
A BILL FOR AN ACT

RELATING TO HEALTH WELLNESS PROGRAMS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that preventive health
2 care is important, not only for each individual's wellbeing, but
3 for the health care system as a whole. Taking the initiative of
4 maintaining or improving one's health reduces a person's
5 potential for adverse health conditions that tax pocketbooks and
6 incur costs to society.

7 The federal Patient Protection and Affordable Care Act
8 encourages employers to provide opportunities for employees to
9 participate in wellness programs to support healthier
10 workplaces. The Act does this in part by maximizing the
11 permissible reward to participants of a wellness program from
12 twenty per cent to thirty per cent of the cost of health
13 coverage, and increasing the maximum reward to as much as fifty
14 per cent for programs designed to prevent or reduce tobacco use.

15 The legislature further finds that while wellness programs
16 are laudable and desirable, there have been concerns that such
17 programs that provide rewards for participants may run afoul of
18 Hawaii's gambling and lottery statutes.



1 "Gambling" is defined in section 712-1220(4), Hawaii

2 Revised Statutes, as follows:

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

15 "Lottery" is defined in section 712-1220(6), Hawaii Revised
16 Statutes, as:

17 "(6) "Lottery" means a gambling scheme in which:

18 (a) *The players pay or agree to pay something of value for*
19 *chances, represented and differentiated by numbers or*
20 *by combinations of numbers or by some other medium,*
21 *one or more of which chances are to be designated the*
22 *winning ones; and*



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

4 (c) The holders of the winning chances are to receive
5 something of value." [Emphasis added]

6 There are concerns that an employee who pays a portion of
7 health care premiums and is eligible for a chance to win a
8 reward based on the person's participation in a wellness program
9 might be considered to be engaged in an illegal gambling scheme
10 or lottery. While this situation likely was not contemplated by
11 the crafters of the gambling laws in the early 1970s, it raises
12 concerns sufficient to warrant appropriate action. The
13 legislature finds that ensuring the success of wellness programs
14 is too important to be stymied by a potential technicality of
15 law.

16 The purpose of this Act is to clarify that participation in
17 a health wellness program does not constitute illegal gambling.

18 SECTION 2. Section 712-1220, Hawaii Revised Statutes, is
19 amended as follows:

20 1. By amending the definition of "gambling" to read:

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



1 contest of chance or a future contingent event not under [his]
2 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
9 of chance, including but not limited to contracts of indemnity
10 or guaranty and life, health, or accident insurance[-], or any
11 payment for or participation in a wellness program, as defined
12 in section 2705(j) of the Public Health Service Act, that is
13 sponsored by:

14 (A) A group health plan, as defined in section 2791(a) of
15 the Public Health Service Act;

16 (B) An insurer subject to article 10A of chapter 431;

17 (C) A mutual benefit society subject to chapter 432; or

18 (D) A health maintenance organization subject to chapter
19 432D."

20 2. By amending the definition of "something of value" to
21 read:



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. "Something of value" does not include any
7 payment for health insurance coverage or for participation in a
8 wellness program, as defined in section 2705(j) of the Public
9 Health Service Act, that is sponsored by:

10 (A) A group health plan, as defined in section 2791(a) of
11 the Public Health Service Act;

12 (B) An insurer subject to article 10A of chapter 431;

13 (C) A mutual benefit society subject to chapter 432; or

14 (D) A health maintenance organization subject to chapter
15 432D;

16 provided that the wellness program does not constitute gambling,
17 as defined in paragraph (4)."

18 SECTION 3. 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.

21 SECTION 4. Statutory material to be repealed is bracketed
22



1 and stricken. New statutory material is underscored.

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

3



Report Title:

Gambling; Wellness Programs; Health Insurance

Description:

Amends the definitions of "gambling" and "something of value" to clarify that participation in health wellness programs is not considered gambling or lottery participation under the Hawaii penal code. (SD2)

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