

Legal 500

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United States - Colorado

Gambling Law

Contributor

Brownstein Hyatt
Farber Schreck



Sarah M. Mercer

Shareholder | smercerc@bhfs.com

Trayton D. Oakes

Shareholder | toakes@bhfs.com

This country-specific Q&A provides an overview of gambling laws and regulations applicable in United States - Colorado.

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United States - Colorado: Gambling Law

1. What is the legal definition of gambling?

“‘Gambling’ means 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 or outcome of an event, including a sporting event, over which the person taking the risk has no control.” C.R.S. § 18-10-102(2).

Gambling or aiding or inducing another to engage in gambling, with the intent to derive a profit therefrom, is generally a crime in Colorado, but there are exceptions including: (1) a bona fide contests of skill, speed, strength, or endurance in which awards are made only to entrants or the owners of entries; (2) any game, wager, or transaction that 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; (3) the Colorado lottery; (4) certain bingo games, raffles and charitable games; (5) licensed casino gaming in accordance with law; and (6) licensed in-person or online/mobile sports betting in accordance with law.

These answers will focus on licensed casino gaming and sports betting.

2. What legislation applies to gambling? Please provide a summary of the legal/regulatory framework.

Primarily Article XVIII, § 9 of the Colorado Constitution and the Colorado Limited Gaming Act, C.R.S. § 44-1-101 *et seq.*, which originally became effective in 1990 by voter referendum authorizing casinos located in the cities of Black Hawk, Central City and Cripple Creek, which has been amended several times since then, including in 2019, when Colorado voters approved a voter referendum authorizing in-person sports betting at licensed casino locations and online/mobile sports betting statewide and 2021, when Colorado voters approved a voter referendum eliminating a \$100 maximum bet limit at casinos.

In addition, each of the Ute Mountain Ute Tribe and the Southern Ute Indian Tribe offer gaming pursuant to its gaming compact with the state of Colorado, entered into pursuant to the federal Indian Gaming Regulatory Act.

3. Which body/ies regulate gambling?

The Colorado Limited Gaming Control Commission (the “CLGCC”) and the Colorado Division of Gaming (“CDOG”). The CLGCC is the regulatory body that makes final determinations on licensing, rulemaking and certain disciplinary matters with respect to gambling, sports betting and fantasy sports. CDOG is an agency within the Colorado Department of Revenue that is tasked with handling investigations, license application review, proposing rules to the CLGCC, and the day-to-day regulation and oversight of gambling, sports betting and fantasy sports in Colorado.

4. Are licences available? If so: a) What is the duration of a licence? b) What types of licences are available? c) Are there different types of licences for B2C and B2B operators? d) Do software suppliers need to be licensed?

Yes, there is no express limit on the total number of licenses available for gambling or sports betting. However, no person may have an ownership interest in more than three casino gaming licenses (known as a retail gaming license). Operating sports betting (whether in-person or online) requires the operator to either have a retail gaming license and obtain a master sports betting license or enter into an agreement with a master sports betting licensee and operate under their license (there are currently over 30 retail gaming licensees).

All gaming and sports betting licenses are for a duration of two years and must be renewed each time thereafter.

For casino gaming, the license to operate a casino is a retail gaming license. An operator license is required for those that are not a retail gaming licensee that either permit slot machines on their premises or that engage in the business of placing and operating slot machines on the premises of a retail gaming licensee. There are also licenses for slot machine manufacturers or distributors and associated equipment supplier licenses for those that import, manufacture, distribute or otherwise provide equipment in connection with gaming that does not meet the definition of a “gaming device.”

For sports betting, a retail gaming licensee can obtain a master sports betting license. A master sports betting

license allows the holder to operate in-person or online/mobile sports betting either directly or by entering into an agreement with a third party to operate it. Such third party would need to obtain an internet sports betting operator license or sports betting operator license, as applicable. There are also sports betting vendor licenses in the form of a vendor major or vendor minor license. Vendor major licenses are required for those that: (1) manage, administer or control wagers or sports betting markets, (2) maintain or operate software/hardware of a sports betting gaming system, or (3) provide products or services to a sports betting operation and receive a share of its revenue (or anyone that receives a share of sports betting revenue). Vendor minor licenses are required for those that contract with or act on behalf of a sports betting operation and are involved in the operation of sports betting but not rising to the level of a vendor major (this specifically includes third-party data storage facilities or data storage managers for sports betting operators). Vendor major licenses have generally had the same licensing and application requirements as sports betting operators, while vendor minor licenses function like a registration with a significantly abbreviated application and process.

CDOG also handles the licensure or registration of fantasy sports operators.

5. Are any types of gambling products prohibited?

All gambling products are prohibited in Colorado unless they are expressly authorized under the Colorado Constitution and statutes or through local elections with respect to the cities of Central, Black Hawk and Cripple Creek. In particular, online casino gaming is not currently permitted in Colorado.

6. What is the headline application procedure? Please include any eligibility and other application requirements, including approximate application costs and any need to establish a local presence.

The business will need to complete a license application for the operating entity and an associated business application for holding companies or other affiliates providing material services to the operating entity. Sports betting operators that are not casino licensees will need to have an agreement with one to become licensed and operate. These applications will ask for information about the business and its business plan, as well as ownership,

financial and other information and supporting documentation. See the answer to the next question regarding applications for individuals related to the business.

Currently, retail casino license fees are between \$5,500–\$8,000, plus a \$5,000–\$10,000 deposit for background investigation costs. There is no fee for associated businesses. Master sports betting license fees are \$2,000. Sports betting operator and vendor major license fees are \$1,200, plus a \$10,000 background deposit.

There is no separate requirement to establish a local presence outside of what may be needed locally to meet a licensee's other operational obligations.

7. Do individuals within the business need to be personally licensed or authorised? If so, please provide headline requirements.

Yes, generally, officers, directors, key employees, and material shareholders of the business (and any associated businesses) require a license or finding of suitability. This requires submission of either Colorado's application or a multijurisdictional personal history disclosure form with a Colorado rider. These documents generally require significant criminal, professional, financial and other background information and supporting documentation such as fingerprinting and identification and personal history documents, tax returns and bank and credit card statements. Other employees working directly with the gaming portion of a casino business must be 18 years of age or older and hold a support license, and employees of a sports betting operator may be required to obtain a support license.

8. Is advertising of gambling permitted and, if permitted, how is it regulated?

Advertising of gambling and sports betting is permitted. Advertisements cannot be false or misleading. Advertisements for offers and bonuses must include the material terms and conditions in close proximity to the headline claim. Advertising cannot target those who are underage.

9. Are marketing affiliates permitted? If so, are they licensed or regulated?

Marketing affiliates are permitted. Licenses are required for marketing affiliates, with a vendor major license

required for those compensated with a share of sports betting revenue and a vendor minor license required for those compensated with fixed fees.

10. What are the penalties for offering, facilitating or marketing unlawful gambling, and can the gambler be penalised for participating in unlawful gambling?

Yes, the gambler can be penalized for participating in unlawful gambling. If the activity is classified as professional gambling, then it is a class 2 misdemeanor; otherwise, it is a petty offense. C.R.S. § 18-10-103. Petty offenses are subject to a fine up to \$300 and up to 10 days in jail. Class 2 misdemeanours are subject to a fine up to \$1,000 and up to 364 days in prison.

The possession of a gambling device unlawfully is a class 2 misdemeanor. C.R.S. § 18-10-105. Transmitting or receiving gambling information unlawfully is a class 2 misdemeanor. C.R.S. § 18-10-106.

Knowingly maintaining, aiding or permitting an unlawful gambling premises is a class 2 misdemeanor or, if a repeat gambling offender, then it is a class 6 felony. C.R.S. § 18-10-107. Class 6 felonies are subject to a fine up to \$100,000 and up to two years in prison.

11. Briefly detail key requirements for licensees.

Licensees need to demonstrate their suitability for a license, similar to other jurisdictions (e.g., they should not have associations with any criminal activity, be financially irresponsible or otherwise pose a risk of bringing disrepute to the state's gaming industry).

12. Briefly detail key anti-money laundering requirements.

Casino and sports betting operators are required to comply with federal (Bank Secrecy Act) and state (see C.R.S. § 18-5-309) anti-money laundering laws, and their internal controls and procedures for such compliance will be reviewed and approved by CDOG. Operators are to promptly report suspicious or illegal wagering activity, including potential money laundering.

13. Briefly detail key responsible gambling (or safer gambling) requirements.

Licensees must implement responsible gaming and self-exclusion programs that include account limits and

marketing opt-outs, display the responsible gaming logo prominently with website linking and help line information, send a report to CDOG annually describing its efforts to promote responsible gaming, and annually submit their strategy to CDOG for implementation of a responsible gaming program. Self-exclusion lists must be shared with CDOG for their centralized database that is shared with other licensees.

14. Briefly detail shareholder reporting and approval threshold(s).

Generally, the entire ownership of a licensee needs to be disclosed in the business's application. Owners of 5% or more for a privately held casino gaming licensee or 10% or more of a publicly held casino gaming licensee need to file a full application. Owners of less than 5% for casino gaming licensees may need to file a short, limited ownership application. Owners of 10% or more of a privately held or publicly held sports betting licensee need to file a full application. CDOG and the CLGCC have discretion to require full applications from any owner, if they so choose.

15. Briefly detail the regulator's enforcement powers, including sanctions.

CDOG and CLGCC have broad discretionary enforcement powers, which include the ability to impose fines, revoke licenses, impose conditions on licensure or continued operations or other disciplinary sanctions.

16. What is the tax rate?

The gaming tax rates for casinos are set annually by the CLGCC, not to exceed 40% of adjusted gross proceeds. Currently, it is a graduated tax based on adjusted gross proceeds: 0.25% for the first \$2 million, 2% for \$2–\$5 million, 9% for \$5–\$8 million, 11% for \$8–\$10 million, 16% for \$10–\$13 million and 20% over \$13 million.

The tax rate for sports betting is 10%, with deductions for the federal excise tax and the ability to deduct free bets/promotions paid to players up to 2.25% of the operator's monthly handle until July 1, 2025, 2% until July 1, 2026, and 1.75% from July 1, 2026, going forward. In addition to taxes and licensing fees, sports betting operators pay an annual fee, which is currently \$78,000 for online/mobile sports betting operators and \$11,700 for in-person sports betting operators.

17. Are there any proposals for changing gambling laws and regulations in the next 12-24 months? If so, please provide an overview of the proposed changes and likely timing.

In July 2024, the Southern Ute Indian Tribe filed a federal lawsuit against Colorado Governor Jared Polis and CDOG Director Christopher Schroder, alleging that they interfered with the tribe's online sports betting operations in violation of their gaming compact with the State of Colorado and the federal Indian Gaming Regulatory Act. In September 2024, the Ute Mountain Ute Tribe joined the Southern Ute Indian Tribe's lawsuit. In October 2024, the attorneys for the State of Colorado filed a motion to dismiss. The outcome of this lawsuit has the potential for nationwide ramifications on the subject of online gaming from Indian lands.

In addition, we anticipate there could be efforts to legalize online gaming in Colorado sometime in the next two years. In 2013, the Colorado Attorney General's Office issued a legal opinion concluding that an amendment to the Colorado Constitution would be required to authorize any form of online gaming in the state.

In Colorado, voter approval is required to make changes to the state constitution, and constitutional changes require 55% voter approval. A proposal to legalize online gaming could be put before the voters either through a legislatively referred ballot measure or a citizen-initiated one. If legislatively referred, such a proposal would need two-thirds support from each of the state's legislative chambers. If citizen-initiated, such a proposal would have to go through the state's Title Board process, and the proponents would have to collect the requisite number of valid signatures.

Given that any proposal to legalize online gaming would include a tax component, such a ballot measure could be put before the voters on the November ballot in either 2025 or 2026.

Effective June 14, 2024, regulations were adopted authorizing sports betting exchanges, making it the second state to permit them.

Effective January 30, 2024, additional fantasy sports regulations were adopted that incorporated many of the same regulatory requirements that apply to sports betting operators.

18. What key regulatory developments are proposed or on the horizon in the next 12-24 months?

See answer to previous question.

19. Do you foresee any imminent risks to the growth of the gambling market in your jurisdiction?

Nothing beyond the current limitations in the status quo (e.g., geographical limitations).

20. If a gambling start-up was looking for a jurisdiction in which to commence its activities, why would it choose yours?

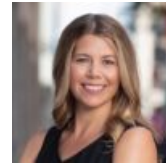
Colorado's gaming and sports betting industry is showing significant growth after its legalization of sports betting and elimination of its \$100 maximum bet limit in casinos. CDOG and the CLGCC are respected gaming regulators that have been doing this for over 30 years and are able to handle significant changes to Colorado law, as well as propose regulatory changes of their own to modernize and improve the gaming and sports betting market in the state.

Colorado has a straightforward licensing process, and, with over 30 different licensed casinos and over a dozen licensed online/mobile sports betting operators, there are many different potential partners to work with as a vendor or service provider or to access the market as an online/mobile sports betting operator. Due to all of this, we have seen many new online/mobile sports betting operators and vendors test the waters in Colorado as their first market (or first U.S. market) or as a good jurisdiction for early expansion.

Contributors

Sarah M. Mercer
Shareholder

smercerc@bhfs.com



Trayton D. Oakes
Shareholder

toakes@bhfs.com

