

ACT 201

H. B. NO. 60

A Bill for an Act Relating to the Hawaii Penal Code.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Part III of chapter 12 of the Hawaii Penal Code is hereby amended to read as follows:

“PART III. GAMBLING OFFENSES

Sec. 1220 Definitions of terms in this part.

In this part unless a different meaning plainly is required, the following definitions apply.

(1) “Advance gambling activity.” A person “advances gambling activity” if he engages in conduct that materially aids any form of gambling activity. Conduct of this nature includes but is not limited to conduct directed toward the creation or establishment of the particular game, contest, scheme, device, or activity involved, toward the acquisition or maintenance of premises, paraphernalia, equipment, or apparatus therefor, toward the solicitation of inducement of persons to participate therein, toward the actual conduct of the playing phases thereof, toward the arrangement of any of its financial or recording phases, or toward any other phase of its operation. A person advances gambling activity if, having substantial proprietary control or other authoritative control over premises being used with his knowledge for purposes of gambling activity, he permits that activity to occur or continue or makes no effort to prevent its occurrence or continuation. A person advances gambling activity if he plays or participates in any form of gambling activity.

(2) “Bookmaking” means advancing gambling activity by accepting bets from members of the public upon the outcomes of future contingent events.

(3) "Contest of chance" means any contest, game, gaming scheme or gaming device in which the outcome depends in a material degree upon an element of chance, notwithstanding that skill of the contestants may also be a factor therein.

(4) "Gambling." A person engages in gambling if he stakes or risks something of value upon the outcome of a contest of chance or a future contingent event not under his control or influence, upon an agreement or understanding that he or someone else will receive something of value in the event of a certain outcome. Gambling does not include bona fide business transactions valid under the law of contracts, including but not limited to contracts for the purchase or sale at a future date of securities or commodities, and agreements to compensate for loss caused by the happening of chance, including but not limited to contracts of indemnity or guaranty and life, health, or accident insurance.

(5) "Gambling device" means any device, machine, paraphernalia, or equipment that is used or usable in the playing phases of any gambling activity, whether that activity consists of gambling between persons or gambling by a person involving the playing of a machine. However, lottery tickets and other items used in the playing phases of lottery schemes are not gambling devices within this definition.

(6) "Lottery" means a gambling scheme in which:

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

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

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

(7) "Mutuel" means a form of lottery in which the winning chances or plays are not determined upon the basis of a drawing or other act on the part of persons conducting or connected with the scheme, but upon the basis of the outcome or outcomes of a future contingent event or events otherwise unrelated to the particular scheme.

(8) "Player" means a person who engages in gambling solely as a contestant or bettor.

(9) "Profit from gambling activity." A person "profits from gambling activity" if he accepts or receives money or other property pursuant to an agreement or understanding with any person whereby he participates or is to participate in the proceeds of gambling activity.

(10) "Social gambling" is defined in section 1231.

(11) "Something of value" means any money or property, any token, object, or article exchangeable for money or property, or any form of credit or promise directly or indirectly contemplating transfer of money or property or of any interest therein, or involving extension of a service or entertainment.

Sec. 1221 Promoting gambling in the first degree.

(1) A person commits the offense of promoting gambling in the first degree if he knowingly advances or profits from gambling activity by:

- (a) engaging in bookmaking to the extent that he receives or accepts in any one day more than five bets totaling more than \$500; or
 - (b) receiving in connection with a lottery, or mutuel scheme or enterprise money or written records from a person other than a player whose chances or plays are represented by such money or records; or
 - (c) receiving, in connection with a lottery, mutuel, or other gambling scheme or enterprise, more than \$1,000 in any one day of money played in the scheme or enterprise.
- (2) Promoting gambling in the first degree is a class C felony.

Sec. 1222 Promoting gambling in the second degree.

- (1) A person commits the offense of promoting gambling in the second degree if he knowingly profits from gambling activity.
- (2) Promoting gambling in the second degree is a misdemeanor.

Sec. 1223 Gambling.

- (1) A person commits the offense of gambling if he knowingly advances or participates in any gambling activity.
- (2) Gambling is a misdemeanor.

Sec. 1224 Possession of gambling records in the first degree.

(1) A person commits the offense of possession of gambling records in the first degree if he knowingly possesses any writing, paper, instrument, or article:

- (a) of a kind commonly used in the operation or promotion of a book-making scheme or enterprise, and constituting, reflecting, or representing more than five bets totaling more than \$500; or
 - (b) of a kind commonly used in the operation, promotion, or playing of a lottery or mutuel scheme or enterprise, and constituting, reflecting, or representing more than 500 plays or chances therein.
- (2) Possession of gambling records in the first degree is a class C felony.

Sec. 1225 Possession of gambling records in the second degree.

(1) A person commits the offense of possession of gambling records in the second degree if he knowingly possesses any writing, paper, instrument, or article:

- (a) of a kind commonly used in the operation or promotion of a book-making scheme or enterprise; or
 - (b) of a kind commonly used in the operation, promotion, or playing of a lottery or mutuel scheme or enterprise.
- (2) Possession of gambling records in the second degree is a misdemeanor.

Sec. 1226 Possession of a gambling device.

(1) A person commits the offense of possession of a gambling device if he manufactures, sells, transports, places, possesses, or conducts or negotiates any transaction affecting or designed to affect ownership, custody, or use of any gambling device, knowing it is to be used in the advancement of gambling activity which is not social gambling.

- (2) Possession of gambling device is a misdemeanor.

Sec. 1227 Possession of gambling records; defense.

In any prosecution under sections 1224 and 1225, it is a defense that the writing, paper, instrument, or article possessed by the defendant was neither used nor intended to be used in the advancement of gambling activity, except for records used in social gambling.

Sec. 1228 Gambling offenses; prima facie evidence.

(1) Proof that a person knowingly possessed any gambling record specified in sections 1224 and 1225 or any gambling device in section 1226 is prima facie evidence that the person possessed the record or device with knowledge of its contents and character.

(2) In any prosecution under this part in which it is necessary to prove the occurrence of a sporting event, a published report of its occurrence in any daily newspaper, magazine, or other periodically printed publication of general circulation, shall be admissible in evidence and shall constitute prima facie evidence of the occurrence of the event.

Sec. 1229 Lottery offenses; no defense.

It is no defense to a prosecution under any section of this part relating to a lottery that the lottery itself is drawn or conducted outside this State and is not in violation of the laws of the jurisdiction in which it is drawn or conducted.

Sec. 1230 Forfeiture of gambling devices, records, and proceeds.

Any gambling device or gambling record possessed in violation of a section in this part, or any money used as a bet or stake in gambling activity in violation of a section in this part, is forfeited, subject to the requirements of section 119, to the State.

Sec. 1231 Social gambling; definition and specific conditions; affirmative defense.

(a) Definition. "Social gambling" means gambling in which all of the following conditions are present:

- (1) Players compete on equal terms with each other; and
- (2) No player receives, or becomes entitled to receive, anything of value or any profit, directly or indirectly, other than his personal gambling winnings; and
- (3) No other person, corporation, unincorporated association, or entity receives or becomes entitled to receive, anything of value or any profit, directly or indirectly, from any source, including but not limited to permitting the use of premises, supplying refreshments, food, drinks, service, lodging or entertainment; and
- (4) It is not conducted or played in or at a hotel, motel, bar, nightclub, cocktail lounge, restaurant, massage parlor, billiard parlor, or any business establishment of any kind, public parks, public buildings, public beaches, school grounds, churches or any other public area; and
- (5) None of the players is below the age of majority; and
- (6) The gambling activity is not bookmaking.

(b) Affirmative defense:

- (1) In any prosecution for an offense described in paragraphs 1223,

1224, 1225 or 1226, a defendant may assert the affirmative defense that the gambling activity in question was a social gambling game as defined in paragraph 1231(a).

- (2) If the defendant asserts the affirmative defense, he shall have the burden of going forward with evidence to prove the facts constituting such defense unless such facts are supplied by the testimony of the prosecuting witness or circumstance in such testimony, and of proving such facts by a preponderance of evidence.

(c) In any prosecution for an offense described in this part the fact that the gambling activity involved was other than a social gambling game shall not be an element of the offense to be proved by the prosecution in making out its prima facie case.”

SECTION 2. If the affirmative defense in section 1231 is held invalid, such section shall be severed and inapplicable as a defense to prosecution of offenses there enumerated.

Additionally, if any provision or clause of this Act or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

SECTION 3. Material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.*

SECTION 4. This Act shall take effect upon its approval.

(Approved May 29, 1973.)

*Edited accordingly.