

Hawai'i Coalition Against Legalized Gambling

1124 Fort Street Mall, Suite 209
Honolulu, HI 96813

Member Organizations

Advocates for Consumer Rights
Animal Rights Hawaii
Buddhist Peace Fellowship
Christian Voice of Hawaii
Church of Jesus Christ of
Latter-day Saints
Church of Perfect Liberty
Common Cause Hawaii
Disciples of Christ
Hale Kipa
Hawaii Appleseed Center
for Law & Economic Justice
Hawaii Assemblies of God
Hawaii Association of
International Buddhists
Hawaii Christian Coalition
Hawaii Conference of
Seventh-day Adventists
Hawaii Conference of the United
Church of Christ (UCC)
Hawaii District United Methodist
Church
Hawaii Family Forum
Hawaii Pacific Baptist Convention
Hawaii Rainbow Coalition
Hawaii Religions for Peace
Hawaii Youth Services Network
Honolulu Friends Meeting
(Quakers)
Honolulu Police Department
Institute for Religion and Social
Change
The Interfaith Alliance Hawaii
Kokua Council
League of Women Voters of Hawaii
Life of the Land (Hawaii)
Dr. Martin Luther King, Jr.
Coalition Hawaii
Mestizo Association
Muslim Association & Islamic
Center of Hawaii
Pacific Gateway Center
Presbytery of the Pacific
Saints Constantine & Helen Greek
Orthodox Church
Smart Business Hawaii
Soto Zen Mission of Hawaii
Temple Emanu-El
Windward Coalition of Churches
The Woman's Board of Missions
for the Pacific Islands (UCC)

Cooperating Organizations

Catholic Charities Hawaii
Catholic Diocese of Honolulu
Chamber of Commerce of Honolulu
Hawaii Bankers Association
Hawaii Business Roundtable
Hawaiian Humane Society
Hawaii State PTSA

COMMITTEE ON JUDICIARY AND LABOR

Senator Clayton Hee, Chair

Senator Maile S. L. Shimabukuro, Vice Chair

Tuesday, April 2nd, 2013

9:30 a.m., Conference Room 016

My name is Tom Kay. I am a kama'aina attorney representing the Hawai'i Coalition Against Legalized Gambling. HCALG is in favor of HB 343 HD2 which amends section 712-1220 of the Hawaii Revised Statutes to make clear that sweepstakes gambling using computers or electronic machines is illegal under Hawaii law.

During the past several years internet sweepstake gambling has proliferated in states on the mainland and is now occurring in Hawaii. The sweepstake machines and computers allow patrons to play casino type games including poker, blackjack, and slots. *Business Week* estimated their revenue in 2011 to be in excess of eleven billion dollars. Among many who disapprove of the practice is the American Gaming Association who issued a "white paper" against sweepstake gambling.

Manufacturers, distributors, and operators claim that they are operating legal sweepstakes games, promoting products such as discount coupons, or services such as internet time, and that the patrons are receiving free play by buying the products or services. However, in actuality, patrons are paying to play the casino games to win money.

The amendments to section 712-1220 of the Hawaii Revised Statutes in HB343, HD2 establish that patrons are gambling illegally when they pay money to play casino games on machines or computers with the chance to win a prize or cash while they are supposedly buying goods or services.

Enacting this legislation will greatly assist law enforcement agencies as they proceed to eradicate this form of illegal gambling from our state.

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Senator Maile S. L. Shimabukuro, Vice Chair

Tuesday, April 2nd, 2013

9:30 a.m., Conference Room 016

My name is Tom Kay. I am a kama'aina attorney representing the Hawai'i Coalition Against Legalized Gambling. HCALG opposes HB343, HD2-PROPOSED SD1. The proposed amendment in this draft excludes gambling from "bona fide business game promotions that comply with the following requirements . . ." The requirements set forth are identical to those proposed in testimonies submitted by PJY Enterprises for hearings on HB343 before both the House Judiciary Committee on Feb 8, 2013 and the House Finance Committee on Feb 22, 2013.

PJY Enterprises, LLC, is the primary plaintiff presently engaged in a lawsuit before the United States District Court of Hawaii against Prosecuting Attorney Keith Kaneshiro and Honolulu Chief of Police Louis M. Kealoha to recover 77 Products Direct sweepstake terminals seized by the police as gambling devices.

In an interim ruling on the case dated Feb 28, 2013, US District Judge Leslie E. Kobayashi held, "Based on the current record before the Court, the devices at issue appear to fall within the ambit of Haw. Rev. Stat. section 712-1220(5)." She later stated "The record supports a preliminary finding that the terminals can operate as "gambling devices."

The requirements being proposed under HB343, HD2-PROPOSED SD1 would intentionally qualify the operation of Products Direct sweepstakes terminals as bona fide business game promotions and exclude said terminals from being considered gambling devices under Hawaii Revised Statutes section 712-1220(5).

We respectfully request that the Committee on Judiciary and Labor oppose HB343, HD2-PROPOSED SD1 and instead support HB343, HD2 which will assist law enforcement agencies to eradicate this form of illegal gambling in Hawaii.

hee2 - Kathleen

From: mailinglist@capitol.hawaii.gov
Sent: Sunday, March 31, 2013 5:01 PM
To: JDLTestimony
Cc: janetmason@hawaiiantel.net
Subject: Submitted testimony for HB343 on Apr 2, 2013 09:30AM
Attachments: HB343_SD1_proposed_.pdf

HB343

Submitted on: 3/31/2013

Testimony for JDL on Apr 2, 2013 09:30AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Janet Mason	League of Women Voters	Oppose	Yes

Comments: League of Women Voters supports HB343, HD2 and opposes HB343 HD2, SD1.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov

HOUSE OF REPRESENTATIVES
TWENTY-SEVENTH LEGISLATURE, 2013
STATE OF HAWAII

H.B. NO. 343
H.D. 2
S.D. 1
Proposed

A BILL FOR AN ACT

RELATING TO GAMBLING OFFENSES.

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

1 SECTION 1. The legislature finds that Hawaii's gambling
2 laws need clarification. The purpose of this Act is to amend
3 chapter 712, Hawaii Revised Statutes, to clarify the gambling
4 laws to provide that gambling activities offered incident to the
5 purchase of goods or services constitute gambling, but that
6 legitimate business game promotions do not.

7 SECTION 2. Section 712-1220, Hawaii Revised Statutes, is
8 amended to read as follows:

9 "§712-1220 **Definitions of terms in this part.** In this
10 part unless a different meaning plainly is required, the
11 following definitions apply.

12 [+1+] "Advance gambling activity". A person "advances
13 gambling activity" if he engages in conduct that materially aids
14 any form of gambling activity. Conduct of this nature includes
15 but is not limited to conduct directed toward the creation or
16 establishment of the particular game, contest, scheme, device,
17 or activity involved, toward the acquisition or maintenance of
18 premises, paraphernalia, equipment, or apparatus therefor,

2013-2081 HB343 SD1 SMA.doc



1 toward the solicitation or inducement of persons to participate
2 therein, toward the actual conduct of the playing phases
3 thereof, toward the arrangement of any of its financial or
4 recording phases, or toward any other phase of its operation. A
5 person advances gambling activity if, having substantial
6 proprietary control or other authoritative control over premises
7 being used with his knowledge for purposes of gambling activity,
8 he permits that activity to occur or continue or makes no effort
9 to prevent its occurrence or continuation. A person advances
10 gambling activity if he plays or participates in any form of
11 gambling activity.

12 [~~+2~~] "Bookmaking" means advancing gambling activity by
13 accepting bets from members of the public upon the outcomes of
14 future contingent events.

15 [~~+3~~] "Contest of chance" means any contest, game, gaming
16 scheme, or gaming device in which the outcome depends in a
17 material degree upon an element of chance, notwithstanding that
18 skill of the contestants may also be a factor therein.

19 [~~+4~~] "Gambling". A person engages in gambling if he
20 stakes or risks something of value upon the outcome of a contest
21 of chance or a future contingent event not under his control or
22 influence, upon an agreement or understanding that he or someone



1 else will receive something of value in the event of a certain
2 outcome. Gambling does not include [~~bona~~]:

3 (a) Bona fide business transactions valid under the law of
4 contracts, including but not limited to contracts for
5 the purchase or sale at a future date of securities or
6 commodities, and agreements to compensate for loss
7 caused by the happening of chance, including but not
8 limited to contracts of indemnity or guaranty and
9 life, health, or accident insurance[-]; and

10 (b) Bona fide business game promotions that comply with
11 the following requirements:

12 (i) The game promotion is conducted or offered in
13 connection with the sale, promotion, or
14 advertisement of a bona fide product or service,
15 or to enhance the brand or image of a supplier of
16 bona fide consumer products or services. An item
17 is not bona fide if it is offered at a price that
18 is disproportionate to the value of the item
19 purchased;

20 (ii) No purchase payment, entry fee, or proof of
21 purchase is required as a condition of entering



- 1 the game promotion or receiving something of
2 value;
- 3 (iii) The chance to win by free play must be offered
4 from the same pool from which the chance to win
5 via purchase is drawn;
- 6 (iv) All materials advertising the game promotion
7 clearly disclose that no purchase or payment is
8 necessary to enter and provide details on the
9 free method of participation; and
- 10 (v) In cases where a service or usage time is being
11 sold or promoted, any usage time; privilege to
12 use or operate; or credits accumulated by the
13 customers must be allowed to be transferred or
14 sold to any other person.

15 [+5+] "Gambling device" means any device, machine,
16 paraphernalia, or equipment that is used or usable in the
17 playing phases of any gambling activity, whether that activity
18 consists of gambling between persons or gambling by a person
19 involving the playing of a machine. However, lottery tickets
20 and other items used in the playing phases of lottery schemes
21 are not gambling devices within this definition.

22 [+6+] "Lottery" means a gambling scheme in which:



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

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

9 (c) The holders of the winning chances are to receive
10 something of value.

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

17 [~~+8~~] "Player" means a person who engages in gambling
18 solely as a contestant or bettor.

19 [~~+9~~] "Profit from gambling activity". A person "profits
20 from gambling activity" if he accepts or receives money or other
21 property pursuant to an agreement or understanding with any



1 person whereby he participates or is to participate in the
2 proceeds of gambling activity.

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

4 ~~[(11)]~~ "Something of value" means [any]:

5 (a) Any money or property~~[any]~~ ;

6 (b) Any token, object, or article exchangeable for money
7 or property~~[any]~~ ;

8 (c) Any purchase of an item or service that entitles a
9 person to participate in a gambling scheme or use a
10 gambling device; or

11 (d) Any entries, credits, or play points that extend or
12 permit the privilege of playing a game of chance
13 without charge,

14 or any form of credit or promise directly or indirectly
15 contemplating transfer of money or property or of any
16 interest therein, or involving extension of a service or
17 entertainment."

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 and stricken. New statutory material is underscored.



H.B. NO. 343
H.D. 2
S.D. 1
Proposed

1 SECTION 5. This Act shall take effect on July 1, 2013.

2013-2081 HB343 SD1 SMA.doc



H.B. NO. 343
H.D. 2
S.D. 1
Proposed

Report Title:

Gambling Machines and Devices; Gambling Activities Offered
Incident to Purchase of Goods or Services

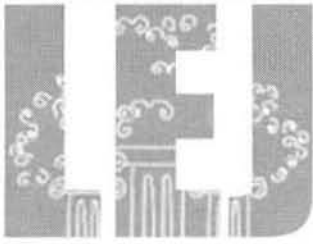
Description:

Amends a definition in the gambling law to provide that gambling activities offered incident to the purchase of goods or services, or any entries, credits, or play points that extend or permit the privilege of playing a game of chance without charge, constitute gambling. Excepts bona fide business game promotions from gambling. Effective July 1, 2013. (Proposed SD1)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

2013-2081 HB343 SD1 SMA.doc





David Derauf, M.D.
 Marc Fleischaker, Esq.
 Naomi C. Fujimoto, Esq.
 Patrick Gardner, Esq.
 Francis T. O'Brien, Esq.
 David J. Reber, Esq.

Victor Geminiani, Esq.

Date: April 1, 2013

To: Senator Clayton Hee, Committee on Judiciary and Labor Chair

From: Gavin Thornton, Deputy Director
 Hawai'i Appleseed Center for Law and Economic Justice

Re: Testimony in support of HB 343 HD2 and in opposition to the proposed SD1 version of HB 343
 Scheduled for a hearing on April 2, 2013

Dear Chair Hee and committee members:

Thank you for an opportunity to testify in support of HB 343 HD2, which would ensure that slot machine-like gambling devices are not permitted in Hawai'i. We also express our opposition to the proposed SD1 of HB343, which would run counter to the original purpose of the bill. The Hawai'i Appleseed Center for Law and Economic Justice advocates on behalf of low-income people in Hawai'i to help them gain access to the resources, services, and fair treatment that they need to realize their opportunities for self-achievement and economic security.

Hawai'i Appleseed has reviewed a wealth of studies regarding the effects of gambling, and we have completed a report that analyzes the likely impact of the introduction of gambling to Hawai'i.¹ The report concludes that legalized gambling would be harmful to Hawai'i for a host of reasons, including the following:

- Gambling has a disproportionate negative impact on low-income people, who spend higher percentages of their income on gambling than other segments of the population.
- Gambling establishments have been empirically shown to increase the rates of serious crime including rape, robbery, aggravated assault, burglary, larceny, and auto theft.
- The introduction of gambling cannibalizes existing, healthy businesses, funneling money that would have otherwise been spent on goods and services that help to bolster our economy into slot machines.
- The presence of gambling tends to increase problem or pathological gambling, which is associated with a variety of social problems including job loss, substance abuse, divorce, child abuse and neglect, domestic violence, and homelessness.

¹ The full report, *Gambling With Paradise*, which includes citations to the many studies supporting our conclusions, is available at <http://hiappleseed.org/gambling-paradise>.

Because of these problems and others, Hawai'i does not allow any form of gambling, and the legislature has repeatedly rejected efforts to legalize gambling. Unable to legitimize gambling through the legislative process, those who are interested in spreading gambling to our state have tried to exploit what they believe to be a loophole in Hawai'i's anti-gambling law in order to introduce slot machines here under the guise of "sweepstakes machines." A Honolulu Magazine article about its author's experience at one of these sweepstakes machine establishments says it well: "These places aren't arcades, they're off-brand casinos. They're Vegas lite. The arcade owners like to say their machines aren't games of chance, but at the end of the day, it's thinly disguised gambling."²

HB 343 seals up the potential loophole that purveyors of gambling are trying to exploit; the proposed SD1 version of the bill broadens it. Please pass HB 343 and do not adopt the proposed SD1 version of the bill to ensure that Hawai'i remains free of gambling and its terrible side-effects.

Thank you for the opportunity to testify.

Aloha,



Gavin Thornton
Deputy Director

² Michael Keany, *Afterthoughts: Risky Business – When an arcade's not really an arcade*, available at <http://www.honolulumagazine.com/Honolulu-Magazine/September-2012/Afterthoughts-Risky-Business/>.

Presentation To
Committee on Judiciary and Labor
April 2, 2013 at 9:30am
State Capitol Conference Room 016

Testimony in Support of Proposed SD 1 to Bill HB 343, HD 2

TO: The Honorable Clayton Hee, Chair
The Honorable Maile S. L. Shimabukuro, Vice Chair
Members of the Committee

My name is Neal Okabayashi and I represent the Hawaii Bankers Association (HBA). HBA is the trade association representing all FDIC insured depository institutions with branch offices in the State of Hawaii.

We had some concerns on the language of HB 343, HD 2 because of its overbreadth and potential for infringing on very common promotional contests by banks. However, in reviewing the proposed SD 1, our concerns have been assuaged by it, and accordingly, we support the SD 1.

Thank you for the opportunity to submit this testimony and please let us know if we can provide further information.

Neal Okabayashi
(808) 525-5785