

Senator Karen Mayne proposes the following substitute bill:

GAMBLING MACHINE AND SWEEPSTAKES AMENDMENTS

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Karen Mayne

House Sponsor: Timothy D. Hawkes

Cosponsor: Curtis S. Bramble

LONG TITLE

General Description:

This bill modifies provisions relating to gambling.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ modifies the crime of gambling;
- ▶ increases criminal penalties for an individual convicted of a gambling offense;
- ▶ prohibits placing a fringe gaming machine into operation;
- ▶ authorizes a municipality and county to seize gambling debts, proceeds, or a fringe gaming device under certain circumstances;
- ▶ provides a cause of action for a person who suffers economic loss as a result of a fringe gaming device, video gaming device, or gambling device or record; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:



25 This bill provides a special effective date.

26 **Utah Code Sections Affected:**

27 AMENDS:

28 **32B-3-303**, as last amended by Laws of Utah 2011, Chapter 307

29 **32B-5-301**, as last amended by Laws of Utah 2019, Chapter 403

30 **32B-9-204**, as last amended by Laws of Utah 2012, Chapter 365

31 **76-10-1101**, as last amended by Laws of Utah 2019, Chapter 185

32 **76-10-1102**, as last amended by Laws of Utah 2019, Chapter 185

33 **76-10-1104**, as last amended by Laws of Utah 2019, Chapter 185

34 **76-10-1105**, as last amended by Laws of Utah 2019, Chapter 185

35 ENACTS:

35a **Ĥ→ 76-10-1101.5, Utah Code Annotated 1953 ←Ĥ**

36 **76-10-1110**, Utah Code Annotated 1953

37 **76-10-1112**, Utah Code Annotated 1953

38 **76-10-1113**, Utah Code Annotated 1953



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

41 Section 1. Section **32B-3-303** is amended to read:

42 **32B-3-303. Acts making a person subject to this part.**

43 (1) One or more of the following acts constitute a nuisance activity:

44 (a) a single felony conviction within the last two years of:

45 (i) a retail licensee; or

46 (ii) supervisory or managerial level staff of the retail licensee;

47 (b) a single conviction under Title 58, Chapter 37, Utah Controlled Substances Act:

48 (i) (A) of a retail licensee; or

49 (B) staff of the retail licensee;

50 (ii) within the last two years; and

51 (iii) made on the basis of an act that occurs on the licensed premises;

52 (c) three or more convictions of patrons of a retail licensee under Title 58, Chapter 37,

53 Utah Controlled Substances Act, if:

54 (i) the convictions are made on the basis of an act that occurs on the licensed premises;

55 and

- 56 (ii) there is evidence that the retail licensee knew or should have known of the illegal
57 activity;
- 58 (d) a single conviction within the last two years of a retail licensee or staff of the retail
59 licensee that is made on the basis of:
- 60 (i) pornographic and harmful materials:
- 61 (A) that violate Title 76, Chapter 10, Part 12, Pornographic and Harmful Materials and
62 Performances; and
- 63 (B) if the violation occurs on the licensed premises;
- 64 (ii) prostitution;
- 65 (iii) engaging in or permitting gambling, as defined and proscribed in Title 76, Chapter
66 10, Part 11, Gambling, on the licensed premises;
- 67 (iv) having any fringe gaming device, video gaming device, or gambling device or
68 record as defined [~~and proscribed by Title 76, Chapter 10, Part 11, Gambling;~~] in Section
69 76-10-1101 on the licensed premises;
- 70 (v) on the licensed premises engaging in or permitting a contest, game, gaming
71 scheme, or gaming device that requires the risking of something of value for a return or for an
72 outcome when the return or outcome is based upon an element of chance, excluding the playing
73 of an amusement device that confers only an immediate and unrecorded right of replay not
74 exchangeable for value;
- 75 (vi) a disturbance of the peace that occurs on the licensed premises; or
- 76 (vii) disorderly conduct that occurs on the licensed premises; or
- 77 (e) three or more adjudicated violations of this title within the last two years by a retail
78 licensee or by staff of the retail licensee that result in a criminal citation or an administrative
79 referral to the department relating to:
- 80 (i) the sale, offer for sale, or furnishing of an alcoholic product to a minor;
- 81 (ii) the sale, offer for sale, or furnishing of an alcoholic product to a person actually,
82 apparently, or obviously intoxicated;
- 83 (iii) the sale, offer for sale, or furnishing of an alcoholic product after the lawful hours
84 for the sale or furnishing; or
- 85 (iv) acts or conduct on the licensed premises contrary to the public welfare and morals
86 involving lewd acts or lewd entertainment prohibited by this title.

87 (2) For purposes of Subsection (1), in the case of a retail licensee that is a partnership,
88 corporation, or limited liability company, a conviction under Subsection (1)(c) includes a
89 conviction of any of the following for an offense described in Subsection (1)(c):

90 (a) a partner;

91 (b) a managing agent;

92 (c) a manager;

93 (d) an officer;

94 (e) a director;

95 (f) a stockholder who holds at least 20% of the total issued and outstanding stock of a
96 corporate retail licensee; or

97 (g) a member who owns at least 20% of a limited liability company retail licensee.

98 Section 2. Section **32B-5-301** is amended to read:

99 **32B-5-301. General operational requirements.**

100 (1) (a) A retail licensee and staff of a retail licensee shall comply with this title and the
101 rules of the commission, including the relevant part under Chapter 6, Specific Retail License
102 Act, for the specific type of retail license.

103 (b) Failure to comply as provided in Subsection (1)(a) may result in disciplinary action
104 in accordance with Chapter 3, Disciplinary Actions and Enforcement Act, against:

105 (i) a retail licensee;

106 (ii) individual staff of a retail licensee; or

107 (iii) both a retail licensee and staff of the retail licensee.

108 (2) (a) If there is a conflict between this part and the relevant part under Chapter 6,
109 Specific Retail License Act, for the specific type of retail license, the relevant part under
110 Chapter 6, Specific Retail License Act, governs.

111 (b) Notwithstanding that this part refers to "liquor" or an "alcoholic product," a retail
112 licensee may only sell, offer for sale, furnish, or allow the consumption of an alcoholic product
113 specifically authorized by the relevant part under Chapter 6, Specific Retail License Act.

114 (c) Notwithstanding that this part or the relevant part under Chapter 6, Specific Retail
115 License Act, refers to "retail licensee," staff of the retail licensee is subject to the same
116 requirement or prohibition.

117 (3) (a) A retail licensee shall display in a prominent place in the licensed premises the

118 retail license that is issued by the department.

119 (b) A retail licensee shall display in a prominent place a sign in large letters that
120 consists of text in the following order:

121 (i) a header that reads: "WARNING";

122 (ii) a warning statement that reads: "Drinking alcoholic beverages during pregnancy
123 can cause birth defects and permanent brain damage for the child.";

124 (iii) a statement in smaller font that reads: "Call the Utah Department of Health at
125 [insert most current toll-free number] with questions or for more information.";

126 (iv) a header that reads: "WARNING"; and

127 (v) a warning statement that reads: "Driving under the influence of alcohol or drugs is a
128 serious crime that is prosecuted aggressively in Utah."

129 (c) (i) The text described in Subsections (3)(b)(i) through (iii) shall be in a different
130 font style than the text described in Subsections (3)(b)(iv) and (v).

131 (ii) The warning statements in the sign described in Subsection (3)(b) shall be in the
132 same font size.

133 (d) The Department of Health shall work with the commission and department to
134 facilitate consistency in the format of a sign required under this section.

135 (4) A retail licensee may not on the licensed premises:

136 (a) engage in or permit any form of gambling~~[-as defined and proscribed in Title 76,~~
137 ~~Chapter 10, Part 11, Gambling]~~, as defined in Section [76-10-1101](#), or fringe gambling, as
138 defined in Section [76-10-1101](#);

139 (b) have any fringe gaming device, video gaming device, or gambling device or record
140 as defined [and proscribed by Title 76, Chapter 10, Part 11, Gambling] in Section [76-10-1101](#);
141 or

142 (c) engage in or permit a contest, game, gaming scheme, or gaming device that requires
143 the risking of something of value for a return or for an outcome when the return or outcome is
144 based upon an element of chance, excluding the playing of an amusement device that confers
145 only an immediate and unrecorded right of replay not exchangeable for value.

146 (5) A retail licensee may not knowingly allow a person on the licensed premises to, in
147 violation of Title 58, Chapter 37, Utah Controlled Substances Act, or Chapter 37a, Utah Drug
148 Paraphernalia Act:

149 (a) sell, distribute, possess, or use a controlled substance, as defined in Section
150 58-37-2; or

151 (b) use, deliver, or possess with the intent to deliver drug paraphernalia, as defined in
152 Section 58-37a-3.

153 (6) Upon the presentation of credentials, at any time during which a retail licensee is
154 open for the transaction of business, the retail licensee shall immediately:

155 (a) admit a commissioner, authorized department employee, or law enforcement officer
156 to the retail licensee's premises; and

157 (b) permit, without hindrance or delay, the person described in Subsection (6)(a) to
158 inspect completely:

159 (i) the entire premises of the retail licensee; and

160 (ii) the records of the retail licensee.

161 (7) An individual may not consume an alcoholic product on the licensed premises of a
162 retail licensee on any day during the period:

163 (a) beginning one hour after the time of day that the period during which a retail
164 licensee may not sell, offer for sale, or furnish an alcoholic product on the licensed premises
165 begins; and

166 (b) ending at the time specified in the relevant part under Chapter 6, Specific Retail
167 License Act, for the type of retail license when the retail licensee may first sell, offer for sale,
168 or furnish an alcoholic product on the licensed premises on that day.

169 (8) (a) An employee of a retail licensee who sells, offers for sale, or furnishes an
170 alcoholic product to a patron shall wear an identification badge.

171 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
172 commission shall make rules related to the requirement described in Subsection (8)(a).

173 Section 3. Section **32B-9-204** is amended to read:

174 **32B-9-204. General operational requirements for an event permit.**

175 (1) (a) An event permittee and a person involved in the storage, sale, offer for sale, or
176 furnishing of an alcoholic product at an event for which an event permit is issued, shall comply
177 with this title and rules of the commission.

178 (b) Failure to comply as provided in Subsection (1)(a):

179 (i) may result in:

180 (A) disciplinary action in accordance with Chapter 3, Disciplinary Actions and
181 Enforcement Act, against:

182 (I) an event permittee;

183 (II) a person involved in the storage, sale, offer for sale, or furnishing of an alcoholic
184 product at the event; or

185 (III) any combination of the persons listed in this Subsection (1)(b);

186 (B) immediate revocation of the event permit;

187 (C) forfeiture of a bond; or

188 (D) immediate seizure of an alcoholic product present at the event; and

189 (ii) if the event permit is revoked, disqualifies the event permittee from applying for an
190 event permit for a period of three years from the date of revocation of the event permit.

191 (c) An alcoholic product seized under this Subsection (1) shall be returned to the event
192 permittee after an event if forfeiture proceedings are not instituted under Section 32B-4-206.

193 (2) (a) If there is a conflict between this part and the relevant part under this chapter for
194 the specific type of special use permit held by the special use permittee, the relevant part
195 governs.

196 (b) Notwithstanding that this part may refer to "liquor" or an "alcoholic product," an
197 event permittee may only sell, offer for sale, or furnish an alcoholic product specified in the
198 relevant part under this chapter for the type of event permit that is held by the event permittee.

199 (c) Notwithstanding that this part or the relevant part under this chapter for the type of
200 event permit held by an event permittee refers to "event permittee," a person involved in the
201 storage, sale, offer for sale, or furnishing of an alcoholic product at the event for which the
202 event permit is issued is subject to the same requirement or prohibition.

203 (3) An event permittee shall display a copy of the event permit in a prominent place in
204 the area in which an alcoholic product is sold, offered for sale, furnished, and consumed.

205 (4) An event permittee may not on the premises of the event:

206 (a) engage in or allow any form of gambling~~[-, as defined and proscribed in Title 76,~~
207 ~~Chapter 10, Part 11, Gambling]~~, as defined in Section 76-10-1101, or fringe gambling, as
208 defined in Section 76-10-1101;

209 (b) have any fringe gaming device, video gaming device, or gaming device or record
210 as defined [~~and proscribed by Title 76, Chapter 10, Part 11, Gambling]~~ in Section 76-10-1101;

211 or

212 (c) engage in or permit a contest, game, gaming scheme, or gaming device that requires
213 the risking of something of value for a return or for an outcome when the return or outcome is
214 based upon an element of chance, excluding the playing of an amusement device that confers
215 only an immediate and unrecorded right of replay not exchangeable for value.

216 (5) An event permittee may not knowingly allow a person at an event to, in violation of
217 Title 58, Chapter 37, Utah Controlled Substances Act, or Chapter 37a, Utah Drug
218 Paraphernalia Act:

219 (a) sell, distribute, possess, or use a controlled substance, as defined in Section
220 58-37-2; or

221 (b) use, deliver, or possess with the intent to deliver drug paraphernalia, as defined in
222 Section 58-37a-3.

223 (6) An event permittee may not sell, offer for sale, or furnish beer except beer
224 purchases from:

225 (a) a beer wholesaler licensee;

226 (b) a beer retailer; or

227 (c) a small brewer.

228 (7) An event permittee may not store, sell, offer for sale, furnish, or allow the
229 consumption of an alcoholic product purchased for an event in a location other than that
230 described in the application and designated on the event permit unless the event permittee first
231 applies for and receives approval from the director, with the approval of the Compliance,
232 Licensing, and Enforcement Subcommittee, for a change of location.

233 (8) (a) Subject to Subsection (8)(b), an event permittee may sell, offer for sale, or
234 furnish beer for on-premise consumption:

235 (i) in an open original container; and

236 (ii) in a container on draft.

237 (b) An event permittee may not sell, offer for sale, or furnish beer sold pursuant to
238 Subsection (8)(a):

239 (i) in a size of container that exceeds two liters; or

240 (ii) to an individual patron in a size of container that exceeds one liter.

241 (9) (a) An event permittee may not sell or offer for sale an alcoholic product at less

242 than the cost of the alcoholic product to the event permittee.

243 (b) An event permittee may not sell an alcoholic product at a discount price on any date
244 or at any time.

245 (c) An event permittee may not sell or offer for sale an alcoholic product at a price that
246 encourages overconsumption or intoxication.

247 (d) An event permittee may not sell or offer for sale an alcoholic product at a special or
248 reduced price for only certain hours of the day of an event.

249 (e) An event permittee may not sell, offer for sale, or furnish more than one alcoholic
250 product at the price of a single alcoholic product.

251 (f) An event permittee, or a person operating, selling, offering, or furnishing an
252 alcoholic product under an event permit, may not sell, offer for sale, or furnish an indefinite or
253 unlimited number of alcoholic products during a set period for a fixed price, unless:

254 (i) the alcoholic product is served to a patron at a seated event;

255 (ii) food is available whenever the alcoholic product is sold, offered for sale, or
256 furnished; and

257 (iii) no person advertises that at the event a person may be sold or furnished an
258 indefinite or unlimited number of alcoholic products during a set period for a fixed price.

259 (g) An event permittee may not engage in a public promotion involving or offering a
260 free alcoholic product to the general public.

261 (10) An event permittee may not sell, offer for sale, or furnish an alcoholic product to:

262 (a) a minor;

263 (b) a person actually, apparently, or obviously intoxicated;

264 (c) a known interdicted person; or

265 (d) a known habitual drunkard.

266 (11) (a) An alcoholic product is considered under the control of the event permittee
267 during an event.

268 (b) A patron at an event may not bring an alcoholic product onto the premises of the
269 event.

270 (12) An event permittee may not permit a patron to carry from the premises an open
271 container that:

272 (a) is used primarily for drinking purposes; and

273 (b) contains an alcoholic product.

274 (13) (a) A person involved in the storage, sale, or furnishing of an alcoholic product at
275 an event is considered under the supervision and direction of the event permittee.

276 (b) A person involved in the sale, offer for sale, or furnishing of an alcoholic product at
277 an event may not, while on duty:

278 (i) consume an alcoholic product; or

279 (ii) be intoxicated.

280 (14) A minor may not handle, sell, offer for sale, or furnish an alcoholic product at an
281 event.

282 (15) The location specified in an event permit may not be changed without prior
283 written approval of the commission.

284 (16) An event permittee may not sell, transfer, assign, exchange, barter, give, or
285 attempt in any way to dispose of the event permit to another person whether for monetary gain
286 or not.

287 (17) (a) An event permittee may not sell, offer for sale, furnish, or allow the
288 consumption of an alcoholic product during a period that:

289 (i) begins at 1 a.m.; and

290 (ii) ends at 9:59 a.m.

291 (b) This Subsection (17) does not preclude a local authority from being more restrictive
292 with respect to the hours of sale, offer for sale, furnishing, or consumption of an alcoholic
293 product at an event.

294 (18) A patron may have no more than one alcoholic product of any kind at a time
295 before the patron.

296 (19) (a) An event permittee shall display, in a prominent place, a sign in large letters
297 that consists of text in the following order:

298 (i) a header that reads: "WARNING";

299 (ii) a warning statement that reads: "Drinking alcoholic beverages during pregnancy
300 can cause birth defects and permanent brain damage for the child.";

301 (iii) a statement in smaller font that reads: "Call the Utah Department of Health at
302 [insert most current toll-free number] with questions or for more information.";

303 (iv) a header that reads: "WARNING"; and

304 (v) a warning statement that reads: "Driving under the influence of alcohol or drugs is a
305 serious crime that is prosecuted aggressively in Utah."

306 (b) (i) The text described in Subsections (19)(a)(i) through (iii) shall be in a different
307 font style than the text described in Subsections (19)(a)(iv) and (v).

308 (ii) The warning statements in the sign described in Subsection (19)(a) shall be in the
309 same font size.

310 (c) The Department of Health shall work with the commission and department to
311 facilitate consistency in the format of a sign required under this section.

312 Section 4. Section **76-10-1101** is amended to read:

313 **76-10-1101. Definitions.**

314 As used in this part:

315 (1) (a) "Amusement device" means a game that:

316 (i) is activated by a coin, token, or other object of consideration or value; and

317 (ii) does not provide the opportunity to:

318 (A) enter into a sweepstakes, lottery, or other gambling event; or

319 (B) receive any form of consideration or value, except an appropriate reward.

320 (b) "Amusement device" includes:

321 (i) a video game;

322 (ii) a driving simulator;

323 (iii) an electronic game;

324 (iv) a claw machine;

325 (v) a bowling game;

326 (vi) a shuffleboard game;

327 (vii) a skee-ball game;

328 (viii) a pool table;

329 (ix) a pinball machine;

330 (x) a target machine; and

331 (xi) a baseball machine.

332 (2) "Amusement facility" means a facility that:

333 (a) is operated primarily for the purpose of providing amusement or entertainment to

334 customers;

335 (b) is located on property that is open to customers for the purpose of providing
336 customers with an opportunity to use an amusement device;

337 (c) receives a substantial amount of the facility's revenue from the operation of
338 amusement devices; and

339 (d) does not provide an opportunity for, or a machine or device that enables, gambling
340 or fringe gambling.

341 (3) (a) "Appropriate reward" means a reward that:

342 (i) an individual receives as a result of the individual's participation in or use of an
343 amusement device; and

344 (ii) provides:

345 (A) full and adequate return for money, a token, or other consideration or value
346 invested into the amusement device;

347 (B) an immediate and unrecorded ability to replay a game featured on an amusement
348 device that is not exchangeable for value;

349 (C) a toy, novelty, or other non-monetary prize with a value of less than \$100 as a
350 reward for playing; or

351 (D) tickets or credits that are redeemable for a toy, novelty, or non-monetary prize at an
352 amusement facility, or at any franchise or chain of the amusement facility, where the
353 amusement device is located.

354 (b) "Appropriate reward" does not include money, a gift certificate, a gift card, credit to
355 be used in a retail store, or other form of monetary compensation or reward.

356 [(+)] (4) "Consumer" means the same as that term is defined in Section 76-10-1230.

357 (5) "Enter or entry" means an act or process by which an individual becomes eligible to
358 receive a prize offered for participation in any form of sweepstakes, game, or contest.

359 [(2)] (6) (a) "Fringe gambling" means any de facto form of gambling, lottery, fringe
360 gaming device, or video gaming device that is given, conducted, or offered for use or sale by a
361 business in exchange for anything of value or incident to the purchase of another good or
362 service.

363 (b) "Fringe gambling" does not include;

364 (i) a promotional activity that is clearly ancillary to the primary activity of a
365 business[-]; or

366 (ii) use of an amusement device or vending machine.

367 ~~[(3)]~~ (7) (a) "Fringe gaming device" means a [device that provides the user]

368 mechanically, electrically, or electronically operated machine or device that:

369 (i) is not an amusement device or a vending machine;

370 (ii) is capable of displaying or otherwise presenting information on a screen or through
371 any other mechanism; and

372 ~~[(i) a card, token, credit, or product in exchange for anything of value; and]~~

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

377 ~~[(b) "Fringe gaming device" does not include a device that provides the user a card,~~
378 ~~token, credit, or product in exchange for only the user's name, birthdate, or contact~~
379 ~~information.]~~

380 (iii) provides the user with a card, token, credit, gift certificate, product, or opportunity
381 to participate in a contest, game, gaming scheme, or sweepstakes with a potential return of
382 money or other prize.

383 (b) "Fringe gaming device" includes a machine or device similar to a machine or
384 device described in Subsection (7)(a) that seeks to avoid application or circumvent this part or
385 Article VI, Section 27, of the Utah Constitution.

386 ~~[(4)]~~ (8) (a) "Gambling" means risking anything of value for a return or risking
387 anything of value upon the outcome of a contest, game, gaming scheme, or gaming device
388 when the return or outcome:

389 (i) is based on an element of chance, regardless of:

390 (A) the existence of a preview or pre-reveal feature in the device, contest, or game;
391 [and] or

392 (B) whether the preview or pre-reveal feature described in Subsection (8)(a)(i)(A)
393 allows users to see individual or successive outcomes; and

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

396 (b) "Gambling" includes a lottery.

397 (c) "Gambling" does not include:

398 (i) a lawful business transaction; or

399 (ii) playing use of an amusement device ~~[that confers:]~~.

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

401 ~~[(B) as a reward for playing, a toy or novelty with a value of less than \$10.]~~

402 ~~[(5)]~~ (9) "Gambling bet" means money, checks, credit, or any other representation of
403 value.

404 ~~[(6)]~~ (10) "Gambling device or record" means anything specifically designed for use in
405 gambling or fringe gambling or used primarily for gambling or fringe gambling.

406 ~~[(7)]~~ (11) "Gambling proceeds" means anything of value used in gambling or fringe
407 gambling.

408 ~~[(8)]~~ (12) "Internet gambling" or "online gambling" means gambling, fringe gambling,
409 or gaming by use of:

410 (a) the Internet; or

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

412 ~~[(9)]~~ (13) "Internet service provider" means a person engaged in the business of
413 providing Internet access service, with the intent of making a profit, to consumers in Utah.

414 ~~[(10)]~~ (14) "Lottery" means any scheme for the disposal or distribution of property by
415 chance among persons who have paid or promised to pay any valuable consideration for the
416 chance of obtaining property, or portion of it, or for any share or any interest in property, upon
417 any agreement, understanding, or expectation that it is to be distributed or disposed of by lot or
418 chance, whether called a lottery, raffle, or gift enterprise, or by whatever name it is known.

419 (15) "Prize" means a gift, award, gratuity, good, service, credit, or anything else of
420 value that may be or is transferred to an individual or placed on an account or other record with
421 the intent to be transferred to an individual.

422 ~~[(11)]~~ (16) "Promotional activity that is clearly ancillary to the primary activity of a
423 business" means ~~[that the]~~ a promotional activity that:

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

425 (b) is related to a good or service ordinarily provided by ~~[the]~~ a business or the
426 marketing or advertisement of a good or service ordinarily provided by the business;

427 (c) does not require a person to purchase a good or service from the business in

428 consideration for participation or an advantage in the promotional activity or any other contest,
429 game, gaming scheme, sweepstakes, or promotional activity; [~~and~~]

430 (d) promotes [~~the~~] a good or service [~~being promoted for purchase by the business~~]
431 described in Subsection (16)(b) on terms that are commercially reasonable[-]; and

432 (e) does not, through use of a machine or device:

433 (i) simulate a gambling environment;

434 (ii) require the purchase of something of value to participate in the promotional activity
435 that is not regularly used, purchased, or redeemed by users of the machine or device;

436 (iii) provide a good or service described in Subsection (16)(b):

437 (A) in a manner in which the person acquiring the good or service is unable to
438 immediately acquire, redeem, or otherwise use the good or service after the time of purchase;

439 or

440 (B) at a value less than the full value of the good or service;

441 (iv) appear or operate in a manner similar to a machine or device that is normally found
442 in a casino for the purpose of gambling;

443 (v) provide an entertaining display, designed to appeal to an individual's senses, that
444 promotes actual or simulated game play that is similar in appearance or function to gambling,
445 including:

446 (A) a video playing card game, including a video poker game;

447 (B) a video bingo game;

448 (C) a video craps game;

449 (D) a video keno game;

450 (E) a video lotto game;

451 (F) an 8-liner machine;

452 (G) a Pot O' Gold game;

453 (H) a video game involving a random or chance matching of pictures, words, numbers,
454 or symbols; or

455 (I) a video game that reveals a prize as the game is played; or

456 (vi) otherwise create a pretextual transaction to facilitate a contest, game, gaming
457 scheme, or sweepstakes in an attempt to circumvent the requirements of this part or Article VI,
458 Section 27, of the Utah Constitution.

459 (17) "Skill-based game" means a game, played on a machine or device, the outcome of
 460 which is based, in whole or in part, on the skill of the player, regardless of whether a degree of
 461 chance is involved.

462 (18) "Sweepstakes" means a game, advertising scheme, marketing scheme, or other
 463 promotion:

464 (a) that an individual may enter with or without payment of any consideration;

465 (b) that qualifies the person to win a prize; and

466 (c) the result of which is based on chance.

467 (19) "Vending machine" means a device:

468 (a) that dispenses merchandise in exchange for money or any other item of value;

469 (b) that provides full and adequate return of the value deposited;

470 (c) through which the return of value is not conditioned on an element of chance or
 471 skill; and

472 (d) (i) does not include a promotional activity; or

473 (ii) includes a promotional activity that is clearly ancillary to the primary activity of a
 474 business.

475 ~~[(12)]~~ (20) "Video gaming device" means [any] a device that [possesses all] includes
 476 all of the following [characteristics]:

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

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

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

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

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

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

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

489a ~~Ĥ~~→Section 5. Section 76-10-1101.5 is enacted to read:

489b 76-10-1101.5. General culpability requirement applicable.

489c **Nothing in this part preempts or makes inapplicable the provisions of Title 76, Chapter**

489d **2, Part 1, Culpability Generally.** ←~~Ĥ~~

490 Section ~~H~~→ [5] 6 ←~~H~~ . Section 76-10-1102 is amended to read:

491 **76-10-1102. Gambling.**

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

493 (a) participates in gambling or fringe gambling, including any Internet or online
494 gambling;

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

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

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

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

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

503 (3) (a) A person is guilty of a ~~[class A misdemeanor]~~ third degree felony who
504 intentionally provides or offers to provide any form of Internet or online gambling to any
505 person in this state.

506 (b) Subsection (3)(a) does not apply to an Internet service provider, a hosting company
507 as defined in Section 76-10-1230, a provider of public telecommunications services as defined
508 in Section 54-8b-2, or an Internet advertising service by reason of the fact that the Internet
509 service provider, hosting company, Internet advertising service, or provider of public
510 telecommunications services:

511 (i) transmits, routes, or provides connections for material without selecting the
512 material; or

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

514 (4) If any federal law ~~[is enacted that]~~ authorizes Internet gambling in the states and
515 that federal law provides that individual states may opt out of Internet gambling, this state shall
516 opt out of Internet gambling in the manner provided by federal law and within the time frame
517 provided by that law.

518 (5) ~~[Whether or not any]~~ Regardless of whether a federal law is enacted that authorizes
519 Internet gambling in the states, this section acts as this state's prohibition of any gambling,
520 including Internet gambling, in this state.

521 Section 6. Section **76-10-1104** is amended to read:

522 **76-10-1104. Gambling promotion.**

523 (1) A person is guilty of gambling promotion if the person derives or intends to derive
524 an economic benefit other than personal winnings from gambling or fringe gambling and:

525 (a) the person induces or aids another to engage in gambling or fringe gambling; or

526 (b) the person knowingly invests in, finances, owns, controls, supervises, manages, or
527 participates in any gambling or fringe gambling.

528 (2) Gambling promotion is a class [B] A misdemeanor, except that any person who is
529 twice convicted under this section is guilty of a third degree felony.

530 Section 7. Section **76-10-1105** is amended to read:

531 **76-10-1105. Possessing a gambling device or record.**

532 (1) A person is guilty of possessing a gambling device or record if the person
533 knowingly possesses the gambling device or record with intent to use the gambling device or
534 record in gambling or fringe gambling.

535 (2) Possession of a gambling device or record is a class [B] A misdemeanor, except
536 that any person who is [~~twice~~] convicted two or more times under this section is [~~guilty of a~~
537 ~~class A misdemeanor, and a person who is convicted three or more times under this section is~~
538 guilty of a third degree felony.

539 Section 8. Section **76-10-1110** is enacted to read:

540 **76-10-1110. Fringe gaming devices.**

541 (1) Notwithstanding any other provision in Title 76, Chapter 10, Offenses Against
542 Public Health, Safety, Welfare, and Morals, it is unlawful for any person to derive or intend to
543 derive an economic benefit from a fringe gaming device by:

544 (a) permitting a fringe gaming device to be located on or in any real or personal
545 property owned, rented, or under the control of the person; or

546 (b) allowing individual or public access or use of a fringe gaming device as part of any
547 business owned or operated by the person;

548 (c) inducing or aiding a person to use a fringe gaming device;

549 (d) investing in, financing, owning, controlling, or otherwise managing a fringe gaming
550 device; or

551 (e) possessing a fringe gaming device with the intent to use or allow another to use the

552 fringe gaming device.

553 (2) Subsection (1) applies regardless of whether the fringe gaming device:

554 (a) is server-based;

555 (b) uses a simulated game terminal as a representation of a prize associated with the

556 results of a sweepstakes entry;

557 (c) uses a simulated game to influence or determine the result of the simulated game or

558 the value of a prize;

559 (d) selects the winner of a prize from a predetermined or finite pool of entries;

560 (e) includes a pre-reveal feature;

561 (f) predetermines a prize and reveals the prize at the time a sweepstakes entry result is

562 revealed;

563 (g) requires deposit of any money, coin, token, or gift certificate, or the use of a credit

564 card, debit card, prepaid card, or any other method of payment to activate the device;

565 (h) requires direct payment into the machine or device or remote activation of the

566 device;

567 (i) requires a purchase of a related product regardless of whether the product has

568 legitimate value;

569 (j) reveals the prize incrementally, regardless of whether a prize is awarded; or

570 (k) includes a skill-based game.

571 (3) Each violation of this section is a separate offense.

572 (4) A person who violates this section is guilty of:

573 (a) a class A misdemeanor for the first offense; or

574 (b) a third degree felony for a subsequent offense.

575 Section 9. Section **76-10-1112** is enacted to read:

576 **76-10-1112. Local control.**

577 (1) Nothing in this part preempts or otherwise limits the authority of a county or

578 municipality to enact a local ordinance related to gambling or fringe gambling.

579 (2) In accordance with Title 24, Forfeiture and Disposition of Property Act, a county or

580 municipality may seize gambling debts, gambling proceeds, or fringe gaming devices that are

581 reasonably identifiable as being obtained or provided in violation of this part or a local

582 ordinance.

583 Section 10. Section **76-10-1113** is enacted to read:

584 **76-10-1113. Cause of action.**

585 (1) An individual who suffers economic loss as a result of a fringe gaming device,
586 video gaming device, or gambling device or record may bring a cause of action against a
587 person who operates or receives revenue from the fringe gaming device, video gaming device,
588 or gambling device or record to recover damages, costs, and attorney fees.

589 (2) An individual who brings suit under Subsection (1) may recover twice the amount
590 of the economic loss described in Subsection (1).

591 Section 11. **Effective date.**

592 If approved by two-thirds of all the members elected to each house, this bill takes effect
593 upon approval by the governor, or the day following the constitutional time limit of Utah
594 Constitution, Article VII, Section 8, without the governor's signature, or in the case of a veto,
595 the date of veto override.