A BILL FOR AN ACT

RELATING TO INTERNET GAMING.

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

SECTION 1. The legislature finds that internet wagering on games of chance and games of skill has evolved into a core form of entertainment for millions of individuals worldwide. In over eighty-five jurisdictions across the world, internet gambling is a legalized, regulated, and taxed activity that generates billions of dollars in revenue for governments. Currently, the United States is the largest unregulated internet gambling market in the world. It is estimated that millions of Americans have wagered billions of dollars annually on unregulated, offshore websites, resulting in significant revenues escaping the United States economy.

On September 20, 2011, the United States Department of Justice issued an opinion that reversed its previous interpretation of the federal Wire Act, 18 U.S.C. §1084. The Department of Justice's new interpretation allows state governments, subject to certain restrictions, to legalize and regulate internet gambling operations and capture that revenue for the benefit of state governments.
The legislature also finds that tens of thousands of Hawaii residents are estimated to participate in illegal online gambling on unregulated internet web sites. These gambling web sites are operated by illegal offshore operators not subject to regulation or taxation in the United States. Questions often arise about the honesty and the fairness of the games offered to Hawaii residents, but neither federal nor Hawaii laws currently provide any consumer protections for Hawaii residents who play on these web sites. Moreover, tens of millions of dollars in revenues generated from online gambling are being realized by offshore operators serving Hawaii residents, but no benefits are provided to the State.

To protect Hawaii residents who gamble on the Internet, and to capture revenues generated from internet gambling in Hawaii, it is in the best interest of the State and its citizens to regulate this existing activity by authorizing and implementing a secure, responsible, and legal system for internet gambling. The State's interests are best met by doing so through an internet-only lottery and gaming corporation, which shall be a public instrumentality, operating for the sole benefit of the State, and accountable to the legislature and to the public through a system of audits and reports.
The purpose of this Act is to create a body politic, known as the Hawaii internet lottery and gaming corporation, authorized to offer a regulated, secure, and responsible framework for the conduct of internet wagering and gaming in Hawaii that will provide consumer protections and capture additional revenues for the benefit of the State that are currently flowing offshore to unregulated internet gambling operations.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

"CHAPTER

INTERNET LOTTERY AND GAMING

§ -1 Definitions. As used in this chapter, the term:

"Board" means the board of directors of the Hawaii internet lottery and gaming corporation.

"Chief executive officer" means the chief executive officer of the Hawaii internet lottery and gaming corporation.

"Corporation" means the Hawaii internet lottery and gaming corporation.

"Lottery", "lottery game", or "lottery games" means any game of chance approved by the board and operated pursuant to
this chapter, including but not limited to interactive instant
win games, as well as draw games.

"Major procurement contract" means any product or service
contract for an amount in excess of $75,000.

"Member" or "members" means a director or directors of the
board of directors of Hawaii internet lottery and gaming
corporation.

"Net proceeds" means all revenue derived from the
operations of the corporation, less operating expenses.

"Operating expenses" means all costs of doing business,
including but not limited to prizes, bonuses, advertising and
marketing costs, costs related to the internet gaming provider,
personnel costs, capital costs, funds for problem gambling
education and treatment, and other operating costs.

"Person" means any individual, corporation, partnership,
unincorporated association, or other legal entity.

"Vendor" means a person who provides or proposes to provide
goods or services to the corporation pursuant to a major
procurement contract, but does not include an employee of the
corporation, or an agency or instrumentality of the State.

§  -2  Hawaii internet lottery and gaming corporation
established. There is established a body corporate and politic
to be known as the Hawaii internet lottery and gaming corporation, which shall be deemed to be an instrumentality of the State but shall not be deemed a state agency. The corporation shall be a public corporation registered with the director of commerce and consumer affairs and shall be subject to the corporate laws of the State. Venue for the corporation shall be the first circuit.

§ -3 Purpose and authority of corporation. (a) The purpose of the Hawaii internet lottery and gaming corporation shall be to conduct and regulate internet wagering and gaming for the benefit of the State, with the assistance of a private internet gaming provider, pursuant to this chapter and rules adopted hereunder.

(b) The Hawaii internet lottery and gaming corporation shall be authorized to:

(1) Offer internet wagering on games of chance and games of skill, including lottery, poker, and casino games, to individuals over the age of eighteen years; provided that the corporation shall not offer internet wagering on any sporting event or sporting contest;
(2) Enter into agreements with other state gaming entities for the offering of multistate games, consistent with state and federal law;

(3) Utilize the broad reach of its internet gaming platform to offer legally compliant free-play games and sweepstakes with Hawaii related prizes to individuals outside of Hawaii, for the purpose of attracting tourists and providing free exposure for Hawaii and Hawaii businesses to domestic and overseas markets;

(4) Conduct no more than two land based gaming entertainment events annually, related to the corporation's internet game offerings, for the purpose of attracting tourists to Hawaii; provided that the corporation shall not have the authority to conduct any other form of land-based gambling; and

(5) To engage in other activities consistent with the purpose of this chapter and rules adopted hereunder, and with state, federal and international laws.

§ 4 Board of directors; membership; reimbursement for expenses; conflict of interests; quorum. (a) The corporation shall be governed by a board of directors composed of seven
members. Three members shall be appointed by the governor, two shall be appointed by the president of the senate, and two shall be appointed by the speaker of the house of representatives.

(b) Members of the board of directors shall be prominent persons in their business or profession and shall not have been convicted of any felony offense. The board shall include individuals with knowledge and expertise in lottery and gaming, marketing and entertainment, technology, accounting, law, and operation of a business enterprise.

(c) Members of the board of directors shall serve for terms of five years; provided that, of the initial members appointed, three shall be appointed for a term of two years, two shall be appointed for a term of four years, and two shall be appointed for a term of five years. Any vacancy occurring on the board shall be filled by the governor by appointment for the unexpired term.

(d) Members of the board of directors shall not have any interest in an undertaking that puts their personal interest in conflict with that of the corporation, including but not limited to an interest in a major procurement contract or a participating vendor.
(e) The board of directors may delegate to any one or more of its members, to the chief executive officer, or to any agent or employee of the corporation any powers and duties as it may deem proper.

(f) A majority of members of the board of directors shall constitute a quorum for the transaction of any business and for the exercise of any power or function of the corporation.

(g) Action may be taken and motions and resolutions adopted by the board of directors at any meeting thereof by the affirmative vote of a majority of present and voting members.

(h) No vacancy in the membership of the board shall impair the right of the members to exercise all the powers and perform all the duties of the board.

(i) The members of the board shall be compensated in the amount of $ per year and shall be reimbursed for expenses, including travel expenses, necessary for the performance of their duties.

§ -5 Board of directors; powers and duties. In addition to any other powers and duties authorized by law, the board shall:

(1) Select an internet gaming provider, pursuant to the requirements of this chapter;
(2) Adopt regulations, policies, and procedures relating to the conduct of internet games and the internet gaming provider, including but not limited to rules governing:

(A) Type of games to be conducted;

(B) Price points for games and percentage of rake;

(C) Forms of payment accepted and prohibited;

(D) Number and amount of prizes;

(E) Method of selecting winners and validating winnings;

(F) Manner and time of payment of prizes;

(G) Frequency of games, and drawings or selection of winning tickets or shares;

(H) Means of conducting drawings for lottery games;

(I) Responsible gaming;

(J) The conduct of the internet gaming provider;

(K) The gaming platform; and

(L) Any and all other matters necessary, desirable, or convenient toward ensuring the efficient and effective operation of internet gaming;

(3) Provide the chief executive officer with private sector perspective and direction;
(4) Approve, disapprove, amend, or modify the budget recommended by the chief executive officer for the operation of the corporation;

(5) Approve, disapprove, amend, or modify the terms of the major procurements recommended by the chief executive officer; and

(6) Perform other functions as necessary to carry out the purposes of this chapter.

§ -6 Chief executive officer; appointment; compensation.

The board of directors shall appoint and shall provide for the compensation of a chief executive officer who shall be an employee of the corporation and who shall serve at the pleasure of the board. The chief executive officer shall direct the day-to-day operations and management of the corporation and shall be vested with powers and duties as specified by the board and by law.

§ -7 Chief executive officer; powers and duties. The chief executive officer of the corporation shall direct and supervise all administrative and technical activities in accordance with the provisions of this chapter and with regulations, policies, and procedures adopted by the board. It shall be the duty of the chief executive officer to:
1 (1) Supervise and exercise active oversight of the
operations of the internet gaming provider;

2 (2) Hire and supervise a small staff of employees, as
deemed necessary; provided that all applicants for
employment shall be subject to background check;

3 provided further that no person who has been convicted
of a felony or bookmaking or other forms of illegal
4 gambling or of a crime involving moral turpitude shall
be employed by the corporation;

5 (3) In consultation with the internet gaming provider,
prepare an annual budget, including a marketing
6 budget, for the approval of the board;

7 (4) Report quarterly to the board a full and complete
statement of internet gaming revenues and expenses for
8 the preceding quarter; and

9 (5) Perform other duties generally associated with a chief
executive officer of a corporation of an
entrepreneurial nature.

$ -8 General powers of the corporation. The corporation

is granted comprehensive and extensive powers as generally

exercised by corporations engaged in for-profit business

activities and all powers as are necessary or convenient to
effectuate those purposes and provisions of this chapter that
are not in conflict with the state constitution or federal law,
including to:

(1) Sue and be sued in contract and in tort and to
    complain and defend in all courts;
(2) Adopt and alter a seal;
(3) Adopt, amend, and repeal bylaws, regulations, and
    policies and procedures for the regulation of its
    affairs and the conduct of its business;
(4) Elect and prescribe the duties of officers and
    employees of the corporation and to perform such other
    matters as the corporation may determine;
(5) Procure or provide insurance;
(6) Hold copyrights, trademarks, and service marks and
    enforce its rights with respect thereto;
(7) Initiate, supervise, and administer the operation of
    the internet games in accordance with the provisions
    of this chapter and regulations, policies, and
    procedures adopted pursuant thereto;
(8) Enter into written agreements with one or more other
    states or sovereigns for the operation, participation
    in marketing, and promotion of joint games;
(9) Conduct such market research as is necessary or appropriate;
(10) Acquire or lease real property and make improvements thereon and acquire by lease or by purchase personal property, including, but not limited to, computers; mechanical, electronic, and on-line equipment and terminals; and intangible property, including, but not limited to, computer programs, systems, and software;
(11) Enter into contracts, to incur debt in its own name, and enter into financing agreements with the State, agencies or instrumentalities of the State, or with any commercial bank or credit provider; provided, that any such debt shall be approved by the director of finance;
(12) Administer oaths, take depositions, issue subpoenas, and compel the attendance of witnesses and the production of books, papers, documents, and other evidence relative to any investigation or proceeding conducted by the corporation;
(13) Appoint and select officers, agents, and employees, including professional and administrative staff and personnel, as deemed necessary;
(14) Select and contract with vendors;
(15) Enter into contracts or agreements with state or local law enforcement agencies for the performance of law enforcement, background investigations, and security checks;
(16) Establish and maintain banking relationships, including but not limited to establishment of checking and savings accounts and lines of credit;
(17) Advertise and promote the internet games; and
(18) Adopt and amend regulations, policies, and procedures as necessary to exercise its powers, fulfill its duties, organize and operate the corporation, regulate the conduct of internet games, and as otherwise necessary or desirable for the efficient and effective operation of the corporation and effectuation of the purposes of this chapter; provided that the corporation shall be exempt from chapter 91 regarding the adoption of bylaws, regulations, policies, and procedures or in the exercise of any regulatory power.

§ -9 Corporation authorized to borrow money; restriction on use of money in state general fund. (a) The corporation, in accordance with the provisions of this chapter, may borrow or
accept and expend moneys as may be received from any source,
including income from the corporation's operations, for
effectuating its corporate purposes, including the payment of
the initial expenses of initiation, administration, and
operation of the corporation and the internet gaming website.

(b) The corporation shall be self-sustaining and self-funded. Moneys in the state general fund shall not be used or
obligated to pay the expenses of the corporation or prizes of
the lottery, and no claim for the payment of an expense of the
lottery or prizes of the lottery may be made against any moneys
other than moneys credited to the corporation operating account.

(c) The corporation may purchase, lease, or lease-purchase
goods or services as necessary for effectuating the purposes of
this chapter.

§ -10 Reports by the corporation. To ensure the
financial integrity of the internet gaming operations, the
corporation through the board of directors shall:

(1) Submit quarterly and annual reports to the governor
and legislature, disclosing the total revenues, prize
disbursements, operating expenses, and administrative
expenses of the corporation during the reporting
period;

2013-0723 SB SMA.doc
(2) Adopt a system of internal audits and controls;
(3) Maintain regular records of transactions; and
(4) Contract with a certified public accountant or firm for an annual financial audit of the corporation; provided that the certified public accountant or firm shall have no financial interest in any vendor with whom the corporation is under contract.

§ 11 Bidding requirements and procedures for contracts generally. (a) The corporation shall enter into contracts for major procurements with a value of over $75,000 only after engaging in a competitive process. The requirements of chapter 103D shall not apply to procurements conducted by the corporation but its procedures shall be designed to allow the selection of proposals that provide the greatest long-term benefit to the State, the greatest integrity for the corporation, and the best service and products for the public. The requirement for a competitive process shall not apply in the case of a single vendor having exclusive rights to offer a particular service or product.

(b) The corporation shall investigate the responsibility, security, and integrity of any vendor who is a finalist in submitting a bid, proposal, or offer as part of a major
procurement. The corporation shall not select a vendor with questionable integrity for any major procurement.

(c) A solicitation, request for qualification, or specification for a contract may not require, stipulate, suggest, or encourage a monetary or other financial contribution or donation as an explicit or implied term or condition for awarding or completing the contract.

(d) No vendor or applicant for a major procurement contract may pay, give, or make any economic opportunity, gift, loan, gratuity, special discount, favor, hospitality, or service, excluding food and beverages having an aggregate value not exceeding $100 in any calendar year, to the chief executive officer, any board member, or any employee of the corporation or to a member of the immediate family residing in the same household of the chief executive officer, board member, or employee.

§ -12 Adoption of internet gaming rules. Within one hundred-eighty days of its formation, the board shall adopt rules and policies governing its internet gaming operations, consistent with the requirements of this chapter. The board may retain a neutral advisor with expertise in internet gaming to assist the board in adopting its rules.
§  -13  Registered player accounts and restrictions on play.  (a) A person desiring to wager money on the corporation's web-site shall register for an account by providing documentation verifying the identity of the individual and that the person is at least eighteen years of age. The corporation shall have sole discretion to exclude from participation in internet wagering any person who is reasonably determined to be unsuitable to participate in those games or whose participation would be contrary to requests concerning self-exclusion or limits on losses, amounts wagered, or playing time.

(b) The corporation shall use personal identification numbers or other technology so that only the registered person has access to the person's wagering account and that games can be played only from within the legally permissible geographical borders.

(c) Initially, only individuals physically located in the State may wager on the corporation's internet gaming website. At such time that a legally compliant mechanism is established to permit wagering by individuals physically located outside of the State, the corporation shall adopt rules to allow and govern wagering by those individuals.
§ 14 Responsible gaming measures. (a) The corporation's internet gaming website shall provide information on problem gambling, including a problem gambling hotline telephone number that a person may call to seek information and assistance for a potential gambling addiction. The corporation shall offer responsible gambling services, such as self-exclusion, limits on losses, amounts wagered, and playing time, and other services as the corporation reasonably may determine are necessary and appropriate to reduce and prevent problem gambling.

(b) The corporation shall offer, at the time of registration, the option to place a limitation on the amount of funds that may be transferred into a wagering account within any twenty-four hour period. The corporation shall adopt procedures to ensure that the player may not deposit more funds into the account than specified. If, after the wagering account is opened, a person wishes to increase the amount of funds that may be transferred, the corporation may increase the amount after obtaining and verifying the validity of identification and personal information. However, that increase shall not be effective until at least twenty-four hours after the change is requested.
§ 15 Selection of the internet gaming provider. (a) Within one hundred-eighty days of its formation, the board shall commence a competitive process for the selection of a qualified and suitable internet gaming provider. The selection of the internet gaming provider shall be done through a request for qualifications, which shall take into account the following factors:

(1) The provider’s knowledge and expertise with regard to:

(A) United States regulated gaming and lottery operations;

(B) Interactive digital media and entertainment; and

(C) Internet technology; and

(2) The suitability of the provider’s executives and key employees to operate a legally compliant gaming enterprise with honesty, fairness, and integrity; provided that a provider that has engaged in any of the following activities shall be deemed unsuitable to serve as the corporation’s internet gaming provider:

(A) The provider that has accepted or assisted in the acceptance of any wagers of money or other consideration related to internet gambling activity, including internet poker, lottery, or
casino games, from an individual located in the United States, prior to the issuance on September 20, 2011, of an opinion by the United States Department of Justice pertaining to the interpretation of the Wire Act, 18 U.S.C. § 1084; provided that this paragraph shall not apply to providers that have accepted pari-mutuel wagers on races in compliance with the Interstate Horseracing Act;

(B) The provider has operated in violation of the laws of any country or state in which it has operated; or

(C) The operator has been indicted or convicted of a crime related to its gaming operations in any state or foreign jurisdiction.

(b) The request for qualification may not require, stipulate, suggest, or encourage a monetary or other financial contribution or donation as an explicit or implied term or condition for awarding the contract.

(c) The board shall select the internet gaming provider that offers the greatest integrity for the corporation, the
greatest long-term benefit to the State, and the best service
and products for the public.

§ -16 Responsibilities of the internet gaming provider.
The internet gaming provider shall be responsible for operating
a legally compliant, secure, and responsible internet gaming
operation on behalf of the corporation. The internet gaming
provider's general responsibilities shall include, among other
things:

(1) Providing all the technology infrastructure, software,
and operational support necessary for the development,
operation, and maintenance of the internet gaming
website, including:

(A) Game software and graphics;

(B) Computer hardware;

(C) Server hosting;

(D) Player account registration and management;

(E) Geo-location services;

(F) Age-verification services;

(G) Responsible gaming controls;

(H) Anti-collusion and security tools;

(I) Payment gateway software functionality;

(J) Deposit and decline tools and services;
(K) Charge back reporting software;

(L) Network reconciliation and controls;

(M) Financial reporting and player management; and

(N) Other related administrative back office functionality and operational support;

(2) Providing marketing services, including a comprehensive, customized marketing plan for the corporation, consisting of both on-line and off-line marketing components aimed at maximizing revenues in a responsible manner and attracting tourism for the State through the corporation's internet gaming operations; and

(3) Providing customer support and trained personnel to respond to inquiries from players regarding technological problems, investigate fraud and collusion, and any other issues that may arise.

§ -17 Internet gaming system requirements. The corporation shall establish specific requirements for the internet gaming platform, to include, among other things:

(1) Age verification requirements reasonably designed to block access to minors;

(2) Geo-location requirements to ensure legal compliance;
(3) Appropriate data security standards;
(4) Antifraud systems;
(5) Virus prevention;
(6) Data protection;
(7) Access controls;
(8) Firewalls;
(9) Disaster recovery;
(10) Redundancy;
(11) Game fairness;
(12) Transparency and reporting;
(13) Distribution of funds; and
(14) Auditing.

§ -18 Compensation of the internet gaming provider. The corporation shall compensate the internet gaming provider with a percentage of the corporation's revenues, in addition to reimbursement of on-going costs associated with the operation of the internet gaming site, including costs related to geo-location, age verification, payment processing and banking, web-hosting, and bandwidth, and any amounts necessary to the implementation or operation of the site.

§ -19 Disposition of proceeds. (a) All proceeds of internet gaming conducted under this chapter shall be the
property of the corporation. The corporation shall pay its
operating expenses from the proceeds.

(b) There is created within the state treasury a special
fund to be known as the internet lottery and gaming special
fund. On or before the fifteenth day of each quarter, the
corporation shall deposit to the internet lottery and gaming
special fund all net proceeds derived from internet wagering and
gaming activities during the preceding quarter.

(c) Funds in the internet lottery and gaming special fund
shall be allocated as follows:

(1) Public school capital improvements: thirty-five per
cent;

(2) University of Hawaii system capital improvements:
twenty-five per cent;

(3) Scholarships and educational loan repayments for
medical students who commit to practice medicine in
Hawaii for ten years after completion of their
residency: ten per cent;

(4) University of Hawaii John A. Burns School of Medicine
family practice rural residency program: ten per
cent;

(5) Watershed protection: ten per cent;
(6) Problem gambling reduction and prevention programs: five per cent; and

(7) Administration of the special fund: five per cent.

§ -20 Tax treatment. The activities of the corporation shall be deemed to constitute an essential government function and all operations of the corporation shall be exempt from any form of taxation under state law and, to the extent allowed, under federal law. In addition, the corporation shall not be required to pay any taxes or assessments upon or in respect to sales of lottery tickets, games, or any property or moneys of the corporation, levied by the State or any political subdivision thereof, except as required by federal law. The corporation and its assets, property, and revenues shall at all times be exempt from taxation of every kind by the State and any political subdivision thereof, including any special districts in the State with powers of taxation.

§ -21 Unlawful gambling. It shall be unlawful for any person to offer or play any game provided on the Internet that is not authorized pursuant to this chapter. Any violation of this section shall be punished as provided in part III of chapter 712; provided that nothing herein shall preclude
enforcement of any other civil or criminal law for a violation of this chapter."

SECTION 3. If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the invalidity does not affect other provisions or applications of the Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

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

SECTION 5. This Act shall take effect on July 1, 2013.

INTRODUCED BY: [Signatures]
Report Title:
Internet Gambling; Hawaii Internet Lottery and Gambling Corporation

Description:
Establishes the Hawaii internet lottery and gaming corporation for the purpose of conducting internet gambling in Hawaii. Allocates proceeds to capital improvements at public schools and the University of Hawaii system, scholarships and educational loan repayments for medical students who practice in Hawaii for 10 years, support for the family practice rural residency program, watershed protection, and reduction and prevention of problem gambling.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.