

# Internet Sweepstakes Cafes

## Internet Cafes

## Cyber Cafes

### FAQ:

#### What is a sweepstakes?

Michigan law does not define the term sweepstakes. By common definition, sweepstakes are advertising or promotional devices by which items of value (prizes) are awarded to participating consumers by chance, with no purchase or "entry fee" required in order to win (e.g., Publisher Clearing House, Readers Digest). Sweepstakes must be completely devoid of consideration otherwise they may constitute a lottery. Under Michigan law, if you are required to be present at the place of business or pay for Internet access to play a game of chance for a prize, that is consideration, making the game a lottery, not a sweepstakes.

#### How is a sweepstakes different than a lottery?

Lotteries are generally illegal under state and federal laws with the exception of state run lotteries and licensed charity gaming. A lottery is an activity in which all three of the following elements are present: 1) consideration; 2) prize; and 3) chance. But even if an element of a lottery is missing Michigan Courts construe the term broadly with a view to declaring any such kind of gaming a lottery.

#### Is there an exception under state law for an Internet Sweepstakes Café?

There is no Internet Sweepstakes Café exception to the general Penal Code ban on illegal lotteries and gambling. MCL 750.372; MCL 750.301.

#### Is there a promotional exception to the general ban against lotteries?

Yes, in 1996 the Michigan Legislature amended the law and provided a very limited exception to the general Penal Code lottery ban under MCL 750.372(2). But see further information in this guide on the limited nature of this exception.

## **MICHIGAN GAMING CONTROL BOARD**

Internet Sweepstakes Cafes, Internet Cafes, and Cyber Cafes continue to generate considerable concern for governmental agencies and citizens within the State of Michigan. Close consultation with the prosecutorial authority should always occur before and during investigations of these businesses.

For purposes of this guide, an Internet Sweepstakes Café, Internet Café, or Cyber Café is a business that offers customers internet access on computer terminals for a fee and provides games of chance for customers to play for a chance to win a prize. These establishments may be run under the false premise they are conducting legal promotional sweepstakes. But, there is no such exception for this type of gaming under Michigan law.

Unless authorized by statute, the Michigan Penal Code broadly prohibits any kind of gambling containing the elements of consideration, prize and chance. There is, however, a very limited exception for certain promotional activity. Under MCL 750.372(2) a person may conduct a lottery or gift enterprise "as a promotional activity that is clearly occasional and ancillary to the primary business of that person." To fit within the exception, the activity must be calculated to promote the business, must not involve payment of money solely for the chance to win a prize, and must not involve purchase of a product or service for substantially more than fair market value.



The promotional lottery exception was addressed in a Court of Appeals decision involving illegal pull-tab games. **Face Trading Inc. v. Department of Consumer and Industry Services & Liquor Control Commission** 270 Mich App 653 (2006). The Court stated that for an activity to qualify for this exception, the activity must promote only one business or the products of that business, as opposed to promoting several businesses or products. The Court held that an activity is not clearly occasional and ancillary to the primary business of the person conducting the activity if the activity is conducted consistently and is a part of the primary business.

The term lottery is construed very broadly by Michigan courts with a view to declaring any such gaming illegal even when one of the three elements (i.e. consideration, prize and chance) may be missing. **Attorney General v PowerPick Players Club of Michigan, LLC** 287 Mich App 13 (2010).

If the lottery or gaming is part of the business and cash or other payoffs to winners are regularly occurring, the activity is most likely illegal.

**432.218 Prohibited conduct; violation as felony; violation as misdemeanor; penalties; presumption; venue.**

Sec. 18. (1) A person is guilty of a felony punishable by imprisonment for not more than 10 years or a fine of not more than \$100,000.00, or both, and shall be barred from receiving or maintaining a license for doing any of the following:

- A Conducting a gambling operation where wagering is used or to be used without a license issued by the board.
- B. Conducting a gambling operation where wagering is permitted other than in the manner specified in section 9.

**MCL 750.159g "Racketeering" defined—Felony offense.**

Sec. 159g.

As used in this chapter, "racketeering" means committing, attempting to commit, conspiring to commit, or aiding or abetting, soliciting, coercing, or intimidating a person to commit an offense for financial gain, involving any of the following:

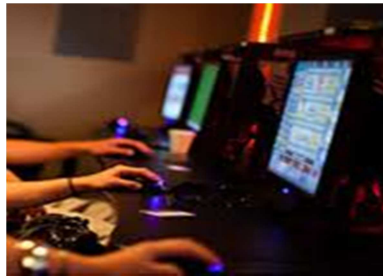
(f) A felony violation of section 18 of the Michigan Gaming Control and Revenue Act, 1996 IL 1, MCL 432.218, concerning the business of gaming.

(o) A violation of section 145d, concerning internet or computer crimes.

(y) A violation of section 301, 302, 303, 304, 305, 305a, or 313, concerning gambling.

(dd) A violation of section 411k, concerning money laundering.

(pp) A felony violation of section 909(4) of the Michigan Liquor Control Code of 1998, 1998 PA 58, MCL 436.1909, concerning the illegal sale, delivery, or importation of spirits.



**MCL 750.159i Prohibited conduct--Racketeering.**

Sec. 159i.

(1) A person employed by, or associated with, an enterprise shall not knowingly conduct or participate in the affairs of the enterprise directly or indirectly through a pattern of racketeering activity.

(2) A person shall not knowingly acquire or maintain an interest in or control of an enterprise or real or personal property used or intended for use in the operation of an enterprise, directly or indirectly, through a pattern of racketeering activity.

(3) A person who has knowingly received any proceeds derived directly or indirectly from a pattern of racketeering activity shall not directly or indirectly use or invest any part of those proceeds, or any proceeds derived from the use or investment of any of those proceeds, in the establishment or operation of an enterprise, or the acquisition of any title to, or a right, interest, or equity in, real or personal property used or intended for use in the operation of an enterprise.

A person shall not conspire or attempt to violate subsection (1), (2), or (3).

**MCL 750.372 Lotteries and gift enterprises; prohibited acts; applicability of subsection (1); "promotional activity" defined; violation as misdemeanor; penalty.**

Except as otherwise provided by law or in this section, a person shall not do any of the following:

(a) Set up or promote within this state any lottery or gift enterprise for money.

(b) Dispose of any property, real or personal, goods, chattels, merchandise, or valuable thing by the way of lottery or gift enterprise.

(c) Aid, either by printing or writing, or in any way be concerned in the setting up, managing, or drawing of a lottery or gift enterprise.

(d) In a house, shop, or building owned or occupied by him or her or under his or her control, knowingly permit the setting up, managing, or drawing of any lottery or gift enterprise, or knowingly permit the sale of any lottery ticket or share of a ticket, or any other writing, certificate, bill, goods, chattels, merchandise, token, or other device purporting or intended to entitle the holder or bearer or other person to any prize or gift or any share of or interest in any prize or gift to be drawn in any lottery or gift enterprise.

(e) Knowingly allow money or other property to be raffled off in a house, shop, or building owned or occupied by him or her or allow money or other property to be won by throwing or using dice or by any other game or course of chance.

(2) Subsection (1) does not apply to a lottery or gift enterprise conducted by a person as a promotional activity that is clearly occasional and ancillary to the primary business of that person. As used in this subsection, "promotional activity" means an activity that is calculated to promote a business enterprise or the sale of its products or services, but does not include a lottery or gift enterprise involving the payment of money solely for the chance or opportunity to win a prize or a lottery or gift enterprise that may be entered by purchasing a product or service for substantially more than its fair market value.

A person violating subsection (1) is guilty of a misdemeanor punishable by imprisonment for not more than 2 years or by a fine of not more than \$1,000.00.

**MCL 750.301 Accepting money or valuable thing contingent on uncertain event.**

Any person or his or her agent or employee who, directly or indirectly, takes, receives, or accepts from any person any money or valuable thing with the agreement, understanding or allegation that any money or valuable thing will be paid or delivered to any person where the payment or delivery is alleged to be or will be contingent upon the result of any race, contest, or game or upon the happening of any event not known by the parties to be certain, is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$1,000.00.

**MCL 750.302 Keeping or occupying common gambling house or building or place where gaming permitted; apparatus used for gaming or gambling; manufacture or possession of gaming or gambling apparatus for sale.**

Except as provided in subsection (2), any person, or his or her agent or employee who, directly or indirectly, keeps, occupies, or assists in keeping or occupying any common gambling house or any building or place where gaming is permitted or suffered or who suffers or permits on any premises owned, occupied, or controlled by him or her any apparatus used for gaming or gambling or who shall use such apparatus for gaming or gambling in any place within this state, is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$1,000.00.

This section does not prohibit the manufacture of gaming or gambling apparatus or the possession of gaming or gambling apparatus by the

manufacturer of the apparatus solely for sale outside of this state, or for sale to a gambling establishment operating within this state in compliance with the laws of this state, if applicable, and in compliance with the laws of the United States, provided the manufacturer meets or exceeds federal government requirements in regard to manufacture, storage, and transportation.

## Internet Sweepstakes Cafes

**MCL 750.303 Keeping or maintaining gaming room, gaming table, or game of skill or chance for hire, gain, or reward; accessory; applicability of subsection (1) to mechanical amusement device, slot machine, or crane game; "slot machine" and "crane game" defined; notice.**

(1) Except as otherwise provided in this section, a person who for hire, gain, or reward, keeps or maintains a gaming room, gaming table, game of skill or chance, or game partly of skill and partly of chance, used for gaming, or who permits a gaming room, or gaming table, or game to be kept, maintained, or played on premises occupied or controlled by the person, is guilty of a misdemeanor, punishable by imprisonment for not more than 2 years, or a fine of not more than \$1,000.00. A person who aids, assists, or abets in the keeping or maintaining of a gaming room, gaming table, or game, is guilty of a misdemeanor, punishable by imprisonment for not more than 2 years, or a fine of not more than \$1,000.00.

(2) Subsection (1) does not apply to a mechanical amusement device which may, through the application of an element of skill, reward the player with the right to replay the mechanical

amusement device at no additional cost if the mechanical amusement device is not allowed to accumulate more than 15 replays at 1 time; the mechanical amusement device is designed so that accumulated free replays may only be discharged by reactivating the device for 1 additional play for each accumulated free replay; and the mechanical amusement device makes no permanent record, directly or indirectly, of the free replays awarded.

(3) Subsection (1) does not apply to a slot machine if the slot machine is 25 years old or older and is not used for gambling purposes. As used in this section, "slot machine" means a mechanical device, an essential part of which is a drum or reel which bears an insignia and which when operated may deliver, as a result of the application of an element of chance, a token or money or property, or by operation of which a person may become entitled to receive, as a result of the application of an element of chance, a token or money or property.

(4) A slot machine which is being used for a gambling purpose in violation of subsection (3) shall be confiscated and turned over to the director of the department of state police for auction.

(5) Subsection (1) does not apply to a crane game. As used in this section, "crane game" means an amusement machine activated by the insertion of a coin by which the player uses 1 or more buttons, joysticks, or similar means of control, or a combination of those means of control, to position a mechanical or electromechanical claw, or other retrieval device, over a prize, toy, novelty, or an edible item having a wholesale value of not more than \$3.75, and thereby attempts to retrieve the prize, toy, novelty, or edible item. Every prize, toy, or edible item must be retrievable by the claw. A slot machine is not considered a crane game.

(6) A person who knowingly alters a crane game that is available for play so that the crane game is not in compliance with the elements of the definition contained in subsection (5) is guilty of a felony, punishable by imprisonment for not more than 2 years, or a fine of not more than \$20,000.00, or both.

(7) A law enforcement officer may confiscate any crane game that is available for play and is not in compliance with the elements of the definition contained in subsection (5). The confiscated crane games and their contents shall not be destroyed, altered, dismantled, sold, or otherwise disposed of except upon order of a court having competent jurisdiction.

(8) The following notice shall be conspicuously posted on the front of every crane game located in this state: "This game is not licensed or regulated by the state of Michigan."

**MCL 752.796 Use of computer program, computer, computer system, or computer network to commit crime.**

Sec. 6.

(1) A person shall not use a computer program, computer, computer system, or computer network to commit, attempt to commit, conspire to commit, or solicit another person to commit a crime.

(2) This section does not prohibit a person from being charged with, convicted of, or punished for any other violation of law committed by that person while violating or attempting to violate this section, including the underlying offense.

(3) This section applies regardless of whether the person is convicted of committing, attempting to commit, conspiring to commit, or soliciting another person to commit the underlying offense.

**MCL 750.308 Gaming house; search warrant; seizure of apparatus and material; arrest.**

If a person makes oath before a judge that he or she has probable cause to believe and does believe that a house or other building, room, or place is used as and for a common gaming house, for gaming for money or other property, or is occupied, used, or kept for promoting a lottery, or for the sale of lottery tickets, or for promoting the game known as a policy lottery or policy, or for the buying or selling of pools or registering of bets upon any race, game, contest, act, or event, and that persons resort thereto for any such purpose, the judge, whether the names of the persons last mentioned are known to the complainant or not, shall, if he or she be satisfied there is reasonable cause for such belief, issue a warrant commanding the sheriff or deputy sheriff or any constable or police officer to enter and search such house, building, room, or place, and if any lottery, policy or pool tickets, slips, checks, manifold books or sheets, memoranda of any bet, or other implements, apparatus, or material of any form of gaming be found in the place, to take into his or her custody all the implements, apparatus, or material of gaming, including any articles, equipment, furniture, loud speakers and amplifying apparatus, adding machines, calculators, money changers and boxes, and money found therein or in or on gambling apparatus, or material used in connection with or the promotion of gambling or a gambling place; and upon the finding of such apparatus and material of any form of gaming, the officers shall be authorized to arrest the keepers of the place, all persons in any way assisting in keeping the same, whether as capper, tout, guard, doorkeep, lookout, or otherwise, and all persons who are there found, and to keep the persons, implements, apparatus, or material of gaming, including any punch board prizes, articles, equipment, furniture, loud speakers and amplifying

apparatus, adding machines, calculators, money changers and boxes, and money found therein or in or on gambling apparatus, or material used in connection with or the promotion of gambling or a gambling place, so that they may be forthcoming before some court or magistrate to be dealt with according to law. The provisions of law relative to destroying or other disposition of gaming articles shall apply to all articles and property seized as herein provided.

**750.308a Disposition of articles or property seized.**

On application of a sheriff, chief of police of a police department, commissioner of the Michigan state police, or other peace officer, a court or magistrate of competent jurisdiction may upon due notice and hearing turn over to said sheriff, chief of a police department, commissioner of the Michigan state police, or peace officer, any articles or property listed under the provisions of section 308 of this chapter lawfully seized by any such peace officer for such disposition as the court or magistrate shall prescribe, or said court or magistrate may provide for the destruction or other disposition of said articles or property.

Any funds derived from the disposition of any such articles or property shall be turned over to the treasurer of the city, township or county whose law enforcement officer made application for the disposition of such articles or property, or to the state treasurer if such application is made by the commissioner of the Michigan state police.



Serving Michigan citizens by licensing and regulating commercial casinos in Detroit, their suppliers and employees, regulating pari-mutuel horse racing, and overseeing Native American casinos in Michigan.

In November 1996, Michigan voters approved Proposal E, effectively authorizing three licensed casinos to be built in Detroit. Proposal E was later substantially improved and strengthened, then signed into law as the Michigan Gaming Control & Revenue Act.

In January 2010, the governor issued Executive Order 45 authorizing all of the authority, powers, duties, and functions of the Office of Racing Commissioner to the Executive Director of the Michigan Gaming Control Board.

Native American tribes are sovereign nations. As such, the State of Michigan does not have general regulatory authority over Indian casinos, although the State does have oversight authority over compliance with the State-Tribal Compact provisions. Tribal casinos are regulated by the National Indian Gaming Commission and the government of the appropriate tribal community.

**“The Michigan Gaming Control Board shall ensure the conduct of fair and honest gaming to protect the interests of the citizens of the State of Michigan.”**

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