

ACT 111

H.B. NO. 2197

A Bill for an Act Relating to Gambling.

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

SECTION 1. The legislature finds that violent activity in and around illegal gambling houses has grown rampant in recent years, with reports of armed robberies, stabbings, and shootings becoming all too common. There have been reports of “turf wars” between factions, vying for security work at these establishments, which have resulted in multiple killings.

The legislature further finds that aside from physical violence, illegal gambling houses are known for being drug and sex trafficking establishments, as reflected by a report published on February 1, 2021, by the Hawaii state commission on the status of women. Citing a 2019 study conducted jointly with Arizona State University, the report found that twenty-two per cent of twenty-two sex trafficking victims were exploited in illegal game rooms in the State. A first-hand account stated that they would go to illegal game rooms around town and find drug dealers present. Another first-hand account stated they were responsible for moving young sex-trafficking victims, all under twenty-five years of age, who were on heroin and living in illegal game rooms as runaways from abusive homes. Due to these testimonies, the legislature believes that illegal gambling houses have a profoundly negative impact on communities across the State, particularly in residential neighborhoods.

The legislature further finds that existing law makes it nearly impossible for law enforcement to prosecute property owners whose properties are used as illegal gambling houses. Even if the same property owner repeatedly leases their property to individuals who use it as an illegal gambling house, there is practically no way to establish a property owner's knowing state of mind if they do not visit the property and purportedly has no inclination of illegal gambling activities happening on their property. Individuals who work at illegal gambling establishments as cashiers, security, or similarly culpable jobs are typically charged under promoting gambling in the second degree, which is a misdemeanor. In comparison, promoting prostitution is a class B felony and applies to those with arguably less involvement in the business enterprise, such as drivers who refer passengers to a commercial sex worker for "kickbacks". The legislature believes that a misdemeanor level offense is inconsistent with the dangerous effects that illegal gambling houses have on the surrounding communities.

In order to guard the safety and welfare of the State's citizens, and particularly residential neighborhoods, illegal gambling houses cannot be tolerated any longer and existing laws relating to the promotion of gambling need to be strengthened to deter and punish those who put the State's citizens at risk.

While the legislature believes that existing laws need to be strengthened, it is not the intent to affect the significant exception that currently exists for social gambling as provided under section 712-1231, Hawaii Revised Statutes; and existing exceptions for trading securities or commodities, selling or purchasing insurance, and any other exceptions provided under section 712-1220, Hawaii Revised Statutes. It is the intent of the legislature to only affect the promotion of illegal gambling.

Accordingly, the purpose of this Act is to:

- (1) Amend the definition of "advance gambling activity" to repeal playing or participating in any form of gambling activity;
- (2) Amend the requisite state of mind for promoting gambling in the first and second degree to recklessness and negligence, respectively;
- (3) Amend the offenses of promoting gambling in the first and second degree to a class B felony and class C felony, respectively;
- (4) Amend the offense of gambling to repeal advancing any gambling activity; and
- (5) Exclude the offenses of promoting gambling in the first and second degree from qualifying for deferred acceptance of guilty plea or nolo contendere plea.

SECTION 2. Section 706-606.5, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

"(1) Notwithstanding section 706-669 and any other law to the contrary, any person convicted of murder in the second degree, any class A felony, any class B felony, or any of the following class C felonies:

- (a) Section 134-7 relating to persons prohibited from owning, possessing, or controlling firearms or ammunition;
- (b) Section 134-8 relating to ownership, etc., of certain prohibited weapons;
- (c) Section 134-17 only as it relates to providing false information or evidence to obtain a permit under section 134-9;
- (d) Section 188-23 relating to possession or use of explosives, electro-fishing devices, and poisonous substances in state waters;
- (e) Section 386-98(d)(1) relating to fraud violations and penalties;
- (f) Section 431:2-403(b)(2) relating to insurance fraud;

- (g) Section 707-703 relating to negligent homicide in the second degree;
- (h) Section 707-711 relating to assault in the second degree;
- (i) Section 707-713 relating to reckless endangering in the first degree;
- (j) Section 707-716 relating to terroristic threatening in the first degree;
- (k) Section 707-721 relating to unlawful imprisonment in the first degree;
- (l) Section 707-732 relating to sexual assault in the third degree;
- (m) Section 707-752 relating to promoting child abuse in the third degree;
- (n) Section 707-757 relating to electronic enticement of a child in the second degree;
- (o) Section 707-766 relating to extortion in the second degree;
- (p) Section 708-811 relating to burglary in the second degree;
- (q) Section 708-821 relating to criminal property damage in the second degree;
- (r) Section 708-831 relating to theft in the second degree;
- (s) Section 708-835.5 relating to theft of livestock;
- (t) Section 708-836 relating to unauthorized control of propelled vehicle;
- (u) Section 708-839.55 relating to unauthorized possession of confidential personal information;
- (v) Section 708-839.8 relating to identity theft in the third degree;
- (w) Section 708-852 relating to forgery in the second degree;
- (x) Section 708-854 relating to criminal possession of a forgery device;
- (y) Section 708-875 relating to trademark counterfeiting;
- (z) Section 710-1071 relating to intimidating a witness;
- (aa) Section 711-1103 relating to riot;
- ~~[(bb)]~~ ~~Section 712-1221 relating to promoting gambling in the first degree;~~
- ~~(ee)]~~ ~~(bb)~~ Section 712-1224 relating to possession of gambling records in the first degree;
- ~~[(dd)]~~ ~~(cc)~~ Section 712-1247 relating to promoting a detrimental drug in the first degree; or
- ~~[(ee)]~~ ~~(dd)~~ Section 846E-9 relating to failure to comply with covered offender registration requirements,

or who is convicted of attempting to commit murder in the second degree, any class A felony, any class B felony, or any of the class C felony offenses enumerated above and who has a prior conviction or prior convictions for the following felonies, including an attempt to commit the same: murder, murder in the first or second degree, a class A felony, a class B felony, any of the class C felony offenses enumerated above, or any felony conviction of another jurisdiction, shall be sentenced to a mandatory minimum period of imprisonment without possibility of parole as provided in subsection (2).”

SECTION 3. Section 712-1220, Hawaii Revised Statutes, is amended by amending the definition of “advance gambling activity” to read as follows:

““Advance gambling activity”. A person “advances gambling activity” if ~~[he engages]~~ the person:

- (1) 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]~~:

- (A) ~~The creation or establishment of the particular game, contest, scheme, device, or activity involved[; toward the];~~
- (B) ~~The acquisition or maintenance of premises, paraphernalia, equipment, or apparatus therefor[; toward the];~~
- (C) ~~The solicitation or inducement of persons to participate therein[; toward the];~~
- (D) ~~The actual conduct of the playing phases thereof[; toward the];~~
- (E) ~~The arrangement of any of its financial or recording phases[; or toward any]; or~~
- (F) ~~Any other phase of its operation[. A person advances gambling activity if, having]; or~~
- (2) Having substantial proprietary control or other authoritative control over premises being used with [his] the person's 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.]"

SECTION 4. Section 712-1221, Hawaii Revised Statutes, is amended to read as follows:

**"§712-1221 Promoting gambling in the first degree.** (1) A person commits the offense of promoting gambling in the first degree if the person [~~knowingly~~] recklessly advances or profits from gambling activity by:

- (a) Engaging in bookmaking to the extent that the person receives or accepts in any seven-day period more than five bets totaling more than \$500;
- (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 or having become due and payable in connection with a lottery, mutuel, or other gambling scheme or enterprise, more than \$1,000 in any seven-day period played in the scheme or enterprise.
- (2) Promoting gambling in the first degree is a class [C] B felony."

SECTION 5. Section 712-1222, Hawaii Revised Statutes, is amended to read as follows:

**"§712-1222 Promoting gambling in the second degree.** (1) A person commits the offense of promoting gambling in the second degree if the person [~~knowingly~~] negligently advances or profits from gambling activity.

(2) Promoting gambling in the second degree is a [~~misdemeanor~~] class C felony."

SECTION 6. Section 712-1223, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

**"(1)** A person commits the offense of gambling if the person knowingly [~~advances or~~] participates in any gambling activity."

SECTION 7. Section 853-4, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

- "(a)** This chapter shall not apply when:
- (1) The offense charged involves the intentional, knowing, reckless, or negligent killing of another person;

- (2) The offense charged is:
  - (A) A felony that involves the intentional, knowing, or reckless bodily injury, substantial bodily injury, or serious bodily injury of another person; or
  - (B) A misdemeanor or petty misdemeanor that carries a mandatory minimum sentence and that involves the intentional, knowing, or reckless bodily injury, substantial bodily injury, or serious bodily injury of another person;

provided that the prohibition in this paragraph shall not apply to offenses described in section 709-906(18);
- (3) The offense charged involves a conspiracy or solicitation to intentionally, knowingly, or recklessly kill another person or to cause serious bodily injury to another person;
- (4) The offense charged is a class A felony;
- (5) The offense charged is nonprobationable;
- (6) The defendant has been convicted of any offense defined as a felony by the Hawaii Penal Code or has been convicted for any conduct that if perpetrated in this State would be punishable as a felony;
- (7) The defendant is found to be a law violator or delinquent child for the commission of any offense defined as a felony by the Hawaii Penal Code or for any conduct that if perpetrated in this State would constitute a felony;
- (8) The defendant has a prior conviction for a felony committed in any state, federal, or foreign jurisdiction;
- (9) A firearm was used in the commission of the offense charged;
- (10) The defendant is charged with the distribution of a dangerous, harmful, or detrimental drug to a minor;
- (11) The defendant has been charged with a felony offense and has been previously granted deferred acceptance of guilty plea or no contest plea for a prior offense, regardless of whether the period of deferral has already expired;
- (12) The defendant has been charged with a misdemeanor offense and has been previously granted deferred acceptance of guilty plea or no contest plea for a prior felony, misdemeanor, or petty misdemeanor for which the period of deferral has not yet expired;
- (13) The offense charged is:
  - (A) Escape in the first degree;
  - (B) Escape in the second degree;
  - (C) Promoting prison contraband in the first degree;
  - (D) Promoting prison contraband in the second degree;
  - (E) Bail jumping in the first degree;
  - (F) Bail jumping in the second degree;
  - (G) Bribery;
  - (H) Bribery of or by a witness;
  - (I) Intimidating a witness;
  - (J) Bribery of or by a juror;
  - (K) Intimidating a juror;
  - (L) Jury tampering;
  - (M) Promoting prostitution;
  - (N) Abuse of family or household member except as provided in paragraph (2) and section 709-906(18);
  - (O) Sexual assault in the second degree;
  - (P) Sexual assault in the third degree;
  - (Q) A violation of an order issued pursuant to chapter 586;

- (R) Promoting child abuse in the second degree;
- (S) Promoting child abuse in the third degree;
- (T) Electronic enticement of a child in the first degree;
- (U) Electronic enticement of a child in the second degree;
- (V) Commercial sexual exploitation pursuant to section 712-1200.5;
- (W) Street prostitution and commercial sexual exploitation under section 712-1207(1)(b) or (2)(b);
- (X) Commercial sexual exploitation near schools or public parks under section 712-1209;
- (Y) Commercial sexual exploitation of a minor under section 712-1209.1; [Ø]
- (Z) Habitual commercial sexual exploitation under section 712-1209.5;
- (AA) Violation of privacy in the first degree under section 711-1110.9;
- (BB) Violation of privacy in the second degree under section 711-1111(1)(d), (e), (f), (g), or (h); [Ø]
- [Ø](CC)[Ø] Habitually operating a vehicle under the influence of an intoxicant under section 291E-61.5(a);
- (DD) Promoting gambling in the first degree; or
- (EE) Promoting gambling in the second degree;
- (14) The defendant has been charged with:
  - (A) Knowingly or intentionally falsifying any report required under part XIII of chapter 11, with the intent to circumvent the law or deceive the campaign spending commission; or
  - (B) Violating section 11-352 or 11-353; or
- (15) The defendant holds a commercial driver's license and has been charged with violating a traffic control law, other than a parking law, in connection with the operation of any type of motor vehicle."

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

SECTION 9. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 10. This Act shall take effect upon its approval; provided that the amendments made to section 853-4, Hawaii Revised Statutes, by section 7 of this Act shall not be repealed when that section is reenacted on June 30, 2026, pursuant to section 15 of Act 19, Session Laws of Hawaii 2020.

(Approved June 17, 2022.)