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I MINA'TRENTAI DOS NA LIHESLATURAN GUÅHAN
2014 (SECOND) Regular Session

CERTIFICATION OF PASSAGE OF AN ACT TO *I MAGA'LAHEN GUÅHAN*

This is to certify that **Bill No. 192-32 (COR), "AN ACT TO *ADD* NEW §§ 64.15, 64.16 AND 64.17 TO ARTICLE 1, CHAPTER 64 OF TITLE 9, GUAM CODE ANNOTATED, RELATIVE TO THE PROHIBITION AND FORFEITURE OF ELECTRONIC MACHINES OR DEVICES TO CONDUCT SWEEPSTAKES GAMBLING,"** was on the 1st day of February, 2014, duly and regularly passed.

Judith T. Won Pat, Ed.D.
Speaker

Attested:

Tina Rose Muña Barnes
Legislative Secretary

This Act was received by *I Maga'lahen Guåhan* this 1st day of Feb., 2014, at 10:30 o'clock a.m.

Assistant Staff Officer
Maga'lahi's Office

APPROVED:

EDWARD J.B. CALVO
I Maga'lahen Guåhan

Date: _____

Public Law No. _____

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

Bill No. 192-32 (COR)
As amended on the Floor.

Introduced by: B. J.F. Cruz
T. C. Ada
V. Anthony Ada
FRANK B. AGUON, JR.
Chris M. Dueñas
Michael T. Limtiaco
Brant T. McCreadie
Tommy Morrison
T. R. Muña Barnes
Vicente (ben) C. Pangelinan
R. J. Respicio
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Michael F. Q. San Nicolas
Aline A. Yamashita, Ph.D.
Judith T. Won Pat, Ed.D.

AN ACT TO *ADD* NEW §§ 64.15, 64.16 AND 64.17 TO ARTICLE 1, CHAPTER 64 OF TITLE 9, GUAM CODE ANNOTATED, RELATIVE TO THE PROHIBITION AND FORFEITURE OF ELECTRONIC MACHINES OR DEVICES TO CONDUCT SWEEPSTAKES GAMBLING.

BE IT ENACTED BY THE PEOPLE OF GUAM:

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

"**§ 64.15. Use of Electronic Machine or Device to Conduct Sweepstakes Illegal.**

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

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

(A) is server-based;

(B) uses a simulated game terminal as a representation of the prizes associated with the results of the sweepstakes entries;

(C) utilizes software such that the simulated game influences or determines the winning or value of the prize;

(D) selects prizes from a predetermined finite pool of entries;

(E) utilizes a mechanism that reveals the content of a predetermined sweepstakes entry;

(F) predetermines the prize results and stores those results for delivery at the time the sweepstakes entry results are revealed;

(G) utilizes software to create a game result;

(H) requires deposit of any money, coin, or token, or the use of any credit card, debit card, prepaid card, or any other method of payment to activate the electronic machine or device;

(I) requires direct payment into the electronic machine or device, or remote activation of the electronic machine or device;

(J) requires purchase of a related product having legitimate value;

(K) reveals the prize incrementally, even though it may *not* influence whether or not a prize is to be awarded or the value of any prize awarded;

(L) determines and associates the prize with an entry or entries at the time the sweepstakes is entered;

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

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

(2) *Enter* or *entry* means the act or process by which a person becomes eligible to receive any prize offered in a sweepstakes.

(3) *Entertaining display* means any visual information, capable of being seen by a sweepstakes entrant, that takes the form of actual game play, or simulated game play.

(4) *Game play* or *simulated game play* means any game play whether actual or electronically simulated which when played may return winnings (other than free games *not*

redeemable for cash) of value to the user based partially or completely upon chance, which a user is required to participate in prior to the reveal of a prize, or the receipt of anything of value.

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

(6) *Sweepstakes* means any game, advertising scheme or plan, or other promotion, which uses an electronic machine or device as defined in this Section, with or without payment of any consideration, that a person may enter to win or become eligible to receive any prize, the determination of which is based partially or completely upon chance.

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

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

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

(c) Nothing in this Section shall be construed to make illegal any activity which is lawfully conducted pursuant to Title 9 GCA, Chapter 64, Article 2."

Section 2. A new § 64.16 is hereby *added* to Article 1, Chapter 64 of Title 9, Guam Code Annotated, to read:

"§ 64.16. Forfeiture of Electronic Machine or Device Used to Conduct Sweepstakes.

Upon a determination by the Department of Revenue and Taxation or the Attorney General that probable cause exists to believe that any electronic machine or device is being operated or is intended to be operated to conduct a sweepstakes or promote a sweepstakes in violation of Title 9 GCA §64.15 above, the electronic machine or device *shall* be subject to immediate seizure by law enforcement officials from the Department of Revenue and Taxation, the Guam Police Department, or the Office of the Attorney General. Any government entity in possession of a seized electronic machine or device *shall* retain the item pending a disposition order from a Superior Court judge. Upon application by the Department of Revenue and Taxation, or the Attorney General, or the owner of the electronic machine or device, and after notice to all parties and an opportunity to be heard by all parties, if the court determines that it is unlawful to possess the electronic machine or device, the Director of the Department of Revenue and Taxation, or the Attorney General, may have the electronic machine or device destroyed, or may use the electronic machine or device for training, or may sell the electronic machine or device at an auction to be held at the place where the electronic machine or device is located, or at another place as determined by the Director of the Department of Revenue and Taxation, or the Attorney General. If the court determines that the electronic machine or device is *not* unlawful to possess under Title 9 GCA §64.15, the electronic machine or device *shall* be ordered released to its owner upon satisfactory proof of ownership. Neither the government of Guam nor its officials, employees or

agents shall be liable for the seizure of electronic machines and devices under this statute when a court determines that the electronic machine or device is ordered to be released to its owner. The foregoing procedures for release *shall not* apply with respect to an item seized for use as evidence in any criminal action or proceeding until after entry of final judgment."

Section 3. A new § 64.17 is hereby *added* to Aticle 1, Chapter 64 of Title 9, Guam Code Annotated, to read:

"**§ 64.17. Penalties.**

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

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

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

(2) The person to be assessed an administrative penalty *shall* be entitled to notice, to a hearing before the Director of the Department of Revenue and Taxation, and to review by the Superior Court according to the procedures in Articles 1 and 2 of the Administrative Adjudication Law.

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

(A) notice was given; and

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

(C) the penalty was imposed; and

(D) the penalty remains unpaid.

A judgment of the court entered under this Subpart (3) of § 64.17(b) may be enforced and collected in the same manner as a money judgment of the Superior Court."