

JAN 20 2023

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 gambling is now
2 legal in forty-eight out of fifty states. For the people of
3 Hawaii, gambling is as popular as it is in the rest of the
4 country, but it remains illegal within its borders. With no
5 local venues or tax for gambling, Hawaii remains a target market
6 for a growing number of jurisdictions where gambling is legal.
7 Hawaii residents generate hundreds of millions of dollars,
8 perhaps billions, in economic activity in other jurisdictions
9 related to gambling, and in return, Hawaii receives no benefit.
10 Hawaii residents take an estimated three hundred thousand
11 trips to Las Vegas and other gambling destinations each year,
12 with many residents making multiple trips per year. In 2011, it
13 was reported that Boyd Gaming, a Nevada-based gaming
14 corporation, earned about \$600,000,000 from Hawaii annually.
15 Further, in a 2021 annual investor report, Boyd Gaming
16 highlighted that customers from the Hawaiian market comprised
17 more than half of the room nights sold at The California, the



1 Fremont, and Main Street Station, and that decreases in Hawaiian
2 market spending could adversely affect their business and
3 financial condition. As testified to the house of
4 representatives committee on tourism in 2012 by a longtime
5 lobbyist for gambling interests in Hawaii, the "prohibition of
6 that which is legal nearly everywhere else costs Hawaii
7 \$1,000,000,000 each year in outgoing dollars and returns none".

8 Despite its prohibition, Hawaii carries an economic burden
9 from gambling. A 2009 study by the National Council on Problem
10 Gambling estimated that the social costs of gambling addiction
11 in Hawaii from twenty thousand problem gamblers and ten thousand
12 pathological gamblers was \$26,300,000; however, no public
13 funding was provided for gambling treatment and prevention. A
14 2016 survey update by the National Council on Problem Gambling
15 indicated that the number of problem gamblers had risen to
16 nearly twenty-five thousand, and that Hawaii remained one of ten
17 states that did not set aside funds to specifically address
18 problem gambling.

19 Accordingly, the purpose of this Act is to:

- 20 (1) Prohibit advertisements for Nevada hotels, resorts, or
21 other recreational services that promote casinos or



1 gambling devices licensed by the Nevada Gaming
 2 Commission from being broadcast, televised, marketed
 3 in printed publications or displays, distributed
 4 online, or otherwise communicated by electronic means
 5 within the State; and

6 (2) Impose a general excise tax on persons engaged in the
 7 arrangement, provision, or sale within the State of
 8 vacation packages or other recreational services that
 9 promote gambling or gambling devices that is not
 10 prohibited by state law of thirty per cent of gross
 11 income due to that activity.

12 SECTION 2. The Hawaii Revised Statutes is amended by
 13 adding a new chapter to be appropriately designated and to read
 14 as follows:

15 "CHAPTER

16 ADVERTISING OF NEVADA HOTELS, RESORTS, AND OTHER RECREATIONAL
 17 SERVICES PROMOTING GAMBLING

18 § -1 Prohibition; civil penalty. (a) Advertisements
 19 for Nevada hotels, resorts, or other recreational services that
 20 promote casinos or gambling devices licensed by the Nevada
 21 Gaming Commission shall not be broadcast, televised, marketed in



1 printed publications or displays, distributed online, or
2 otherwise communicated by electronic means within the State.

3 (b) For the purposes of this section, "gambling device"
4 means any device, machine, paraphernalia, or equipment that is
5 used or usable in the playing phases of any gambling activity,
6 whether that activity consists of gambling between persons or
7 gambling by a person involving the playing of a machine.
8 "Gambling device" excludes lottery tickets and other items used
9 in the playing phases of lottery schemes.

10 (c) The fine for violation of this chapter shall not
11 exceed \$ for each advertisement, and shall not exceed
12 an aggregate amount of \$."

13 SECTION 3. Section 237-13, Hawaii Revised Statutes, is
14 amended to read as follows:

15 "§237-13 Imposition of tax. There is hereby levied and
16 shall be assessed and collected annually privilege taxes against
17 persons on account of their business and other activities in the
18 State measured by the application of rates against values of
19 products, gross proceeds of sales, or gross income, whichever is
20 specified, as follows:

21 (1) Tax on manufacturers.



- 1 (A) Upon every person engaging or continuing within
2 the State in the business of manufacturing,
3 including compounding, canning, preserving,
4 packing, printing, publishing, milling,
5 processing, refining, or preparing for sale,
6 profit, or commercial use, either directly or
7 through the activity of others, in whole or in
8 part, any article or articles, substance or
9 substances, commodity or commodities, the amount
10 of the tax to be equal to the value of the
11 articles, substances, or commodities,
12 manufactured, compounded, canned, preserved,
13 packed, printed, milled, processed, refined, or
14 prepared for sale, as shown by the gross proceeds
15 derived from the sale thereof by the manufacturer
16 or person compounding, preparing, or printing
17 them, multiplied by one-half of one per cent.
- 18 (B) The measure of the tax on manufacturers is the
19 value of the entire product for sale.
- 20 (2) Tax on business of selling tangible personal property;
21 producing.



1 (A) Upon every person engaging or continuing in the
2 business of selling any tangible personal
3 property whatsoever, there is likewise hereby
4 levied, and shall be assessed and collected, a
5 tax equivalent to four per cent of the gross
6 proceeds of sales of the business; provided that,
7 in the case of a wholesaler, the tax shall be
8 equal to one-half of one per cent of the gross
9 proceeds of sales of the business; and provided
10 further that insofar as the sale of tangible
11 personal property is a wholesale sale under
12 section 237-4(a)(8), the tax shall be one-half of
13 one per cent of the gross proceeds. Upon every
14 person engaging or continuing within this State
15 in the business of a producer, the tax shall be
16 equal to one-half of one per cent of the gross
17 proceeds of sales of the business, or the value
18 of the products, for sale.

19 (B) Gross proceeds of sales of tangible property in
20 interstate and foreign commerce shall constitute
21 a part of the measure of the tax imposed on



1 persons in the business of selling tangible
2 personal property, to the extent, under the
3 conditions, and in accordance with the provisions
4 of the Constitution of the United States and the
5 Acts of the Congress of the United States which
6 may be now in force or may be hereafter adopted,
7 and whenever there occurs in the State an
8 activity to which, under the Constitution and
9 Acts of Congress, there may be attributed gross
10 proceeds of sales, the gross proceeds shall be so
11 attributed.

12 (C) No manufacturer or producer, engaged in such
13 business in the State and selling the
14 manufacturer's or producer's products for
15 delivery outside of the State (for example,
16 consigned to a mainland purchaser via common
17 carrier f.o.b. Honolulu), shall be required to
18 pay the tax imposed in this chapter for the
19 privilege of so selling the products, and the
20 value or gross proceeds of sales of the products
21 shall be included only in determining the measure



1 of the tax imposed upon the manufacturer or
2 producer.

3 (D) A manufacturer or producer, engaged in such
4 business in the State, shall pay the tax imposed
5 in this chapter for the privilege of selling its
6 products in the State, and the value or gross
7 proceeds of sales of the products, thus subjected
8 to tax, may be deducted insofar as duplicated as
9 to the same products by the measure of the tax
10 upon the manufacturer or producer for the
11 privilege of manufacturing or producing in the
12 State; provided that no producer of agricultural
13 products who sells the products to a purchaser
14 who will process the products outside the State
15 shall be required to pay the tax imposed in this
16 chapter for the privilege of producing or selling
17 those products.

18 (E) A taxpayer selling to a federal cost-plus
19 contractor may make the election provided for by
20 paragraph (3) (C), and in that case the tax shall
21 be computed pursuant to the election,



1 notwithstanding this paragraph or paragraph (1)
2 to the contrary.

3 (F) The department, by rule, may require that a
4 seller take from the purchaser of tangible
5 personal property a certificate, in a form
6 prescribed by the department, certifying that the
7 sale is a sale at wholesale; provided that:

8 (i) Any purchaser who furnishes a certificate
9 shall be obligated to pay to the seller,
10 upon demand, the amount of the additional
11 tax that is imposed upon the seller whenever
12 the sale in fact is not at wholesale; and

13 (ii) The absence of a certificate in itself shall
14 give rise to the presumption that the sale
15 is not at wholesale unless the sales of the
16 business are exclusively at wholesale.

17 (3) Tax upon contractors.

18 (A) Upon every person engaging or continuing within
19 the State in the business of contracting, the tax
20 shall be equal to four per cent of the gross
21 income of the business.



1 (B) In computing the tax levied under this paragraph,
2 there shall be deducted from the gross income of
3 the taxpayer so much thereof as has been included
4 in the measure of the tax levied under
5 subparagraph (A), on another taxpayer who is a
6 contractor, as defined in section 237-6; provided
7 that any person claiming a deduction under this
8 paragraph shall be required to show in the
9 person's return the name and general excise
10 number of the person paying the tax on the amount
11 deducted by the person.

12 (C) In computing the tax levied under this paragraph
13 against any federal cost-plus contractor, there
14 shall be excluded from the gross income of the
15 contractor so much thereof as fulfills the
16 following requirements:

17 (i) The gross income exempted shall constitute
18 reimbursement of costs incurred for
19 materials, plant, or equipment purchased
20 from a taxpayer licensed under this chapter,
21 not exceeding the gross proceeds of sale of



1 the taxpayer on account of the transaction;

2 and

3 (ii) The taxpayer making the sale shall have
4 certified to the department that the
5 taxpayer is taxable with respect to the
6 gross proceeds of the sale, and that the
7 taxpayer elects to have the tax on gross
8 income computed the same as upon a sale to
9 the state government.

10 (D) A person who, as a business or as a part of a
11 business in which the person is engaged, erects,
12 constructs, or improves any building or
13 structure, of any kind or description, or makes,
14 constructs, or improves any road, street,
15 sidewalk, sewer, or water system, or other
16 improvements on land held by the person (whether
17 held as a leasehold, fee simple, or otherwise),
18 upon the sale or other disposition of the land or
19 improvements, even if the work was not done
20 pursuant to a contract, shall be liable to the
21 same tax as if engaged in the business of



1 contracting, unless the person shows that at the
2 time the person was engaged in making the
3 improvements the person intended, and for the
4 period of at least one year after completion of
5 the building, structure, or other improvements
6 the person continued to intend to hold and not
7 sell or otherwise dispose of the land or
8 improvements. The tax in respect of the
9 improvements shall be measured by the amount of
10 the proceeds of the sale or other disposition
11 that is attributable to the erection,
12 construction, or improvement of such building or
13 structure, or the making, constructing, or
14 improving of the road, street, sidewalk, sewer,
15 or water system, or other improvements. The
16 measure of tax in respect of the improvements
17 shall not exceed the amount which would have been
18 taxable had the work been performed by another,
19 subject as in other cases to the deductions
20 allowed by subparagraph (B). Upon the election
21 of the taxpayer, this paragraph may be applied



1 notwithstanding that the improvements were not
2 made by the taxpayer, or were not made as a
3 business or as a part of a business, or were made
4 with the intention of holding the same. However,
5 this paragraph shall not apply in respect of any
6 proceeds that constitute or are in the nature of
7 rent, which shall be taxable under paragraph (9);
8 provided that insofar as the business of renting
9 or leasing real property under a lease is taxed
10 under section 237-16.5, the tax shall be levied
11 by section 237-16.5.

12 (4) Tax upon theaters, amusements, radio broadcasting
13 stations, etc.

14 (A) Upon every person engaging or continuing within
15 the State in the business of operating a theater,
16 opera house, moving picture show, vaudeville,
17 amusement park, dance hall, skating rink, radio
18 broadcasting station, or any other place at which
19 amusements are offered to the public, the tax
20 shall be equal to four per cent of the gross
21 income of the business, and in the case of a sale



1 of an amusement at wholesale under section 237-
2 4(a)(13), the tax shall be one-half of one per
3 cent of the gross income.

4 (B) The department may require that the person
5 rendering an amusement at wholesale take from the
6 licensed seller a certificate, in a form
7 prescribed by the department, certifying that the
8 sale is a sale at wholesale; provided that:

9 (i) Any licensed seller who furnishes a
10 certificate shall be obligated to pay to the
11 person rendering the amusement, upon demand,
12 the amount of additional tax that is imposed
13 upon the seller whenever the sale is not at
14 wholesale; and

15 (ii) The absence of a certificate in itself shall
16 give rise to the presumption that the sale
17 is not at wholesale unless the person
18 rendering the sale is exclusively rendering
19 the amusement at wholesale.

20 (5) Tax upon sales representatives, etc. Upon every
21 person classified as a representative or purchasing



1 agent under section 237-1, engaging or continuing
2 within the State in the business of performing
3 services for another, other than as an employee, there
4 is likewise hereby levied and shall be assessed and
5 collected a tax equal to four per cent of the
6 commissions and other compensation attributable to the
7 services so rendered by the person.

8 (6) Tax on service business.

9 (A) Upon every person engaging or continuing within
10 the State in any service business or calling
11 including professional services not otherwise
12 specifically taxed under this chapter, there is
13 likewise hereby levied and shall be assessed and
14 collected a tax equal to four per cent of the
15 gross income of the business, and in the case of
16 a wholesaler under section 237-4(a)(10), the tax
17 shall be equal to one-half of one per cent of the
18 gross income of the business.

19 (B) The department may require that the person
20 rendering a service at wholesale take from the
21 licensed seller a certificate, in a form



1 prescribed by the department, certifying that the
2 sale is a sale at wholesale; provided that:

3 (i) Any licensed seller who furnishes a
4 certificate shall be obligated to pay to the
5 person rendering the service, upon demand,
6 the amount of additional tax that is imposed
7 upon the seller whenever the sale is not at
8 wholesale; and

9 (ii) The absence of a certificate in itself shall
10 give rise to the presumption that the sale
11 is not at wholesale unless the person
12 rendering the sale is exclusively rendering
13 services at wholesale.

14 (C) Where any person is engaged in the business of
15 selling interstate or foreign common carrier
16 telecommunication services within and without the
17 State, other than as a home service provider, the
18 tax shall be imposed on that portion of gross
19 income received by a person from service which is
20 originated or terminated in this State and is
21 charged to a telephone number, customer, or



1 account in this State notwithstanding any other
2 state law (except for the exemption under section
3 237-23(a)(1)) to the contrary. If, under the
4 Constitution and laws of the United States, the
5 entire gross income as determined under this
6 paragraph of a business selling interstate or
7 foreign common carrier telecommunication services
8 cannot be included in the measure of the tax, the
9 gross income shall be apportioned as provided in
10 section 237-21; provided that the apportionment
11 factor and formula shall be the same for all
12 persons providing those services in the State.

13 (D) Where any person is engaged in the business of a
14 home service provider, the tax shall be imposed
15 on the gross income received or derived from
16 providing interstate or foreign mobile
17 telecommunications services to a customer with a
18 place of primary use in this State when the
19 services originate in one state and terminate in
20 another state, territory, or foreign country;
21 provided that all charges for mobile



1 telecommunications services which are billed by
2 or for the home service provider are deemed to be
3 provided by the home service provider at the
4 customer's place of primary use, regardless of
5 where the mobile telecommunications originate,
6 terminate, or pass through; provided further that
7 the income from charges specifically derived from
8 interstate or foreign mobile telecommunications
9 services, as determined by books and records that
10 are kept in the regular course of business by the
11 home service provider in accordance with section
12 239-24, shall be apportioned under any
13 apportionment factor or formula adopted under
14 subparagraph (C). Gross income shall not
15 include:

- 16 (i) Gross receipts from mobile
17 telecommunications services provided to a
18 customer with a place of primary use outside
19 this State;



- 1 (ii) Gross receipts from mobile
- 2 telecommunications services that are subject
- 3 to the tax imposed by chapter 239;
- 4 (iii) Gross receipts from mobile
- 5 telecommunications services taxed under
- 6 section 237-13.8; and
- 7 (iv) Gross receipts of a home service provider
- 8 acting as a serving carrier providing mobile
- 9 telecommunications services to another home
- 10 service provider's customer.

11 For the purposes of this paragraph, "charges for
12 mobile telecommunications services", "customer",
13 "home service provider", "mobile
14 telecommunications services", "place of primary
15 use", and "serving carrier" have the same meaning
16 as in section 239-22.

17 (7) Tax on insurance producers. Upon every person engaged
18 as a licensed producer pursuant to chapter 431, there
19 is hereby levied and shall be assessed and collected a
20 tax equal to 0.15 per cent of the commissions due to
21 that activity.



1 (8) Tax on receipts of sugar benefit payments. Upon the
2 amounts received from the United States government by
3 any producer of sugar (or the producer's legal
4 representative or heirs), as defined under and by
5 virtue of the Sugar Act of 1948, as amended, or other
6 Acts of the Congress of the United States relating
7 thereto, there is hereby levied a tax of one-half of
8 one per cent of the gross amount received; provided
9 that the tax levied hereunder on any amount so
10 received and actually disbursed to another by a
11 producer in the form of a benefit payment shall be
12 paid by the person or persons to whom the amount is
13 actually disbursed, and the producer actually making a
14 benefit payment to another shall be entitled to claim
15 on the producer's return a deduction from the gross
16 amount taxable hereunder in the sum of the amount so
17 disbursed. The amounts taxed under this paragraph
18 shall not be taxable under any other paragraph,
19 subsection, or section of this chapter.

20 (9) Tax on vacation packages or other recreational
21 services promoting gambling. Upon every person



1 engaged in the arrangement, provision, or sale within
 2 the State of vacation packages or other recreational
 3 services that promote gambling or gambling devices
 4 that is not prohibited by state law, there is hereby
 5 levied and shall be assessed and collected a tax equal
 6 to 30.00 per cent of the gross income or commissions
 7 due to that activity.

8 [~~9~~] (10) Tax on other business. Upon every person
 9 engaging or continuing within the State in any
 10 business, trade, activity, occupation, or calling not
 11 included in the preceding paragraphs or any other
 12 provisions of this chapter, there is likewise hereby
 13 levied and shall be assessed and collected, a tax
 14 equal to four per cent of the gross income thereof.
 15 In addition, the rate prescribed by this paragraph
 16 shall apply to a business taxable under one or more of
 17 the preceding paragraphs or other provisions of this
 18 chapter, as to any gross income thereof not taxed
 19 thereunder as gross income or gross proceeds of sales
 20 or by taxing an equivalent value of products, unless
 21 specifically exempted."



1 SECTION 4. In codifying the new sections added by section
2 2 of this Act, the revisor of statutes shall substitute
3 appropriate section numbers for the letters used in designating
4 the new sections in this Act.

5 SECTION 5. This Act does not affect rights and duties that
6 matured, penalties that were incurred, and proceedings that were
7 begun before its effective date.

8 SECTION 6. If any provision of this Act, or the
9 application thereof to any person or circumstance, is held
10 invalid, the invalidity does not affect other provisions or
11 applications of the Act that can be given effect without the
12 invalid provision or application, and to this end the provisions
13 of this Act are severable.

14 SECTION 7. Statutory material to be repealed is bracketed
15 and stricken. New statutory material is underscored.

16 SECTION 8. This Act shall take effect on July 1, 2023.

17

INTRODUCED BY: 



S.B. NO. 935

Report Title:

Advertisements; Nevada Gaming Commission; Gambling and Gambling Devices; Civil Penalty; Vacation Packages; General Excise Tax

Description:

Prohibits advertisements for Nevada hotels, resorts, or other recreational services that promote casinos or gambling devices licensed by the Nevada Gaming Commission from being broadcast, televised, marketed in printed publications or displays, distributed online, or otherwise communicated by electronic means within the State. Imposes a general excise tax on persons engaged in the arrangement, provision, or sale within the State of vacation packages or other recreational services that promote gambling or gambling devices that is not prohibited by state law of thirty per cent of gross income due to that activity.

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