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## 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 there is a  
2 proliferation of vending machines that dispense "sweepstakes"  
3 game cards that can also be used to make brief long distance  
4 telephone calls. These cards typically cost \$1 each and, while  
5 vendors make it possible to obtain a card by mail at no cost,  
6 these cards are from a separate pool of possible winners than  
7 the pool comprised of a set of cards placed in a vending  
8 machine.

9           The legislature further finds that purchasers may buy one  
10 hundred or more of these cards in an effort to win a cash prize  
11 and often dispose of losing cards instead of using them to  
12 obtain the one or two minute long distance calls each card  
13 authorizes. With the wide availability of low cost and flat  
14 rate long distance calling plans on land line telephone accounts  
15 and free long distance calling plans on cellular telephone  
16 accounts, the \$1 cost of these "sweepstakes" cards far exceeds  
17 the value of the long distance call authorized by the cards and  
18 the ability to make a long distance call with the card is



1 clearly incidental to its value as a "sweepstakes" entry. These  
2 "sweepstakes" cards are not like the chances to win prizes  
3 offered by, for example, fast food restaurants because those  
4 chances are offered in connection with, and merely incidental  
5 to, the sale of a bona fide product, namely, a meal.

6 The purpose of this Act is to clarify that, where the  
7 chance to win something of value is offered in conjunction with  
8 purchase of an item, the activity constitutes gambling, even if  
9 a chance to win is offered by mail at no cost, if the item is  
10 offered at a price that is disproportionate to the value of the  
11 item or if the chance to win at no cost by mail is offered from  
12 a pool different than the pool from which the chance to win via  
13 purchase is drawn.

14 SECTION 2. Section 712-1220, Hawaii Revised Statutes, is  
15 amended to read as follows:

16 "§712-1220 Definitions of terms in this part. In this  
17 part unless a different meaning plainly is required, the  
18 following definitions apply.

19 [~~1~~] "Advance gambling activity". A person "advances  
20 gambling activity" if [~~he~~] the person engages in conduct that  
21 materially aids any form of gambling activity. Conduct of this  
22 nature includes but is not limited to conduct directed toward



1 the creation or establishment of the particular game, contest,  
2 scheme, device, or activity involved, toward the acquisition or  
3 maintenance of premises, paraphernalia, equipment, or apparatus  
4 therefor, toward the solicitation or inducement of persons to  
5 participate therein, toward the actual conduct of the playing  
6 phases thereof, toward the arrangement of any of its financial  
7 or recording phases, or toward any other phase of its operation.

8 A person advances gambling activity if, having substantial  
9 proprietary control or other authoritative control over premises  
10 being used with [~~his~~] the person's knowledge for purposes of  
11 gambling activity, [~~he~~] the person permits that activity to  
12 occur or continue or makes no effort to prevent its occurrence  
13 or continuation. A person advances gambling activity if [~~he~~]  
14 the person plays or participates in any form of gambling  
15 activity. Conduct which constitutes gambling activity under  
16 this definition is not rendered otherwise by the fact that free  
17 play is offered by mail as an alternative to play via purchase  
18 of:

19 (1) An item that is not bona fide or is offered at a price  
20 that is disproportionate to the value of the item  
21 purchased; or



1        (2) A chance to win if the free play by mail is offered  
2                    from a pool different than the pool from which the  
3                    chance to win via purchase is drawn.

4        [~~2~~] "Bookmaking" means advancing gambling activity by  
5 accepting bets from members of the public upon the outcomes of  
6 future contingent events.

7        [~~3~~] "Contest of chance" means any contest, game, gaming  
8 scheme, or gaming device in which the outcome depends in a  
9 material degree upon an element of chance, notwithstanding that  
10 skill of the contestants may also be a factor therein.

11        [~~4~~] "Gambling". A person engages in gambling if [~~he~~]  
12 the person stakes or risks something of value upon the outcome  
13 of a contest of chance or a future contingent event not under  
14 [~~his~~] the person's control or influence, upon an agreement or  
15 understanding that [~~he~~] the person or someone else will receive  
16 something of value in the event of a certain outcome. Gambling  
17 does not include bona fide business transactions valid under the  
18 law of contracts, including but not limited to contracts for the  
19 purchase or sale at a future date of securities or commodities,  
20 and agreements to compensate for loss caused by the happening of  
21 chance, including but not limited to contracts of indemnity or  
22 guaranty and life, health, or accident insurance.



1        [+5] "Gambling device" means any device, machine,  
2 paraphernalia, or equipment that is used or usable in the  
3 playing phases of any gambling activity, whether that activity  
4 consists of gambling between persons [or], gambling by a person  
5 involving the playing of a machine [~~However, lottery tickets~~  
6 ~~and other items used in the playing phases of lottery schemes~~  
7 ~~are not gambling devices within this definition.~~], or a lottery.

8        [+6] "Lottery" means a gambling scheme in which:

- 9        (a) The players pay or agree to pay something of value for  
10 chances, represented and differentiated by numbers or  
11 by combinations of numbers or by some other medium,  
12 one or more of which chances are to be designated the  
13 winning ones; and
- 14        (b) The winning chances are to be determined by a drawing  
15 or by some other method based on an element of chance;  
16 and
- 17        (c) The holders of the winning chances are to receive  
18 something of value.

19        [+7] "Mutuel" means a form of lottery in which the  
20 winning chances or plays are not determined upon the basis of a  
21 drawing or other act on the part of persons conducting or  
22 connected with the scheme, but upon the basis of the outcome or



1 outcomes of a future contingent event or events otherwise  
2 unrelated to the particular scheme.

3       ~~[(8)]~~ "Player" means a person who engages in gambling  
4 solely as a contestant or bettor.

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

11       ~~[(10)]~~ "Social gambling" is defined in section 712-1231.

12       ~~[(11)]~~ "Something of value" means any money or property,  
13 any token, object, or article exchangeable for money or  
14 property, or any form of credit or promise directly or  
15 indirectly contemplating transfer of money or property or of any  
16 interest therein, or involving extension of a service or  
17 entertainment."

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

21       "§712-       Free play not a defense; when. It shall not be  
22 a defense to an offense charged under this part that free play



1 was offered, if the free play was offered by mail as an  
2 alternative to play via purchase of:

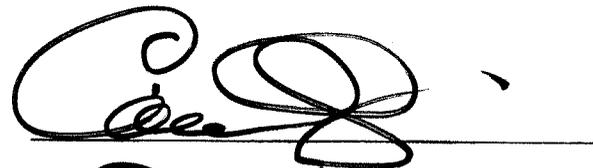
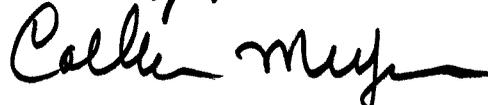
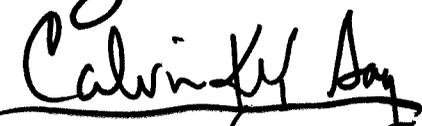
- 3       (1) An item that is not bona fide or is offered at a price
- 4             that is disproportionate to the value of the item
- 5             purchased; or
- 6       (2) A chance to win if the free play by mail is offered
- 7             from a pool different than the pool from which the
- 8             chance to win via purchase is drawn."

9       SECTION 4. Statutory material to be repealed is bracketed  
10 and stricken. New statutory material is underscored.

11       SECTION 5. This Act shall take effect upon its approval.

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13

INTRODUCED BY:




**Report Title:**

Gambling; Lottery; Sweepstakes

**Description:**

Amends definition of gambling to clarify that purchase of sweepstakes entry that also provides nominal non-gambling value constitutes gambling even if sweepstakes entry can be obtained without payment of consideration.

