

JAN 21 2009

S.B. NO. 14

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# 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.







**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.

