
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 of cards placed in a vending machine.

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



1 are not like the chances to win prizes offered by, for example,
2 fast food restaurants, because those chances are offered in
3 connection with, and merely incidental to, the sale of a bona
4 fide product, namely, a meal.

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

13 SECTION 2. Chapter 712, Hawaii Revised Statutes, is
14 amended by adding a new section to part III, to be appropriately
15 designated and to read as follows:

16 "§712- Free play not a defense; when. It shall not be
17 a defense to an offense charged under this part that free play
18 was offered, if the free play was offered by mail as an
19 alternative to play via purchase of:

20 (1) An item that is not bona fide or is offered at a price
21 that is disproportionately high compared to the value
22 of the item purchased; or



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

4 This section applies only to devices into which a consumer
5 inserts money and the device provides a sweepstakes ticket or
6 card that, by reason of chance, may entitle the consumer to a
7 money prize."

8 SECTION 3. Section 712-1220, Hawaii Revised Statutes, is
9 amended to read as follows:

10 **"§712-1220 Definitions of terms in this part.** In this
11 part unless a different meaning plainly is required, the
12 following definitions apply[-]:

13 [~~1~~] "Advance gambling activity". A person "advances
14 gambling activity" if [~~he~~] the person engages in conduct that
15 materially aids any form of gambling activity. Conduct of this
16 nature includes but is not limited to conduct directed toward
17 the creation or establishment of the particular game, contest,
18 scheme, device, or activity involved, toward the acquisition or
19 maintenance of premises, paraphernalia, equipment, or apparatus
20 therefor, toward the solicitation or inducement of persons to
21 participate therein, toward the actual conduct of the playing
22 phases thereof, toward the arrangement of any of its financial



1 or recording phases, or toward any other phase of its operation.
2 A person advances gambling activity if, having substantial
3 proprietary control or other authoritative control over premises
4 being used with [~~his~~] the person's knowledge for purposes of
5 gambling activity, [~~he~~] the person permits that activity to
6 occur or continue or makes no effort to prevent its occurrence
7 or continuation. A person advances gambling activity if [~~he~~]
8 the person plays or participates in any form of gambling
9 activity. With regard to devices into which a consumer inserts
10 money and the device provides a sweepstakes ticket or card that,
11 by reason of chance, may entitle the consumer to a money prize,
12 conduct that constitutes gambling activity under this definition
13 is not rendered otherwise by the fact that free play is offered
14 by mail as an alternative to play via purchase of:
15 (1) An item that is not bona fide or is offered at a price
16 that is disproportionately high to the value of the
17 item purchased; or
18 (2) A chance to win if the free play by mail is offered
19 from a pool different than the pool from which the
20 chance to win via purchase is drawn.



1 [~~(2)~~] "Bookmaking" means advancing gambling activity by
2 accepting bets from members of the public upon the outcomes of
3 future contingent events.

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

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

20 [~~(5)~~] "Gambling device" means any device, machine,
21 paraphernalia, or equipment that is used or usable in the
22 playing phases of any gambling activity, whether that activity



1 consists of gambling between persons [~~e~~], gambling by a person
2 involving the playing of a machine[~~— However, lottery tickets~~
3 ~~and other items used in the playing phases of lottery schemes~~
4 ~~are not gambling devices within this definition.], or a lottery.~~

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

6 [(a)] (1) The players pay or agree to pay something of value for
7 chances, represented and differentiated by numbers or
8 by combinations of numbers or by some other medium,
9 one or more of which chances are to be designated the
10 winning ones; and

11 [(b)] (2) The winning chances are to be determined by a drawing
12 or by some other method based on an element of chance;
13 and

14 [(c)] (3) The holders of the winning chances are to receive
15 something of value.

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



1 [~~8~~] "Player" means a person who engages in gambling
2 solely as a contestant or bettor.

3 [~~9~~] "Profit from gambling activity". A person "profits
4 from gambling activity" if [~~he~~] the person accepts or receives
5 money or other property pursuant to an agreement or
6 understanding with any person whereby [~~he~~] the person
7 participates or is to participate in the proceeds of gambling
8 activity.

9 [~~10~~] "Social gambling" is defined in section 712-1231.

10 [~~11~~] "Something of value" means any money or property,
11 any token, object, or article exchangeable for money or
12 property, or any form of credit or promise directly or
13 indirectly contemplating transfer of money or property or of any
14 interest therein, or involving extension of a service or
15 entertainment."

16 SECTION 4. This Act does not affect rights and duties that
17 matured, penalties that were incurred, and proceedings that were
18 begun, before its effective date.

19 SECTION 5. Statutory material to be repealed is bracketed
20 and stricken. New statutory material is underscored.

21 SECTION 6. This Act shall take effect on July 1, 3011.



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. (SD2)

