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

9 The legislature further finds that purchasers may buy one
10 hundred or more of these cards in an effort to win a cash prize
11 and often dispose of losing cards instead of using them for one-
12 or two-minute long distance calls each card authorizes. With
13 the wide availability of low cost and flat rate long distance
14 calling plans on land line telephone accounts and free long
15 distance calling plans on cellular telephone accounts, the \$1
16 cost of these "sweepstakes" cards far exceeds the value of the
17 long distance call authorized by the cards and the ability to
18 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 on premises licensed under chapter 281, Hawaii
11 Revised Statutes, or if the chance to win at no cost by mail is
12 offered from a pool different from the pool from which the
13 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:

21 (1) An item on premises licensed under chapter 281; or



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

4 This section applies only to devices into which a consumer
5 inserts money, either electronically or in the form of currency,
6 and the device provides a sweepstakes ticket or card that, by
7 reason of chance, may entitle the consumer to a money prize."

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

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

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



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

- 16 (1) An item on premises licensed under chapter 281; or
17 (2) A chance to win if the free play by mail is offered
18 from a pool different than the pool from which the
19 chance to win via purchase is drawn.

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



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

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

17 ~~[(5)]~~ "Gambling device" means any device, machine,
18 paraphernalia, or equipment that is used or usable in the
19 playing phases of any gambling activity, whether that activity
20 consists of gambling between persons ~~[or]~~, gambling by a person
21 involving the playing of a machine~~[. However, lottery tickets~~



1 ~~and other items used in the playing phases of lottery schemes~~
2 ~~are not gambling devices within this definition.], or a lottery.~~

3 [~~6~~] "Lottery" means a gambling scheme in which:

4 [~~a~~] (1) The players pay or agree to pay something of
5 value for chances, represented and differentiated by
6 numbers or by combinations of numbers or by some other
7 medium, one or more of which chances are to be
8 designated the winning ones; and

9 [~~b~~] (2) The winning chances are to be determined by a
10 drawing or by some other method based on an element of
11 chance; and

12 [~~c~~] (3) The holders of the winning chances are to receive
13 something of value.

14 [~~7~~] "Mutuel" means a form of lottery in which the
15 winning chances or plays are not determined upon the basis of a
16 drawing or other act on the part of persons conducting or
17 connected with the scheme, but upon the basis of the outcome or
18 outcomes of a future contingent event or events otherwise
19 unrelated to the particular scheme.

20 [~~8~~] "Player" means a person who engages in gambling
21 solely as a contestant or bettor.



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

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

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

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

17 SECTION 5. Statutory material to be repealed is bracketed
18 and stricken. New statutory material is underscored.

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

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INTRODUCED BY:

Calvin K. By



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. Eliminates free play as a defense under certain circumstances.

