests whether of man or beast, when practiced for the purpose of deciding wagers, as well as games of hazard or skill by means of instruments or devices.

Everhart v. People, 130 P. 1076 (1913).

2. **Under Colo. Rev. Stat. § 18-10-102(2) (2009) gambling does not include:**

- a. Bona fide contests of skill, speed, strength, or endurance in which awards are made only to entrants or the owners of entries;
- b. Bona fide business transactions which are valid under the law of contracts;
- c. Other acts or transactions now or hereafter expressly authorized by law;
- d. Any game, wager, or transaction which is incidental to a bona fide social relationship, is participated in by natural persons only, and in which no person is participating, directly or indirectly, in professional gambling; or
- e. Any use of or transaction involving a crane game. "Crane game" means an amusement machine that, upon insertion of a coin, bill, token, or similar object, allows the player to use one or more buttons, joysticks, or other controls to maneuver a crane or claw over a nonmonetary prize, toy, or novelty, none of which shall have a cost of more than twenty-five dollars, and then, using the crane or claw, to attempt to retrieve the prize, toy, or novelty for the player. Colo. Rev. Stat. § 12-47.1-103 (2009).

3. **"Professional gambling" consists of:**

Professional gambling means aiding or inducing another to engage in gambling, with the intent to derive a profit; or participating in gambling and having, other than by virtue of skill or luck, a lesser chance of losing or a greater chance of winning than one or more of the other participants. Colo. Rev. Stat. § 18-10-102(8)(a) (2009).

4. The Colorado Liquor Code prohibits any person licensed to sell malt, vinous, or spirituous liquors at retail to authorize or permit any gambling, or the use of any gambling device or machine, except as provided by the Bingo and Raffles Law. Colo. Rev. Stat. § 12-47-128(5)(n)(I) *Charnes v. Central City Opera House Asso.*, 773 P.2d 546 (Colo.1989)
5. **"Gain" in the context of gambling is defined in Colo. Rev. Stat. § 18-10-102(1) (2009) as the direct realization of winnings.**

The term "for gain" is used to describe the purpose or object for which a person risks a thing of value. The "for gain" element of "gambling" is satisfied whenever one risks a thing of value for the purpose of directly realizing winnings as a result of the risk taken. Thus the "for gain" element of "gambling," includes risks that not only result in success, but also those which result in failure or loss. *Charnes v. Central City Opera House Asso.*, 773 P.2d 546 (Colo. 1989).

6. **Colorado permits limited stakes gaming. Colo. Rev. Stat. §§ 12-47.1-101 to 1-602 (2009).**
  - a. "Limited gaming" means the use of slot machines and the card games of blackjack and poker, each game having a maximum single bet of five dollars. Colo. Const. Art. XVIII, Section 9.
  - b. Limited gaming is authorized, may be operated and maintained subject to the provisions of article 12 of the code. All limited gaming authorized by this article shall be regulated by the Colorado limited gaming control commission. Colo. Rev. Stat. § 12-47.1-104.
  - c. Limited gaming shall take place only in the following existing Colorado cities: The city of Central, county of Gilpin; the city of Black Hawk, county of Gilpin; and the city of Cripple Creek, county of Teller. Colo. Rev. Stat. § 12-47.1-105 (2009).
  - d. Limited gaming shall only be conducted in structures which conform, as determined by the respective municipal governing bodies, to the architectural styles and designs that were common to the areas prior to World War I and which conform to the requirements of applicable respective city ordinances, regardless of the age of said structures. Colo. Const. Art. XVIII, Section 9.

No more than thirty-five percent of the square footage of any building and no more than fifty percent of any one floor of such building, may be used for limited gaming. Colo. Const. Art. XVIII, Section 9.

License fees are set forth in Colo. Rev. Stat. § 12-47.1-512 (2009).

Limited gaming operations shall be prohibited between the hours of 2:00 o'clock a.m. and 8:00 o'clock a.m. Colo. Const. Art. XVIII, Section 9.

Up to a maximum of forty percent of the adjusted gross proceeds of limited gaming shall be paid by each licensee, in addition to any applicable license fees, for the privilege of conducting limited gaming. Colo. Const. Art. XVIII, Section 9. The percentage is established annually by the commission according to the criteria established by the general assembly in the implementing legislation. These payments must be made into a limited gaming fund that is hereby created in the state treasury. Colo. Const. Art. XVIII, Section 9.

Gaming tax is set by Gaming Control Commission and shall not exceed 40 of adjusted gross proceeds. Colo. Rev. Stat. §§ 12-47.1-601 (2009).

#### **7. Golf match not "gambling".**

A golf match, participated in and bet on by four golfers, in which each of the four, by his playing, had control over the outcome did not constitute "gambling" as defined in subsection (2). *Berckefeldt v. Hammer*, 616 P.2d 183 (1980).

#### **8. Dominant factor**

The state of Colorado uses the dominant factor test for determining gambling based on the definition of gambling as defined in Colo. Rev. Stat. § 18-10-102(2). *Charnes v. Central City Opera House Asso.*, 773 P.2d 546, 548 (Colo. 1989).

#### **9. Lottery**

A lottery is present when consideration is paid for the opportunity to win a prize awarded by chance. Interrogatories of Governor Regarding Sweepstakes Races Act, Article XVIII, Section 2 is violated if chance is the controlling factor in the award. *In re Interrogatories of Governor Regarding Sweepstakes Races Act.*, 196 Colo. 353, 356 (Colo. 1978).

#### **1. Definition of bookmaking**

The court in *Everhart v. People*, 130 P. 1076, (1913), held that the evidence was sufficient to convict, where the defendant made books and sold pools on certain horse races held at a racetrack on a certain day. In this case the defendant "unlawfully did keep and exhibit a certain gaming table, establishment, device and apparatus, . . . to win and gain money by gambling," and that he "unlawfully did play at a game for a sum of money or other property of value, and did make a bet and wager for a sum of money or other property of value, upon the result of such game." *Everhart v. People*, 130 P. 1076, (1913).

## **II. Specific gaming Device definitions**

### 1. "Gambling device" means

Any device, machine, paraphernalia, or equipment that is used or usable in the playing phases of any professional gambling activity, whether that activity consists of gambling between persons or gambling by a person involving the playing of a machine; except that the term does not include a crane game, as defined in section 12-47.1-103 (5.5), Colo. Rev. Stat. § 18-10-102

A crane game under Colo. Rev. Stat. § 12-47.1-103 means an amusement machine that, upon insertion of a coin, bill, token, or similar object, allows the player to use one or more buttons, joysticks, or other controls to maneuver a crane or claw over a nonmonetary prize, toy, or novelty, none of which shall have a cost of more than twenty-five dollars, and then, using the crane or claw, to attempt to retrieve the prize, toy, or novelty for the player.

Definition of gambling devices pertains to use. The words "gambling device or apparatus" do not mean literally instrumentalities with appliances adapted and essential to particular games, but include any species of device or apparatus kept and used for gambling, winning, betting, or gaining money or other property. It is the use to which the article or thing is appropriated which renders the keeping or exhibition thereof unlawful within the meaning of the sections here involved. *Everhart v. People*, 130 P. 1076 (1913).

Nor is payment of winnings. While a gaming device may "pay nothing", it nevertheless may be used or kept for the purpose of gambling. *Walker v. Begole*, 63 P.2d 1224 (1936) and *MacArthur v. Wycaver*, 211 P.2d 556 (1949).

### 2. Gaming Table

Colorado courts have held that "a **gaming table** consists in the essentials of the game. A table in the literal sense need not exist. A game played and something of value **bet** are the essential elements of a **gaming table, establishment, device or apparatus** as used in this act." *Everhart v. People*, 54 Colo. 272, 281, 130 P. 1076 (1913).

### 3. Possession of gambling device

- a. Pursuant to Colo. Rev. Stat. § 18-10-105 (2009) a person who owns, manufactures, sells, transports, possesses, or engages in any transaction designed to affect the ownership, custody, or use of a gambling device or gambling record, knowing that it is to be used in professional gambling, commits possession of a gambling device or record.
- b. The sale, transportation, manufacture, and remanufacture of gambling devices, including the acquisition of essential parts therefor and the assembly of such parts, is permitted if such devices are sold, transported, manufactured, and remanufactured only for transportation in interstate or foreign commerce when such transportation is not prohibited by any

applicable foreign, state, or federal law. Storage of gambling devices is also permitted but only for purposes of manufacturing, remanufacturing, and transporting such devices in interstate or foreign commerce when their transportation is not prohibited. Colo. Rev. Stat. § 18-10-105.

#### 4. **Video games**

In *State Dept v. Grooms Music* the court held that video games that had been used in gambling by liquor licensee were "usable in professional gambling activities" so that the games were subject to destruction and the proceeds of such games were subject to forfeiture pursuant to statute, even if the owner did not have actual or constructive knowledge of the use of the games for gambling. *State Dept. of Rev. v. Grooms Music Co.*, 721 P.2d 1225 (Colo. App. 1986).

5. **"Pinball" machines are gambling devices** *Approximately Fifty-Nine Gambling Devices v. People*, 130 P.2d 920 (1942).

#### 6. **Blackjack**

"Blackjack" means a banking card game commonly known as "21" or "blackjack" played by a maximum of seven players in which each player bets against the dealer. The object is to draw cards whose value will equal or approach twenty-one without exceeding that amount and win amounts bet, payable by the dealer, if the player holds cards more valuable than the dealer's cards. Colo. Rev. Stat. § 12-47.1-103 (2009).

#### 7. **Slot machine**

"Slot machine" means any mechanical, electrical, video, electronic, or other device, contrivance, or machine which, after insertion of a coin, token, or similar object, or upon payment of any required consideration whatsoever by a player, is available to be played or operated, and which, whether by reason of the skill of the player or application of the element of chance, or both, may deliver or entitle the player operating the machine to receive cash premiums, merchandise, tokens, or redeemable game credits, or any other thing of value other than unredeemable free games, whether the payoff is made automatically from the machines or in any other manner. Colo. Rev. Stat. § 12-47.1-103 (2006).

"Slot machine" does not include: vintage slot machine models which were introduced on the market prior to 1984 and are not used for gambling purposes or in connection with limited gaming; or Crane games. Colo. Rev. Stat. § 12-47.1-103 (2006).

### III. **Bucket shop laws**

An action wherein plaintiff seeks to recover from defendant, a brokerage company commonly denominated a "bucket shop," a certain sum of money which plaintiff alleges she deposited with her husband to be kept for her and which without her consent he gambled away to defendant,

betting upon the market price of certain grains, provisions and corporate stocks, is in reality an action for money had and received, the theory of which is that defendant has plaintiff's money without her consent and without having parted with any consideration therefor, and the burden is upon plaintiff to show that the money in question belonged to her, that it was secured by defendant without her consent and without giving any valid consideration therefor. *John G. Morgan Brokerage Co. v. Shemwell*, 16 Colo. App. 185 (Colo. Ct. App. 1901).

A defense to an action on a promissory note, that it was given without consideration, and for losses sustained by the maker in a gambling-room or bucket-shop in betting upon the future price of wheat in the Chicago market, is not sustained where the evidence on the trial shows that the plaintiff was an assignee for value, - that he purchased the note before maturity and without knowledge of any defenses thereto, and the maker testified in his own behalf that it was executed without consideration, as accommodation paper to the proprietors of the gambling shop to save their credit with the banks, and with permission to exhibit it, but on their promise not to use it in any other manner. *Pendleton v. Smissaert*, 1 Colo. App. 508 (Colo. Ct. App. 1892).

#### **IV. Prohibition of games of skills**

The Article II, Section 3 of the Colorado Constitution does not grant the citizen a constitutional right to conduct a business which may be inimical to the public morals, such as the use of pinball machines as gambling devices. *Bunzel v. City of Golden*, 372 P.2d 161 (1962).

##### **1. Poker/card Games**

Poker, under Colo. Rev. Stat. § 12-47.1-103, means a card game played by a player or players who are dealt cards by a dealer.

##### **a. The object of the game is:**

- i. For each player to bet the superiority of such player's hand and win the other players' bets by either making a bet no other player is willing to match or proving to hold the most valuable cards after all the betting is over; or
- ii. For each player, whether by reason of the skill of the player or application of the element of chance, or both, to hold a poker hand entitled to a monetary or premium return based upon a publicly available pay schedule. Colo. Rev. Stat. § 12-47.1-103 (2009).

In a variation of poker in which there can be more than one winning hand and the dealer's participation is necessary or desirable to improve the game for players other than the dealer, the dealer may play, but under no circumstances may the dealer place a wager in any game in which he or she is dealing. A game in which the player holding the highest-scoring hand splits his or

her winnings with the player holding the lowest-scoring hand does not qualify as a "variation of poker in which there can be more than one winning hand" for purposes of this paragraph (b). Colo. Rev. Stat. § 12-47.1-103 (2009).

- b. Under Colo. Rev. Stat. § 18-20-111 (2009) it is unlawful to manufacture, sell, or distribute any cards, chips, dice, game, or device which is intended to be used to violate any provision of article 47.1 of title 12, of the Colo. Rev. Stat.
- c. It is unlawful to mark, alter, or otherwise modify any associated equipment or limited gaming device in a manner that:
  - i. Affects the result of a wager by determining win or loss; or
  - ii. Alters the normal criteria of random selection, which affects the operation of a game or which determines the outcome of a game. Colo. Rev. Stat. § 18-20-111 (2009).
- d. It is unlawful for any person to instruct another in cheating or in the use of any device for that purpose, with the knowledge or intent that the information or use so conveyed may be employed to violate any provision of article 47.1 of title 12, of the Colo. Rev. Stat. Colo. Rev. Stat. § 18-20-111 (2009).
- e. Any person issued a license pursuant to article 47.1 of title 12, C.R.S., violating any provision of this section commits a class 6 felony, and any other person violating any provision of this section commits a class 1 misdemeanor. If the person is a repeating gambling offender, the person commits a class 5 felony. Colo. Rev. Stat. § 18-20-111 (2009).

## 2. **Billiards**

The governing bodies of municipalities have the following powers to regulate businesses: To license, regulate, tax, or prohibit and suppress **billiard**, bagatelle, pigeonhole, or any other tables or implements kept or used for a similar purpose in any place of public resort and pin alleys and ball alleys. Colo. Rev. Stat. § 31-15-501 (2009).

## 3. **Bowling**

The governing bodies of municipalities have the following powers to regulate businesses: To license, regulate, tax, or prohibit and suppress billiard, bagatelle, pigeonhole, or any other tables or implements kept or used for a similar purpose in any place of public resort and pin alleys and **ball alleys**. Colo. Rev. Stat. § 31-15-501 (2009).

## V. Express Exemptions

### 1. Social Gaming

Any game, wager, or transaction which is incidental to a bona fide social relationship, is participated in only by natural persons, and in which no person is participating, directly or indirectly, in professional gambling, is excluded from the definition of gambling. Colo. Rev. Stat. § 18-10-102(2)(d) (2009). *Also see*, *Leichliter v. State Liquor Licensing Auth.*, 9 P.3d 1153 (Colo. Ct. App. 2000)

Colo. Rev. Stat. § 18-10-102(2)(d) (2009) changed the common law and specifically exempted "social gambling" from the ambit of forbidden conduct. *Houston v. Younghans*, 580 P.2d 801 (1978). Social gambling is game incidental to bona fide social relationship, participated in by natural persons and is no way connected to professional gambling. *Houston v. Younghans*, 580 P.2d 801 (1978).

To determine whether a game is incidental to a bona fide social relationship and thus excluded from the definition of gambling, the critical inquiry is whether the participants came together for any shared purpose other than gambling; where a basketball pool was entered into only by devoted patrons of a neighborhood bar and liquor authority inspectors, it was incidental to a bona fide social relationship. *Leichliter v. State Liquor Licensing Auth.*, 9 P.3d 1153 (Colo. 1999). The critical inquiry as to whether a gambling activity resulted from a bona fide social relationship is whether the participants came together for any shared purpose other than gambling. *Leichliter v. State Liquor Licensing Auth.*, 9 P.3d 1153 (Colo. Ct. App. 2000).

### 2. Charity Gaming

Any person licensed as a retailer, or as both a retailer and operator, may choose to allow a charitable organization to sponsor limited gaming at that retailer's licensed premises, if the following conditions are met:

- a. The organization is a charitable organization, which for purposes of this section means any organization, not for pecuniary profit, which is operated for the relief of poverty, distress, or other condition of public concern within this state and which has been so engaged for five years prior to making application to sponsor limited gaming under this article;
- b. The licensed operator or retailer and the charitable organization agree in writing upon all the terms and conditions of the sponsorship, and a copy of the written agreement is filed with the commission at least fourteen days prior to the day of the sponsored event;

- c. All sponsored events shall take place on licensed retail premises, and all requirements of this article shall apply to such events, unless specifically modified by this part 9; and
- d. Criminal violations of this article discovered during an authorized investigation or discovered by the commission shall be referred to the appropriate district attorney. Colo. Rev. Stat. § 12-47.1-901 (2009).

### **3. Lottery**

A lottery is a scheme by which, by one's paying money or some other thing of value, he obtains the contingent right to have something of greater value, if an appeal to chance, by lot or otherwise, under the direction of the manager of the scheme, should decide in his favor. *Cross v. People*, 32 P 821 (1893).

Colorado State Lottery is operated under Department of Revenue. Colo. Rev. Stat. § 24-35-202. All expenses and prizes of lottery must be paid from proceeds derived from lottery. Colo. Rev. Stat. § 25-35-210. Prizes are subject to state income tax.

A lottery is present when consideration is paid for the opportunity to win a prize awarded by chance. In re Interrogatories of Governor Regarding Sweepstakes Races Act, Article XVIII, Section 2 is violated if chance is the controlling factor in the award. In re Interrogatories of Governor Regarding Sweepstakes Races Act., 196 Colo. 353, 356 (Colo. 1978).

All gambling is not lottery. It is unquestionably true that all lotteries are forms of gambling, but it does not follow that all gambling is a "lottery" as those terms are defined in law. *Ginsberg v. Centennial Turf Club*, 251 P.2d 926 (1952). The laws are violated when chance controlling factor in award.

### **4. Bingo and Raffles**

The Bingo and Raffles Law, Colo. Rev. Stat. §§ 12-9-101 to 12-9-113 (1985 & Supp. 1988), authorizes the Secretary of State for the State of Colorado to issue a license for games of chance commonly known as bingo or lotto, in which prizes are awarded on the basis of designated numbers or symbols on a card conforming to numbers or symbols selected at random. *Charnes v. Central City Opera House Asso.*, 773 P.2d 546 (Colo. 1989).

### **5. Horse Racing**

Horseracing has been decided to be gaming within the intent of the language here used. The word gaming is held to extend "to physical contests, whether of man or beast, when practiced for the purpose of deciding wagers, or for the purpose of diversion, as well as to games of hazard or skill, by means of instruments or devices. *Boughner v. Meyer*, 5 Colo. 71, 73-74 (Colo. 1879).

While an element of chance no doubt enters into horse and dog races, it does not control them. The bettor makes his own choice of the animal he believes will finish the race in first, second or third place. In making that selection he has available the previous records of the animal and the jockey, and various other facts that he may take into consideration in choosing the animal upon which he places a wager. *Ginsberg v. Centennial Turf Club*, 251 P.2d 926 (1952).

Statutes authorizing pari-mutuel betting on racing events are valid against the contention that such betting constitutes a lottery. *Ginsberg v. Centennial Turf Club*, 126 Colo. 471, 251 P.2d 926 (1952).

There are limitations on pari-mutuel wagering, wagers on pari-mutuel horse or greyhound races conducted in or out of this state may only be placed upon the premises of a racetrack or an in-state simulcast facility licensed by the commission or such out-of-state racetrack or simulcast facility as authorized by the commission. No wagering or betting on the results of any of the races licensed under this article shall be conducted outside a licensed or approved racetrack or simulcast facility. Colo. Rev. Stat. § 12-60-703.5 (2009).

**6. Licensing requirements for those permitted to manufacture and distribute games of chance equipment.** Colo. Rev. Stat. § 12-9-107.5 (2006).

- a. No person other than a manufacturer licensee or licensed agent shall act as a bingo-raffle manufacturer within Colorado. The manufacture of electronic devices used as aids in the game of bingo, and the printing of raffle tickets other than pull tabs, as designed and requested by a licensee, does not constitute the manufacture of games of chance equipment; except that such electronic devices shall be subject to the reporting requirements of subsections (5) and (6) of this section, and the fees established by the licensing authority in accordance with section 12-9-103.5 (3) and subsection (5) of this section.
- b. No individual shall act for or represent a landlord, manufacturer, or supplier licensee with respect to an activity covered by such license unless such individual is the licensee's owner, officer, director, partner, member, or ten percent or more shareholder of record with the licensing authority, or is the manufacturer's or supplier's licensed agent. No manufacturer or supplier licensee shall allow any person not authorized by this subsection (3) to represent it or serve as its agent with regard to any Colorado transaction.
- c. Except to the extent otherwise provided in Colo. Rev. Stat. § 12-9-107 (1), no manufacturer or supplier licensee or licensed agent shall buy, receive, sell, lease, furnish, or distribute any pull tabs, bingo cards or sheets, electronic devices used as aids in the game of bingo, or other games of

chance equipment from or to any person within Colorado other than manufacturer or supplier licensees or agents and bingo-raffle licensees; except that:

- d. A landlord licensee, supplier, or manufacturer or its agent may sell or distribute cards, sheets, equipment, or electronic devices used as aids in the game of bingo for the playing of bingo not for resale to nursing homes and other entities that distribute the cards, sheets, or electronic devices and allow playing of the game free of charge, without consideration given or received by any person for the privilege of playing; and
- e. A bingo-raffle licensee may sell its used equipment to another bingo-raffle licensee.
- f. Every manufacturer and supplier licensee shall file, upon forms prescribed by the licensing authority, quarterly reports on its licensed activities within Colorado. Such reports shall be accompanied by quarterly fees established by the licensing authority in accordance with section 12-9-103.5 (3) and deposited in the bingo-raffle cash fund. Such reports shall be filed with the licensing authority no later than April 30, July 31, October 31, and January 31 of each year licensed, and each report shall cover the preceding calendar quarter. Reports shall enumerate by quantity, purchaser or lessee, and price the pull tabs, bingo cards or sheets, electronic devices used as aids in the game of bingo, and other games of chance equipment manufactured, conveyed, or distributed within Colorado or for use or distribution in Colorado and shall include the licensee's total sales, including amounts realized from leases, of equipment as defined in section 12-9-102 (5) and electronic devices used as aids in the game of bingo and the names and addresses of all Colorado suppliers or agents of the licensee and shall be signed and verified by the owner or the chief executive officer of the licensee. These quarterly reports shall not be public records as defined in section 24-72-202, of the Colo. Rev. Stat.
- g. Every manufacturer or supplier licensee, and every licensed agent for such licensee, shall keep and maintain complete and accurate records, in accord with generally accepted accounting principles, of all licensed activities. The records shall include invoices for all games of chance equipment or electronic devices used as aids in the game of bingo conveyed or distributed within Colorado, or for use or distribution in Colorado, which invoices are specific as to the nature, description, quantity, and serial numbers of the pull tabs, bingo cards or sheets, electronic devices used as aids in the game of bingo, and other equipment so conveyed or distributed.

The records shall also show all receipts and expenditures made in connection with licensed activities, including, but not limited to, records of sales by dates, purchasers, and items sold or leased, monthly bank account reconciliations, disbursement records, and credit memos for any returned items. These records shall be maintained for a period of at least three years.

- h. No manufacturer or supplier licensee or licensed agent shall be a person responsible for or assisting in the conduct, management, or operation of any game of chance within Colorado. Colo. Rev. Stat. § 12-9-107.5 (2009).

## **VI. Specific Internet prohibition**

Colorado does not have a statutory, case law, or attorney general opinion definition governing specific internet prohibitions.

## **VII. Penalties for unlawful gambling/ Gambling Crimes**

### **1. General Gambling Crimes**

#### **a. Gambling prohibited**

- i. Gambling is a class one petty offense, and professional gambling is a class one misdemeanor. Colo. Rev. Stat. § 18-10-103(1), (2) (2009). If he is a repeating gambling offender, it is a class 5 felony. Colo. Rev. Stat. § 18-10-103 (2009).
- ii. The term "repeating gambling offender" means any person who is convicted of an offense within five years after a previous misdemeanor conviction under the gambling sections or under a former statute prohibiting gambling activities or at any time after a previous felony conviction under any of the sections. A conviction in any jurisdiction of the United States of an offense which, if committed in this state, would be professional gambling shall constitute a previous conviction for purposes of a prosecution in this state as a repeating gambling offender. Colo. Rev. Stat. § 18-20-102 (2009).

#### **b. Gambling information**

Whoever knowingly transmits or receives gambling information by telephone, telegraph, radio, semaphore, or other means or knowingly installs or maintains equipment for the transmission or

receipt of gambling information commits a class 3 misdemeanor. If the offender is a repeating gambling offender, it is a class 6 felony. Colo. Rev. Stat. § 18-10-106 (2009).

c. Possession of gambling device

Possession of a gambling device or record or violation of . Colo. Rev. Stat. § 18-10-105 and is a class 2 misdemeanor. If the offender is a repeating gambling offender, it is a class 6 felony. Colo. Rev. Stat. § 18-10-105 (2009).

d. Player versus operator

i. A person is legally accountable as principal for the behavior of another constituting a criminal offense if, with the intent to promote or facilitate the commission of the offense, he or she aids, abets, advises, or encourages the other person in planning or committing the offense. Colo. Rev. Stat. § 18-1-603 (2009).

ii. An operator means any person who places slot machines upon such person's business premises or any person who, individually or jointly, pursuant to an agreement whereby consideration is paid for the right to place slot machines on another's business premises, engages in the business of placing and operating slot machines on retail premises within the cities of Central, Black Hawk, or Cripple Creek. Colo. Rev. Stat. § 12-47.1-103 (2009).

e. Maintaining gambling premises

Whoever as owner, lessee, agent, employee, operator, or occupant knowingly maintains, aids, or permits the maintaining of gambling premises commits maintaining gambling premises. Colo. Rev. Stat. § 18-10-107 (2009). All gambling premises are common nuisances that shall be subject to abatement as provided by law. Colo. Rev. Stat. § 18-10-107 (2009). Maintaining gambling premises is a class 3 misdemeanor. If the offender is a repeating gambling offender, it is a class 6 felony. Colo. Rev. Stat. § 18-10-107 (2009).

f. Active and inactive participation in gambling

Active participation in gambling process is not necessary in this state that someone actively participate in the gambling process in order to be engaged in professional gambling. People v. Wheatridge Poker Club, 194 Colo. 15, 569 P.2d 324 (1977).

## 2. **Specific Gaming Crimes**

a. False representation for licensing

Any person who knowingly makes a false statement in any application for a license or in any statement attached to the application, or who provides any false or misleading information to the commission or the division, or who fails to keep books and records to substantiate the receipts, expenses, or uses resulting from limited gaming as prescribed in rules or regulations publicized by the commission, or who falsifies any books or records which relate to any transaction connected with the holding, operating, and conducting of any limited card games or slot machines, or who knowingly violates any of the provisions of article 47.1 of title 12, of the Colo. Rev. Stat. or any rule or regulation adopted by the commission or any terms of any license granted commits a class 5 felony. Colo. Rev. Stat. § 18-20-104 (2009).

It is unlawful for any person, whether he is an owner or employee of, or a player in, an establishment, to cheat at any limited gaming activity. Colo. Rev. Stat. § 18-20-106 (2009).

"Cheating" means to alter the selection of criteria which determine:

- i. The result of a game; or
  - ii. The amount or frequency of payment in a game. Colo. Rev. Stat. § 18-20-106 (2009)
- b. Pari-mutual racing
1. No person or agent or employee of any person shall place, receive, offer, or agree to place or receive a wager on a pari-mutuel horse or greyhound race, conducted in or broadcast in this state, by messenger, telephone, telegraph, facsimile machine, or other electronic device; this does not apply to associations or simulcast facilities licensed by the commission. Colo. Rev. Stat. § 12-60-703.5 (2009). Any person who violates commits a class 2 misdemeanor and shall be punished as provided in Colo. Rev. Stat. § 18-1.3-501. Colo. Rev. Stat. § 12-60-703.5 (2009).

### **3. Fraudulent acts**

- a. Under Colo. Rev. Stat. § 18-20-107 (2009) it is unlawful for any person to:
  - i. Alter or misrepresent the outcome of a game or other event on which wagers have been made after the outcome is made sure but before it is revealed to the players;
  - ii. Place, increase, or decrease a bet or to determine the course of play after acquiring knowledge, not available to all players, of the outcome of the game or any event that affects the outcome of the game or which is the subject of the bet or to aid anyone in acquiring such knowledge for the

purpose of placing, increasing, or decreasing a bet or determining the course of play contingent upon that event or outcome;

- iii. Claim, collect, or take, or attempt to claim, collect, or take, money or anything of value in or from a limited gaming activity with intent to defraud and without having made a wager contingent thereon, or to claim, collect, or take an amount greater than the amount won;
- iv. Knowingly to entice or induce another to go to any place where limited gaming is being conducted or operated in violation of the provisions of article 47.1 of title 12, C.R.S., with the intent that the other person play or participate in that limited gaming activity;
- v. Place or increase a bet after acquiring knowledge of the outcome of the game or other event which is the subject of the bet, including past-posting and pressing bets;
- vi. Reduce the amount wagered or to cancel a bet after acquiring knowledge of the outcome of the game or other event which is the subject of the bet, including pinching bets;
- vii. Manipulate, with the intent to cheat, any component of a gaming device in a manner contrary to the designed and normal operational purpose for the component, including, but not limited to, varying the pull of the handle of a slot machine, with knowledge that the manipulation affects the outcome of the game or with knowledge of any event that affects the outcome of the game;
- viii. By any trick or slight of hand performance, or by fraud or fraudulent scheme, cards, or device, for himself or another, win or attempt to win money or property or a representative of either or reduce a losing wager or attempt to reduce a losing wager in connection with limited gaming;
- ix. Conduct any limited gaming operation without a valid license;
- x. Conduct any limited gaming operation on an unlicensed premises;
- xi. Permit any limited gaming game or slot machine to be conducted, operated, dealt, or carried on in any limited gaming premises by a person other than a person licensed for such premises pursuant to article 47.1 of title 12, of the Colo. Rev. Stat.

- xii. Place any limited gaming games or slot machines into play or display such games or slot machines without the authorization of the Colorado limited gaming control commission;
  - xiii. Employ or continue to employ any person in a limited gaming operation who is not duly licensed or registered in a position whose duties require a license or registration pursuant to article 47.1 of title 12, of the Colo. Rev. Stat. Or
  - xiv. Without first obtaining the requisite license or registration pursuant to article 47.1 of title 12, of the Colo. Rev. Stat. be employed, work, or otherwise act in a position whose duties would require licensing or registration pursuant to said article.
- b. Any person issued a license pursuant to article 47.1 of title 12, of the Colo. Rev. Stat. violating any provision of this section commits a class 6 felony, and any other person violating any provision of this section commits a class 1 misdemeanor. If the person is a repeating gambling offender, the person commits a class 5 felony. Colo. Rev. Stat. § 18-20-107 (2009).

**4. Use of device for calculating probabilities**

- a. Under Colo. Rev. Stat. § 18-20-108 (2009) it is unlawful for any person at a licensed gaming establishment to use, or possess with the intent to use, any device to assist:
  - i. In projecting the outcome of the game;
  - ii. In keeping track of the cards played;
  - iii. In analyzing the probability of the occurrence of an event relating to the game; or
- b. In analyzing the strategy for playing or betting to be used in the game, except as permitted by the Colorado limited gaming control commission. Under Colo. Rev. Stat. § 18-20-108 (2009).
- c. Any person issued a license pursuant to article 47.1 of title 12, C.R.S., violating any provision of this section commits a class 6 felony and any other person violating any provision of this section commits a class 1 misdemeanor. If the person is a repeating gambling offender, the person commits a class 5 felony. Under Colo. Rev. Stat. § 18-20-108 (2009).

**5. Use of counterfeit or unapproved chips or tokens or unlawful coins or devices - possession of certain unlawful devices, equipment, products, or materials**

- a. It is unlawful for any licensee, employee, or other person to use counterfeit chips in any limited gaming activity.
- b. It is unlawful for any person, in playing or using any limited gaming activity designed to be played with, to receive, or to be operated by chips or tokens approved by the Colorado limited gaming control commission or by lawful coin of the United States of America:
  - i. Knowingly to use anything other than chips or tokens approved by the Colorado limited gaming control commission or lawful coin, legal tender of the United States of America, or to use coin not of the same denomination as the coin intended to be used in that limited gaming activity; or
  - ii. To use any device or means to violate the provisions of article 47.1 of title 12, of the Colo. Rev. Stat.
- c. It is unlawful for any person to possess any device, equipment, or material that he knows has been manufactured, distributed, sold, tampered with, or serviced in violation of the provisions of article 47.1 of title 12, of the Colo. Rev. Stat.
- d. It is unlawful for any person, not a duly authorized employee of a licensee acting in furtherance of his or her employment within an establishment, to have on his or her person or in his or her possession any device intended to be used to violate the provisions of article 47.1 of title 12, of the Colo. Rev. Stat.
- e. It is unlawful for any person, not a duly authorized employee of a licensee acting in furtherance of his or her employment within an establishment, to have on his or her person or in his or her possession while on the premises of any licensed gaming establishment any key or device known to have been designed for the purpose of and suitable for opening, entering, or affecting the operation of any limited gaming activity, drop box, or electronic or mechanical device connected thereto, or for removing money or other contents therefrom.
- f. Possession of more than one of the devices, equipment, products, or materials described in this section shall give rise to a rebuttable presumption that the possessor intended to use them for cheating.
- g. It is unlawful for any person to use or possess while on the premises any cheating or thieving device, including but not limited to, tools, drills, wires, coins, or tokens attached to strings or wires or electronic or magnetic devices, to facilitate the alignment of any winning combination or to facilitate removing from any slot

machine any money or contents thereof, unless the person is a duly authorized gaming employee acting in the furtherance of his or her employment.

- h. Any person violating any provision of this section commits a class 6 felony; except that, if the person is a repeating gambling offender, the person commits a class 5 felony. Colo. Rev. Stat. § 18-20-109.

**6. Unlawful manufacture, sale, distribution, marking, altering, or modification of equipment and devices associated with limited gaming - unlawful instruction**

- a. It is unlawful to manufacture, sell, or distribute any cards, chips, dice, game, or device which is intended to be used to violate any provision of article 47.1 of title 12, of the Colo. Rev. Stat.
- b. It is unlawful to mark, alter, or otherwise modify any associated equipment or limited gaming device in a manner that:
  - i. Affects the result of a wager by determining win or loss; or
  - ii. Alters the normal criteria of random selection, which affects the operation of a game or which determines the outcome of a game.
- c. It is unlawful for any person to instruct another in cheating or in the use of any device for that purpose, with the knowledge or intent that the information or use so conveyed may be employed to violate any provision of article 47.1 of title 12, of the Colo. Rev. Stat.
- d. Any person issued a license pursuant to article 47.1 of title 12, of the Colo. Rev. Stat., violating any provision of this section commits a class 6 felony, and any other person violating any provision of this section commits a class 1 misdemeanor. If the person is a repeating gambling offender, the person commits a class 5 felony. Colo. Rev. Stat. § 18-20-111.

**7. Unlawful entry by excluded and ejected persons**

- a. It is unlawful for any person whose name is on the list promulgated by the Colorado limited gaming control commission pursuant to Colo. Rev. Stat. §§ 12-47.1-1001 or 12-47.1-1002, to enter the licensed premises of a limited gaming licensee.
- b. It is unlawful for any person whose name is on the list promulgated by the Colorado limited gaming control commission pursuant to section 12-47.1-1001 or 12-47.1-1002, of the Colo. Rev. Stat., to have any personal pecuniary interest, direct or indirect, in any limited gaming licensee, licensed premises, establishment, or business involved in or with limited gaming or in the shares in

any corporation, association, or firm licensed pursuant to article 47.1 of title 12, of the Colo. Rev. Stat.

- c. Any person violating the provisions of this section commits a class 5 felony. Colo. Rev. Stat. § 18-20-112 (2009).

#### **8. Cheating game and devices**

- a. It is unlawful for any person playing any licensed game in licensed gaming premises to:
  - i. knowingly conduct, carry on, operate, or deal or allow to be conducted, carried on, operated, or dealt any cheating or thieving game or device; or
  - ii. Knowingly deal, conduct, carry on, operate, or expose for play any game or games played with cards or any mechanical device, or any combination of games or devices, which have in any manner been marked or tampered with or placed in a condition or operated in a manner the result of which tends to deceive the public or tends to alter the normal random selection of characteristics or the normal chance of the game which could determine or alter the result of the game.
- b. Any person violating any provision of this section commits a class 6 felony; except that, if the person is a repeating gambling offender, the person commits a class 5 felony. Colo. Rev. Stat. § 18-20-110 (2009).

#### **9. False or misleading information**

- a. It is unlawful for any person to provide any false or misleading information under the provisions of article 47.1 of title 12, of the Colo. Rev. Stat
- b. Any person violating any of the provisions of this section commits a class 5 felony. Colo. Rev. Stat. § 18-20-114 (2009).

#### **10. Personal pecuniary gain or conflict of interest**

- a. It is unlawful for any person to issue, suspend, revoke, or renew any license pursuant to article 47.1 of title 12, C.R.S., for any personal pecuniary gain or any thing of value, as defined in section 18-1-901 (3) (r), or for any person to violate any of the provisions of part 4 of article 47.1 of title 12, of the Colo. Rev. Stat.
- b. Any person violating any of the provisions of this section commits a class 3 felony. Colo. Rev. Stat. § 18-20-113 (2009).

### **VIII. State of Anne/ recovery of debts**

"The weight of authority seems to be to the effect that the knowledge of the unlawful purpose on the part of those furnishing materials or labor [for the erection of structures to be used for gambling will defeat recovery." *Denver Park & Amusement Co. v. Kirchhof*, 89 Colo. 399, 406 (Colo. 1931).

"Even in the hands of bona fide purchasers, negotiable paper founded in whole or in part upon a gambling or gaming consideration, within the meaning of this section, is utterly void. The protection which the law extends to an innocent holder, who for value in the usual course of trade has received negotiable paper, is of no avail when the statute in terms or by unavoidable implication has pronounced the instrument absolutely void. Stricken with nullity at its birth, it can thereafter gain no vitality. There is, however, a distinction between the status of negotiable paper held by a bona fide purchaser where the original consideration is by the courts adjudged to be illegal, and negotiable paper when the statute declares such paper to be void." *Boughner v. Meyer*, 5 Colo. 71 (Colo. 1879).

## **IX. Lawful commercial casino gaming**

### **Gaming Contracts**

All contracts, promises, agreements, conveyances, securities and notes made, given, granted, executed, drawn or entered into, where the whole or any part of the consideration thereof shall be for money, property or other valuable thing, won by any gaming, or by playing at cards, or any gambling device or game of chance, or by betting on the side or hands of any person gaming, or for the reimbursing, or paying any money or property knowingly lent or advanced at the time and place of such play, to any person or persons so gaming or betting, shall be utterly void and of no effect. *Boughner v. Meyer*, 5 Colo. 71, 72-73 (Colo. 1879).

Even at common law a wager against sound policy is not recoverable; the wager that a certain execution will not be collected, is in contravention of sound policy. The moment such a wager is made, the one party has a pecuniary interest which might influence him to interfere with the due administration of justice, by seeking to defeat the process of court. To hold that such a wager is valid, is to encourage unwarranted intermeddling with the mandates of judicial tribunals. Although void as against sound policy, as it is not within the statutory prohibition, the check, in the hands of a bona fide holder, for value received in due course of trade, must be protected. Negotiable paper, where the consideration arises from a wagering contract, will not be declared void in the hands of bona fide purchasers, unless so enacted by statute. *Boughner v. Meyer*, 5 Colo. 71 (Colo. 1879).