

GAMBLING MACHINES AMENDMENTS

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Michael K. McKell

Senate Sponsor: Todd Weiler

LONG TITLE

Committee Note:

The Judiciary Interim Committee recommended this bill.

General Description:

This bill modifies provisions relating to gambling.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ modifies definitions;
- ▶ clarifies that certain gambling offenses include fringe gambling; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

76-10-1101, as last amended by Laws of Utah 2012, Chapters 27 and 157

76-10-1102, as last amended by Laws of Utah 2012, Chapter 157

76-10-1103, as enacted by Laws of Utah 1973, Chapter 196

76-10-1104, as last amended by Laws of Utah 1991, Chapter 241



28 [76-10-1105](#), as enacted by Laws of Utah 1973, Chapter 196

29

30 *Be it enacted by the Legislature of the state of Utah:*

31 Section 1. Section **76-10-1101** is amended to read:

32 **76-10-1101. Definitions.**

33 As used in this part:

34 (1) "Consumer" means the same as that term is defined in Section [76-10-1230](#).

35 ~~[(+)]~~ (2) (a) "Fringe gambling" means any gambling, lottery, fringe gaming device, or
36 video gaming device ~~[which is: (i)]~~ that is given, conducted, or offered for use or sale by a
37 business in exchange for anything of value~~[, or (ii) given away]~~ or incident to the purchase of
38 ~~[other goods or services]~~ another good or service.

39 (b) "Fringe gambling" does not ~~[mean]~~ include a promotional activity that is clearly
40 ancillary to the primary activity of a business.

41 ~~[(c) Determination of whether a promotional activity is clearly ancillary under~~
42 ~~Subsection (1)(b) is by consideration of the totality of the circumstances, which may include~~
43 ~~one or more of these factors:]~~

44 ~~[(i) the manner in which the business is marketed, advertised, or promoted;]~~

45 ~~[(ii) whether and the degree to which the business provides instructions regarding the~~
46 ~~use or operation of the promotional activity, as compared to the use or operation of the goods~~
47 ~~or services sold by the business;]~~

48 ~~[(iii) the availability and terms of any free play option to engage in the promotional~~
49 ~~activity;]~~

50 ~~[(iv) whether any contest, sweepstakes, or other promotional entries provided to~~
51 ~~customers who purchase goods or services from the business provide any advantage in winning~~
52 ~~a prize over any advantage provided to participants in the promotional activity who do not~~
53 ~~purchase goods or services from the business;]~~

54 ~~[(v) whether the goods or services promoted for purchase by the business are on terms~~
55 ~~that are commercially reasonable; and]~~

56 ~~[(vi) whether any prize won by participation in the promotion may be parlayed into one~~
57 ~~or more additional opportunities to win an additional prize.]]~~

58 (3) (a) "Fringe gaming device" means a device that provides the user:

59 (i) a card, token, credit, or product in exchange for anything of value; and

60 (ii) along with the card, token, credit, or product, the opportunity to participate in a
 61 contest, game, gaming scheme, or sweepstakes with a potential return of money or something
 62 of value that is based on an element of chance and not substantially affected by a person's skill,
 63 knowledge, or dexterity.

64 (b) "Fringe gaming device" does not include a device that ~~§~~ → :

64a (i) ~~§~~ provides the user a card,

65 token, credit, or product in exchange for only the user's name, birthdate, or contact information ~~§~~ → ;

65a (ii) utilizes a mandatory electronic age verification process that:

65b (A) provides a visual warning that notifies the user that use is limited to adults 18 years
 65c of age or older; and

65d (B) electronically or mechanically requires the user to input a birthdate demonstrating
 65e that the user is not under 18 years of age before the device can be activated for play; and

65f (iii) provides a visual warning that use of the device is limited to 60 minutes and
 65g automatically terminates the user's session on the device at the expiration of the time limit ~~§~~ .

66 ~~(2)~~ (4) (a) "Gambling" means risking anything of value for a return or risking
 67 anything of value upon the outcome of a contest, game, gaming scheme, or gaming device
 68 when the return or outcome:

69 (i) is based ~~upon~~ on an element of chance ~~§~~ → , regardless of the existence of a preview
 69a or pre-reveal feature in the

69b device, contest, or game ~~§~~ ; and

70 (ii) is in accord with an agreement or understanding that someone will receive
 71 ~~something~~ anything of value in the event of a certain outcome.

72 (b) "Gambling" includes a lottery ~~[and fringe gambling]~~.

73 (c) "Gambling" does not include:

74 (i) a lawful business transaction; or

75 (ii) playing an amusement device that confers:

76 (A) only an immediate and unrecorded right of replay not exchangeable for value[-]; or

77 (B) as a reward for playing, a toy or novelty with a value of less than ~~§~~ → ~~[\$5]~~ \$50 ~~§~~ .

78 ~~(3)~~ (5) "Gambling bet" means money, checks, credit, or any other representation of
 79 value.

80 ~~(4)~~ (6) "Gambling device or record" means anything specifically designed for use in
 81 gambling or fringe gambling or used primarily for gambling or fringe gambling.

82 ~~(5)~~ (7) "Gambling proceeds" means anything of value used in gambling or fringe

83 gambling.

84 ~~[(6)]~~ (8) "Internet gambling" or "online gambling" means gambling, fringe gambling,
85 or gaming by use of:

86 (a) the Internet; or

87 (b) any mobile electronic device that allows access to data and information.

88 (9) "Internet service provider" means a person engaged in the business of
89 providing Internet access service, with the intent of making a profit, to consumers in Utah.

90 ~~[(7)]~~ (10) "Lottery" means any scheme for the disposal or distribution of property by
91 chance among persons who have paid or promised to pay any valuable consideration for the
92 chance of obtaining property, or portion of it, or for any share or any interest in property, upon
93 any agreement, understanding, or expectation that it is to be distributed or disposed of by lot or
94 chance, whether called a lottery, raffle, or gift enterprise, or by whatever name it is known.

95 (11) "Promotional activity that is clearly ancillary to the primary activity of a business"
96 means that the promotional activity:

97 (a) continues for a limited period of time;

98 (b) is related to a good or service provided by the business or the marketing or
99 advertisement of a good or service provided by the business;

100 (c) does not require a person to purchase a good or service from the business in
101 consideration for participation or an advantage in the promotional activity or any other contest,
102 game, gaming scheme, sweepstakes, or promotional activity; and

103 (d) promotes the good or service being promoted for purchase by the business on terms
104 that are commercially reasonable.

105 ~~[(8)]~~ (12) "Video gaming device" means any device that possesses all of the following
106 characteristics:

107 (a) a video display and computer mechanism for playing a game;

108 (b) the length of play of any single game is not substantially affected by the skill,
109 knowledge, or dexterity of the player;

110 (c) a meter, tracking, or recording mechanism that records or tracks any money, tokens,
111 games, or credits accumulated or remaining;

112 (d) a play option that permits a player to spend or risk varying amounts of money,
113 tokens, or credits during a single game, in which the spending or risking of a greater amount of
114 money, tokens, or credits:

115 (i) does not significantly extend the length of play time of any single game; and

116 (ii) provides for a chance of greater return of credits, games, or money; and

117 (e) an operating mechanism that, in order to function, requires inserting money, tokens,
118 or other valuable consideration ~~[in order to function]~~ other than solely the user's name,
119 birthdate, or contact information.

120 Section 2. Section **76-10-1102** is amended to read:

121 **76-10-1102. Gambling.**

122 (1) A person is guilty of gambling if the person:

123 (a) participates in gambling or fringe gambling, including any Internet or online
124 gambling;

125 (b) knowingly permits any gambling or fringe gambling to be played, conducted, or
126 dealt upon or in any real or personal property owned, rented, or under the control of the actor,
127 whether in whole or in part; or

128 (c) knowingly allows the use of any video gaming device that is:

129 (i) in any business establishment or public place; and

130 (ii) accessible for use by any person within the establishment or public place.

131 (2) Gambling is a class B misdemeanor, except that any person who is convicted two
132 or more times under this section is guilty of a class A misdemeanor.

133 (3) (a) A person is guilty of a class A misdemeanor who intentionally provides or
134 offers to provide any form of Internet or online gambling to any person in this state.

135 (b) Subsection (3)(a) does not apply to an Internet service provider [~~or~~], a hosting
136 company as defined in Section 76-10-1230, a provider of public telecommunications services
137 as defined in Section 54-8b-2, or an Internet advertising service by reason of the fact that the
138 Internet service provider, hosting company, Internet advertising service, or provider of public
139 telecommunications services:

140 (i) transmits, routes, or provides connections for material without selecting the
141 material; or

142 (ii) stores or delivers the material at the direction of a user.

143 (4) If any federal law is enacted that authorizes Internet gambling in the states and that
144 federal law provides that individual states may opt out of Internet gambling, this state shall opt
145 out of Internet gambling in the manner provided by federal law and within the time frame
146 provided by that law.

147 (5) Whether or not any federal law is enacted that authorizes Internet gambling in the
148 states, this section acts as this state's prohibition of any gambling, including Internet gambling,
149 in this state.

150 Section 3. Section 76-10-1103 is amended to read:

151 **76-10-1103. Gambling fraud.**

152 (1) A person is guilty of gambling fraud if ~~[he]~~ the person participates in gambling or
153 fringe gambling and wins or acquires to himself or herself or another any gambling proceeds
154 when ~~[he]~~ the person knows ~~[he]~~ the person has a lesser risk of losing or greater chance of
155 winning than one or more of the other participants, and the risk is not known to all participants.

156 (2) A person convicted of gambling fraud ~~[shall be]~~ is punished as in the case of theft
157 of property of like value.

158 Section 4. Section **76-10-1104** is amended to read:

159 **76-10-1104. Gambling promotion.**

160 (1) A person is guilty of gambling promotion if ~~[he]~~ the person derives or intends to
161 derive an economic benefit other than personal winnings from gambling or fringe gambling
162 and:

163 (a) ~~[he]~~ the person induces or aids another to engage in gambling or fringe gambling;

164 or

165 (b) ~~[he]~~ the person knowingly invests in, finances, owns, controls, supervises,
166 manages, or participates in any gambling or fringe gambling.

167 (2) Gambling promotion is a class B misdemeanor, ~~[provided, however]~~ except that
168 any person who is twice convicted under this section ~~[shall be]~~ is guilty of a ~~[felony of the]~~
169 third degree felony.

170 Section 5. Section **76-10-1105** is amended to read:

171 **76-10-1105. Possessing a gambling device or record.**

172 (1) A person is guilty of possessing a gambling device or record if ~~[he]~~ the person
173 knowingly possesses ~~[it with intent to use it]~~ the gambling device or record with intent to use
174 the gambling device or record in gambling or fringe gambling.

175 (2) Possession of a gambling device or record is a class B misdemeanor, ~~[provided,~~
176 ~~however,]~~ except that any person who is twice convicted under this section ~~[shall be]~~ is guilty
177 of a class A misdemeanor, and ~~[any]~~ a person who is convicted three or more times under this
178 section ~~[shall be]~~ is guilty of a ~~[felony of the]~~ third degree felony.