

---

---

# 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 the purchase of an item, the activity constitutes gambling, even  
9 if 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. Chapter 712, Hawaii Revised Statutes, is  
15 amended by adding a new section to part III, to be appropriately  
16 designated and to read as follows:

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



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

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

9            **"§712-1220 Definitions of terms in this part.** In this  
10 part unless a different meaning plainly is required, the  
11 following definitions apply.

12            [~~1~~] "Advance gambling activity". A person "advances  
13 gambling activity" if [~~he~~] the person engages in conduct that  
14 materially aids any form of gambling activity. Conduct of this  
15 nature includes but is not limited to conduct directed toward  
16 the creation or establishment of the particular game, contest,  
17 scheme, device, or activity involved, toward the acquisition or  
18 maintenance of premises, paraphernalia, equipment, or apparatus  
19 therefor, toward the solicitation or inducement of persons to  
20 participate therein, toward the actual conduct of the playing  
21 phases thereof, toward the arrangement of any of its financial  
22 or recording phases, or toward any other phase of its operation.



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

12 (1) An item that is not bona fide or is offered at a price  
13 that is disproportionate to the value of the item  
14 purchased; or

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

18 [~~2~~] "Bookmaking" means advancing gambling activity by  
19 accepting bets from members of the public upon the outcomes of  
20 future contingent events.

21 [~~3~~] "Contest of chance" means any contest, game, gaming  
22 scheme, or gaming device in which the outcome depends in a



1 material degree upon an element of chance, notwithstanding that  
2 skill of the contestants may also be a factor therein.

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

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



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

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

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

10 ~~[(c)]~~ (3) The holders of the winning chances are to receive  
11                   something of value.

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

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

20           ~~[(9)]~~ "Profit from gambling activity". A person "profits  
21 from gambling activity" if ~~[he]~~ the person accepts or receives  
22 money or other property pursuant to an agreement or



1 understanding with any person whereby [~~he~~] the person  
2 participates or is to participate in the proceeds of gambling  
3 activity.

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

5 [~~(11)~~] "Something of value" means any money or property,  
6 any token, object, or article exchangeable for money or  
7 property, or any form of credit or promise directly or  
8 indirectly contemplating transfer of money or property or of any  
9 interest therein, or involving extension of a service or  
10 entertainment."

11 SECTION 4. Statutory material to be repealed is bracketed  
12 and stricken. New statutory material is underscored.

13 SECTION 5. This Act shall take effect on July 1, 2112.



**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. Effective July 1, 2112.  
(HB1836 HD1)

