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CITY AND COUNTY OF HONOLULU

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OUR REFERENCE **JI-TA**

February 22, 2013

The Honorable Sylvia Luke, Chair
and Members
Committee on Finance
State House of Representatives
Hawaii State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Luke and Members:

Subject: House Bill No. 343, H.D. 1, Relating to Gambling Offenses

I am Jerry Inouye, Major of the Narcotics/Vice Division of the Honolulu Police Department, City and County of Honolulu.

The Honolulu Police Department supports House Bill No. 343, H.D. 1, Relating to Gambling Offenses.

Over the last several years, new gambling devices have arrived in Hawaii. The manufacturers use gimmicks to claim these "sweepstakes" machines are legal when in fact they violate current gambling statutes.

Passage of this bill would address this latest generation of gambling machines by clarifying the existing law. It would serve to ensure that businesses and the general public do not fall prey to those promoting the sale and use of such gambling devices.

The Honolulu Police Department urges you to support House Bill No. 343, H.D. 1, Relating to Gambling Offenses.

Thank you for the opportunity to testify.

APPROVED:

Handwritten signature of Louis M. Kealoha in black ink.

LOUIS M. KEALOHA
Chief of Police

Sincerely,

Handwritten signature of Jerry Inouye in black ink.

JERRY INOUE, Major
Narcotics/Vice Division

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LATE

February 22, 2013

Honorable Sylvia Luke
Chair, House Finance Committee
House of Representatives
Twenty-Seventh State Legislature
Regular Session 2013
State of Hawaii

Re: *H.B. NO. 343 H.D.1*

Dear Madam Chair,

I am David Jay Bernstein, in-house counsel for Cyber Centers International Inc. (hereinafter, "Cyber"), the provider of Internet Sweepstakes software known as Lucky Charms to the local Hawaiian businesses: Winner'z Zone; Triple A Amusements; and Lucky G Amusements (hereinafter "Operators"). I offer this letter in testimony to the Committee regarding *H.B. NO. 343 H.D.1* and ask that it be entered into the record.

The Operators are all long time small business owners and operators of amusement arcades located in Hawaii. I am submitting this letter as a current overview of the mechanical means of operation of so-called sweepstakes machines and, coordinately, of the business operations of the Cyber Operators.

The subject bill is a result of the proliferation and subsequent investigation of a stand-alone sweepstakes machine known as Products Direct. This letter will not address the legality of that machine or the method in which it operates. This letter is to outline the system that exists in the Operators' businesses and the Lucky Charms sweepstakes software.

The Operators do not operate sweepstakes terminals where the games and all of the software are housed within the machine. What the Operators operate are simply computers. These computers may be ALL IN ONE type computers with integrated touch screens or TOWER computers with separate touch screen monitors. Each computer has a keyboard and a mouse and may be purchased online through DELL or GATEWAY, at the local BEST BUY or anywhere computers are sold. They may stand alone or they may be housed in cabinets. But, in the final analysis, they are everyday computers, legal in all jurisdictions.

The cabinets are built by cabinet or furniture shops specifically to house the computers. The cabinets protect the computers, enhance their appearance and give Consumers a comfortable and convenient way to access the internet and create documents. Additionally, Cyber is planning to further improve the computers by permitting Consumers to purchase music and video downloads, charge their cell phones and eventually to make local, long distance and international calls, all through the computer. The cabinets may be ordered with built-in printers or the computers can be networked to a central Multi-Function computer, printer, scanner and fax. They may be accessed through keyboard log in or by the use of an access swipe card.

In the future, the cabinets will also house screens which will run streaming video commercials and static ads, which will be made available through various domains such as; 15secondcommercial.com, 20secondcommercial.com and facetimeads.com. Coupons for merchandise available, not online, but through local vendors will be printed out for free, allowing the Operators the opportunity to build not only their own businesses, but also to drive business to many of their fellow entrepreneurs located in Hawaii, thereby increasing local trade and, in turn, tax revenue (as all of the ad revenue earned will be taxable).

I reiterate that it is important to remember that the computers may be removed from the cabinets and continue to function as they were originally designed to when they left DELL or some other manufacturer's warehouse, as computer work stations with internet access.

Currently, when Consumers log into the computer they are purchasing internet time at a cost of \$1.00 per six minute increment. This gives them access to the computer and to the Internet. All offensive sites are excluded and are not accessible through the computers. Internet time is a viable and valuable product offered throughout the United States and Worldwide. In Hawaii alone, internet service is sold, not only in Internet Cafes, but also in hotels and many other businesses. The fees that the Operators charge the Consumers for internet time is reasonably priced and, in most instances, lower than the fees charged by hotels, motels and other businesses, who may charge \$20 an hour or more. Additionally, the other businesses that sell internet time often do so in minimum 1-hour increments. What this means is that if a Consumer wishes to check or create an email, they must pay the hourly rate to do so. On the other hand, the Operators offer internet access for as little as \$1. For other services, these other businesses typically charge as much as \$1.00 per page for printing and \$2.00 for the first page of a fax. The Cyber Operators charge half of that. Although the figures are not readily available, in Hawaii, the gross sale of internet time is certainly in the tens of millions of dollars.

In addition to the use of the internet or the purchase of other products through the computer, the Consumer is given free credits to enter a sweepstakes. The sweepstakes is what has come under so much scrutiny and is a cause of concern for the government and local authorities. It is apparent that many operators who purportedly offer promotional sweepstakes may not be selling a product or, perhaps, are selling a specious or worthless product, and are, therefore, *per se* selling access to the sweepstakes. This is not the case with the sale of internet time and the many valuable future offerings that the Operators will provide the Consumers. I reiterate that the value of the legally-run and operated sweepstakes industry presents tremendous potential financial benefits to the Great State of Hawaii. The gross receipts tax revenue to Hawaii on the sale of

internet time alone is many millions of dollars and, as we become a more wired world, it will no doubt continue to grow.

At the Operators businesses, Consumers are given free entries into a sweepstakes along with their purchase. These free entries do not have to be used at the Operator's location and Consumers do not have to play the *casino style*¹ games in order to reveal the results. The results can be revealed through the mail, online at one of the Operators' computers, at the counter by asking a clerk to reveal the results, **through a non-entertaining Sweepstakes Revealer** at the Operators' locations or on any computer in the world. In order to be considered gambling, consideration must be given in order to play, and there is absolutely no consideration given to enter the sweepstakes.

Gambling is currently illegal in Hawaii and according to the 2010 Census it is estimated that 7,000 Hawaiians travel to Las Vegas each week. Airline statistics reveal that, not accounting for repeat visits—of which there were likely many—and travelers continuing elsewhere, about 20 percent of all Hawaiians visited Las Vegas in one year. Although, the sweepstakes are not gambling, many Consumers enjoy the casino style games and, I submit, it is certainly desirable to retain some of that business within the State of Hawaii. Again, I reiterate that the Cyber Operators are able to provide much of the excitement of the Las Vegas experience without the dangers inherent in illegal gambling. For example, since the results of the Finite Pool (which is the backbone of the sweepstakes) are predetermined, it is not likely that a person would squander their life savings or their family's food budget, on a chance to win a big payday since the pool does not allow for oversized wins or continuous losers. In fact, in the pool behind Lucky Charms it guarantees that over 83% of all sweepstakes entries are winners and that each entry has a 92 out of 100 chance of winning. Therefore, the *gross* income to The Operators is limited. Obviously, this is a tremendous difference arguing in favor of and for the legality of Sweepstakes over gambling casinos; because the house's "take" at a casino, creates the potential for players to lose a tremendous amount of money.

As you can see, this is very different from gambling. The primary difference is the "Math model." The math model employed in gambling is based on an "infinite pool." For instance, a "gambling" slot machine contains a random number generator ("RNG") which is continually working "behind the scenes," so to speak, even when the machine itself is not operating. The RNG provides an infinite number of possibilities from which winners may be chosen, i.e. an infinite pool. Sweepstakes, however, depend upon a finite pool of numbers, so, immediately, the odds are considerably improved (as mentioned above, 83% of all entries are winners!!) and the winners have already been chosen prior to the Consumer ever engaging. Ergo, as mentioned above, it would be extraordinarily difficult, if not impossible, for a person to compromise his or her family's well-being by playing the free sweepstakes (investing, for instance, six-dollars per hour in the purchase of internet time), the way it is possible in a casino.

¹ In some states, for instance, some object to the "bells & whistles" because they say it appeals to a "gambling instinct." As you will see, what differentiates our sweepstakes software-driven machines from gambling machines is a "math model" based on finite pools. It seems silly to us to say that something is bad because it resembles something that some people believe is bad. Quite simply, Sweepstakes ARE NOT GAMBLING. The bells & whistles are just for entertainment because most folks prefer to be entertained. But, in our Operators' establishments, if people want to check their sweepstakes numbers in silence and without flashing lights or cartoon characters, they can do that too; to each his own.

This brings to mind the issue of crime. Since the computers and software track all purchases and the sweepstakes entries used, it would be difficult, if not impossible, for instance, to launder money through a business such as our Operators'. Our Operators purchase a license based on the entries as they are needed, in effect they buy inventory which is then used as the Consumer reveals the entries. Since every dollar that comes into the Operators' businesses is accounted for electronically on a remote server, they are auditable and there is no way to manipulate the books. Further, when the Operators give free entries to the Consumers, this has the opposite effect of money laundering since the revenue from products sold compared to entries goes down. It is important to note that there have been no instances of criminal activity at the Operators' locations and they are in fact, known to be attractive and safe environments.

If the legislature passes 343 and makes it illegal to award free entries into a sweepstakes incidental to a purchase, that will make all free sweepstakes in the State of Hawaii illegal, including those offered by McDonald's, Taco Bell, House and Garden Television and hundreds of others. In addition, Sweepstakes are played at many government facilities, including those in Hawaii. The Navy and the Marines routinely play sweepstakes "bingo" at their facilities. Each Consumer receives a limited entry into the sweepstakes for free and more upon the purchase of a meal.

The issue of Publisher's Clearing House Sweepstakes is particularly interesting in that most people enter the sweepstakes not to purchase the magazines, but for the chance to win the sweepstakes. Nevertheless, the passing of this bill would also make the Sweepstakes offered by Publishers' Clearing House illegal; even though it has awarded over \$230 Million in Sweepstakes winnings in its 45 year history and has sold billions of dollars in magazines through the promotion.

It is a strict requirement of a sweepstakes that no purchase is necessary. Not only do the Operators observe this basic tenet but they go several steps further; allowing the Consumer to enter the sweepstakes through any internet connected computer. The Operators feel that to force a Consumer to remain at a so-called sweepstakes machine in order to reveal the entries may cause the Consumer to continue to purchase the product only for access to the games and that is not the Operators' intent. Although many sweepstakes are the main draw for many product's sales (a clear example is Publishers' Clearing House as noted above), it is the Operators' contention that, in order to be a legitimate sweepstakes, the Consumer should not be limited to revealing the results at the vendors' locations.

Additionally, the Operators believe that in order for computer access time to be sold, the computer must have access to the internet and, at a minimum; a keyboard, a mouse and a touch screen monitor. The Operators offer this configuration.

We respectfully ask this august body to reconsider its position regarding the criminalization of sweepstakes which will no doubt confuse the issue even further and perhaps cause heretofore unforeseen consequences. Instead, we propose that The Hawaii Legislature reconsider whether, in damning Sweepstakes, they have caught up a porpoise in the same net as the sharks. We ask

that you revisit this issue and pass more well-thought-out legislation regulating the access to sweepstakes where it pertains to local businesses and the sale of their products and services.

There are operators who may attempt to mimic legitimate sweepstakes and whose employees are not helpful in explaining the no purchase necessary rule. Therefore, in creating effective but not overly draconian legislation, we would recommend that the following rules and regulations are implemented:

1. THE SWEEPSTAKES RULES MUST BE CLEARLY POSTED WITHIN 5' OF ANY COMPUTER OR TERMINAL WHERE THE SWEEPSTAKES MAY BE REVEALED.
2. THE CONSUMER MUST HAVE THE OPTION OF REVEALING THE SWEEPSTAKES RESULTS WITHOUT PLAYING THE GAMES.
3. THE SWEEPSTAKES RULES MUST BE AVAILABLE ON EACH COMPUTER OR TERMINAL WHERE THE CONSUMER MAY READ THEM **PRIOR** TO ENTERING THE SWEEPSTAKES.
4. THE CONSUMER MUST AGREE TO A DISCLAIMER ON THE COMPUTER OR TERMINAL PRIOR TO ENTERING THE SWEEPSTAKES OR PLAYING GAMES. THE AGREEMENT MUST REQUIRE THE CONSUMER TO MAKE A CONSCIOUS DECISION BY ACCEPTING THE RULES AND DISCLAIMER THROUGH TOUCH SCREEN OR MOUSE.
5. THE OPERATOR MUST FILE WITH THE LOCAL POLICE AUTHORITIES A LEGAL OPINION ISSUED BY A LOCAL ATTORNEY AS TO THE LEGALITY OF THE SWEEPSTAKES AND THE VIABILITY OF THE FINITE POOL BASED ON A CERTIFICATON OF A RECOGNIZED INDEPENDENT LABORATORY SPCIALIZING IN SUCH CERTIFICATIONS, CONFIRMING THAT THE GAMES ARE NOT OPERATED THROUGH THE USE OF A RANDOM NUMBER GENERATOR.
6. THE ENTRIES INTO THE SWEEPSTAKES MAY NOT BE CONVERTED TO CASH AND MUST BE CLEARLY SEPARATED ON THE COMPUTER OR TERMINAL SCREEN.
7. IN ORDER TO PURCHASE MORE PRODUCTS AND RECEIVE ADDITIONAL FREE SWEEPSTAKES ENTRIES, THE CONSUMER MUST MAKE A CONSCIOUS DECISION AND PURCHASE ADDITIONAL PRODUCTS THROUGH TOUCH SCREEN OR MOUSE.

In addition to the above, and in order to administer the sweepstakes locations, each device that is located within a business that offers free sweepstakes should be registered with the local zoning board with a reasonable annual permit fee charged for each machine within 30 days of placement. A sticker signifying its registration should be placed on the outside of the CPU or cabinet so local police and zoning officials can confirm that they are properly licensed.

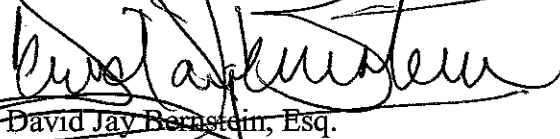
To summarize, the Operators' computers are not sweepstakes terminals, but simply computers. To make the access of an online sweepstakes illegal would render all sweepstakes illegal and would be a regulation of the internet which is under federal jurisdiction. To make the "machines" that access the sweepstakes illegal would make all computers illegal. We believe that there is a

better way, and that is through regulation. Regulation will add significantly to the government treasury and avoid very expensive litigation. We do not want to be adversarial. Our Operators and their families are born in Hawaii, have built their businesses in Hawaii and employ many people there. Our Operators' deepest desire is to be a partner of the government, to work hand in hand toward a solution and to continue to nurture and protect the Magnificent State of Hawaii, the diversity of its businesses and the mores of the Hawaiian people. Our Operators are very involved in civic affairs and local charities and their businesses will continue to further many worthy causes.

Finally, Sweepstakes can be a fun, legal and financially safe alternative to gambling that carries with it virtually none of the darker concerns attached to gambling. Furthermore, it will foster Hawaiian businesses and her treasury, which will benefit all Hawaiians.

I submit that outlawing Sweepstakes will not only be unwise but, actually, self-defeating. Please consider carefully before taking such an extreme measure.

Respectfully yours,



David Jay Bernstein, Esq.

Cc: Joseph Souki
Speaker of the House

Karl Rhoads
Chair, Committee on Judiciary

FINTestimony

LATE

From: Matthew Matsunaga [mmatsunaga@schlackito.com]
Sent: Thursday, February 21, 2013 8:14 PM
To: FINTestimony
Subject: Testimony in opposition to HB 343 HD1

DATE: Friday, February 22, 2013
TIME: 1:30 P.M.
PLACE: Conference Room 308
State Capitol
415 South Beretania Street

Rep. Sylvia Luke,
Chair
Rep. Scott Y. Nishimoto, Vice Chair
Rep. Aaron Ling Johanson, Vice Chair

Committee on Finance

I represent PJY Enterprises, LLC, a local small business that distributes the Products Direct Sweepstakes terminals. These are legitimate promotions for legitimate products (similar to Publishers Clearing House, Reader's Digest Sweepstakes, Pepsi Billion Dollar Sweepstakes and McDonalds Monopoly), and are designed to generate enthusiasm and entice customers to enter games of chance that are tied to creating awareness of and purchasing Hawaii products, such as coffee, sunglasses, t-shirts, etc. HB 343 HD1 actually criminalizes any business promotion that involves free entry into a game of chance with the purchase of an item or service. This would likely criminalize well known and well established promotions, such as McDonalds Monopoly, Publishers Clearing House, Reader's Digest Sweepstakes and other contests.

Instead of targeting legitimate business promotions, perhaps you should criminalize those promotions that are not connected with legitimate products. I respectfully ask that, if you pass this measure, you revise it to only criminalize promotions that do NOT comply with the following requirements:

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

- (b) No purchase payment, entry fee, or proof of purchase is required as a condition of entering the game promotion or receiving something of value;
- (c) The chance to win by free play must be offered from the same pool from which the chance to win via purchase is drawn.
- (d) All materials advertising the game promotion clearly disclose that no purchase or payment is necessary to enter and provide details on the free method of participation;
- (e) In cases where electronic devices are used as the revealing mechanism, they should not be connected to a server (such as in the case of the devices used by internet sweepstakes cafes), which allows the possibility of manipulating the outcomes of the games of chance, and/or the payouts, while a customer is playing the games of chance. (There are systems currently being operated in this State, and elsewhere that have this capability.); and
- (f) In cases where a "service" or usage time is being sold or promoted, any usage time, privilege to use and/or operate or credits accumulated by the customers must be allowed to be transferred or sold to any other person. (There are several sweepstakes devices being operated which sell enormous amounts of usage time, privilege to use and/or operate or credits that are allowed to be accumulated, but they do not provide any means for the customer to retain any excess; meaning there is NO data base that either the customer or the seller can use to retain or account for their purchases.)

I respectfully oppose the passage of HB 343 HD1 or alternatively ask that this Committee consider the above amendments. Thank you for the opportunity to testify.

Matthew M. Matsunaga



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