

JAN 20 2023

A BILL FOR AN ACT

RELATING TO GAMING.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The Hawaii Revised Statutes is amended by
2 adding a new chapter to be appropriately designated and to read
3 as follows:

4 "CHAPTER

5 LOTTERY AND GAMING

6 § -1 Definitions. As used in this chapter:

7 "Board" means the board of directors of the Hawaii lottery
8 and gaming corporation.

9 "Chief executive officer" means the chief executive officer
10 of the Hawaii lottery and gaming corporation.

11 "Community betterment purposes" means:

12 (1) Funding public education programs related to
13 technology;

14 (2) Assisting teachers, principals, vice-principals, and
15 other staff in the public school system with their
16 professional development; and



1 (3) Addressing heat abatement issues in the public school
2 system.

3 "Corporation" means the Hawaii lottery and gaming
4 corporation.

5 "Lottery", "lottery game", or "lottery games" means any
6 game of chance approved by the board and operated pursuant to
7 this chapter, including but not limited to interactive instant
8 win games and draw games.

9 "Major procurement contract" means any product or service
10 contract for an amount in excess of \$75,000.

11 "Member" or "members" means a director or directors of the
12 board of directors of the Hawaii lottery and gaming corporation.

13 "Net proceeds" means all revenue derived from the
14 operations of the corporation, less operating expenses.

15 "Operating expenses" means all costs the corporation incurs
16 through its operations, including but not limited to prizes,
17 bonuses, advertising and marketing costs, costs related to the
18 gaming provider, personnel costs, capital costs, funds for
19 problem gambling education and treatment, and other operating
20 costs.

21 "Person" has the same meaning as set forth in section 1-19.



1 "Problem gambling" or "gambling addiction" includes all
2 gambling behavior patterns that compromise, disrupt, or damage
3 personal, family, or vocational pursuits.

4 "Vendor" means a person who provides or proposes to provide
5 goods or services to the corporation pursuant to a major
6 procurement contract, but does not include an employee of the
7 corporation, or an agency or instrumentality of the State.

8 **§ -2 Hawaii lottery and gaming corporation established.**

9 There is established a body corporate and politic to be known as
10 the Hawaii lottery and gaming corporation, which shall be deemed
11 to be an instrumentality of the State but shall not be deemed a
12 state agency. The corporation shall be a public corporation
13 registered with the director of commerce and consumer affairs
14 and shall be subject to the corporate laws of the State. For
15 purposes of venue, the corporation shall be deemed to reside in
16 the first judicial circuit.

17 **§ -3 Purpose and authority of corporation.** (a) The

18 purpose of the corporation shall be to conduct and regulate
19 wagering and gaming for the benefit of the State and for
20 community betterment purposes, with the assistance of a private



1 gaming provider, pursuant to this chapter and rules adopted
2 hereunder.

3 (b) The corporation may:

4 (1) Offer wagering on games of chance and games of skill,
5 including lottery, poker, and casino games, to
6 individuals over the age of eighteen years; provided
7 that the corporation shall not offer wagering on any
8 sporting event or sporting contest;

9 (2) Enter into agreements with other state gaming entities
10 for the offering of multistate games, consistent with
11 state and federal law;

12 (3) Utilize the broad reach of its gaming platform to
13 offer legally compliant free-play games and
14 sweepstakes with Hawaii-related prizes to individuals
15 outside of Hawaii, for the purpose of attracting
16 tourists and providing free exposure for Hawaii and
17 Hawaii businesses to domestic and overseas markets;

18 (4) Conduct no more than two gaming entertainment events
19 per year, related to the corporation's other game
20 offerings, for the purpose of attracting tourists to



1 Hawaii; provided that the corporation shall not
2 conduct any other form of event-based gambling; and
3 (5) Engage in other activities consistent with the purpose
4 of this chapter and rules adopted hereunder, and with
5 state, federal, and international laws.

6 § -4 Board of directors; membership; reimbursement for
7 expenses; conflict of interests; quorum. (a) The corporation
8 shall be governed by a board of directors composed of seven
9 members. Three initial members shall be appointed by the
10 governor, two shall be appointed by the president of the senate,
11 and two shall be appointed by the speaker of the house of
12 representatives.

13 (b) Members of the board shall be prominent persons in
14 their business or profession and shall not have been convicted
15 of any felony offense. The board shall include individuals with
16 knowledge and expertise in lottery and gaming, marketing and
17 entertainment, technology, accounting, law, and operation of a
18 business enterprise.

19 (c) Notwithstanding section 26-34(a), with respect to the
20 length of terms, members of the board shall serve for terms of
21 five years; provided that of the initial members appointed,



1 three shall be appointed for a term of two years, two shall be
2 appointed for a term of four years, and two shall be appointed
3 for a term of five years. Any vacancy occurring on the board
4 shall be filled by the governor by appointment for the unexpired
5 term.

6 (d) Members of the board shall not have any interest in an
7 undertaking that places their personal interest in conflict with
8 that of the corporation, including but not limited to an
9 interest in a major procurement contract or a participating
10 vendor.

11 (e) The board may delegate to any one or more of its
12 members, to the chief executive officer, or to any agent or
13 employee of the corporation, any powers and duties as it may
14 deem proper.

15 (f) A majority of members of the board shall constitute a
16 quorum for the transaction of any business and for the exercise
17 of any power or function of the corporation.

18 (g) Action may be taken and motions and resolutions
19 adopted by the board at any meeting thereof by the affirmative
20 vote of a majority of present and voting members.



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1 (h) No vacancy in the membership of the board shall impair
2 the right of the members to exercise all the powers and perform
3 all the duties of the board.

4 (i) The members of the board shall be compensated in the
5 amount of \$ per year and shall be reimbursed for
6 expenses, including travel expenses, necessary for the
7 performance of their duties.

8 § -5 Board of directors; powers and duties. In addition
9 to any other powers and duties authorized by law, the board
10 shall:

11 (1) Select a gaming provider, pursuant to the requirements
12 of this chapter;

13 (2) Adopt regulations, policies, and procedures relating
14 to the conduct of games and the gaming provider,
15 including but not limited to rules governing:

16 (A) Type of games to be conducted;

17 (B) Price points for games and percentage of rake;

18 (C) Forms of payment accepted and prohibited;

19 (D) Number and amount of prizes;

20 (E) Method of selecting winners and validating
21 winnings;



- 1 (F) Manner and time of payment of prizes;
- 2 (G) Frequency of games and drawings or selection of
- 3 winning tickets or shares;
- 4 (H) Means of conducting drawings for lottery games;
- 5 (I) Responsible gaming;
- 6 (J) The conduct of the gaming provider;
- 7 (K) The gaming platform; and
- 8 (L) Any and all other matters necessary, desirable,
- 9 or convenient toward ensuring the efficient and
- 10 effective operation of gaming;
- 11 (3) Provide the chief executive officer with private
- 12 sector perspective and direction;
- 13 (4) Approve, disapprove, amend, or modify the budget
- 14 recommended by the chief executive officer for the
- 15 operation of the corporation;
- 16 (5) Approve, disapprove, amend, or modify the terms of the
- 17 major procurements recommended by the chief executive
- 18 officer; and
- 19 (6) Perform other functions as necessary to carry out the
- 20 purposes of this chapter.



1 **§ -6 Chief executive officer; appointment; compensation.**

2 The board of directors, at its discretion, shall appoint and
3 shall provide for the compensation of a chief executive officer
4 who shall be an employee of the corporation and who shall serve
5 at the pleasure of the board. The chief executive officer shall
6 direct the day-to-day operations and management of the
7 corporation and shall be vested with powers and duties as
8 specified by the board and by law.

9 **§ -7 Chief executive officer; powers and duties.** The
10 chief executive officer of the corporation shall direct and
11 supervise all administrative and technical activities of the
12 corporation in accordance with this chapter and with
13 regulations, policies, and procedures adopted by the board. It
14 shall be the duty of the chief executive officer to:

- 15 (1) Supervise and exercise active oversight of the
16 operations of the gaming provider;
- 17 (2) Hire and supervise a small staff of employees, as
18 deemed necessary; provided that all applicants for
19 employment shall be subject to a background check;
20 provided further that no person who has been convicted
21 of a felony or bookmaking or other forms of illegal



1 gambling or of a crime involving moral turpitude shall
2 be employed by the corporation;

3 (3) In consultation with the gaming provider, prepare an
4 annual budget, including a marketing budget, for the
5 approval of the board;

6 (4) Report quarterly to the board a full and complete
7 statement of gaming revenues and expenses for the
8 preceding quarter; and

9 (5) Perform any other duties customary of the position of
10 chief executive officer.

11 § -8 **General powers of the corporation.** The corporation
12 is granted comprehensive and extensive powers as generally
13 exercised by corporations engaged in for-profit business
14 activities and all powers as are necessary or convenient to
15 effectuate those purposes and provisions of this chapter that
16 are not in conflict with the Hawaii State Constitution or
17 federal law, including to:

18 (1) Sue and be sued in contract and in tort and to
19 complain and defend in all courts;

20 (2) Adopt and alter a seal;



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- 1 (3) Adopt, amend, and repeal bylaws, regulation, and
2 policies and procedures for the regulation of its
3 affairs and the conduct of its business;
- 4 (4) Elect and prescribe the duties of officers and
5 employees of the corporation and to perform other
6 matters as the corporation may determine;
- 7 (5) Procure or provide insurance;
- 8 (6) Hold copyrights, trademarks, and service marks and
9 enforce its rights with respect thereto;
- 10 (7) Initiate, supervise, and administer the operation of
11 games in accordance with this chapter and regulations,
12 policies, and procedures adopted pursuant thereto;
- 13 (8) Enter into written agreements with one or more other
14 states or sovereigns for the operation, participation
15 in marketing, and promotion of joint games;
- 16 (9) Conduct market research as is necessary or
17 appropriate;
- 18 (10) Acquire or lease real property and make improvements
19 thereon and acquire by lease or by purchase personal
20 property, including but not limited to computers;
21 mechanical, electronic, and on-line equipment and



- 1 terminals; and intangible property, including but not
2 limited to computer programs, systems, and software;
- 3 (11) Enter into contracts, incur debt in its own name, and
4 enter into financing agreements with the State,
5 agencies or instrumentalities of the State, or with
6 any commercial bank or credit provider; provided that
7 any debt shall be approved by the director of finance;
- 8 (12) Administer oaths, take depositions, issue subpoenas,
9 and compel the attendance of witnesses and the
10 production of books, papers, documents, and other
11 evidence relative to any investigation or proceeding
12 conducted by the corporation;
- 13 (13) Appoint and select officers, agents, and employees,
14 including professional and administrative staff and
15 personnel, as deemed necessary;
- 16 (14) Select and contract with vendors;
- 17 (15) Enter into contracts or agreements with state or local
18 law enforcement agencies for the performance of law
19 enforcement, background investigations, and security
20 checks;



- 1 (16) Establish and maintain banking relationships,
2 including but not limited to establishment of checking
3 and savings accounts and lines of credit;
- 4 (17) Purchase, lease, or lease-purchase goods or services
5 as necessary to effectuate the purposes of this
6 chapter;
- 7 (18) Advertise and promote games; and
- 8 (19) Adopt and amend regulations, policies, and procedures
9 as necessary to exercise its powers, fulfill its
10 duties, organize and operate the corporation, regulate
11 the conduct of games, and as otherwise necessary or
12 desirable for the efficient and effective operation of
13 the corporation and effectuation of the purposes of
14 this chapter; provided that the corporation shall be
15 exempt from chapter 91 regarding the adoption of
16 bylaws, regulations, policies, and procedures or in
17 the exercise of any regulatory power.

18 **§ -9 Corporation authorized to borrow money; restriction**
19 **on use of money in state general fund; lottery and gaming**
20 **special fund.** (a) The corporation, in accordance with this
21 chapter, may borrow or accept and expend moneys received from



1 any source, including income from the corporation's operations,
2 for effectuating its corporate purposes, including the payment
3 of the initial expenses of initiation, administration, and
4 operation of the corporation.

5 (b) The corporation shall be self-sustaining and self-
6 funded. Moneys in the state general fund shall not be used or
7 obligated to pay the expenses of the corporation or prizes of
8 the lottery, and no claim for the payment of an expense of the
9 lottery or prizes of the lottery may be made against any moneys
10 other than moneys credited to the lottery and gaming special
11 fund.

12 (c) There is created within the state treasury a special
13 fund to be known as the lottery and gaming special fund. Moneys
14 authorized under this chapter may be deposited into the special
15 fund.

16 **§ -10 Reports by the corporation.** To ensure the
17 financial integrity of gaming operations, the corporation
18 through the board of directors shall:

19 (1) Submit quarterly and annual reports to the governor
20 and legislature, disclosing the total revenues, prize
21 disbursements, operating expenses, and administrative



1 expenses of the corporation during the reporting
2 period;

3 (2) Adopt a system of internal audits and controls;

4 (3) Maintain regular records of transactions; and

5 (4) Contract with a certified public accountant or firm
6 for an annual financial audit of the corporation;
7 provided that the certified public accountant or firm
8 shall have no financial interest in any vendor with
9 whom the corporation is under contract.

10 § -11 Bidding requirements and procedures for contracts
11 generally. (a) The corporation shall enter into major
12 procurement contracts only after engaging in a competitive
13 process. Procurements conducted by the corporation shall not be
14 subject to chapter 103D but shall be designed to allow the
15 selection of proposals that provide the greatest long-term
16 benefit to the State, the greatest integrity for the
17 corporation, and the best service and products for the public.
18 The requirement for a competitive process shall not apply in the
19 case of a single vendor having exclusive rights to offer a
20 particular service or product.



1 (b) The corporation shall investigate the responsibility,
2 security, and integrity of any vendor who is a finalist in
3 submitting a bid, proposal, or offer as part of a major
4 procurement. The corporation shall not select a vendor with
5 questionable integrity for any major procurement.

6 (c) A solicitation, request for qualification, or
7 specification for a contract shall not require, stipulate,
8 suggest, or encourage a monetary or other financial contribution
9 or donation as an explicit or implied term or condition for
10 awarding or completing the contract.

11 (d) No vendor or applicant for a major procurement
12 contract shall pay, give, or make any economic opportunity,
13 gift, loan, gratuity, special discount, favor, hospitality, or
14 service, excluding food and beverages having an aggregate value
15 not exceeding \$100 in any calendar year, to the chief executive
16 officer, any board member, or any employee of the corporation or
17 to a member of the immediate family residing in the same
18 household of the chief executive officer, board member, or
19 employee.

20 § -12 Adoption of gaming rules. Within one hundred
21 eighty days of the appointment of all initial members of the



1 board, the board shall adopt rules and policies governing its
2 gaming operations, consistent with the requirements of this
3 chapter. The board may retain a neutral advisor with expertise
4 in gaming to assist the board in adopting its rules.

5 **§ -13 Responsible gaming measures.** The corporation's
6 website shall provide information on problem gambling, including
7 a problem gambling hotline telephone number that a person may
8 call to seek information and assistance for a potential gambling
9 addiction. The corporation shall offer responsible gambling
10 services, such as self-exclusion, limits on losses, amounts
11 wagered, and playing time, and other services as the corporation
12 reasonably may determine are necessary and appropriate to reduce
13 and prevent problem gambling.

14 **§ -14 Selection of the gaming provider.** (a) Within one
15 hundred eighty days of appointment of all initial members of the
16 board, the board shall commence a competitive process for the
17 selection of a qualified and suitable gaming provider. The
18 selection of the gaming provider shall be done through a request
19 for qualifications, which shall take into account the following
20 factors:

21 (1) The provider's knowledge and expertise with regard to:



- 1 (A) United States regulated gaming and lottery
- 2 operations;
- 3 (B) Interactive digital media and entertainment; and
- 4 (C) Internet technology; and
- 5 (2) The suitability of the provider's executives and key
- 6 employees to operate a legally compliant gaming
- 7 enterprise with honesty, fairness, and integrity;
- 8 provided that a provider that has engaged in any of
- 9 the following activities shall be deemed unsuitable to
- 10 serve as the corporation's internet gaming provider:
- 11 (A) The provider has accepted or assisted in the
- 12 acceptance of any wagers of money or other
- 13 consideration related to gambling activity,
- 14 including internet poker, lottery, or casino
- 15 games, from an individual located in the United
- 16 States, prior to the September 20, 2011 opinion
- 17 issued by the United States Department of Justice
- 18 pertaining to the interpretation of the Wire Act,
- 19 title 18 United States Code Section 1084;
- 20 provided that this subparagraph shall not apply
- 21 to providers that have accepted pari-mutuel



1 wagers on races in compliance with the Interstate
2 Horseracing Act;

3 (B) The provider has operated in violation of the
4 laws of any country or state in which it has
5 operated; or

6 (C) The provider has been indicted or convicted of a
7 crime related to its gaming operations in any
8 state or foreign jurisdiction.

9 (b) The request for qualification shall not require,
10 stipulate, suggest, or encourage a monetary or other financial
11 contribution or donation as an explicit or implied term or
12 condition for awarding the contract.

13 (c) The board shall select the gaming provider that offers
14 the greatest integrity for the corporation, the greatest long-
15 term benefit to the State, and the best service and products for
16 the public.

17 § -15 Responsibilities of the gaming provider. The
18 gaming provider shall be responsible for operating a legally
19 compliant, secure, and responsible gaming operation on behalf of
20 the corporation. The gaming provider's general responsibilities
21 shall include, among other things:



- 1 (1) Providing all the technology infrastructure, software,
2 and operational support necessary for the development,
3 operation, and maintenance of any websites associated
4 with the gaming operation, including:
 - 5 (A) Game software and graphics;
 - 6 (B) Computer hardware;
 - 7 (C) Server hosting;
 - 8 (D) Player account registration and management;
 - 9 (E) Geo-location services;
 - 10 (F) Age-verification services;
 - 11 (G) Responsible gaming controls;
 - 12 (H) Anti-collusion and security tools;
 - 13 (I) Payment gateway software functionality;
 - 14 (J) Deposit and decline tools and services;
 - 15 (K) Charge back reporting software;
 - 16 (L) Network reconciliation and controls;
 - 17 (M) Financial reporting and player management; and
 - 18 (N) Other related administrative back office
19 functionality and operational support;
- 20 (2) Providing marketing services, including a
21 comprehensive, customized marketing plan for the



1 corporation, consisting of both online and off-line
2 marketing components aimed at maximizing revenues in a
3 responsible manner and attracting tourism for the
4 State through the corporation's gaming operations; and
5 (3) Providing customer support and trained personnel to
6 respond to inquiries from players, investigate fraud
7 and collusion, and resolve any other issues that may
8 arise.

9 § -16 Compensation of the gaming provider. The
10 corporation shall compensate the gaming provider with a
11 percentage of the corporation's revenues, in addition to
12 reimbursement of ongoing costs associated with the gaming
13 operation, including costs related to geo-location, age
14 verification, payment processing and banking, web hosting, and
15 bandwidth, and any amounts necessary for the implementation of
16 the gaming operation.

17 § -17 Disposition of proceeds. (a) All proceeds of
18 gaming conducted under this chapter shall be the property of the
19 corporation. The corporation shall pay its operating expenses
20 from the proceeds.



1 (b) On or before the fifteenth day of each quarter, the
2 corporation shall deposit into the lottery and gaming special
3 fund all net proceeds derived from wagering and gaming
4 activities during the preceding quarter.

5 (c) Funds in the lottery and gaming special fund shall be
6 allocated as follows, with a priority on community betterment
7 purposes:

8 (1) Department of education shortage differentials:
9 twenty-five per cent;

10 (2) Department of education capital improvements: twenty
11 per cent;

12 (3) University of Hawaii system capital improvements:
13 twenty per cent;

14 (4) Scholarships and educational loan repayments for
15 medical students who commit to practice medicine in
16 Hawaii for ten years after completion of their
17 residency: ten per cent;

18 (5) University of Hawaii John A. Burns school of medicine
19 family practice rural residency program: ten per
20 cent;

21 (6) Watershed protection: five per cent;



1 (7) Problem gambling reduction and prevention programs:
2 five per cent; and

3 (8) Administration of the program and special fund: five
4 per cent.

5 § -18 **Tax treatment.** The activities of the corporation
6 shall be deemed to constitute an essential government function,
7 and all operations of the corporation shall be exempt from any
8 form of taxation under state law and, to the extent allowed,
9 under federal law. In addition, the corporation shall not be
10 required to pay any taxes or assessments upon or in respect to
11 sales of lottery tickets, games, or any property or moneys of
12 the corporation, levied by the State or any political
13 subdivision thereof, except as required by federal law. The
14 corporation and its assets, property, and revenues shall at all
15 times be exempt from taxation of every kind by the State and any
16 political subdivision thereof, including any special districts
17 in the State with powers of taxation.

18 § -19 **Unlawful gambling.** It shall be unlawful for any
19 person to offer or play any gambling or wagering in the State
20 that is not authorized pursuant to this chapter. Any violation
21 of this section shall be punished as provided in part III of



1 chapter 712; provided that nothing herein shall preclude
2 enforcement of any other civil or criminal law for a violation
3 of this chapter."

4 SECTION 2. If any provision of this Act, or the
5 application thereof to any person or circumstance, is held
6 invalid, the invalidity does not affect other provisions or
7 applications of the Act that can be given effect without the
8 invalid provision or application, and to this end the provisions
9 of this Act are severable.

10 SECTION 3. This Act does not affect rights and duties that
11 matured, penalties that were incurred, and proceedings that were
12 begun before its effective date.

13 SECTION 4. This Act shall take effect on July 1, 2023.

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INTRODUCED BY:

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S.B. NO. 1107

Report Title:

Gaming; Hawaii Lottery and Gaming Corporation; Lottery and Gaming Special Fund; Gaming Provider

Description:

Establishes the Hawaii Lottery and Gaming Corporation for the purpose of conducting and regulating wagering and gaming in the State. Establishes the Lottery and Gaming Special Fund and allocates certain percentages of the fund to various community betterment purposes.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

