

JAN 18 2013

A BILL FOR AN ACT

RELATING TO GAMBLING.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that gambling, as defined
2 in section 712-1220(4), Hawaii Revised Statutes, is composed of
3 three necessary elements. First, a person must wager something
4 of value. Second, the wager must be placed on the outcome of a
5 contest of chance or a future contingent event that is not under
6 the wagerer's control or influence. Finally, the wager must be
7 made under conditions in which a payout is made if a specified
8 outcome occurs.

9 Recently, across the nation, including in this State, a
10 proliferation of electronic sweepstakes game machines have been
11 designed to circumvent the spirit, if not the letter, of
12 gambling laws by making opportunities to play contests of chance
13 for prizes incidental to the purchase of goods or services. For
14 example, a business may sell a phone card or internet time that,
15 for no additional charge, affords the buyer an opportunity to
16 play contests of chance on a machine that offers payouts. The
17 cost of the card or internet time sometimes far exceeds what it
18 would cost to buy the card or time if no opportunity for play is



1 included. Many of the contests of chance that may be played on
2 these machines resemble games that are widely associated with
3 gambling. However, businesses operating these machines contend
4 that their use does not constitute gambling because the
5 consumer's payment is for the purchase of other goods or
6 services, not for the opportunity to use the machine, and
7 therefore the consumer is not wagering anything of value for
8 purposes of the gambling law. In fact, these businesses claim
9 that they are merely offering a sweepstakes to promote their
10 goods or services, even though it is often apparent that the
11 purchases are primarily or solely made for the opportunity to
12 play on a sweepstakes machine that replicates the gambling
13 experience.

14 The legislature also finds that, now more than ever, the
15 prohibition of gambling activities has become exceedingly
16 difficult in light of a highly sophisticated and adaptable
17 gaming industry that uses technology to exploit perceived
18 loopholes in the law. Electronic gaming machines can be quickly
19 reprogrammed to modify gameplay and other features, which
20 presents tremendous challenges to efforts to define prohibited
21 activities under the gambling law. Hence, the effective



1 crafting and enforcement of gambling prohibitions remains a
2 constant and ever-evolving process.

3 The purpose of this Act is to strengthen gambling laws by
4 addressing contests of chance played to win something of value
5 where the wager consists of an incidental purchase of goods or
6 services.

7 SECTION 2. Chapter 712, Hawaii Revised Statutes, is
8 amended by adding a new section to part III to be appropriately
9 designated and to read as follows:

10 "§712- Sweepstakes; defenses. (1) In a prosecution
11 under any section of this part relating to a sweepstakes, it is
12 an affirmative defense that the sweepstakes operator offered
13 free entry or play; provided that:

14 (a) The free entry or play is offered for immediate use in
15 the same manner as entry or play obtained by purchase
16 of goods or services, not offered by mail or some
17 other means for use at a later time or date; and

18 (b) The defendant shall have the burden of going forward
19 with evidence to prove, by a preponderance of the
20 evidence, the facts constituting the defense, unless
21 the facts are supplied by the testimony of the
22 prosecuting witness or circumstances in the testimony.



1 (2) In a prosecution under any section of this part
2 relating to a sweepstakes, it is no defense that a person who
3 enters or plays the sweepstakes may determine whether the person
4 has won without having to actually enter or play the contest of
5 chance."

6 SECTION 3. Section 712-1220, Hawaii Revised Statutes, is
7 amended to read as follows:

8 "§712-1220 **Definitions of terms in this part.** In this
9 part, unless a different meaning plainly is required, the
10 following definitions apply[-]:

11 [~~1~~] "Advance gambling activity". A person "advances
12 gambling activity" if [~~he~~] the person engages in conduct that
13 materially aids any form of gambling activity. Conduct of this
14 nature includes but is not limited to conduct directed toward
15 the creation or establishment of the particular game, contest,
16 scheme, device, or activity involved, toward the acquisition or
17 maintenance of premises, paraphernalia, equipment, or apparatus
18 therefor, toward the solicitation or inducement of persons to
19 participate therein, toward the actual conduct of the playing
20 phases thereof, toward the arrangement of any of its financial
21 or recording phases, or toward any other phase of its operation.

22 A person advances gambling activity if, having substantial



1 proprietary control or other authoritative control over premises
2 being used with [~~his~~] the person's knowledge for purposes of
3 gambling activity, [~~he~~] the person permits that activity to
4 occur or continue or makes no effort to prevent its occurrence
5 or continuation. A person advances gambling activity if [~~he~~]
6 the person plays or participates in any form of gambling
7 activity.

8 [~~(2)~~] "Bookmaking" means advancing gambling activity by
9 accepting bets from members of the public upon the outcomes of
10 future contingent events.

11 [~~(3)~~] "Contest of chance" means any contest, game, gaming
12 scheme, or gaming device in which the outcome depends in a
13 material degree upon an element of chance, notwithstanding that
14 skill of the contestants may also be a factor therein.

15 [~~(4)~~] "Gambling". A person engages in gambling if [~~he~~] the
16 person stakes or risks something of value upon the outcome of a
17 contest of chance or a [~~future~~] contingent event not under [~~his~~]
18 the person's control or influence, including an outcome that has
19 already been determined or an event that has already occurred
20 but the outcome or occurrence is unknown to the person, upon an
21 agreement or understanding that [~~he~~] the person or someone else



1 will receive something of value in the event of a certain
2 outcome. Gambling [~~does~~]:

3 (1) Includes the use of any gambling device that is
4 offered incident to the purchase of other goods or
5 services, at no additional charge; and

6 (2) Does not include bona fide business transactions valid
7 under the law of contracts, including but not limited
8 to contracts for the purchase or sale at a future date
9 of securities or commodities, and agreements to
10 compensate for loss caused by the happening of chance,
11 including but not limited to contracts of indemnity or
12 guaranty and life, health, or accident insurance.

13 [~~5~~] "Gambling device" [~~means~~]:

14 (1) Means any device, machine, paraphernalia, or equipment
15 that is [~~used~~]:

16 (a) Used or usable in the playing phases of any
17 gambling activity, whether that activity consists
18 of gambling between persons or gambling by a
19 person involving the playing of a machine[~~-~~
20 However,]; or

21 (b) Available to play or operate a contest of chance
22 upon payment of something of value, including the



1 purchase of goods or services incidental to play
2 or operation of the device, and that may deliver
3 or entitle the person playing or operating the
4 device to a payout of anything of value, whether
5 the payout is made automatically by the device or
6 in any other manner; and

7 (2) Includes any machine used to play sweepstakes that:

8 (a) Discharges:

9 (i) Any prize, including money, cash equivalent,
10 debit card, merchandise credit card, or
11 opportunities to enter a sweepstakes or play
12 any other contest of chance, whether the
13 payout is made automatically by the machine
14 or in any other manner and whether the
15 discharge of the prize can be determined
16 either at the beginning or at the end of
17 play; or

18 (ii) Anything that may be exchanged for a prize;
19 or

20 (b) Displays any symbol entitling any person to
21 receive a prize.



1 However, the term does not include lottery tickets and
2 other items used in the playing phases of lottery
3 schemes [~~are not gambling devices within this~~
4 definition].

5 [~~(6)~~] "Lottery" means a gambling scheme in which:

6 (a) The players pay or agree to pay something of value for
7 chances, represented and differentiated by numbers or
8 by combinations of numbers or by some other medium,
9 one or more of which chances are to be designated the
10 winning ones; and

11 (b) The winning chances are to be determined by a drawing
12 or by some other method based on an element of chance;
13 and

14 (c) The holders of the winning chances are to receive
15 something of value.

16 [~~(7)~~] "Mutuel" means a form of lottery in which the winning
17 chances or plays are not determined upon the basis of a drawing
18 or other act on the part of persons conducting or connected with
19 the scheme, but upon the basis of the outcome or outcomes of a
20 future contingent event or events otherwise unrelated to the
21 particular scheme.



1 ~~[(8)]~~ "Player" means a person who engages in gambling
2 solely as a contestant or bettor.

3 ~~[(9)]~~ "Profit from gambling activity". A person "profits
4 from gambling activity" if ~~[he]~~ the person accepts or receives
5 money or other property pursuant to an agreement or
6 understanding with any other person whereby ~~[he]~~ the person
7 participates or is to participate in the proceeds of gambling
8 activity.

9 ~~[(10)]~~ "Social gambling" is defined in section 712-1231.

10 ~~[(11)]~~ "Something of value" ~~[means]~~:

11 (1) Means any money or property, any token, object, or
12 article exchangeable for money or property, any
13 purchase of goods or services that entitles a person
14 to participate in a gambling scheme or to play or
15 operate a gambling device, or any form of credit or
16 promise directly or indirectly contemplating transfer
17 of money or property or of any interest therein, or
18 involving extension of a service or entertainment~~[-]~~;
19 and

20 (2) Includes a sweepstakes ticket or other item that
21 entitles the holder to a share or chance in a
22 sweepstakes, whether the ticket or other item is



1 obtained in conjunction with the purchase of goods or
2 services or provided at no cost in limited quantities
3 pursuant to the terms of the sweepstakes.

4 "Sweepstakes":

5 (1) Means any game, advertising scheme or plan, or other
6 promotion that constitutes a contest of chance by
7 which a person may enter to win or become eligible to
8 receive any prize, the determination of which is based
9 upon chance; and

10 (2) Includes only those sweepstakes that an entrant can
11 enter, play, or otherwise interact with using a
12 gambling device furnished by the sweepstakes operator
13 or an affiliate or person under contract with the
14 operator, in an establishment controlled by,
15 affiliated with, or contracting with the operator."

16 SECTION 4. This Act does not affect rights and duties that
17 matured, penalties that were incurred, and proceedings that were
18 begun before its effective date.

19 SECTION 5. Statutory material to be repealed is bracketed
20 and stricken. New statutory material is underscored.



1 SECTION 6. This Act shall take effect upon its approval.

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INTRODUCED BY:

[Handwritten Signature]

[Handwritten Signature]

Anzanne Chun Oskala

Michelle Sidani



S.B. NO. 852

Report Title:

Gambling; Gambling Devices; Sweepstakes

Description:

Amends various definitions in the gambling law to clarify that gambling includes playing or entering sweepstakes or other contests of chance played to win something of value, where the wager consists of an incidental purchase of goods or services.

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