

HOUSE BILL 1885

By Cepicky

AN ACT to amend Tennessee Code Annotated, Title 4; Title 4, Chapter 49; Title 8, Chapter 6, Part 4; Title 40, Chapter 2 and Title 47, relative to illegal activity.

WHEREAS, there exists a growing presence in Tennessee of illegal online sweepstakes casinos and other forms of online gambling that are often marketed as legal, free-to-play, social gaming platforms and that utilize a promotional sweepstakes model; and

WHEREAS, such online sweepstakes casinos generally utilize a system allowing players to play casino-style games with virtual currency and exchange the virtual currency for cash or other real-world prizes; and

WHEREAS, in reality, such online sweepstakes casinos and other online-gambling platforms serve as a façade to hide the fact that players may engage in real-money gambling through the purchase and use of virtual currency; and

WHEREAS, under this promotional sweepstakes model, consumers are induced to purchase virtual currency under the false impression that they are not engaged in illegal gambling when in fact their payments allow them to participate in games of chance that award real-world prizes; and

WHEREAS, such online sweepstakes casinos generally constitute illegal lotteries and violate Tennessee gambling and consumer protection laws, and there exists the need to clarify for the public that such online sweepstakes casinos are expressly illegal given their prevalence in this State; and

WHEREAS, other forms of illegal gambling are becoming widespread, including gambling machines and other forms of internet-based and electronic gambling that are advertised as legal and legitimate; and

WHEREAS, there exists a need to continue to protect Tennesseans from the potential risks of illegal gambling and to enact laws and regulations related to consumer protection and safety as it relates to illegal gaming; and

WHEREAS, the attorney general and reporter should be empowered with the tools to properly investigate violations of law, including illegal gambling; now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 47, Chapter 18, is amended by adding the following new part:

47-18-5901. Part definitions.

As used in this part:

- (1) "Attorney general" means the attorney general and reporter;
- (2) "Gambling" has the same meaning as defined in § 39-17-501;
- (3) "Gambling device" means a gambling device or record as defined in § 39-17-501;
- (4) "Individual" means a natural person;
- (5) "Online sweepstakes game" means gambling in the form of a game, contest, or promotion that:
 - (A) Is available on the internet and is accessible on a mobile phone, computer terminal, or similarly accessible device;
 - (B) Utilizes a virtual-currency system allowing a player to:
 - (i) Play or participate with a currency, such as a virtual coin, token, or other representation of value, that is directly purchased, received through a bonus or promotion, or received for free with the purchase of another type of currency or related product, service, or activity; and

(ii) Exchange the currency for a prize, award, cash, or cash equivalent, or the chance to win a prize, award, cash, or cash equivalent; and

(C) Simulates gambling of any kind, including, but not limited to, casino-style gaming such as slot machines, video poker, table games, lottery games, bingo, or unlicensed sports wagering; and

(6) "Person" means an individual, business entity, trust, or other organization or entity.

47-18-5902. Prohibition.

(a) Gambling; the operation or possession of gambling devices; and the operation, conducting, or commercial promoting of online sweepstakes games and other forms of online or app-based gambling are unlawful and are offenses against the public health, safety, and welfare of this state.

(b) In addition to other penalties imposed by law, a person who commits one (1) or more of the following acts is subject to the remedies set forth in this part:

(1) Offers wagers or entry fees for gambling to a person located within this state or accepts wagers or entry fees for gambling from a person located within this state;

(2) Operates, conducts, or commercially promotes online sweepstakes games or other forms of online or app-based gambling within this state;

(3) Sells or distributes gambling devices within this state;

(4) Permits gambling devices to be operated upon premises owned, leased, managed, or otherwise controlled by a person within this state; or

(5) Supports, facilitates, or assists in the operation of online sweepstakes games or other gambling within this state.

(c) This section does not make unlawful or otherwise restrict lawful games permitted under or by the Tennessee Sports Gaming Act or Fantasy Sports Act, compiled in title 4, chapter 49, Tennessee nonprofit gaming laws under title 3, chapter 17, or the Tennessee education lottery corporation under title 4, chapter 51.

47-18-5903. Penalties.

(a) A violation of this part constitutes a violation of the Tennessee Consumer Protection Act of 1977, compiled in part 1 of this chapter, is deemed an unfair or deceptive act or practice affecting trade or commerce, and is subject to the penalties and remedies as provided in the Tennessee Consumer Protection Act of 1977.

(b) Costs must not be taxed against the attorney general or this state for actions brought under this section.

47-18-5904. Confidentiality of records.

Information and documents received, created, or maintained by the attorney general as part of the administration and enforcement of this part are confidential and are not subject to disclosure pursuant to the Tennessee Public Records Act, compiled in title 10, chapter 7. Such confidentiality is not waived if the information and data is shared or has been shared with a state or federal agency or a law enforcement agency.

SECTION 2. Tennessee Code Annotated, Section 47-18-104(b), is amended by adding the following new subdivision:

() Violating § 47-18-5902.

SECTION 3. Tennessee Code Annotated, Section 40-2-102(a), is amended by deleting the language ", except gaming, which shall be commenced within six (6) months".

SECTION 4. Tennessee Code Annotated, Title 8, Chapter 6, Part 4, is amended by adding the following new section:

8-6-409. Requests for information and documents.

(a) If the attorney general and reporter has reason to believe that a person is engaging in, has engaged in, or is about to engage in an unlawful act or practice under state law that is a proper subject of inquiry by the attorney general and reporter, or has reason to believe it to be in the public interest to conduct an investigation to ascertain whether a person is engaging in, has engaged in, or is about to engage in such act or practice, the attorney general and reporter may:

(1) Require a person with information relevant to the subject matter of the investigation to file a statement or report in writing, under oath or otherwise, as to all the facts and circumstances concerning the alleged violation and to furnish and make available for examination all documentary material and information relevant to the subject matter of the investigation;

(2) Examine under oath a person with information relevant to the subject matter of the investigation; and

(3) Examine or sample all merchandise deemed relevant to the subject matter of the investigation.

(b) Prior to the return date specified in the attorney general and reporter's request for information pursuant to subsection (a), or within ten (10) days following notice of such a request, whichever is shorter, a person from whom information has been requested may petition the circuit or chancery court of the county containing the office from which the attorney general and reporter made the request pursuant to subsection (a), stating good cause, for a protective order to extend the return date for a reasonable time, or to modify or set aside the request. The attorney general and reporter must receive at least one (1) days' notice of such a petition and must be given an opportunity to respond.

(c) If no protective order from the court is secured and the written request by the attorney general and reporter is not complied with by its return date, the attorney general and reporter, upon notice to the person requested to provide information, may apply to the circuit or chancery court of the county containing the office from which the attorney general and reporter made the request pursuant to subsection (a), for an order compelling compliance with the request made pursuant to subsection (a).

(d) Upon a showing by the attorney general and reporter to the circuit or chancery court of the county containing the office from which the attorney general and reporter made or could have made the request pursuant to subsection (a) that the attorney general and reporter has reason to believe that a person is engaging in, has engaged in, or is about to engage in an unlawful act or practice under state law that is a proper subject of inquiry by the attorney general and reporter, or has reason to believe it to be in the public interest to conduct an investigation to ascertain whether a person is engaging in, has engaged in, or is about to engage in such act or practice; that the persons who are committing, have committed, or are about to commit such acts or practices or who possess the relevant documentary material have left this state or are about to leave this state; and that such an order is necessary for the enforcement of any state law that is a proper subject of inquiry by the attorney general and reporter, the court may order such persons to comply with subsection (a) regardless of whether the attorney general and reporter has made a prior request for information. The court may also, notwithstanding another law, immediately and without notice, forbid the removal from any place, concealment, withholding, destruction, mutilation, falsification, or alteration by any other means of documentary material in the possession, custody, or control of a person believed by the attorney general and reporter to be connected with

acts or practices which violate state law that is a proper subject of inquiry by the attorney general and reporter.

(e) A person who has received notice of a request for information pursuant to subsection (a), or of an order pursuant to subsection (c) or (d), and with the intent to avoid, evade, or prevent compliance, in whole or in part, with a civil investigation or order, removes from any place, conceals, withholds, destroys, mutilates, falsifies or by any other means alters documentary material in the possession, custody, or control of a person subject to such notice, is subject to a civil penalty of not more than one thousand dollars (\$1,000) per document, recoverable by this state in addition to any other appropriate sanction.

(f) Documentary material or merchandise requested pursuant to this section must be produced for inspection and copying during normal business hours at the principal office or place of business of the person possessing such documentary material or merchandise, or at such other time and place as may be agreed upon by the possessor and the attorney general and reporter.

(g)

(1) All testimony, books, documents, or other writings, records, or tangible objects obtained by the attorney general and reporter pursuant to this section are confidential and must not be publicly divulged by the office of the attorney general and reporter except in the discharge of the duties of the office or in legal proceedings in which the state is a party.

(2) All other documentary material, answers to written interrogatories, and transcripts of oral testimony that are voluntarily provided to the attorney general and reporter as part of an investigation under this part must be treated as if obtained pursuant to a request issued under this part if said materials were

obtained pursuant to an investigative demand or similar process issued by another state or federal attorney general or law enforcement agency, obtained from a state or federal attorney general or law enforcement agency pursuant to a statutory obligation to produce, or provided by a person with information relevant to the subject matter of the investigation. In conducting an inquiry pursuant to this section, the attorney general and reporter, whenever such aid is determined to be necessary and desirable, may request the aid of an agency of this state; and such agency, as requested, shall give full aid, support, and cooperation to the attorney general and reporter in such investigation.

(h) Service of a notice, order, or request for information by the attorney general and reporter may be made in compliance with the Tennessee Rules of Civil Procedure or by:

(1) Delivering a duly executed copy of the notice, order, or request for information to the person to be served or to a partner or to an officer or agent authorized by appointment or by law to receive service of process on behalf of the person to be served;

(2) Mailing by registered or certified mail a duly executed copy of the notice, order, or request for information addressed to the person, to be served at the person's principal place of business in this state, or if the person has no place of business within this state, to the person's principal office, place of business, home, or last known address; or

(3) Personal service, pursuant to §§ 20-2-214 - 20-2-220.

(i) This section does not apply to requests by the attorney general and reporter under the Tennessee Consumer Protection Act, compiled in title 47, chapter 18, or the Tennessee Human Rights Act, compiled in title 4, chapter 21.

(j) No provision of this section shall be construed to limit, modify, or supersede the Tennessee Consumer Protection Act or the Tennessee Human Rights Act.

SECTION 5. Tennessee Code Annotated, Section 4-49-204(a)(6), is amended by deleting the language "§§ 4-49-203, 4-49-204," and substituting "this section and §§ 4-49-203, 4-49-205," and by adding the language "and other persons" after the word "licensees".

SECTION 6. Tennessee Code Annotated, Section 4-49-206(b), is amended by deleting the subsection and substituting:

(b) In addition to the authority of the sports wagering council to investigate violations of and enforce compliance with this part, the attorney general and reporter may investigate violations of § 4-49-205 in accordance with the Tennessee Consumer Protection Act of 1977, compiled in title 47, chapter 18. The attorney general and reporter may institute proceedings involving alleged violations of § 4-49-205 in Williamson County circuit or chancery court or another venue otherwise permitted by law.

SECTION 7. Tennessee Code Annotated, Section 4-49-208, is amended by deleting subsection (a) and substituting:

(a) The Uniform Administrative Procedures Act, compiled in chapter 5 of this title, governs all matters and procedures regarding the hearing and judicial review of any contested case arising under §§ 4-49-203 - 4-49-205 and 4-49-208 to which the sports wagering council is a party.

SECTION 8. Tennessee Code Annotated, Section 4-49-208, is amended by deleting all language before the colon in subsection (b) and substituting:

(b) The sports wagering council may investigate and conduct a hearing with respect to a licensee or any other person upon information that a licensee or other person has violated this part, or upon receipt of a credible complaint from a person that a

licensee or other person has violated this part. If the sports wagering council determines that the licensee or other person has violated this part, the sports wagering council may do any of the following or both:

SECTION 9. Tennessee Code Annotated, Title 4, Chapter 49, Part 2, is amended by deleting the language "sports wagering advisory council" wherever it may appear and substituting "sports wagering council".

SECTION 10. If any provision of this act or its application to any person or circumstance is held invalid, then the invalidity does not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to that end, the provisions of this act are severable.

SECTION 11. This act takes effect upon becoming a law, the public welfare requiring it.