


MINA' TRENTAI DOS NA LIHESLATURAN GUÅHAN
2013 (FIRST) Regular Session

Bill No. 192-32 (WR)

Introduced by:

B. J.F. Cruz 

AN ACT TO ADD A NEW § 64.15, § 64.16, AND § 64.17 TO CHAPTER 64 OF TITLE 9 OF THE GUAM CODE ANNOTATED; RELATIVE TO THE PROHIBITION AND FORFEITURE OF ELECTRONIC MACHINES OR DEVICES TO CONDUCT SWEEPSTAKES GAMBLING.

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1 **BE IT ENACTED BY THE PEOPLE OF GUAM:**

2 **Section 1.** A new § 64.15 is hereby *added* to Chapter 64 of Title 9 of the
3 Guam Code Annotated to read:

4 **“§ 64.15. Use of Electronic Machine or Device to Conduct**
5 **Sweepstakes Illegal.**

6 (a) Definitions. As used in this Section the following words *shall*,
7 unless the context clearly requires otherwise, have the following meanings:

8 (1) “Electronic machine or device”, a mechanically, electrically
9 or electronically operated machine or device that is owned, leased or
10 otherwise possessed by a sweepstakes sponsor or promoter, or any
11 sponsors, promoters, partners, affiliates, subsidiaries, or contractors
12 thereof, that is intended to be used by a sweepstakes entrant, that uses
13 energy, and that is capable of displaying information on a screen or
14 other mechanism. This section is applicable to an electronic machine
15 or device whether or not it:

- 1 (i) is server-based;
- 2 (ii) uses a simulated game terminal as a representation of
3 the prizes associated with the results of the sweepstakes entries;
- 4 (iii) utilizes software such that the simulated game
5 influences or determines the winning or value of the prize;
- 6 (iv) selects prizes from a predetermined finite pool of
7 entries;
- 8 (v) utilizes a mechanism that reveals the content of a
9 predetermined sweepstakes entry;
- 10 (vi) predetermines the prize results and stores those
11 results for delivery at the time the sweepstakes entry results are
12 revealed;
- 13 (vii) utilizes software to create a game result;
- 14 (viii) requires deposit of any money, coin, or token, or
15 the use of any credit card, debit card, prepaid card, or any other
16 method of payment to activate the electronic machine or device;
- 17 (ix) requires direct payment into the electronic machine
18 or device, or remote activation of the electronic machine or
19 device;
- 20 (x) requires purchase of a related product having
21 legitimate value;
- 22 (xi) reveals the prize incrementally, even though it may
23 not influence whether or not a prize is to be awarded or the
24 value of any prize awarded;
- 25 (xii) determines and associates the prize with an entry or
26 entries at the time the sweepstakes is entered;

1 (xiii) is a slot machine or other form of electrical,
2 mechanical, or computer game.

3 “Electronic machine or device” also includes gambling devices as
4 defined in § 64.20(b) of this Chapter.

5 (2) “Enter” or “entry”, the act or process by which a person
6 becomes eligible to receive any prize offered in a sweepstakes.

7 (3) “Entertaining display”, any visual information, capable of
8 being seen by a sweepstakes entrant, that takes the form of actual
9 game play, or simulated game play.

10 (4) “Prize”, any gift, award, gratuity, good, service, credit, or
11 anything else of value, which may be transferred to a person, whether
12 possession of the prize is actually transferred, or placed on an account
13 or other record as evidence of the intent to transfer the prize.

14 (5) “Sweepstakes”, any game, advertising scheme or plan, or
15 other promotion, which, uses an electric machine or device defined in
16 this Section, with or without payment of any consideration, a person
17 may enter to win or become eligible to receive any prize, the
18 determination of which is based partially or completely upon chance.

19 (b) It shall be unlawful for any person to operate or knowingly possess
20 with the intent to operate, or place into operation, an electronic machine or
21 device to:

22 (1) conduct a sweepstakes through the use of an entertaining
23 display, including the entry process or the reveal of a prize; or

24 (2) promote a sweepstakes that is conducted through the use of
25 an entertaining display, including the entry process or the reveal of a
26 prize.

1 (c) Nothing in this section shall be construed to make illegal any
2 activity which is lawfully conducted pursuant to 9 GCA Chapter 64 Article
3 2.”

4 **Section 2.** A new § 64.16 is hereby *added* to Chapter 64 of Title 9 of
5 the Guam Code Annotated to read:

6 **“§ 64.16. Forfeiture of Electronic Machine or Device Used to**
7 **Conduct Sweepstakes.**

8 Upon a determination by the Department of Revenue and Taxation or
9 the Attorney General that probable cause exists to believe that any electronic
10 machine or device is being operated or is intended to be operated to conduct
11 a sweepstakes or promote a sweepstakes in violation of 9 GCA §64.15
12 above, the electronic machine or device *shall* be subject to immediate
13 seizure by law enforcement officials from the Department of Revenue and
14 Taxation, the Guam Police Department, or the Office of the Attorney
15 General. Any government entity in possession of a seized electronic machine
16 or device *shall* retain the item pending a disposition order from a Superior
17 Court judge. Upon application by the Department of Revenue and Taxation
18 or the Attorney General or the owner of the electronic machine or device,
19 and after notice to all parties and an opportunity to be heard by all parties, if
20 the court determines that it is unlawful to possess the electronic machine or
21 device, the Director of the Department of Revenue and Taxation or the
22 Attorney General may have the electronic machine or device destroyed, or
23 may use the electronic machine or device for training or may sell the
24 electronic machine or device at an auction to be held at the place where the
25 electronic machine or device is located or at another place as determined by
26 the Director of the Department of Revenue and Taxation or the Attorney
27 General. If the court determines that the electronic machine or device is not

1 unlawful to possess under 9 GCA § 64.15, the electronic machine or device
2 shall be ordered released to its owner upon satisfactory proof of ownership.
3 Neither the Government of Guam nor its officials, employees or agents shall
4 be liable for the seizure of electronic machines and devices under this statute
5 when a court determines that the electronic machine or device is ordered to
6 be released to its owner. The foregoing procedures for release shall not apply
7 with respect to an item seized for use as evidence in any criminal action or
8 proceeding until after entry of final judgment.”

9 **Section 3.** A new § 64.17 is hereby *added* to Chapter 64 of Title 9 of the
10 Guam Code Annotated to read:

11 **“§ 64.17. Penalties.**

12 (a) Any person who violates 9 GCA § 64.15 shall be guilty of a
13 felony punishable by imprisonment of not more than five (5) years and a fine
14 not to exceed \$250,000, or both. Each violation of 9 GCA § 64.15 shall be
15 considered a separate offense.

16 (b) Any person who violates 9 GCA § 64.15 *may* also be subject to an
17 administrative penalty of not more than \$250,000 to be assessed by a
18 decision and order of the Director of the Department of Revenue and
19 Taxation. Each violation of 9 GCA § 64.15 *shall* be considered a separate
20 offense.

21 (1) Before issuing a decision and order assessing an
22 administrative penalty, the Department of Revenue and Taxation shall
23 give written notice, in the form of an accusation, to the person to be
24 assessed an administrative penalty.

25 (2) The person to be assessed an administrative penalty shall be
26 entitled to notice, to a hearing before the Director of the Department
27 of Revenue and Taxation, and to review by the Superior Court

1 according to the procedures in Articles 1 and 2 of the Administrative
2 Adjudication Law.

3 (3) If any person fails to comply with an administrative penalty
4 decision and order after the assessment has become final, or after a
5 court in an action brought pursuant to the Administrative Adjudication
6 Law has entered a final judgment in favor of the Director of the
7 Department of Revenue and Taxation, the Attorney General of Guam
8 may bring a civil action to enforce the order and to recover the
9 amount ordered or assessed, plus interest of six percent (6%) per
10 annum from the date of the final administrative decision and order or
11 the date of the final judgment, as the case may be. In this action, the
12 validity, amount, and appropriateness of the penalty assessed by the
13 administrative decision and order or the final judgment of the court
14 made after an appeal of the administrative decision and order shall not
15 be subject to review. The Director of the Department of Revenue and
16 Taxation need only show that:

17 (A) notice was given; and

18 (B) a hearing was held, or the time granted for requesting a
19 hearing has run without a request for a hearing; and

20 (C) the penalty was imposed; and

21 (D) the penalty remains unpaid.

22 A judgment of the court entered under this subpart (3) of 9 GCA §
23 64.17(b) may be enforced and collected in the same manner as a
24 money judgment of the Superior Court.”