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# A BILL FOR AN ACT

RELATING TO GAMING.

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

1           SECTION 1. The legislature finds that in 1992, Congress  
2 passed the Professional and Amateur Sports Protection Act  
3 (PASPA), to prohibit state-sanctioned sports gambling, with  
4 exceptions for state-sponsored sports wagering in Nevada, and  
5 sports lotteries in Oregon and Delaware. In 2012, the New  
6 Jersey legislature authorized certain regulated sports wagering  
7 at New Jersey casinos and racetracks and implemented a  
8 comprehensive regulatory scheme for licensing casinos and  
9 sporting events. Five sports leagues sued under PASPA to enjoin  
10 the New Jersey law, which the state defended by arguing that  
11 PASPA was unconstitutional under the anti-commandeering  
12 doctrine. New Jersey then passed a second law in 2014 that  
13 professional and amateur sports leagues then sued again to  
14 enjoin. That suit was decided before the United States Supreme  
15 Court as *Murphy v. National Collegiate Athletic Association*  
16 (*NCAA*), 138 S. Ct. 1461, on May 14, 2018. One of the questions  
17 before the court was whether a federal statute that prohibits



1 modification or repeal of state-law prohibitions on private  
2 conduct impermissibly commandeers the regulatory power of  
3 states. In a six to three opinion authored by Justice Alito,  
4 the court reversed in favor of New Jersey, finding that PASPA's  
5 provision prohibiting state authorization of sports gambling  
6 schemes violates the anticommandeering doctrine under the 10th  
7 Amendment to the U.S. Constitution. The anticommandeering  
8 doctrine emerged under *New York v. United States*, 505 U.S. 144  
9 (1992) and *Printz v. United States*, 521 U.S. 898 (1997).  
10 Pursuant to this authority, "Congress may not simply 'commandeer  
11 the legislative process of the States by directly compelling  
12 them to enact and enforce a federal regulatory program.'"

13 The legislature finds that tens of thousands of Hawaii  
14 residents are estimated to participate in illegal online sports  
15 gambling on unregulated internet web sites. These gambling web  
16 sites are operated by illegal offshore operators not subject to  
17 regulation or taxation in the United States. Questions often  
18 arise about the honesty and the fairness of the games offered to  
19 Hawaii residents, but neither federal nor Hawaii laws currently  
20 provide any consumer protections for Hawaii residents who play  
21 on these web sites. Moreover, tens of millions of dollars in



1 revenues generated from online gambling are being realized by  
2 offshore operators serving Hawaii residents, but no benefits are  
3 provided to the State.

4 To protect Hawaii residents who gamble on the Internet, and  
5 to capture revenues generated from internet sports wagering in  
6 Hawaii, it is in the best interest of the State and its citizens  
7 to regulate this existing activity by authorizing and  
8 implementing a secure, responsible, and legal system for sports  
9 wagering. The State's interests are best met by doing so  
10 through a sports wagering corporation, which shall be a public  
11 instrumentality, operating for the sole benefit of the State,  
12 and accountable to the legislature and to the public through a  
13 system of audits and reports.

14 The purpose of this Act is to create a body politic, known  
15 as the Hawaii sports wagering corporation, authorized to offer a  
16 regulated, secure, and responsible framework for the conduct of  
17 sports wagering in Hawaii that will provide consumer protections  
18 and capture additional revenues for the benefit of the State in  
19 light of the ruling that PASPA was unconstitutional.



1 SECTION 2. The Hawaii Revised Statutes is amended by  
2 adding a new chapter to be appropriately designated and to read  
3 as follows:

4 "CHAPTER

5 HAWAII SPORTS WAGERING CORPORATION

6 § -1 Definitions. As used in this chapter, the term:

7 "Board" means the board of directors of the Hawaii sports  
8 wagering corporation.

9 "Chief executive officer" means the chief executive officer  
10 of the Hawaii sports wagering corporation.

11 "Corporation" means the Hawaii sports wagering corporation.

12 "Member" or "members" means a member or members of the  
13 board of directors of the Hawaii sports wagering corporation.

14 "Net proceeds" means all revenue derived from the  
15 operations of the corporation, less operating expenses.

16 "Operating expenses" means all costs of doing business,  
17 including but not limited to advertising and marketing costs,  
18 costs related to the internet wagering provider, personnel  
19 costs, capital costs, funds for problem gambling education and  
20 treatment, and other operating costs.



1 "Person" means any individual, corporation, partnership,  
2 unincorporated association, or other legal entity.

3 "Vendor" means a person who provides or proposes to provide  
4 goods or services to the corporation pursuant to a procurement  
5 contract, but does not include an employee of the corporation,  
6 or an agency or instrumentality of the State.

7 § -2 Hawaii sports wagering corporation established.

8 (a) There is established the Hawaii sports wagering corporation  
9 to be placed within the department of business, economic  
10 development, and tourism for administrative purposes only. The  
11 corporation shall be a public body and a body corporate and  
12 politic.

13 (b) The corporation shall employ, exempt from chapter 76  
14 and section 26-35(a)(4), an executive director and executive  
15 assistant. The corporation may employ, subject to chapter 76,  
16 technical experts and officers, agents, and employees, permanent  
17 and temporary, as required. The corporation may also employ  
18 officers, agents, and employees, prescribe their duties and  
19 qualifications, and fix their salaries, not subject to chapter  
20 76, when in the determination of the corporation, the services  
21 to be performed are unique and essential to the execution of the



1 functions of the corporation. The corporation may call upon the  
2 attorney general for legal services as it may require. The  
3 corporation may delegate to one or more of its agents or  
4 employees its powers and duties as it deems proper.

5       **§ -3 Purpose and authority of corporation.** (a) The  
6 Hawaii sports wagering corporation shall conduct and regulate  
7 sports wagering for the benefit of the State, with the  
8 assistance of a private sports wagering provider, pursuant to  
9 this chapter and rules adopted by the corporation.

10       (b) The Hawaii sports wagering corporation may:

11       (1) Offer sports wagering on sporting events or sporting  
12       contests to individuals over the age of eighteen  
13       years; and

14       (2) Engage in other activities consistent with the purpose  
15       of this chapter and rules adopted hereunder and with  
16       state and federal laws.

17       **§ -4 General powers of the corporation.** (a) The  
18 corporation is granted comprehensive and extensive powers as  
19 generally exercised by corporations engaged in for-profit  
20 business activities and all powers as are necessary or  
21 convenient to effectuate those purposes and provisions of this



1 chapter that are not in conflict with state or federal law,  
2 including to:

- 3 (1) Sue and be sued;
- 4 (2) Have a seal and alter the same at pleasure;
- 5 (3) Make and execute contracts, pursuant to chapter 103D,  
6 and other instruments necessary or convenient to the  
7 exercise of its powers;
- 8 (4) Adopt bylaws and rules in accordance with chapter 91  
9 for its organization, internal management, and to  
10 carry into effect its purposes, powers, and programs;  
11 and
- 12 (5) Elect and prescribe the duties of officers and  
13 employees of the corporation and to perform such other  
14 matters as the corporation may determine.

15 (b) In addition to other powers conferred upon it, the  
16 corporation may do all things necessary and convenient to carry  
17 out the powers expressly provided in this chapter.

18 § -5 Board of directors; membership; reimbursement for  
19 expenses; conflict of interests; quorum. (a) The corporation  
20 shall be governed by a board of directors composed of seven  
21 members. Three members shall be appointed by the governor, two



1 shall be appointed by the president of the senate, and two shall  
2 be appointed by the speaker of the house of representatives.

3 (b) Members of the board shall be prominent persons in  
4 their business or profession and shall not have been convicted  
5 of any felony offense. The board shall include individuals with  
6 knowledge and expertise in sports wagering or gaming, marketing  
7 and entertainment, technology, accounting, law, and operation of  
8 a business enterprise.

9 (c) Members of the board shall serve for terms of five  
10 years; provided that, of the initial members appointed, three  
11 shall be appointed for a term of two years, two shall be  
12 appointed for a term of four years, and two shall be appointed  
13 for a term of five years. Any vacancy occurring on the board  
14 shall be filled by the governor by appointment for the unexpired  
15 term.

16 (d) Members of the board shall not have any interest in an  
17 undertaking that puts their personal interest in conflict with  
18 that of the corporation, including but not limited to an  
19 interest in a procurement contract or a participating vendor.

20 (e) The board may delegate to any one or more of its  
21 members, to the chief executive officer, or to any agent or





1 employee of the corporation any powers and duties as it may deem  
2 proper.

3 (f) A majority of members of the board shall constitute a  
4 quorum for the transaction of any business and for the exercise  
5 of any power or function of the corporation.

6 (g) The members of the board shall be compensated in the  
7 amount of \$ per year and shall be reimbursed for  
8 expenses, including travel expenses, necessary for the  
9 performance of their duties.

10 § -6 Board of directors; powers and duties. In addition  
11 to any other powers and duties authorized by law, the board  
12 shall:

13 (1) Select a sports wagering provider, pursuant to the  
14 requirements of this chapter;

15 (2) Adopt regulations, policies, and procedures relating  
16 to the conduct of the sports wagering provider,  
17 including rules governing:

18 (A) The type of wagers to be taken on certain sports;

19 (B) The physical location where the sports wagering  
20 provider may conduct business;

21 (C) Forms of payment accepted and prohibited;



- 1 (D) Method of validating winnings;
- 2 (E) Manner and time of payment;
- 3 (F) Responsible sports wagering;
- 4 (G) The conduct of the sports wagering provider;
- 5 (H) The sports wagering platform; and
- 6 (I) Any and all other matters necessary, desirable,
- 7 or convenient toward ensuring the efficient and
- 8 effective operation of sports wagering;

9 (3) Provide the chief executive officer with private  
10 sector perspective and direction;

11 (4) Approve, disapprove, amend, or modify the budget  
12 recommended by the chief executive officer for the  
13 operation of the corporation;

14 (5) Approve, disapprove, amend, or modify the terms of the  
15 major procurements recommended by the chief executive  
16 officer; and

17 (6) Perform other functions as necessary to carry out the  
18 purposes of this chapter.

19 **§ -7 Chief executive officer; appointment; compensation.**

20 The board of directors shall appoint and provide for the  
21 compensation of a chief executive officer who shall be an



1 employee of the corporation and who shall serve at the pleasure  
 2 of the board. The chief executive officer shall direct the day-  
 3 to-day operations and management of the corporation and shall be  
 4 vested with powers and duties as specified by the board and by  
 5 law.

6       **§ -8 Chief executive officer; powers and duties.** The  
 7 chief executive officer of the corporation shall direct and  
 8 supervise all administrative and technical activities in  
 9 accordance with this chapter and with regulations, policies, and  
 10 procedures adopted by the board. It shall be the duty of the  
 11 chief executive officer to:

- 12       (1) Supervise and exercise active oversight of the  
 13           operations of the sports wagering provider;
- 14       (2) Hire and supervise a small staff of employees, as  
 15           deemed necessary; provided that all applicants for  
 16           employment shall be subject to a background check;  
 17           provided further that no person who has been convicted  
 18           of a felony or bookmaking or other forms of illegal  
 19           gambling or of a crime involving moral turpitude shall  
 20           be employed by the corporation;



- 1 (3) In consultation with the sports wagering provider,  
2 prepare an annual budget, including a marketing  
3 budget, to be approved by the board;
- 4 (4) Enter into agreements with state or county law  
5 enforcement agencies for the performance of law  
6 enforcement, background investigations, and security  
7 checks;
- 8 (5) Report quarterly to the board a full and complete  
9 statement of sports wagering revenues and expenses for  
10 the preceding quarter; and
- 11 (6) Perform any other duties customary of the position of  
12 chief executive officer.

13 § -9 Corporation restriction on use of money in state  
14 general fund. (a) The corporation, in accordance with this  
15 chapter, may borrow or accept and expend moneys received from  
16 any source, including income from the corporation's operations,  
17 for effectuating its corporate purposes, including the payment  
18 of the initial expenses of initiation, administration, and  
19 operation of the corporation.

20 (b) The corporation shall be self-sustaining and self-  
21 funded. Moneys in the state general fund shall not be used or



1 obligated to pay the expenses of the corporation, and no claim  
2 for the payment of an expense of the corporation shall be made  
3 against any moneys other than moneys credited to the sports  
4 wagering special fund.

5       **§ -10 Sports wagering special fund.** (a) There is  
6 created within the state treasury a special fund to be known as  
7 the sports wagering special fund. Moneys authorized under this  
8 chapter may be deposited into the special fund.

9       (b) All proceeds of the corporation shall be deposited  
10 into the special fund pursuant to section -16.

11       (c) Funds in the sports wagering special fund shall be  
12 used statewide for capital infrastructure modernization,  
13 upgrades, and deferred maintenance projects.

14       **§ -11 Reports by the corporation.** To ensure the  
15 financial integrity of the sports wagering operations, the  
16 corporation through the board of directors shall:

17       (1) Submit quarterly and annual reports to the governor  
18             and legislature, disclosing the total revenues,  
19             disbursements, operating expenses, and administrative  
20             expenses of the corporation during the reporting  
21             period;



- 1           (2) Adopt a system of internal audits and controls;  
2           (3) Maintain regular records of transactions; and  
3           (4) Contract with a certified public accountant or firm  
4           for an annual financial audit of the corporation;  
5           provided that the certified public accountant or firm  
6           shall have no financial interest in any vendor with  
7           whom the corporation is under contract.

8           § -12 **Adoption of sports wagering rules.** Within one  
9 hundred eighty days of the appointment of all members of the  
10 board, the board shall adopt rules and policies governing its  
11 sports wagering operations, consistent with the requirements of  
12 this chapter. The board may retain a neutral advisor with  
13 expertise in sports wagering and gaming to assist the board in  
14 adopting its rules.

15           § -13 **Selection of the sports wagering provider.** (a)  
16 Within one hundred eighty days of the appointment of all members  
17 of the board, the board shall commence a competitive process for  
18 the selection of a qualified and suitable sports wagering  
19 provider. The selection of the sports wagering provider shall  
20 be done through a request for qualifications, which shall take  
21 into account the following factors:



- 1           (1) The provider's knowledge and expertise with regard to:
- 2                   (A) United States regulated gaming and lottery
- 3                           operations;
- 4                   (B) Interactive digital media and entertainment; and
- 5                   (C) Internet technology; and
- 6           (2) The suitability of the provider's executives and key
- 7                   employees to operate a legally compliant gaming
- 8                   enterprise with honesty, fairness, and integrity;
- 9                   provided that a provider that has engaged in any of
- 10                  the following activities shall be deemed unsuitable to
- 11                  serve as the corporation's sports wagering provider:
- 12                   (A) The provider has operated in violation of the
- 13                           laws of any country or state in which it has
- 14                           operated; or
- 15                   (B) The provider has been indicted or convicted of a
- 16                           crime related to its gaming operations in any
- 17                           state or foreign jurisdiction.
- 18           (b) The request for qualification shall not require,
- 19 stipulate, suggest, or encourage a monetary or other financial
- 20 contribution or donation as an explicit or implied term or
- 21 condition for awarding the contract.



1 (c) The board shall select the sports wagering provider  
2 that offers the greatest integrity for the corporation, the  
3 greatest long-term benefit to the State, and the best service  
4 and products for the public.

5 § -14 Responsibilities of the sports wagering provider.

6 The sports wagering provider shall be responsible for operating  
7 a legally compliant, secure, and responsible sports wagering  
8 operation on behalf of the corporation. The sports wagering  
9 provider's general responsibilities shall include, among other  
10 things:

11 (1) Providing all the technology infrastructure, software,  
12 and operational support necessary for the development,  
13 operation, and maintenance of the facility and  
14 website, including:

15 (A) Game software and graphics;

16 (B) Computer hardware;

17 (C) Server hosting;

18 (D) Player account registration and management;

19 (E) Geo-location services;

20 (F) Age-verification services;

21 (G) Responsible gaming controls;





- 1 (H) Anti-collusion and security tools;
- 2 (I) Payment gateway software functionality;
- 3 (J) Deposit and decline tools and services;
- 4 (K) Charge back reporting software;
- 5 (L) Network reconciliation and controls;
- 6 (M) Financial reporting and player management; and
- 7 (N) Other related administrative back office
- 8 functionality and operational support;
- 9 (2) Providing marketing services, including a
- 10 comprehensive, customized marketing plan for the
- 11 corporation, consisting of both on-line and off-line
- 12 marketing components aimed at maximizing revenues in a
- 13 responsible manner and attracting tourism for the
- 14 State through the corporation's sports wagering
- 15 operations; and
- 16 (3) Providing customer support and trained personnel to
- 17 respond to inquiries from players regarding
- 18 technological problems, investigate fraud and
- 19 collusion, and any other issues that may arise.
- 20 § -15 Compensation of the sports wagering provider. The
- 21 corporation shall compensate the sports wagering provider with a



1 percentage of the corporation's revenues, in addition to  
2 reimbursement of ongoing costs associated with the operation,  
3 including costs related to geo-location, age verification,  
4 payment processing and banking, web hosting, and bandwidth, and  
5 any amounts necessary to the implementation or operation of the  
6 site.

7       § -16 **Disposition of proceeds.** (a) All proceeds of  
8 sports wagering conducted under this chapter shall be the  
9 property of the corporation. The corporation shall pay its  
10 operating expenses from the proceeds.

11       (b) On or before the fifteenth day of each quarter, the  
12 corporation shall deposit into the sports wagering special fund  
13 all net proceeds derived from sports wagering activities during  
14 the preceding quarter.

15       § -17 **Tax treatment.** The activities of the corporation  
16 shall be deemed to constitute an essential government function,  
17 and all operations of the corporation shall be exempt from any  
18 form of taxation under state law and, to the extent allowed,  
19 under federal law. In addition, the corporation shall not be  
20 required to pay any taxes or assessments upon or in respect to  
21 any property or moneys of the corporation, levied by the State



1 or any political subdivision thereof, except as required by  
2 federal law. The corporation and its assets, property, and  
3 revenues shall at all times be exempt from taxation of every  
4 kind by the State and any political subdivision thereof,  
5 including any special districts in the State with powers of  
6 taxation.

7       § -18 **Responsible gaming measures.** The corporation  
8 shall provide information on problem gambling, including a  
9 problem gambling hotline telephone number that a person may call  
10 to seek information and assistance for a potential gambling  
11 addiction. The corporation shall offer responsible gambling  
12 services, such as self-exclusion, limits on losses, amounts  
13 wagered, and playing time, and other services as the corporation  
14 reasonably may determine are necessary and appropriate to reduce  
15 and prevent problem gambling."

16       SECTION 3. Chapter 712, Hawaii Revised Statutes, is  
17 amended by adding a new section to part III to be appropriately  
18 designated and to read as follows:

19       "§712- Sports wagering contests. Sports wagering  
20 conducted and administered pursuant to chapter is exempt  
21 from this part."



1 SECTION 4. If any provision of this Act, or the  
 2 application thereof to any person or circumstance, is held  
 3 invalid, the invalidity does not affect other provisions or  
 4 applications of the Act that can be given effect without the  
 5 invalid provision or application, and to this end the provisions  
 6 of this Act are severable.

7 SECTION 5. This Act does not affect rights and duties that  
 8 matured, penalties that were incurred, and proceedings that were  
 9 begun before its effective date.

10 SECTION 6. New statutory material is underscored.

11 SECTION 7. This Act shall take effect on July 1, 2019.

12

INTRODUCED BY:

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# H.B. NO. 1107

**Report Title:**

Hawaii Sports Wagering Corporation

**Description:**

Creates the Hawaii sports wagering corporation to regulate and administer sports wagering in the State.

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

