

LIQUOR COMMISSION  
**CITY AND COUNTY OF HONOLULU**

711 KAPIOLANI BOULEVARD, SUITE 600 • HONOLULU, HAWAII 96813-5249  
PHONE: (808) 523-4458 • FAX: (808) 591-2700 • TOLL-FREE PHONE: 1-800-838-9976 (select "4")  
E-mail address: [liquor@honolulu.gov](mailto:liquor@honolulu.gov) • INTERNET: [www.honolulu.gov/liq](http://www.honolulu.gov/liq)

**SENATE COMMITTEE ON JUDICIARY AND LABOR**

Senator Brian T. Taniguchi, Chair

Senator Clayton Hee, Vice Chair

Tuesday, February 26, 2008  
9:30 a.m. Conference Room 016

My name is Dewey H. Kim, Jr., Administrator of the Honolulu Liquor Commission. The Honolulu Liquor Commission takes this opportunity to **strongly support SB 2009 "Relating to Gambling,"** which amends the 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.

**Current Problematic Situation**

There are currently many so called "Ad-Tab Machines" located throughout bars, lounges and other licensed premises throughout the City and County of Honolulu. Our investigators have also reported these gambling machines in candy stores, fast food places and other retail establishments. These machines dispense a card for \$1.00 that can win anywhere from \$1.00 to \$1,000.00 and they are attached to a phone card, retail coupon or a horoscope. SB 2009 would clearly indicate that the cards and machines fall within the definition of gambling.

We have had uncover investigators witness customers buying a few to hundreds of cards and playing them in the bars and licensed facilities. After they "play" the game, the customers usually throw the cards in the trash without using the coupon, phone card or horoscope. We have received several complaints (more than 10) about persons gambling their paychecks away on the gambling cards. In one situation, gambling through the cards caused a foreclosure and lead to a divorce, according to the complaint from the gambler's wife. In a second case it almost caused the arrest of a bar customer, who refused to quit playing the machine while a law enforcement operation with the Liquor Commission and HPD was proceeding.

The money being generated by these machines is substantial. According to an internet sales site, a company with similar pull tabs offers one kit that has 2880 tickets at \$1.00 each with a 79% payout and profits of \$604.00 after expenses.

There have been complaints of children/adolescents playing the machines in stores, such as crack seed stores. Since the machines are defended as not being gambling as a "token" card is given out, there are no regulatory controls. For example, who certifies that the cash prize is actually contained in the roll of cards and are the players informed if the prize has already been won?

### **Other Problems Caused by the Gambling Machines**

Because of the large amount of money being made on these cards, the following incidents took place in the last few years. Three different bars in Kalihi had individuals enter their premises and take out gambling machines against the owner's will. In two of the cases, guns were brandished and in one of the three cases the individuals took money from the cash register of the premise. Besides using guns, these robberies occurred in broad daytime. We understand from information received that some of the problems may be arising from territorial disputes over who supplies the cards.

This experience is not isolated to Hawaii. In one report this year, the Gambling Commission in Minnesota, warned retailers that pull tab machines have been robbed more than 20 times in the last few months.

### **National Gambling Consultant Concludes Ad-Tab Machines are Gambling**

In 2006, the Commission hired National Gambling Consultant, William L. Holmes, formerly of the Federal Bureau of Investigations and currently a gambling expert witness. He examined the Pull-Tab devices and stated: "Based upon the above facts it is my opinion that the Pull-Tab devices in question are gambling devices that were designed and manufactured for the purpose of gambling." In addition to Mr.

Holmes' written testimony on July 11, 2006, he also came to the Commission hearing and testified.

### **Case Law Throughout the Country Supports the Finding that the Ad-Tab Machines Are Illegal Gambling**

**California:** The People vs. Pacific Gaming Technologies,  
82 Cal. App. 4<sup>th</sup> 699, 98 Cal Rptr.2d 400 (2000)

Pacific Gaming Technologies placed phone card vending machines in bus stations, truck stops and other places people are likely to buy prepaid phone cards. The vending machines had a sweepstakes attached to it. The appellate court found that the machines constituted illegal gambling saying "In our view, if it looks like a duck, walks like a duck, and sounds like a duck, it is a duck."

In this gambling card, the top part of the ticket shows the result of the sweepstakes and the bottom is a phone card to place a call up to 5 minutes. The court ruled that the vending machine did provide an element of chance with the customer being able to win \$100 for a \$1.00 investment.

#### California Attorney General's Memorandum

The California Attorney General issued a memorandum to all Police Chiefs and Sheriffs that "It is the view of the Division of Gambling Control that the gambling device known as Tab Force <sup>TM</sup> constitutes an unlawful gambling device..."

**Colorado:** Snizek and F.A.C.E. Trading, Inc., vs. Colorado Department of Revenue and Colorado Liquor Enforcement, 113 P.3d 1280 (2005).

Ad-Tab machines and the paper tickets in bars constituted illegal gambling devices that were seized by Department of Revenue and Liquor Enforcement Division.

A couple of key points made in this decision; first the primary design of the Ad-tab was to sell the “win cash” feature and not the phone cards. Also, though people could get a free card by sending away from the distributor, in 2000, 20 million cards were sold, but only 40 requests for free entries were received. Also, the California court heard the argument that this product was no different then a McDonald’s promotion. The Court stated that the distinction is that while Ad-Tab are not promoting a product, McDonald’s promotion is for the increased sales of hamburgers.

***Michigan:*** F.A.C.E. vs. Department of Consumer and Industry Services, 717 N.W.2d 377 (2005)

Ad-Tabs with coupons on the back constituted an illegal promotion of a lottery under Michigan law. Michigan sent out an alert that warned that all Ad-Tab Sales in the state must end in October 2004.

***Indiana:*** F.A.C.E.Trading vs. Carter, 821 N.E.2d 38 (2005) Ad-Tab machines are illegal gambling devices under Indiana statutes. Currently Indiana is considering legislation to approve Ad-Tab games.

***Maryland:*** F.A.C.E. Trading vs. Todd, 2006 WL 2068066. Ad-Tab coupons with cash prizes were illegal gaming devices under Maryland state law. The judge indicated that the alleged product discount was a mere guise to allow gambling transactions.

***Florida:*** In 2002, Sheriffs in Florida seized machines and cards from Piglet’s Sports Bar and Grill for operating an illegal lottery with the Ad Tab Machines. The newspaper article indicted that a typical Ad-Tab retailer produces \$6,300 a month in sales and in one case one operator with 25 retailers earned more than \$500,000 a year after expenses. In Florida, the coupons on the back of the card were for products, such as soup or dart games.

It is for the foregoing reasons that the Honolulu Liquor Commission supports SB 2009.

## Hawai`i Coalition Against Legalized Gambling

2345 Nu'uuanu Ave 2<sup>nd</sup> Floor  
Honolulu, Hi 96817

Phone/Fax (808) 595-7766  
E-mail hcalg@hawaiiantel.net

### HCALG MEMBERS

Advocates for Consumer Rights  
Animal Rights Hawaii  
Buddhist Peace Fellowship  
Church of Jesus Christ of Latter-  
day Saints  
Church of Perfect Liberty  
Christian Voice  
Dr. Martin Luther King, Jr.  
Coalition Hawaii  
Family Resource Center  
First Christian Church  
First Unitarian Church of Hawaii  
Green Party of Hawaii  
Hale Kipa Youth Services  
Hawaii Assemblies of God  
Hawaii Association of  
International Buddhists  
Hawaii Pacific Baptist  
Convention  
Hawaii Conference of the United  
Church of Christ (UCC)  
Hawaii District United Methodist  
Church  
Hawaii Family Forum  
Hawaii Island Cluster of United  
Methodist Churches  
Hawaii Presbyterian Council  
Hawaii Youth Services Network  
Honolulu Friends Meeting  
Honolulu Police Department  
Kokua Council for Seniors Citizens  
League of Women Voters of Hawaii  
Life of the Land (Hawaii)  
Mestizo Association  
Muslim Association  
Pacific Gateway Center  
Rainbow Coalition  
Seventh Day Adventist  
S.S. Constantine & Helen Greek  
Orthodox  
Soto Zen Mission  
Temple Bet Shalom  
Temple Emanu-El  
Windward Coalition of Churches  
The Woman's Board of Missions  
For the Pacific Islands (UCC)  
World Conference on Religion and  
Peace

### Cooperating Organizations

Chamber of Commerce of Hawaii  
Catholic Diocese against casinos  
Hawaii Bankers Association  
Hawaii State PTSA  
Hawaiian Humane Society  
Small Business Association

### **Testimony in favor of SB 2009 Relating to Gambling**

Senate Committee on Judiciary and Labor

Brian T. Taniguchi, Chair

Clayton Hee, Vice Chair

February 26, 2008

Conference Room 016 9:30 a.m.

SB 2009 has identical language to HB1836 HD1 SD2 which we expected to pass last April but was carried over to the 2008 session.

The purpose of this bill is to amend the definition of gambling to establish that sweepstakes phone card vending machines are illegal gambling devices. These machines are installed in over eighty bars, and numerous restaurants and retail establishments in Honolulu. Our Coalition regards these devices to be a devious means of introducing legalized gambling to Hawai'i.

A former agent who worked for fourteen years in the FBI crime lab gambling unit testified before the Liquor Commission that, in his opinion, the game cards were designed and manufactured for the purpose of gambling and, to his knowledge, no other state in the country allowed the machines except in legal gambling casinos.

We ask you to support SB 2009 and the desires of the majority of Hawai'i's citizens and the Member Organizations of our Coalition who wish to keep our state free from legalized gambling.

Respectfully submitted,

Dianne F. Kay (phone 373-3479)

President

Hawaii Coalition Against Legalized Gambling