

GAMBLING MACHINE AND SWEEPSTAKES AMENDMENTS

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Karen Mayne

House Sponsor: _____

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:

This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:

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



- 28 **32B-5-301**, as last amended by Laws of Utah 2019, Chapter 403
- 29 **32B-9-204**, as last amended by Laws of Utah 2012, Chapter 365
- 30 **76-10-1101**, as last amended by Laws of Utah 2019, Chapter 185
- 31 **76-10-1102**, as last amended by Laws of Utah 2019, Chapter 185
- 32 **76-10-1104**, as last amended by Laws of Utah 2019, Chapter 185
- 33 **76-10-1105**, as last amended by Laws of Utah 2019, Chapter 185

34 ENACTS:

- 35 **76-10-1110**, Utah Code Annotated 1953
- 36 **76-10-1112**, Utah Code Annotated 1953
- 37 **76-10-1113**, Utah Code Annotated 1953



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

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

41 **32B-3-303. Acts making a person subject to this part.**

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

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

44 (i) a retail licensee; or

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

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

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

48 (B) staff of the retail licensee;

49 (ii) within the last two years; and

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

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

52 Utah Controlled Substances Act, if:

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

54 and

55 (ii) there is evidence that the retail licensee knew or should have known of the illegal
56 activity;

57 (d) a single conviction within the last two years of a retail licensee or staff of the retail
58 licensee that is made on the basis of:

- 59 (i) pornographic and harmful materials:
- 60 (A) that violate Title 76, Chapter 10, Part 12, Pornographic and Harmful Materials and
- 61 Performances; and
- 62 (B) if the violation occurs on the licensed premises;
- 63 (ii) prostitution;
- 64 (iii) engaging in or permitting gambling, as defined and proscribed in Title 76, Chapter
- 65 10, Part 11, Gambling, on the licensed premises;
- 66 (iv) having any fringe gaming device, video gaming device, or gambling device or
- 67 record as defined [~~and proscribed by Title 76, Chapter 10, Part 11, Gambling;~~] in Section
- 68 76-10-1101 on the licensed premises;
- 69 (v) on the licensed premises engaging in or permitting a contest, game, gaming
- 70 scheme, or gaming device that requires the risking of something of value for a return or for an
- 71 outcome when the return or outcome is based upon an element of chance, excluding the playing
- 72 of an amusement device that confers only an immediate and unrecorded right of replay not
- 73 exchangeable for value;
- 74 (vi) a disturbance of the peace that occurs on the licensed premises; or
- 75 (vii) disorderly conduct that occurs on the licensed premises; or
- 76 (e) three or more adjudicated violations of this title within the last two years by a retail
- 77 licensee or by staff of the retail licensee that result in a criminal citation or an administrative
- 78 referral to the department relating to:
 - 79 (i) the sale, offer for sale, or furnishing of an alcoholic product to a minor;
 - 80 (ii) the sale, offer for sale, or furnishing of an alcoholic product to a person actually,
 - 81 apparently, or obviously intoxicated;
 - 82 (iii) the sale, offer for sale, or furnishing of an alcoholic product after the lawful hours
 - 83 for the sale or furnishing; or
 - 84 (iv) acts or conduct on the licensed premises contrary to the public welfare and morals
 - 85 involving lewd acts or lewd entertainment prohibited by this title.
- 86 (2) For purposes of Subsection (1), in the case of a retail licensee that is a partnership,
- 87 corporation, or limited liability company, a conviction under Subsection (1)(c) includes a
- 88 conviction of any of the following for an offense described in Subsection (1)(c):
 - 89 (a) a partner;

- 90 (b) a managing agent;
- 91 (c) a manager;
- 92 (d) an officer;
- 93 (e) a director;
- 94 (f) a stockholder who holds at least 20% of the total issued and outstanding stock of a
- 95 corporate retail licensee; or
- 96 (g) a member who owns at least 20% of a limited liability company retail licensee.

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

98 **32B-5-301. General operational requirements.**

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

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

- 104 (i) a retail licensee;
- 105 (ii) individual staff of a retail licensee; or
- 106 (iii) both a retail licensee and staff of the retail licensee.

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

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

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

116 (3) (a) A retail licensee shall display in a prominent place in the licensed premises the
117 retail license that is issued by the department.

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

- 120 (i) a header that reads: "WARNING";

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

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

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

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

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

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

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

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

135 (a) engage in or permit any form of gambling, as defined and proscribed in Title 76,
136 Chapter 10, Part 11, Gambling;

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

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

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

147 (a) sell, distribute, possess, or use a controlled substance, as defined in Section
148 58-37-2; or

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

151 (6) Upon the presentation of credentials, at any time during which a retail licensee is

152 open for the transaction of business, the retail licensee shall immediately:

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

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

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

158 (ii) the records of the retail licensee.

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

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

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

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

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

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

172 **32B-9-204. General operational requirements for an event permit.**

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

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

177 (i) may result in:

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

180 (I) an event permittee;

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

183 (III) any combination of the persons listed in this Subsection (1)(b);
184 (B) immediate revocation of the event permit;
185 (C) forfeiture of a bond; or
186 (D) immediate seizure of an alcoholic product present at the event; and
187 (ii) if the event permit is revoked, disqualifies the event permittee from applying for an
188 event permit for a period of three years from the date of revocation of the event permit.
189 (c) An alcoholic product seized under this Subsection (1) shall be returned to the event
190 permittee after an event if forfeiture proceedings are not instituted under Section [32B-4-206](#).
191 (2) (a) If there is a conflict between this part and the relevant part under this chapter for
192 the specific type of special use permit held by the special use permittee, the relevant part
193 governs.
194 (b) Notwithstanding that this part may refer to "liquor" or an "alcoholic product," an
195 event permittee may only sell, offer for sale, or furnish an alcoholic product specified in the
196 relevant part under this chapter for the type of event permit that is held by the event permittee.
197 (c) Notwithstanding that this part or the relevant part under this chapter for the type of
198 event permit held by an event permittee refers to "event permittee," a person involved in the
199 storage, sale, offer for sale, or furnishing of an alcoholic product at the event for which the
200 event permit is issued is subject to the same requirement or prohibition.
201 (3) An event permittee shall display a copy of the event permit in a prominent place in
202 the area in which an alcoholic product is sold, offered for sale, furnished, and consumed.
203 (4) An event permittee may not on the premises of the event:
204 (a) engage in or allow any form of gambling, as defined and proscribed in Title 76,
205 Chapter 10, Part 11, Gambling;
206 (b) have any fringe gaming device, video gaming device, or gaming device or record
207 as defined [~~and proscribed by Title 76, Chapter 10, Part 11, Gambling~~] in Section [76-10-1101](#);
208 or
209 (c) engage in or permit a contest, game, gaming scheme, or gaming device that requires
210 the risking of something of value for a return or for an outcome when the return or outcome is
211 based upon an element of chance, excluding the playing of an amusement device that confers
212 only an immediate and unrecorded right of replay not exchangeable for value.
213 (5) An event permittee may not knowingly allow a person at an event to, in violation of

214 Title 58, Chapter 37, Utah Controlled Substances Act, or Chapter 37a, Utah Drug
215 Paraphernalia Act:

216 (a) sell, distribute, possess, or use a controlled substance, as defined in Section
217 58-37-2; or

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

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

222 (a) a beer wholesaler licensee;

223 (b) a beer retailer; or

224 (c) a small brewer.

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

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

232 (i) in an open original container; and

233 (ii) in a container on draft.

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

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

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

238 (9) (a) An event permittee may not sell or offer for sale an alcoholic product at less
239 than the cost of the alcoholic product to the event permittee.

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

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

244 (d) An event permittee may not sell or offer for sale an alcoholic product at a special or

245 reduced price for only certain hours of the day of an event.

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

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

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

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

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

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

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

259 (a) a minor;

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

261 (c) a known interdicted person; or

262 (d) a known habitual drunkard.

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

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

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

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

270 (b) contains an alcoholic product.

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

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

275 (i) consume an alcoholic product; or

276 (ii) be intoxicated.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

310 **76-10-1101. Definitions.**

311 As used in this part:

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

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

314 (ii) does not provide the opportunity to:

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

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

317 (b) "Amusement device" includes:

318 (i) a video game;

319 (ii) a driving simulator;

320 (iii) an electronic game;

321 (iv) a claw machine;

322 (v) a bowling game;

323 (vi) a shuffleboard game;

324 (vii) a skee-ball game;

325 (viii) a pool table;

326 (ix) a pinball machine;

327 (x) a target machine; and

328 (xi) a baseball machine.

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

330 (a) is operated primarily for the purpose of providing amusement or entertainment to
331 customers;

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

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

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

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

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

341 (ii) provides:

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

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

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

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

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

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

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

356 ~~[(2)]~~ (6) (a) "Fringe gambling" means any de facto form of gambling, lottery, fringe
357 gaming device, or video gaming device that is given, conducted, or offered for use or sale by a
358 business in exchange for anything of value or incident to the purchase of another good or
359 service.

360 (b) "Fringe gambling" does not include:

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

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

364 ~~[(3)]~~ (7) (a) "Fringe gaming device" means a ~~[device that provides the user]~~
365 mechanically, electrically, or electronically operated machine or device that:

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

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

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

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

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

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

383 ~~[(4)]~~ (8) (a) "Gambling" means risking anything of value for a return or risking
 384 anything of value upon the outcome of a contest, game, gaming scheme, or gaming device
 385 when the return or outcome:

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

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

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

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

393 (b) "Gambling" includes a lottery.

394 (c) "Gambling" does not include:

395 (i) a lawful business transaction; or

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

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

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

399 ~~[(5)]~~ (9) "Gambling bet" means money, checks, credit, or any other representation of

400 value.

401 ~~[(6)]~~ (10) "Gambling device or record" means anything specifically designed for use in
 402 gambling or fringe gambling or used primarily for gambling or fringe gambling.

403 ~~[(7)]~~ (11) "Gambling proceeds" means anything of value used in gambling or fringe
 404 gambling.

405 ~~[(8)]~~ (12) "Internet gambling" or "online gambling" means gambling, fringe gambling,
 406 or gaming by use of:

407 (a) the Internet; or

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

409 ~~[(9)]~~ (13) "Internet service provider" means a person engaged in the business of
 410 providing Internet access service, with the intent of making a profit, to consumers in Utah.

411 ~~[(10)]~~ (14) "Lottery" means any scheme for the disposal or distribution of property by
 412 chance among persons who have paid or promised to pay any valuable consideration for the
 413 chance of obtaining property, or portion of it, or for any share or any interest in property, upon
 414 any agreement, understanding, or expectation that it is to be distributed or disposed of by lot or
 415 chance, whether called a lottery, raffle, or gift enterprise, or by whatever name it is known.

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

419 ~~[(11)]~~ (16) "Promotional activity that is clearly ancillary to the primary activity of a
 420 business" means ~~[that the]~~ a promotional activity that:

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

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

424 (c) does not require a person to purchase a good or service from the business in
 425 consideration for participation or an advantage in the promotional activity or any other contest,
 426 game, gaming scheme, sweepstakes, or promotional activity; ~~[and]~~

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

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

430 (i) simulate a gambling environment;

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

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

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

436 or

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

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

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

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

443 (B) a video bingo game;

444 (C) a video craps game;

445 (D) a video keno game;

446 (E) a video lotto game;

447 (F) an 8-liner machine;

448 (G) a Pot O' Gold game;

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

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

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

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

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

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

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

- 462 (c) the result of which is based on chance.
463 (19) "Vending machine" means a device:
464 (a) that dispenses merchandise in exchange for money or other item of value;
465 (b) that provides full and adequate return of the value deposited;
466 (c) through which the return of value is not conditioned on an element of chance or
467 skill; and
468 (d) (i) does not include a promotional activity; or
469 (ii) includes a promotional activity that is clearly ancillary to the primary activity of a
470 business.

471 [~~(12)~~] (20) "Video gaming device" means [any] a device that [possesses all] includes
472 all of the following [characteristics]:

- 473 (a) a video display and computer mechanism for playing a game;
474 (b) the length of play of any single game is not substantially affected by the skill,
475 knowledge, or dexterity of the player;
476 (c) a meter, tracking, or recording mechanism that records or tracks any money, tokens,
477 games, or credits accumulated or remaining;
478 (d) a play option that permits a player to spend or risk varying amounts of money,
479 tokens, or credits during a single game, in which the spending or risking of a greater amount of
480 money, tokens, or credits:
481 (i) does not significantly extend the length of play time of any single game; and
482 (ii) provides for a chance of greater return of credits, games, or money; and
483 (e) an operating mechanism that, in order to function, requires inserting money, tokens,
484 or other valuable consideration other than [~~solely~~] entering the user's name, birthdate, or
485 contact information.

486 Section 5. Section **76-10-1102** is amended to read:

487 **76-10-1102. Gambling.**

- 488 (1) A person is guilty of gambling if the person:
489 (a) participates in gambling or fringe gambling, including any Internet or online
490 gambling;
491 (b) knowingly permits [~~any~~] gambling or fringe gambling to be played, conducted, or
492 dealt upon or in any real or personal property owned, rented, or under the control of the actor,

493 whether in whole or in part; or

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

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

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

497 (2) Gambling is a class ~~[B]~~ A misdemeanor, except that any person who is convicted
498 two or more times under this section is guilty of a ~~[class A misdemeanor]~~ third degree felony.

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

502 (b) Subsection (3)(a) does not apply to an Internet service provider, a hosting company
503 as defined in Section [76-10-1230](#), a provider of public telecommunications services as defined
504 in Section [54-8b-2](#), or an Internet advertising service by reason of the fact that the Internet
505 service provider, hosting company, Internet advertising service, or provider of public
506 telecommunications services:

507 (i) transmits, routes, or provides connections for material without selecting the
508 material; or

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

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

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

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

518 **76-10-1104. Gambling promotion.**

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

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

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

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

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

527 **76-10-1105. Possessing a gambling device or record.**

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

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

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

536 **76-10-1110. Fringe gaming devices.**

537 (1) Notwithstanding any other provision in Title 76, Chapter 10, Offenses Against
538 Public Health, Safety, Welfare, and Morals, it is unlawful for any person to operate, place into
539 operation, or allow a person to place into operation a fringe gaming device.

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

541 (a) is server-based;

542 (b) uses a simulated game terminal as a representation of a prize associated with the
543 results of a sweepstakes entry;

544 (c) uses a simulated game to influence or determine the result of the simulated game or
545 the value of a prize;

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

547 (e) includes a pre-reveal feature;

548 (f) predetermines a prize and reveals the prize at the time a sweepstakes entry result is
549 revealed;

550 (g) requires deposit of any money, coin, token, or gift certificate, or the use of a credit
551 card, debit card, prepaid card, or any other method of payment to activate the device;

552 (h) requires direct payment into the machine or device or remote activation of the
553 device;

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

555 legitimate value;

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

557 (k) includes a skill-based game.

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

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

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

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

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

563 **76-10-1112. Local control.**

564 (1) Nothing in this part preempts or otherwise limits the authority of a county or
565 municipality to enact a local ordinance related to gambling or fringe gambling.

566 (2) In accordance with Title 24, Forfeiture and Disposition of Property Act, a county or
567 municipality may seize gambling debts, gambling proceeds, or fringe gaming devices that are
568 reasonably identifiable as being obtained or provided in violation of this part or a local
569 ordinance.

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

571 **76-10-1113. Cause of action.**

572 (1) An individual who suffers economic loss as a result of a fringe gaming device,
573 video gaming device, or gambling device or record may bring a cause of action against a
574 person who operates or receives revenue from the fringe gaming device, video gaming device,
575 or gambling device or record to recover damages.

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

578 Section 11. **Effective date.**

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