A BILL FOR AN ACT

RELATING TO GAMING.

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

SECTION 1. The legislature finds that in 1992, Congress passed the Professional and Amateur Sports Protection Act (PASPA), to prohibit state-sanctioned sports gambling, with exceptions for state-sponsored sports wagering in Nevada, and sports lotteries in Oregon and Delaware. In 2012, the New Jersey legislature authorized certain regulated sports wagering at New Jersey casinos and racetracks and implemented a comprehensive regulatory scheme for licensing casinos and sporting events. Five sports leagues sued under PASPA to enjoin the New Jersey law, which the state defended by arguing that PASPA was unconstitutional under the anti-commandeering doctrine. New Jersey then passed a second law in 2014 that professional and amateur sports leagues then sued again to enjoin. That suit was decided before the United States Supreme Court as Murphy v. National Collegiate Athletic Association (NCAA), 138 S. Ct. 1461, on May 14, 2018. One of the questions before the court was whether a federal statute that prohibits
modification or repeal of state-law prohibitions on private conduct impermissibly commandeers the regulatory power of states. In a six to three opinion authored by Justice Alito, the court reversed in favor of New Jersey, finding that PASPA's provision prohibiting state authorization of sports gambling schemes violates the anticommandeering doctrine under the 10th Amendment to the U.S. Constitution. The anticommandeering doctrine emerged under *New York v. United States*, 505 U.S. 144 (1992) and *Printz v. United States*, 521 U.S. 898 (1997). Pursuant to this authority, "Congress may not simply 'commandeer the legislative process of the States by directly compelling them to enact and enforce a federal regulatory program.'"

The legislature finds that tens of thousands of Hawaii residents are estimated to participate in illegal online sports 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 sports wagering 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 sports wagering. The State's interests are best met by doing so through a sports wagering 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 sports wagering corporation, authorized to offer a regulated, secure, and responsible framework for the conduct of sports wagering in Hawaii that will provide consumer protections and capture additional revenues for the benefit of the State in light of the ruling that PASPA was unconstitutional.
SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

"CHAPTER

HAWAII SPORTS WAGERING CORPORATION

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

"Board" means the board of directors of the Hawaii sports wagering corporation.

"Chief executive officer" means the chief executive officer of the Hawaii sports wagering corporation.

"Corporation" means the Hawaii sports wagering corporation.

"Member" or "members" means a member or members of the board of directors of the Hawaii sports wagering 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 advertising and marketing costs, costs related to the internet wagering 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 procurement contract, but does not include an employee of the corporation, or an agency or instrumentality of the State.

§ -2 Hawaii sports wagering corporation established.

(a) There is established the Hawaii sports wagering corporation to be placed within the department of business, economic development, and tourism for administrative purposes only. The corporation shall be a public body and a body corporate and politic.

(b) The corporation shall employ, exempt from chapter 76 and section 26-35(a)(4), an executive director and executive assistant. The corporation may employ, subject to chapter 76, technical experts and officers, agents, and employees, permanent and temporary, as required. The corporation may also employ officers, agents, and employees, prescribe their duties and qualifications, and fix their salaries, not subject to chapter 76, when in the determination of the corporation, the services to be performed are unique and essential to the execution of the
functions of the corporation. The corporation may call upon the
attorney general for legal services as it may require. The
corporation may delegate to one or more of its agents or
employees its powers and duties as it deems proper.

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

(b) The Hawaii sports wagering corporation may:
(1) Offer sports wagering on sporting events or sporting
contests to individuals over the age of eighteen
years; and
(2) Engage in other activities consistent with the purpose
of this chapter and rules adopted hereunder and with
state and federal laws.

§ -4 General powers of the corporation. (a) 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 state or federal law, including to:

(1) Sue and be sued;

(2) Have a seal and alter the same at pleasure;

(3) Make and execute contracts, pursuant to chapter 103D, and other instruments necessary or convenient to the exercise of its powers;

(4) Adopt bylaws and rules in accordance with chapter 91 for its organization, internal management, and to carry into effect its purposes, powers, and programs;

and

(5) Elect and prescribe the duties of officers and employees of the corporation and to perform such other matters as the corporation may determine.

(b) In addition to other powers conferred upon it, the corporation may do all things necessary and convenient to carry out the powers expressly provided in this chapter.

§ -5 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 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 sports wagering or gaming, marketing and entertainment, technology, accounting, law, and operation of a business enterprise.

(c) Members of the board 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 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 procurement contract or a participating vendor.

(e) The board 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 shall constitute a quorum for the transaction of any business and for the exercise of any power or function of the corporation.

(g) 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.

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

(1) Select a sports wagering provider, pursuant to the requirements of this chapter;

(2) Adopt regulations, policies, and procedures relating to the conduct of the sports wagering provider, including rules governing:

(A) The type of wagers to be taken on certain sports;

(B) The physical location where the sports wagering provider may conduct business;

(C) Forms of payment accepted and prohibited;
(D) Method of validating winnings;

(E) Manner and time of payment;

(F) Responsible sports wagering;

(G) The conduct of the sports wagering provider;

(H) The sports wagering platform; and

(I) Any and all other matters necessary, desirable, or convenient toward ensuring the efficient and effective operation of sports wagering;

(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.

§ -7 Chief executive officer; appointment; compensation.

The board of directors shall appoint and 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.

§ -8 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 this chapter and with regulations, policies, and
procedures adopted by the board. It shall be the duty of the
chief executive officer to:

(1) Supervise and exercise active oversight of the
operations of the sports wagering provider;

(2) Hire and supervise a small staff of employees, as
deemed necessary; provided that all applicants for
employment shall be subject to a background check;
provided further that no person who has been convicted
of a felony or bookmaking or other forms of illegal
gambling or of a crime involving moral turpitude shall
be employed by the corporation;
(3) In consultation with the sports wagering provider, prepare an annual budget, including a marketing budget, to be approved by the board;

(4) Enter into agreements with state or county law enforcement agencies for the performance of law enforcement, background investigations, and security checks;

(5) Report quarterly to the board a full and complete statement of sports wagering revenues and expenses for the preceding quarter; and

(6) Perform any other duties customary of the position of chief executive officer.

§ -9 Corporation restriction on use of money in state general fund. (a) The corporation, in accordance with this chapter, may borrow or accept and expend moneys 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.

(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, and no claim
for the payment of an expense of the corporation shall be made
against any moneys other than moneys credited to the sports
wagering special fund.

§ -10 Sports wagering special fund. (a) There is
created within the state treasury a special fund to be known as
the sports wagering special fund. Moneys authorized under this
chapter may be deposited into the special fund.

(b) All proceeds of the corporation shall be deposited
into the special fund pursuant to section -16.

(c) Funds in the sports wagering special fund shall be
used statewide for capital infrastructure modernization,
upgrades, and deferred maintenance projects.

§ -11 Reports by the corporation. To ensure the
financial integrity of the sports wagering operations, the
corporation through the board of directors shall:

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

§ -12 Adoption of sports wagering rules. Within one hundred eighty days of the appointment of all members of the board, the board shall adopt rules and policies governing its sports wagering operations, consistent with the requirements of this chapter. The board may retain a neutral advisor with expertise in sports wagering and gaming to assist the board in adopting its rules.

§ -13 Selection of the sports wagering provider. (a) Within one hundred eighty days of the appointment of all members of the board, the board shall commence a competitive process for the selection of a qualified and suitable sports wagering provider. The selection of the sports wagering 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 sports wagering provider:
   (A) The provider has operated in violation of the laws of any country or state in which it has operated; or
   (B) The provider has been indicted or convicted of a crime related to its gaming operations in any state or foreign jurisdiction.

(b) The request for qualification shall 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 sports wagering 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.

§ -14 Responsibilities of the sports wagering provider. The sports wagering provider shall be responsible for operating a legally compliant, secure, and responsible sports wagering operation on behalf of the corporation. The sports wagering 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 facility and 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 sports wagering 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.

§ -15 Compensation of the sports wagering provider. The corporation shall compensate the sports wagering provider with a
percentage of the corporation's revenues, in addition to
reimbursement of ongoing costs associated with the operation,
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.

§ -16 Disposition of proceeds. (a) All proceeds of
sports wagering conducted under this chapter shall be the
property of the corporation. The corporation shall pay its
operating expenses from the proceeds.

(b) On or before the fifteenth day of each quarter, the
corporation shall deposit into the sports wagering special fund
all net proceeds derived from sports wagering activities during
the preceding quarter.

§ -17 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
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.

§ 18 Responsible gaming measures. The corporation 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."

SECTION 3. Chapter 712, Hawaii Revised Statutes, is amended by adding a new section to part III to be appropriately designated and to read as follows:

"§712- Sports wagering contests. Sports wagering conducted and administered pursuant to chapter is exempt from this part."
SECTION 4. 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 5. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 6. New statutory material is underscored.

SECTION 7. This Act shall take effect on July 1, 2019.
Report Title:
Hawaii Sports Wagering Corporation

Description:
Creates the Hawaii sports wagering corporation to regulate and administer sports wagering in the State.

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