

JOSH GREEN M.D.  
GOVERNOR

SYLVIA LUKE  
LT. GOVERNOR



STATE OF HAWAII  
DEPARTMENT OF TAXATION

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GARY S. SUGANUMA  
DIRECTOR

KRISTEN M.R. SAKAMOTO  
DEPUTY DIRECTOR

**TESTIMONY OF  
GARY S. SUGANUMA, DIRECTOR OF TAXATION**

**TESTIMONY ON THE FOLLOWING MEASURE:**

S.B. No. 935, Relating to Gambling

**BEFORE THE:**

Senate Committee on Commerce and Consumer Protection

**DATE:** Thursday, February 09, 2023

**TIME:** 9:31 a.m.

**LOCATION:** State Capitol, Room 229

Chair Keohokalole, Vice-Chair Fukunaga, and Members of the Committee:

The Department of Taxation ("Department") offers the following comments regarding S.B. 935 for your consideration.

S.B. 935 adds a new chapter to the Hawaii Revised Statutes (HRS), prohibiting 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. The measure further amends section 237-13, HRS, to impose a 30 percent 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 are not prohibited by State law.

This measure shall take effect on July 1, 2023.

The Department suggests adding a definition for "gambling device" to section 237-13(9), HRS, in section 3 of the bill to avoid ambiguity as to the scope of the tax.

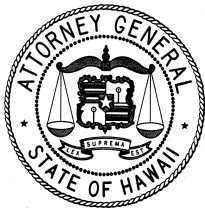
Additionally, the Department notes that it is unclear as to which gambling devices are "not prohibited by state law," as provided on page 21, lines 3 to 4, of the bill, as

Department of Taxation Testimony  
S.B. 935  
February 9, 2023  
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gambling is prohibited by State law. The Department suggest amending this provision to clarify.

Finally, the Department requests that the measure be amended to become effective no earlier than January 1, 2024, to allow time for creation of necessary forms and system changes. The Department notes, however, that due to the number of bills with tax law changes that have been introduced this year, the Department may not have the resources to implement all measures passed this session in time for January 1, 2024. The Department will continue to monitor the status of proposed legislation and will advise whether some changes will require a later effective date.

Thank you for the opportunity to provide comments on this measure.



**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
KA 'OIHANA O KA LOIO KUHINA  
THIRTY-SECOND LEGISLATURE, 2023**

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**ON THE FOLLOWING MEASURE:**  
S.B. NO. 935, RELATING TO GAMBLING.

**BEFORE THE:**  
SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

**DATE:** Thursday, February 9, 2023      **TIME:** 9:31 a.m.

**LOCATION:** State Capitol, Room 229

**TESTIFIER(S):** Anne E. Lopez, Attorney General, or  
Christopher J.I. Leong or Bryan C. Yee, Deputy Attorneys General

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Chair Keohokalole and Members of the Committee:

The Department of the Attorney General provides the following comments.

The purposes of this bill are to: (1) prohibit advertisements within this State for Nevada hotels, resorts, or other recreational services that promote casinos or gambling devices licensed by the Nevada Gaming Commission, and (2) impose a general excise tax of thirty percent of gross income or commissions on the arrangement, provision, or sale of vacation packages or other recreational services that promote gambling or gambling devices not prohibited by state law.

Section 2 of the bill, which prohibits advertisements within this State for Nevada hotels, resorts, or other recreational services that promote casinos or gambling devices licensed by the Nevada Gaming Commission, may be subject to challenge under the First Amendment to the United States Constitution and article I, section 4, of the Hawaii State Constitution as an unconstitutional restriction of commercial speech. The United States Supreme Court has articulated the following test to evaluate whether such a restriction comports with the First Amendment:

In commercial speech cases, then, a four-part analysis has developed. At the outset, we must determine whether the expression is protected by the First Amendment. For commercial speech to come within that provision, it at least must concern lawful activity and not be misleading. Next, we ask whether the asserted governmental interest is substantial. If both inquiries yield positive answers, we must

determine whether the regulation directly advances the governmental interest asserted, and whether it is not more extensive than is necessary to serve that interest.

*Cent. Hudson Gas & Elec. Corp. v. Pub. Serv. Comm'n of N.Y.*, 447 U.S. 557, 566 (1980).

Although the bill cites the illegality of gambling in Hawaii as a concern, gambling in Nevada is generally a lawful activity. For purposes of the constitutional analysis, therefore, the commercial speech appears to concern lawful activity and is not misleading. Assuming that there is a substantial governmental interest in reducing the societal ills associated with gambling, we must next determine whether the prohibition on advertising of Nevada casinos directly reduces those societal ills. It is not clear that those with a gambling addiction will stop or significantly reduce their gambling just because of a lack of advertising. In addition, gambling at casinos outside Nevada could still be advertised. The prohibition on advertisements for Nevada gambling, therefore, might not directly reduce those societal ills. Accordingly, we recommend that section 2 of the bill be deleted.

Separate from the First Amendment concern, we note that federal law preempts the regulation of television advertising, at least with respect to cable television operators. See *Capital Cities Cable, Inc. v. Crisp*, 467 U.S. 691, 705 (1984) ("[B]y requiring cable television operators to delete commercial advertising contained in signals carried pursuant to federal authority, the State has clearly exceeded that limited jurisdiction and interfered with a regulatory area that the [Federal Communications] Commission has explicitly pre-empted."). This issue is also resolved if section 2 of this bill is deleted.

Thank you for the opportunity to provide comments.

# TAX FOUNDATION OF HAWAII

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126 Queen Street, Suite 305

Honolulu, Hawaii 96813 Tel. 536-4587

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SUBJECT: GENERAL EXCISE, 30% Tax on Vacation Packages Promoting Gambling or Gambling Devices

BILL NUMBER: SB 935

INTRODUCED BY: CHANG

EXECUTIVE SUMMARY: 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.

SYNOPSIS: Adds a new chapter to the HRS prohibiting advertisements within Hawaii for Nevada hotels, resorts, or other recreational services that promote casinos or gambling devices licensed by the Nevada Gaming Commission.

Amends section 237-13, HRS, to impose the GET at 30% of gross income from 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.

EFFECTIVE DATE: July 1, 2023.

STAFF COMMENTS: We have concerns about the constitutionality of the regulation of commercial speech. *Linmark Associates, Inc. v. Township of Willingboro*, 431 U.S. 85 (1977).

Regarding the punitive tax on vacation packages, we have concerns that the proposed tax would be considered protectionist, and discriminatory against interstate commerce, on the grounds that the tax is imposed on travel to other States, an activity competing with travel to or involving Hawaii. *Tennessee Wine and Spirits Retailers Ass'n v. Thomas*, 139 S. Ct. 2449 (2019); *Bacchus Imports, Ltd. v. Dias*, 468 U.S. 263 (1984).

Digested: 2/5/2023



A Subsidiary of Boyd Gaming Corporation  
HAWAII ♦ LAS VEGAS

**LATE**

Senator Jarrett Keohokalole, Chair  
Senator Carol Fukunaga, Vice Chair  
Senate Committee on Commerce and Consumer Protection  
Hawaii State Capitol  
Honolulu, Hawaii 96813

Thursday, February 9, 2023 -- 9:31 a.m.  
Conference Room 229 & Videoconference

**RE: SB 935 – Relating to Gambling – Testimony in Opposition**

Aloha Chair Keohokalole, Vice Chair Fukunaga and Members of the Committee:

Vacations Hawaii, a subsidiary of Boyd Gaming, appreciates this opportunity to provide testimony in opposition to SB 935, which prohibits advertisements for Nevada businesses that promote casinos or gambling devices, and imposes a general excise tax on persons engaged in the sale of vacation packages that promote gambling or gambling devices.

Founded in Hawai'i, Vacations Hawaii has served over 1.5 million Hawaii residents with convenient and affordable direct charter flights to Las Vegas since 1996. Vacations Hawaii is proud to be an established part of Hawaii's local history, community and economy with nearly 100 employees based in both Hawaii and in Las Vegas.

Vacations Hawaii notes that Section 1 of the bill incorrectly states Boyd Gaming Corporation's revenue from Hawaii. As reported in its financial statements, Boyd's entire downtown Las Vegas segment earns about \$200 million in all revenue (gaming and non-gaming revenue included) per year from all domestic and international visitors, not just visitors from the State of Hawaii.

SB 935 will hurt the local economy and negatively impact local businesses and employees in the Hawaii advertising, hospitality, and airlines industries. Vacations Hawaii has various business partnerships and contracts with local advertisers and Hawaiian Airlines. These partners are local companies that employ thousands of Hawaii residents and generate significant impact to the State's economy. SB 935 would likely force Vacations Hawaii to cancel these partnerships with local companies that are still recovering from the economic impacts of the COVID-19 pandemic, resulting in negative economic consequences.

SB 935 also raises constitutional concerns, because the measure is a content-based regulation that singles out advertisements promoting products and services in Nevada. The bill, for example, implicates commercial speech, which the United States Supreme Court has held is entitled to protection under the First Amendment. The Supreme Court has also consistently invalidated restrictions designed to deprive consumers of accurate information about products

and services legally offered for sale. SB 935 therefore raises issues relating to the infringement of commercial speech of Nevada businesses where gambling is a legalized industry.

SB 935 also likely raises constitutional issues under the Dormant Commerce Clause because the measure discriminates against gambling advertisements relating to a single jurisdiction. The federal Dormant Commerce Clause prohibits state laws that discriminate against interstate commerce. As Section 1 of the measure states, gambling is legal in forty-eight states, however, the measure only prohibits gambling advertisements from Nevada, not the other states where gambling is legal either physically or online. In doing so, SB 935 is a facially discriminatory measure, which is subject to strict scrutiny.

The measure's proposed thirty-percent general excise tax assessment in connection with the arrangement, provision, or sale of gambling vacation packages also raises federal constitutional issues. A state may not generally tax value earned outside its borders under the due process and commerce clauses. Here, the value of out-of-state vacation packages sold locally is primarily attributable to the destination jurisdiction. As such, a thirty-percent general excise tax is not proportional to the relative value of such interstate transactions.

Vacations Hawaii respectfully requests that the Committee defer this measure because of the negative economic ramifications to local businesses and jobs, as well as various constitutional concerns. Thank you for the opportunity to testify on this measure.

Hawaii State Senate Committee on Commerce and Consumer Protection  
Sen. Jarrett Keohokalole (Chair)  
Sen. Carol Fukunaga (Vice Chair)

## **Written testimony in Support of SB935 related to Gambling**

Aloha Chair Keohokalole and Vice Chair Fukunaga,

I was born and raised in Hawaii and am concerned with gambling legislation in Hawaii. I am currently a Project Coordinator at the Center for Gambling Studies at the Rutgers School of Social Work. I assisted Senator Chang, who represents my hometown district, in drafting this bill. The spirit of SB935 is to spark a broader conversation about gambling and Hawaii.

SB935 would generate revenue for necessary programs while avoiding the ills of having gambling in Hawaii. Independent of whether an activity is legal or not, Hawaii has an obligation to prevent and treat addictions. Hawaii is failing to meet this obligation. A 2009 study performed by the National Council on Problem Gambling (NCPG) estimated the social costs of gambling for Hawaii at \$26,300,000.<sup>1</sup> The NCPG estimates that 24,000 people in the islands struggle with compulsive gambling, and the state Department of Health said it has no data on gambling addiction in Hawaii.<sup>2</sup> Keith Whyte, director of the NCPG, expressed in 2022 that Hawaii is ill-prepared to deal with the specific kinds of help needed for those affected by gambling addiction.<sup>3</sup> Treatment providers across the islands have echoed this sentiment.<sup>4</sup>

Hawaii is vulnerable to being exploited by gambling operators out-of-state. Hundreds of millions of dollars earned in Hawaii becomes business and tax revenue generated for out-of-state operators and jurisdictions. According to the Las Vegas Convention and Visitors authority, about 300,000 passengers have flown from Hawaii to Las Vegas each year.<sup>5</sup> Airline companies also offer travel packages, and these junkets are competitively priced to entice residents. Hawaii must recognize its appeal as a feeder market for out-of-state gaming operators.

Hawaii's vulnerability to out-of-state operators is exacerbated by the rapid expansion of gambling across the rest of the country. According to the American Gaming Association, 33 States and Washington, D.C. currently feature live, legal sports betting markets, with three additional legal markets awaiting launch. It is estimated that 50 million Americans will wager \$16bn on Super Bowl LVII, a 66% increase from the prior year.<sup>6</sup> More than half of American

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<sup>1</sup> National Council on Problem Gambling (2009). Hawaii Gambling and Problem Gambling Estimates. <https://www.ncpgambling.org/files/Help%20By%20State%20Fact%20Sheets/Hawaii%20Fact%20Sheet.pdf>

<sup>2</sup> Lovell, B. (2022, Mar 8). Hawaii Already Has Problem Gamblers, But It Has Few Resources To Help Them. *Honolulu Civil Beat*. <https://www.civilbeat.org/2022/03/hawaii-already-has-problem-gamblers-but-it-has-few-resources-to-help-them/>

<sup>3</sup> Lovell, B. (2022, Mar 8).

<sup>4</sup> Lovell, B. (2022, Mar 8).

<sup>5</sup> Lovell, B. (2022, Mar 8).

<sup>6</sup> Press Release. (2023) American Gaming Association. <https://www.americangaming.org/new/record-50-million-americans-to-wager-16b-on-super-bowl-lvii/>



adults (57%, 146M) live in legal sports betting market. There are currently 44 States with legal casino gaming generating an estimated \$41 billion in tax revenue.<sup>7</sup>

The explosion of gambling in-person and online is straining necessary programs in other States. For example, sports betting was legalized in Ohio on January 1, 2023. The number of calls to the Ohio Problem Gambling Helpline have more than doubled from 600 to 1,492 in the months before and after legalization.<sup>8</sup> In 2022, the NCPG received more than 2,000 calls for help from Hawaii residents seeking treatment for addiction.

In Hawaii, local police are also ill-prepared to address illegal gambling rooms. There are dozens of gambling rooms being monitored in Hawaii at any given time. Law enforcement is unable to take a preventive approach to illicit game rooms and can do little to stem the flow of gambling machines.<sup>9</sup> In 2021, the HPD raided 50 game rooms. Prior to the pandemic, 32 raids were performed in 2019 and 31 in 2018.<sup>10</sup> SB935 could fund necessary programs to improve law enforcement of illegal gambling rooms.

SB935 is an opportunity to address the harms of gambling addiction and related crime in Hawaii. Other States including Ohio, New Jersey, and Massachusetts all have taxed legalized gambling. In these States however, there are also restrictions and regulations related to content, placement, and accuracy of gambling advertising. When it comes to gambling harms, Hawaii is failing to meet its obligation to public health and safety. SB935 can spark a broader conversation about gambling and Hawaii.

Mahalo,  
Ray Cho

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<sup>7</sup> American Gaming Association (2023). <https://www.americangaming.org/>

<sup>8</sup> Scott, M. E. (2023, Feb 7). Calls to Ohio Problem Gambling Helpline Have "Skyrocketed" Since Launch of Sports Betting in January. *City Beat*. <https://www.citybeat.com/news/calls-to-ohio-problem-gambling-helpline-have-skyrocketed-since-launch-of-sports-betting-in-january-14715532>

<sup>9</sup> Geanous, J. (2022, Jan 19). Illegal Gambling Rooms Keep Springing Up But Police Have Few Tools To Shut Them Down. *Civil Beat*. <https://www.civilbeat.org/2022/01/illegal-gambling-rooms-keep-springing-up-but-police-have-few-tools-to-shut-them-down/>

<sup>10</sup> anous, J. (2022, Jan 19).

**SB-935**

Submitted on: 2/3/2023 5:10:25 PM

Testimony for CPN on 2/9/2023 9:31:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
B.A. McClintock	Individual	Oppose	Written Testimony Only

Comments:

We're tired of religions and other zealots trying to curtail certain forms of entertainment because of their misguided beliefs. Please do not support this bill!

**SB-935**

Submitted on: 2/4/2023 8:24:20 AM

Testimony for CPN on 2/9/2023 9:31:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
LIBRADO COBIAN	Individual	Oppose	Written Testimony Only

Comments:

I oppose this BILL . This is a targeted retaliatory bill that demonstrates how government is going too far . It specifically retaliates against the state of Nevada. This is absolutely unacceptable. It specifically targets Vacations Hawaii who has been a model company in Hawaii with historical roots in Hawaii . Absolutely OPPOSE !!!!! LI Cobian

**SB-935**

Submitted on: 2/4/2023 9:17:04 AM

Testimony for CPN on 2/9/2023 9:31:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Victor K. Ramos	Individual	Support	Written Testimony Only

Comments:

SUPPORT:

**SB-935**

Submitted on: 2/5/2023 1:59:03 PM

Testimony for CPN on 2/9/2023 9:31:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Will Caron	Individual	Support	Written Testimony Only

Comments:

I support SB935.