
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 there is a
2 proliferation of vending machines that dispense "sweepstakes"
3 game cards that can also be used to make brief long distance
4 telephone calls. These cards typically cost \$1 each and, while
5 vendors make it possible to obtain a card by mail at no cost,
6 these cards are from a separate pool of possible winners than
7 the pool of cards placed in a vending machine.

8 The legislature further finds that purchasers may buy one
9 hundred or more of these cards in an effort to win a cash prize
10 and often dispose of losing cards instead of using them for one-
11 or two-minute long distance calls each card authorizes. With
12 the wide availability of low cost and flat rate long distance
13 calling plans on land line telephone accounts and free long
14 distance calling plans on cellular telephone accounts, the \$1
15 cost of these "sweepstakes" cards far exceeds the value of the
16 long distance call authorized by the cards and the ability to
17 make a long distance call with the card is clearly incidental to



1 its value as a "sweepstakes" entry. These "sweepstakes" cards
2 are not like the chances to win prizes offered by, for example,
3 fast food restaurants, because those chances are offered in
4 connection with, and merely incidental to, the sale of a bona
5 fide product, namely, a meal.

6 The purpose of this Act is to clarify that, where the
7 chance to win something of value is offered in conjunction with
8 the purchase of an item, that activity constitutes gambling,
9 even if a chance to win is offered by mail at no cost, if the
10 item is offered at a price that is disproportionately high
11 compared to the value of the item, or if the chance to win at no
12 cost by mail is offered from a pool different from the pool from
13 which the chance to win via purchase is drawn.

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

17 "§712- Free play not a defense; when. It shall not be a
18 defense to an offense charged under this part that free play was
19 offered, if the free play was offered by mail as an alternative
20 to play via purchase of:



1 (1) An item that is not bona fide or is offered at a price
2 that is disproportionately high compared to the value
3 of the item purchased; or

4 (2) A chance to win if the free play by mail is offered
5 from a pool different from the pool from which the
6 chance to win via purchase is drawn.

7 This section applies only to devices into which a consumer
8 inserts money and the device provides a sweepstakes ticket or
9 card that, by reason of chance, may entitle the consumer to a
10 money prize."

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

13 "**§712-1220 Definitions of terms in this part.** In this
14 part unless a different meaning plainly is required, the
15 following definitions apply[-]:

16 [~~(1)~~] "Advance gambling activity". A person "advances
17 gambling activity" if [~~he~~] the person engages in conduct that
18 materially aids any form of gambling activity. Conduct of this
19 nature includes but is not limited to conduct directed toward
20 the creation or establishment of the particular game, contest,
21 scheme, device, or activity involved, toward the acquisition or
22 maintenance of premises, paraphernalia, equipment, or apparatus



1 therefor, toward the solicitation or inducement of persons to
2 participate therein, toward the actual conduct of the playing
3 phases thereof, toward the arrangement of any of its financial
4 or recording phases, or toward any other phase of its operation.
5 A person advances gambling activity if, having substantial
6 proprietary control or other authoritative control over premises
7 being used with [~~his~~] the person's knowledge for purposes of
8 gambling activity, [~~he~~] the person permits that activity to
9 occur or continue or makes no effort to prevent its occurrence
10 or continuation. A person advances gambling activity if [~~he~~]
11 the person plays or participates in any form of gambling
12 activity. With regard to devices into which a consumer inserts
13 money and the device provides a sweepstakes ticket or card that,
14 by reason of chance, may entitle the consumer to a money prize,
15 conduct that constitutes gambling activity under this definition
16 is not rendered otherwise by the fact that free play is offered
17 by mail as an alternative to play via purchase of:

18 (1) An item that is not bona fide or is offered at a price
19 that is disproportionately high compared to the value
20 of the item purchased; or



1 (2) A chance to win if the free play by mail is offered
2 from a pool different than the pool from which the
3 chance to win via purchase is drawn.

4 [~~2~~] "Bookmaking" means advancing gambling activity by
5 accepting bets from members of the public upon the outcomes of
6 future contingent events.

7 [~~3~~] "Contest of chance" means any contest, game, gaming
8 scheme, or gaming device in which the outcome depends in a
9 material degree upon an element of chance, notwithstanding that
10 skill of the contestants may also be a factor therein.

11 [~~4~~] "Gambling". A person engages in gambling if [he]
12 the person stakes or risks something of value upon the outcome
13 of a contest of chance or a future contingent event not under
14 [his] the person's control or influence, upon an agreement or
15 understanding that [he] the person or someone else will receive
16 something of value in the event of a certain outcome. Gambling
17 does not include bona fide business transactions valid under the
18 law of contracts, including but not limited to contracts for the
19 purchase or sale at a future date of securities or commodities,
20 and agreements to compensate for loss caused by the happening of
21 chance, including but not limited to contracts of indemnity or
22 guaranty and life, health, or accident insurance.



1 ~~[(5)]~~ "Gambling device" means any device, machine,
2 paraphernalia, or equipment that is used or usable in the
3 playing phases of any gambling activity, whether that activity
4 consists of gambling between persons ~~[or]~~, gambling by a person
5 involving the playing of a machine~~[-. However, lottery tickets~~
6 ~~and other items used in the playing phases of lottery schemes~~
7 ~~are not gambling devices within this definition.]~~, or a lottery.

8 ~~[(6)]~~ "Lottery" means a gambling scheme in which:
9 ~~[(a)]~~ (1) The players pay or agree to pay something of value for
10 chances, represented and differentiated by numbers or
11 by combinations of numbers or by some other medium,
12 one or more of which chances are to be designated the
13 winning ones; and
14 ~~[(b)]~~ (2) The winning chances are to be determined by a drawing
15 or by some other method based on an element of chance;
16 and
17 ~~[(c)]~~ (3) The holders of the winning chances are to receive
18 something of value.

19 ~~[(7)]~~ "Mutuel" means a form of lottery in which the
20 winning chances or plays are not determined upon the basis of a
21 drawing or other act on the part of persons conducting or
22 connected with the scheme, but upon the basis of the outcome or



1 outcomes of a future contingent event or events otherwise
2 unrelated to the particular scheme.

3 [~~8~~] "Player" means a person who engages in gambling
4 solely as a contestant or bettor.

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

11 [~~10~~] "Social gambling" is defined in section 712-1231.

12 [~~11~~] "Something of value" means any money or property,
13 any token, object, or article exchangeable for money or
14 property, or any form of credit or promise directly or
15 indirectly contemplating transfer of money or property or of any
16 interest therein, or involving extension of a service or
17 entertainment."

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



1 SECTION 5. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 6. This Act shall take effect on July 1, 3011.



Report Title:

Gambling; Lottery; Sweepstakes

Description:

Amends definition of gambling to clarify that purchase of sweepstakes entry that also provides nominal non-gambling value constitutes gambling even if sweepstakes entry can be obtained without payment of consideration. (SD1)

