

SB0214S02 compared with SB0214S01

~~{deleted text}~~ shows text that was in SB0214S01 but was deleted in SB0214S02.

inserted text shows text that was not in SB0214S01 but was inserted into SB0214S02.

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~~{Senator Karen Mayne}~~Representative Paul Ray 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;~~{_____}~~

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- ~~→ 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. }~~ None

Utah Code Sections Affected:

AMENDS:

- 32B-3-303**, as last amended by Laws of Utah 2011, Chapter 307
- 32B-5-301**, as last amended by Laws of Utah 2019, Chapter 403
- 32B-9-204**, as last amended by Laws of Utah 2012, Chapter 365
- 76-10-1101**, as last amended by Laws of Utah 2019, Chapter 185
- 76-10-1102**, as last amended by Laws of Utah 2019, Chapter 185
- 76-10-1104**, as last amended by Laws of Utah 2019, Chapter 185
- 76-10-1105**, as last amended by Laws of Utah 2019, Chapter 185

ENACTS:

- 76-10-1110**, Utah Code Annotated 1953
- 76-10-1112**, Utah Code Annotated 1953

~~{ **76-10-1113**, Utah Code Annotated 1953~~

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

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

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

- (1) One or more of the following acts constitute a nuisance activity:
 - (a) a single felony conviction within the last two years of:
 - (i) a retail licensee; or
 - (ii) supervisory or managerial level staff of the retail licensee;
 - (b) a single conviction under Title 58, Chapter 37, Utah Controlled Substances Act:
 - (i) (A) of a retail licensee; or
 - (B) staff of the retail licensee;

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(ii) within the last two years; and

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

(c) three or more convictions of patrons of a retail licensee under Title 58, Chapter 37, Utah Controlled Substances Act, if:

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

and

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

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

(i) pornographic and harmful materials:

(A) that violate Title 76, Chapter 10, Part 12, Pornographic and Harmful Materials and Performances; and

(B) if the violation occurs on the licensed premises;

(ii) prostitution;

(iii) engaging in or permitting gambling, as defined and proscribed in Title 76, Chapter 10, Part 11, Gambling, on the licensed premises;

(iv) having any fringe gaming device, video gaming device, or gambling device or record as defined [~~and proscribed by Title 76, Chapter 10, Part 11, Gambling,~~] in Section 76-10-1101 on the licensed premises;

(v) on the licensed premises engaging in or permitting a contest, game, gaming scheme, or gaming device that requires the risking of something of value for a return or for an outcome when the return or outcome is based upon an element of chance, excluding the playing of an amusement device that confers only an immediate and unrecorded right of replay not exchangeable for value;

(vi) a disturbance of the peace that occurs on the licensed premises; or

(vii) disorderly conduct that occurs on the licensed premises; or

(e) three or more adjudicated violations of this title within the last two years by a retail licensee or by staff of the retail licensee that result in a criminal citation or an administrative referral to the department relating to:

(i) the sale, offer for sale, or furnishing of an alcoholic product to a minor;

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(ii) the sale, offer for sale, or furnishing of an alcoholic product to a person actually, apparently, or obviously intoxicated;

(iii) the sale, offer for sale, or furnishing of an alcoholic product after the lawful hours for the sale or furnishing; or

(iv) acts or conduct on the licensed premises contrary to the public welfare and morals involving lewd acts or lewd entertainment prohibited by this title.

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

(a) a partner;

(b) a managing agent;

(c) a manager;

(d) an officer;

(e) a director;

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

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

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

32B-5-301. General operational requirements.

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

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

(i) a retail licensee;

(ii) individual staff of a retail licensee; or

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

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

(b) Notwithstanding that this part refers to "liquor" or an "alcoholic product," a retail

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licensee may only sell, offer for sale, furnish, or allow the consumption of an alcoholic product specifically authorized by the relevant part under Chapter 6, Specific Retail License Act.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) engage in or permit a contest, game, gaming scheme, or gaming device that requires

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the risking of something of value for a return or for an outcome when the return or outcome is based upon an element of chance, excluding the playing of an amusement device that confers only an immediate and unrecorded right of replay not exchangeable for value.

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

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

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

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

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

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

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

(ii) the records of the retail licensee.

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

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

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

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

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

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

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

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

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

(i) may result in:

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

(I) an event permittee;

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

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

(B) immediate revocation of the event permit;

(C) forfeiture of a bond; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) a beer wholesaler licensee;

(b) a beer retailer; or

(c) a small brewer.

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

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

(i) in an open original container; and

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(ii) in a container on draft.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) a minor;

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

(c) a known interdicted person; or

(d) a known habitual drunkard.

(11) (a) An alcoholic product is considered under the control of the event permittee

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during an event.

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

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

(a) is used primarily for drinking purposes; and

(b) contains an alcoholic product.

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

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

(i) consume an alcoholic product; or

(ii) be intoxicated.

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

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

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

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

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

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

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

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

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

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- (i) a header that reads: "WARNING";
 - (ii) a warning statement that reads: "Drinking alcoholic beverages during pregnancy can cause birth defects and permanent brain damage for the child.";
 - (iii) a statement in smaller font that reads: "Call the Utah Department of Health at [insert most current toll-free number] with questions or for more information.";
 - (iv) a header that reads: "WARNING"; and
 - (v) a warning statement that reads: "Driving under the influence of alcohol or drugs is a serious crime that is prosecuted aggressively in Utah."
- (b) (i) The text described in Subsections (19)(a)(i) through (iii) shall be in a different font style than the text described in Subsections (19)(a)(iv) and (v).
- (ii) The warning statements in the sign described in Subsection (19)(a) shall be in the same font size.
- (c) The Department of Health shall work with the commission and department to facilitate consistency in the format of a sign required under this section.

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

76-10-1101. Definitions.

As used in this part:

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

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

(ii) does not provide the opportunity to:

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

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

(b) "Amusement device" includes:

(i) a video game;

(ii) a driving simulator;

(iii) an electronic game;

(iv) a claw machine;

(v) a bowling game;

(vi) a shuffleboard game;

(vii) a skee-ball game;

(viii) a pool table;

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(ix) a pinball machine;

(x) a target machine; and

(xi) a baseball machine.

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

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

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

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

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

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

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

(ii) provides:

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

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

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

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

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

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

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

[(2)] (6) (a) "Fringe gambling" means any de facto form of gambling, lottery, fringe

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gaming device, or video gaming device that is given, conducted, or offered for use or sale by a business in exchange for anything of value or incident to the purchase of another good or service.

(b) "Fringe gambling" does not include:

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

(ii) use of an amusement device ~~for~~, vending machine, or skill-based game.

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

(i) is not an amusement device ~~for~~, a vending machine ~~for~~, or skill-based game.

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

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

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

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

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

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

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

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

(A) the existence of a preview or pre-reveal feature in the device, contest, or game;

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[and] or

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

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

(b) "Gambling" includes a lottery.

(c) "Gambling" does not include:

(i) a lawful business transaction; or

(ii) [playing] use of an amusement device [that confers:], vending machine, or skill-based game.

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

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

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

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

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

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

~~(a) the Internet; or~~

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

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

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

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

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the intent to be transferred to an individual.

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

(a) continues for a limited period of time;

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

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

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

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

(i) simulate a gambling environment;

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

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

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

or

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

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

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

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

(B) a video bingo game;

(C) a video craps game;

(D) a video keno game;

(E) a video lotto game;

(F) an 8-liner machine;

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(G) a Pot O' Gold game;

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

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

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

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

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

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

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

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

(19) "Vending machine" means a device:

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

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

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

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

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

~~[(12)]~~ (20) "Video gaming device" means [any] a device other than a skill-based game that ~~[possesses all]~~ includes all of the following ~~[characteristics]~~:

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

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

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

(d) a play option that permits a player to spend or risk varying amounts of money,

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tokens, or credits during a single game, in which the spending or risking of a greater amount of money, tokens, or credits:

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

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

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

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

76-10-1102. Gambling.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

76-10-1104. Gambling promotion.

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

- (a) the person induces or aids another to engage in gambling or fringe gambling; or
- (b) the person knowingly invests in, finances, owns, controls, supervises, manages, or participates in any gambling or fringe gambling.

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

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

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

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

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

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

76-10-1110. Fringe gaming devices.

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

- (a) permitting a fringe gaming device to be located on or in any real or personal

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property owned, rented, or under the control of the person; or

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

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

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

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

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

(a) is server-based;

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

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

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

(e) includes a pre-reveal feature;

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

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

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

(i) requires a purchase of a related product regardless of whether the product has legitimate value; ~~or~~

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

~~{~~ (k) includes a skill-based game.

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

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

(a) a class ~~fA}B~~ misdemeanor for the first offense; or

(b) a ~~fthird degree felony}class A misdemeanor~~ for a subsequent offense.

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

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76-10-1112. Local control.

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

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

~~{ Section 10. Section 76-10-1113 is enacted to read:~~

~~76-10-1113. Cause of action.~~

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

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

~~Section 11. Effective date.~~

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

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