

JAN 18 2013

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 gambling, as defined
2 in section 712-1220(4), Hawaii Revised Statutes, is composed of
3 three necessary elements. First, a person must wager something
4 of value. Second, the wager must be placed on the outcome of a
5 contest of chance or a future contingent event that is not under
6 the wagerer's control or influence. Finally, the wager must be
7 made under conditions in which a payout is made if a specified
8 outcome occurs.

9 Recently, across the nation, including in this State, a
10 proliferation of electronic sweepstakes game machines have been
11 designed to circumvent the spirit, if not the letter, of
12 gambling laws by making opportunities to play contests of chance
13 for prizes incidental to the purchase of goods or services. For
14 example, a business may sell a phone card or internet time that,
15 for no additional charge, affords the buyer an opportunity to
16 play contests of chance on a machine that offers payouts. The
17 cost of the card or internet time sometimes far exceeds what it
18 would cost to buy the card or time if no play opportunity is



1 included. Many of the contests of chance that may be played on
2 these machines resemble games that are widely associated with
3 gambling; but the businesses contend that use of the sweepstakes
4 machines does not constitute gambling because the consumer's
5 payment is for the purchase of other goods or services, not for
6 the opportunity to use the machine, and therefore the consumer
7 is not wagering anything of value for purposes of the gambling
8 law. In fact, these businesses claim that they are merely
9 offering a sweepstakes to promote their goods or services, even
10 though it is often apparent that the purchases are primarily or
11 solely made for the opportunity to play on a sweepstakes machine
12 that replicates the gambling experience.

13 The legislature also finds that, now more than ever, the
14 prohibition of gambling activities has become exceedingly
15 difficult in light of a highly sophisticated and adaptable
16 gaming industry that uses technology to exploit loopholes in the
17 law. Electronic gaming machines can be quickly reprogrammed to
18 modify gameplay and other features, which presents tremendous
19 challenges to efforts to define prohibited activities under the
20 gambling law. Hence, the effective crafting and enforcement of
21 gambling prohibitions remains a constant and ever-evolving
22 process.



1 The purpose of this Act is to strengthen gambling laws by
2 addressing contests of chance played to win something of value
3 where the wager consists of an incidental purchase of goods or
4 services.

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

7 1. By amending the definitions of "gambling" and "gambling
8 device" to read:

9 "(4) "Gambling". A person engages in gambling if ~~[he]~~ the
10 person stakes or risks something of value upon the outcome of a
11 contest of chance or a ~~[future]~~ contingent event not under ~~[his]~~
12 the person's control or influence, including an outcome that has
13 already been determined or an event that has already occurred
14 but the outcome or event is unknown to the person, upon an
15 agreement or understanding that ~~[he]~~ the person or someone else
16 will receive something of value in the event of a certain
17 outcome. Gambling ~~[does]~~:

18 (a) Includes the use of any gambling device that is
19 offered incident to the purchase of other goods or
20 services, at no additional charge; and

21 (b) Does not include bona fide business transactions valid
22 under the law of contracts, including but not limited



1 to contracts for the purchase or sale at a future date
2 of securities or commodities, and agreements to
3 compensate for loss caused by the happening of chance,
4 including but not limited to contracts of indemnity or
5 guaranty and life, health, or accident insurance.

6 (5) "Gambling device" means any device, machine,
7 paraphernalia, or equipment that is [used]:

8 (a) Used or usable in the playing phases of any gambling
9 activity, whether that activity consists of gambling
10 between persons or gambling by a person involving the
11 playing of a machine [~~— However,~~]; or

12 (b) Available to play or operate a contest of chance upon
13 payment of something of value, including the purchase
14 of goods or services incidental to play or operation
15 of the device, and that may deliver or entitle the
16 person playing or operating the device to a payout of
17 anything of value, whether the payout is made
18 automatically by the device or in any other manner;

19 provided that lottery tickets and other items used in the
20 playing phases of lottery schemes are not gambling devices
21 within this definition."



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

3 "(11) "Something of value" means any money or property,
4 any token, object, or article exchangeable for money or
5 property, any purchase of goods or services that entitles a
6 person to participate in a gambling scheme or to play or operate
7 a gambling device, or any form of credit or promise directly or
8 indirectly contemplating transfer of money or property or of any
9 interest therein, or involving extension of a service or
10 entertainment."

11 SECTION 3. This Act does not affect rights and duties that
12 matured, penalties that were incurred, and proceedings that were
13 begun before its effective date.

14 SECTION 4. Statutory material to be repealed is bracketed
15 and stricken. New statutory material is underscored.

16 SECTION 5. This Act shall take effect upon its approval.
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S.B. NO. 398

Report Title:

Gambling; Gambling Devices; Sweepstakes Machines

Description:

Amends various definitions in the gambling law to address contests of chance played to win something of value where the wager consists of an incidental purchase of goods or services.

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