

JAN 17 2007

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



1 the ability to make a long distance call with the card is
2 clearly incidental to its value as a "sweepstakes" entry. These
3 "sweepstakes" cards are not like the chances to win prizes
4 offered by, for example, fast food restaurants because those
5 chances are offered in connection with, and merely incidental
6 to, the sale of a bona fide product, namely, a meal.

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

15 SECTION 2. Section 712-1220, Hawaii Revised Statutes, is
16 amended to read as follows:

17 "**§712-1220 Definitions of terms in this part.** In this
18 part unless a different meaning plainly is required, the
19 following definitions apply.

20 [~~1~~] "Advance gambling activity". A person "advances
21 gambling activity" if [~~he~~] the person engages in conduct that
22 materially aids any form of gambling activity. Conduct of this



1 nature includes but is not limited to conduct directed toward
2 the creation or establishment of the particular game, contest,
3 scheme, device, or activity involved, toward the acquisition or
4 maintenance of premises, paraphernalia, equipment, or apparatus
5 therefor, toward the solicitation or inducement of persons to
6 participate therein, toward the actual conduct of the playing
7 phases thereof, toward the arrangement of any of its financial
8 or recording phases, or toward any other phase of its operation.

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

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



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

4 [~~2~~] "Bookmaking" means advancing gambling activity by
5 accepting bets from members of the public upon the outcomes of
6 future contingent events.

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

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



1 ~~[(5)]~~ "Gambling device" means any device, machine,
2 paraphernalia, or equipment that is used or usable in the
3 playing phases of any gambling activity, whether that activity
4 consists of gambling between persons ~~[or]~~, gambling by a person
5 involving the playing of a machine~~[-. However, lottery tickets~~
6 ~~and other items used in the playing phases of lottery schemes~~
7 ~~are not gambling devices within this definition.]~~, or a lottery.

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

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

14 (b) The winning chances are to be determined by a drawing
15 or by some other method based on an element of chance;
16 and

17 (c) The holders of the winning chances are to receive
18 something of value.

19 ~~[(7)]~~ "Mutuel" means a form of lottery in which the
20 winning chances or plays are not determined upon the basis of a
21 drawing or other act on the part of persons conducting or
22 connected with the scheme, but upon the basis of the outcome or



1 outcomes of a future contingent event or events otherwise
2 unrelated to the particular scheme.

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

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

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

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

18 SECTION 3. Chapter 712, Hawaii Revised Statutes, is
19 amended by adding a new section to part III, to be appropriately
20 designated and to read as follows:

21 "§712- Free play not a defense; when. It shall not be
22 a defense to an offense charged under this part that free play



1 was offered, if the free play was offered by mail as an
2 alternative to play via purchase of:

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

9 SECTION 4. Statutory material to be repealed is bracketed
10 and stricken. New statutory material is underscored.

11 SECTION 5. This Act shall take effect upon its approval.

12

INTRODUCED BY: Cherenek Michler



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.

