

JAN 23 2009

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 the
11 one- or two-minute long distance calls each card authorizes.

12 With the wide availability of low cost and flat rate long
13 distance calling plans on land line telephone accounts and free
14 long distance calling plans on cellular telephone accounts, the
15 \$1 cost of these "sweepstakes" cards far exceeds the value of
16 the long distance call authorized by the cards and the ability
17 to make a long distance call with the card is clearly incidental
18 to its value as a "sweepstakes" entry. These "sweepstakes"



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

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

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

16 "§712- Free play not a defense; when. It shall not be
17 a defense to an offense charged under this part that free play
18 was offered, if the free play was offered by mail as an
19 alternative to play via purchase of:

20 (1) An item that is not bona fide or is offered at a price
21 that is disproportionate to the value of the item
22 purchased; 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 SECTION 3. Section 712-1220, Hawaii Revised Statutes, is
5 amended to read as follows:

6 "**§712-1220 Definitions of terms in this part.** In this
7 part unless a different meaning plainly is required, the
8 following definitions apply.

9 [~~(1)~~] "Advance gambling activity". A person "advances
10 gambling activity" if [~~he~~] the person engages in conduct that
11 materially aids any form of gambling activity. Conduct of this
12 nature includes but is not limited to conduct directed toward
13 the creation or establishment of the particular game, contest,
14 scheme, device, or activity involved, toward the acquisition or
15 maintenance of premises, paraphernalia, equipment, or apparatus
16 therefor, toward the solicitation or inducement of persons to
17 participate therein, toward the actual conduct of the playing
18 phases thereof, toward the arrangement of any of its financial
19 or recording phases, or toward any other phase of its operation.
20 A person advances gambling activity if, having substantial
21 proprietary control or other authoritative control over premises
22 being used with [~~his~~] the person's knowledge for purposes of



1 gambling activity, [~~he~~] the person permits that activity to
2 occur or continue or makes no effort to prevent its occurrence
3 or continuation. A person advances gambling activity if [~~he~~]
4 the person plays or participates in any form of gambling
5 activity. Conduct that constitutes gambling activity under this
6 definition is not rendered otherwise by the fact that free play
7 is offered by mail as an alternative to play via purchase of:

8 (1) An item that is not bona fide or is offered at a price
9 that is disproportionate to the value of the item
10 purchased; or

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

14 [~~2~~] "Bookmaking" means advancing gambling activity by
15 accepting bets from members of the public upon the outcomes of
16 future contingent events.

17 [~~3~~] "Contest of chance" means any contest, game, gaming
18 scheme, or gaming device in which the outcome depends in a
19 material degree upon an element of chance, notwithstanding that
20 skill of the contestants may also be a factor therein.

21 [~~4~~] "Gambling". A person engages in gambling if [~~he~~]
22 the person stakes or risks something of value upon the outcome



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

11 ~~[(5)]~~ "Gambling device" means any device, machine,
12 paraphernalia, or equipment that is used or usable in the
13 playing phases of any gambling activity, whether that activity
14 consists of gambling between persons ~~[or]~~, gambling by a person
15 involving the playing of a machine~~[-. However, lottery tickets~~
16 ~~and other items used in the playing phases of lottery schemes~~
17 ~~are not gambling devices within this definition.]~~, or a lottery.

18 ~~[(6)]~~ "Lottery" means a gambling scheme in which:

19 ~~[(a)]~~ (1) The players pay or agree to pay something of
20 value for chances, represented and differentiated by
21 numbers or by combinations of numbers or by some other



1 medium, one or more of which chances are to be
2 designated the winning ones; and

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

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

8 ~~[(7)]~~ "Mutuel" means a form of lottery in which the
9 winning chances or plays are not determined upon the basis of a
10 drawing or other act on the part of persons conducting or
11 connected with the scheme, but upon the basis of the outcome or
12 outcomes of a future contingent event or events otherwise
13 unrelated to the particular scheme.

14 ~~[(8)]~~ "Player" means a person who engages in gambling
15 solely as a contestant or bettor.

16 ~~[(9)]~~ "Profit from gambling activity". A person "profits
17 from gambling activity" if ~~[(he)]~~ the person accepts or receives
18 money or other property pursuant to an agreement or
19 understanding with any person whereby ~~[(he)]~~ the person
20 participates or is to participate in the proceeds of gambling
21 activity.

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



1 [~~(11)~~] "Something of value" means any money or property,
2 any token, object, or article exchangeable for money or
3 property, or any form of credit or promise directly or
4 indirectly contemplating transfer of money or property or of any
5 interest therein, or involving extension of a service or
6 entertainment."

7 SECTION 4. Statutory material to be repealed is bracketed
8 and stricken. New statutory material is underscored.

9 SECTION 5. This Act shall take effect upon its approval.

10

INTRODUCED BY: *Clarence D. ...*



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.

