

SB 3025

SD1

A BILL FOR AN ACT

RELATING TO CONSUMER PROTECTION.

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

1 SECTION 1. The legislature finds that according to a 2011
2 study, ninety-one per cent of children aged two through
3 seventeen played video games. Games and game content are now
4 easily accessible and may be purchased at the touch of a button
5 through smart phones, gaming consoles, or personal computers, or
6 by minors with cash or through gift card purchases.

7 In recent years, video game publishers have begun to employ
8 predatory mechanisms designed to exploit human psychology to
9 compel players to keep spending money in the same way that
10 casino games are designed. These mechanisms allow players to
11 purchase chances at winning rewards within games, similar to a
12 slot machine. One common variety of this type of predatory
13 mechanism, known as a loot box, can present the same
14 psychological, addictive, and financial risks as gambling. The
15 legislature notes that there are even online marketplaces where
16 players can buy and sell digital items won from loot boxes and



1 other gambling-like mechanisms in many games, enabling players
2 to effectively cash out their winnings.

3 The legislature further finds that the American Psychiatric
4 Association has incorporated diagnostic criteria for internet
5 gaming disorder as a condition warranting more clinical research
6 and experience, in order to feature this diagnosis in future
7 versions of the Diagnostic and Statistical Manual for Mental
8 Disorders. The World Health Organization has defined gaming
9 disorder, characterized by a pattern of persistent or recurrent
10 gaming behavior, and plans to add this disorder to the latest
11 version of its list of diseases and mental health conditions,
12 the International Classification of Diseases. Mental health
13 experts have raised particular concern about the exposure of
14 youth and young adults to gambling-like mechanisms, which can
15 affect cognitive development and lead to addiction, and to which
16 youth and young adults are particularly vulnerable.

17 There is currently no age restriction on games that include
18 loot boxes and other exploitive gambling-like mechanisms, and
19 the legislature notes that games featuring these mechanisms are
20 often marketed to youth. Furthermore, there are no disclosure
21 requirements that these types of games may contain predatory,



1 potentially harmful loot boxes and gambling-like mechanisms.
2 The legislature also notes that game publishers can insert
3 gambling-like mechanisms into games at any time via game
4 updates, without prior player or parental knowledge.

5 Compared to casinos, games rarely disclose the odds of
6 winning items of value in loot boxes or in-game gambling-like
7 mechanisms. Video games also lack gaming commissions to ensure
8 players are being treated fairly and not being exploited by
9 gambling-like mechanisms that do not pay out as advertised.
10 Furthermore, game publishers have already begun to develop
11 algorithms that are far more exploitive than casino games and
12 can change the odds of winning valuable items in real time,
13 based on a player's reactions and likelihood of continued
14 spending.

15 The legislature additionally finds that no meaningful
16 protections exist to prevent consumers, particularly vulnerable
17 youth, from being exploited by predatory video game mechanisms
18 that are aggressively marketed on smart phones, gaming consoles,
19 and personal computers. Unlike traditional card games or other
20 games of chance, the ubiquitous reach of video games, which
21 require active, lengthy participation and exposure to the



1 psychological manipulation techniques of exploitive loot boxes
2 and gambling-like mechanisms, presents potentially harmful risks
3 to the financial well-being and mental health of individuals,
4 especially vulnerable youth and young adults.

5 The purpose of this Act is to establish certain disclosure
6 requirements for publishers of video games that contain a system
7 to purchase a randomized reward or consumable virtual item that
8 can be redeemed and directly or indirectly converted to a
9 randomized reward.

10 SECTION 2. Chapter 481B, Hawaii Revised Statutes, is
11 amended by adding two new sections to be appropriately
12 designated and to read as follows:

13 "§481B-A Video games; probability rates; disclosure. (a)
14 Video game publishers that distribute video games that contain a
15 system of further purchasing that includes:

- 16 (1) A randomized reward; or
17 (2) A consumable virtual item that can be redeemed and
18 directly or indirectly converted to a randomized
19 reward,

20 shall prominently disclose and publish to the consumer the
21 probability rates of receiving each type of randomized reward at



1 the time of purchase and at the time any mechanism to receive a
2 randomized reward is activated so as to meaningfully inform the
3 consumer's decision prior to the purchase or activation of any
4 mechanism to receive a randomized reward.

5 (b) The department of commerce and consumer affairs, in
6 consultation with the office of enterprise technology services,
7 is authorized to audit the code of video games sold in this
8 State and subject to this section to ensure that the probability
9 rates for receiving each type of randomized reward are
10 calculated correctly and working properly. The department may
11 contract with a third party to provide additional assistance as
12 needed. The department shall not publicly disclose proprietary
13 information beyond that which is necessary to fulfill the intent
14 of this section.

15 (c) For purposes of this section:

16 "Randomized reward" means a reward in a video game that is
17 based on a variable ratio schedule, wherein a player receives a
18 reward after a random number of actions.

19 "Video game" means an object or device that stores recorded
20 data or instructions, receives data or instructions generated by
21 a person who uses it, and, by processing the data or



1 instructions, creates an interactive game capable of being
2 played, viewed, or experienced on or through a computer, gaming
3 system, console, or other technology.

4 "Video game publisher" means an entity that publishes video
5 games that have either been created internally or through a
6 separate entity.

7 §481B-B Video games; labeling; disclosure. (a) Each
8 video game subject to section 481B-A shall:

9 (1) Bear a prominent, easily legible, bright red label on
10 its packaging that reads: "Warning: contains in-game
11 purchases and gambling-like mechanisms which may be
12 harmful or addictive"; or

13 (2) If purchased digitally and downloaded through the
14 Internet or an online application, prominently
15 disclose to the consumer at the time of consumer
16 purchase a bright red label that is easily legible and
17 that reads: "Warning: contains in-game purchases and
18 gambling-like mechanisms which may be harmful or
19 addictive",

20 so as to meaningfully inform the consumer's decision prior to
21 purchase.



1 (b) No video game publisher shall at any time modify a
2 game to contain or otherwise permit the inclusion of additional
3 content for which the game was not appropriately labeled at the
4 time of original sale.

5 (c) For purposes of this section:

6 "Randomized reward" shall have the same meaning as in
7 section 481B-A.

8 "Video game" shall have the same meaning as in section
9 481B-A.

10 "Video game publisher" shall have the same meaning as in
11 section 481B-A."

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

15 SECTION 4. In codifying the new sections added by section
16 2 of this Act, the revisor of statutes shall substitute
17 appropriate section numbers for the letters used in designating
18 the new sections in this Act.

19 SECTION 5. New statutory material is underscored.

20 SECTION 6. This Act shall take effect upon its approval.



Report Title:

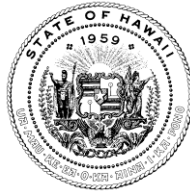
Video Games; Disclosure; Labeling; In-game Purchases; Randomized
Reward

Description:

Establishes certain disclosure requirements for publishers of
video games that contain a system of purchasing a randomized
reward or consumable virtual item. (SD1)

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





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TO THE HOUSE COMMITTEE ON
CONSUMER PROTECTION AND COMMERCE

TWENTY-NINTH LEGISLATURE
Regular Session of 2018

Wednesday, March 21, 2018
2:15 P.M.

**TESTIMONY ON SENATE BILL NO. 3025, S.D. 1, PROPOSED H.D. 1, RELATING
TO CONSUMER PROTECTION.**

TO THE HONORABLE ROY M. TAKUMI, CHAIR, AND MEMBERS OF THE
COMMITTEE:

The Department of Commerce and Consumer Affairs (“Department”) appreciates the opportunity to testify in support of S.B. 3025, S.D. 1, proposed H.D. 1, Relating to Consumer Protection. My name is Stephen Levins, and I am the Executive Director of the Department’s Office of Consumer Protection.

This proposed draft adds a new section to Hawaii Revised Statutes (“HRS”) chapter 480 that: (1) requires a franchisee to disclose at its entrance or storefront that it is not participating in a promotion or discount offered by the franchise; and (2) prohibits a franchisor from limiting or placing conditions upon the franchisee in making the required disclosure.

Consumers are often confused or misled by offers a franchise makes in national advertising campaigns. While an advertisement may state that an offer is not available in Hawaii, this disclosure is often in tiny print and therefore insufficient to inform the consumer that the offer is not available in the State. If a promotion or discount is not available in Hawaii or at a particular location, this information should be disclosed to the

consumer. The disclosure requirement in this bill will clarify to consumers whether an offer is available in Hawaii.

The Department also respectfully submits this new section is most appropriately placed in HRS chapter 481B, since that chapter deals with a litany of unfair and deceptive practices which this proposed draft also addresses.

Thank you for the opportunity to testify on S.B. 3025, S.D. 1, proposed H.D. 1. I would be happy to answer any questions the Committee may have.



Tyler Roukema, Chairman – Outback Steakhouse **Kelii Gouveia, Incoming Chair** – Hula Grill
Hide Sakurai, Vice Chair – Diamond Dining **Dirk Koeppenkastrop, Secretary** – Il Gelato
Ben Dowling, Treasurer – Ocean House **Michael Miller, Past Chair** – Tiki's Grill & Bar

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To: Rep. Roy M. Takumi, Chair
Rep. Linda Ichiyama, Vice Chair
Members of the Committee on Consumer Protection & Commerce

From: Victor Lim, Legislative Chair
Hawaii Restaurant Association

Subj: SB3025 HD1 Advertising campaigns non-participation

Date: March 20, 2018

We at the Hawaii Restaurant Association representing 3,500 restaurants here have questions regarding the intent of this bill in that it is very broad and cover many industries here in Hawaii and not limited to just restaurants. In our restaurant industry we also have many sub categories from fine dining (Morton's, Ruth Chris's, Roy's), fast casual (Chili's, Ruby Tuesday, Outback, CPK), and quick service (McDonald's, Wendy's, Subway) restaurants.

Everyone of the above concepts have a different way of communicating what their respective national advertising offers and how the local entities here in Hawaii choose to honor. The national advertising all have to state (.....at participating restaurants,contiguous 48 states,except AK and HI) as required by the federal provisions.

The broadness of this bill makes it very hard for us or any other industry to properly try and comply.

Thank you for giving us an opportunity to share our comments with your committee. If you have further questions, please feel free to let us know.

Thanks and Aloha.

