SPONSOR: Sen. DeLuca & Rep. Schwartzkopf
Sens. Blevins, Henry, Cook, Sorenson, Bushweller, Ennis, Katz; Reps. Gilligan, Longhurst, Cathcart, D. Short

DELAWARE STATE SENATE
145th GENERAL ASSEMBLY

SENATE BILL NO. 188

AN ACT TO AMEND TITLES 11 AND 29 OF THE DELAWARE CODE RELATING TO CRIMES AND CRIMINAL PROCEDURE AND UNDERAGE LOTTERY GAMING.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each house thereof concurring therein):

Section 1. Amend § 1470, Title 11 of the Delaware Code by striking sub-section (b) in its entirety and substituting in lieu thereof the following:

"(b) 'Cheating device' means any physical, mechanical, electromechanical, electronic, photographic, or computerized device used in such a manner as to cheat, deceive or defraud a video lottery machine or a table game. This includes, but is not limited to, slugs, plastic, tape, string or dental floss which is placed inside a coin or bill acceptor or any other opening in a video lottery machine in a manner to simulate coin or currency acceptance, and is thereafter withdrawn, or forged or stolen keys used to gain access to a machine to remove its contents, or game cards or dice that have been marked, loaded or tampered with.".

Section 2. Amend § 1470, Title 11 of the Delaware Code by re-numbering the current subsection (d) as subsection (e), and adding thereto a new subsection (d) to read as follows:

"(d) 'Table game' shall mean any game played with cards, dice or any mechanical, electromechanical or electronic device or machine (excluding video lottery machines) for money, credit or any representative of value, including, but not limited to, baccarat, blackjack, twenty one, poker, craps, roulette, keno, bingo, wheel of fortune or any variation of these games, whether or not similar in design or operation.".

Section 3. Amend § 1471, Title 11 of the Delaware Code by striking the section in its entirety and substituting in lieu thereof the following:

"§ 1471. Prohibited acts.

(a) It shall be unlawful for any person to use a cheating device in a video lottery machine or at a table game or to have possession of such a device in a video lottery facility, including its parking areas and/or adjacent facilities.

(b) It shall be unlawful for any person to possess, use or have paraphernalia for manufacturing

cheating devices.

(c) It shall be unlawful for any person to cheat in order to collect or take or attempt to cheat in order to collect or take money or anything of value, for themselves or for another, in or from a video lottery machine or a table game in a video lottery facility, including its parking areas and/or adjacent facilities.

(d) It shall be unlawful for any person to manipulate or alter, with the intent to cheat, any physical, mechanical, electromechanical, electronic, or computerized component of a video lottery machine or of a table game, contrary to the designed and normal operational purpose for the component, including, but not limited to, varying the pull of the handle of a video lottery machine, knowing that the manipulation can or could affect the outcome of the game.

(e) It shall be unlawful for any person to use, sell or possess counterfeit slugs, counterfeit tokens, counterfeit gaming chips, counterfeit debit instruments or other counterfeit wagering instruments or any other counterfeit device resembling tokens, gaming chips, debit or other wagering instruments approved by the State Lottery Office for use in a video lottery machine or at a table game in a video lottery facility, including its parking areas and/or adjacent facilities.

(f) It shall be unlawful for any person to place, increase or decrease a wager or to determine the course of play after acquiring knowledge, not available to all players, of the outcome of a table game or any event that affects the outcome of the game or which is the subject of the wager or to aid anyone in acquiring such knowledge for the purpose of placing, increasing or decreasing a wager or determining the course of play contingent upon that event or outcome.

(g) It shall be unlawful for any person to claim, collect or take, or attempt to claim, collect or take, money or anything of value in or from a video lottery machine or a table game, with intent to defraud, without having made a wager contingent thereon, or to claim, collect or take an amount greater than the amount won.

(h) It shall be unlawful for any employee or agent of a video lottery facility to knowingly fail to collect a losing wager or pay an amount greater on any wager than required under the rules of a table game.

(i) It shall be unlawful for any person to place or increase a wager or attempt to place or increase a wager after acquiring knowledge of the outcome of the table game or other event which is the subject of the wager.

(j) It shall be unlawful for any person to reduce the amount wagered or remove or cancel the wager or to attempt to reduce the amount wagered or remove or cancel the wager after acquiring knowledge of the outcome of the table game or other event which is the subject of the wager.

(k) It shall be unlawful for any person to directly or indirectly offer, confer or agree to confer to

another, or solicit, accept or agree to accept from another, anything of value to anyone, for the purpose of influencing the outcome of a race, sporting event, contest or table game upon which a wager may be made, or to place, increase or decrease a wager after acquiring knowledge, not available to the general public, that anyone has been offered, promised or given anything of value for the purpose of influencing the outcome of the race, sporting event, contest or game upon which the wager is placed, increased or decreased.

(l) It shall be unlawful for any person at a video lottery facility, including its parking areas and/or adjacent facilities, without the written consent of the Delaware Lottery Director to use, or possess with the intent to use, any electronic, electrical or mechanical device that is designed, constructed or programmed to assist the user or another person:

(1) In projecting the outcome of a table game or video lottery machine;

(2) In keeping track of the cards played;

(3) In analyzing the probability of the occurrence of an event relating to the game; or

(4) In analyzing the strategy for playing or wagering to be used in the game.".

Section 4. Amend § 1472, Title 11 of the Delaware Code by striking the section in its entirety and substituting in lieu thereof the following:

"§ 1472. Penalties.

(a) Any person convicted of conduct constituting a violation of provisions (a), (b), (d), (e) or (l) of section 1471 of this Title shall be guilty of a class A misdemeanor for a first offense and a class G felony for a second or subsequent conviction in this State or a state with a comparable criminal code section within 3 years of a first offense.

(b) Any person convicted of conduct constituting a violation of provisions (c), (f), (g), (h), (i), or (j) of section 1471 of this Title shall be guilty of:

(1) a class A misdemeanor if the amount involved is less than $1,500 or;

(2) a class G felony if the amount involved is $1,500 or more but not greater than $50,000;

(3) a class E felony if the amount involved is more than $50,000 but less than $100,000;

(4) a class C felony if the amount involved is $100,000 or more.

(c) Any person convicted of conduct constituting a violation of provision (k) of subchapter 1471 shall be guilty of a class G felony.

(d) Amounts involved pursuant to one scheme or course of conduct, whether from the same person or several persons, may be aggregated in determining the grade of the crime.

(e) Upon conviction, the sentencing judge shall require full restitution to the victim for any monetary losses suffered and shall consider the imposition of community service and/or an appropriate curfew for a minor.

(f) Any cheating devices, slugs, paraphernalia for the manufacturing of cheating devices or related materials used by the person shall be forfeited to the Delaware State Police, including vehicles used to store such devices or paraphernalia. The Courts of the Justices of the Peace shall have concurrent jurisdiction with the Court of Common Pleas for misdemeanor offenses under this subchapter and the Superior Court shall have exclusive jurisdiction for felony offenses under this subchapter.".

Section 5. Amend Subchapter VII, Chapter 5, Title 11 of the Delaware Code by adding a new section as follows:

"§ 1474. Detention and questioning of person suspected of violating chapter; limitations on liability; posting of notice.

(a) Any video lottery agent, licensee, or his officers, employees or agents may question any person at his video lottery facility suspected of violating any of the provisions of Section 1471 of this title. No video lottery agent or any of his officers, employees or agents is criminally or civilly liable:

(1) On account of any such questioning; or

(2) For reporting to the Delaware Lottery, Division of Gaming Enforcement or appropriate law enforcement authorities the person suspected of the violation.

(b) Any video lottery agent or any of its officers, employees or agents who has probable cause for believing that there has been a violation of Section 1471 of this title in a video lottery facility, including its parking areas and/or adjacent facilities, by any person may take that person into custody and detain him in the video lottery facility in a reasonable manner and for a reasonable length of time while awaiting the arrival of law enforcement officials, who shall be summoned without delay. Such a taking into custody and detention does not render the video lottery agent or his officers, employees or agents criminally or civilly liable unless it is established by clear and convincing evidence that the taking into custody and detention are unreasonable under all the circumstances.

(c) No video lottery agent or its officers, employees or agents is entitled to the immunity from liability provided for in subsection (b) unless there is displayed in a conspicuous place in the video lottery facility a notice in boldface type clearly legible and in substantially this form: "Any video lottery agent, or any of his officers, employees or agents who has probable cause for believing that any person has violated any provision of Section 1471

of this title may detain that person in this facility.".".

Section 6. Amend § 951, Title 11 of the Delaware Code by deleting the "." following subsection (a)(4) and substituting in lieu thereof "; or", and by inserting a new subsections (a)(5) to read as follows:

"(5) The person knowingly engages in a transaction involving the proceeds of criminal activity intended, in whole or in part, to avoid a currency transaction reporting requirement under the laws of this State or any other State or of the United States.".

Section 7. Amend § 951, Title 11 of the Delaware Code by inserting a new subsection (c)(5) to read as follows:

"(5) 'Structure' or 'structuring' means that a person, acting alone, or in conjunction with, or on behalf of, other persons, conducts or attempts to conduct one or more transactions in currency, in any amount, at one or more financial institutions, including video lottery facilities, on one or more days, in any manner, for the purpose of evading currency transaction reporting requirements provided by State or federal law. "In any manner" includes, but is not limited to, the breaking down into smaller sums of a single sum of currency meeting or exceeding that which is necessary to trigger a currency reporting requirement or the conduct of a transaction, or series of currency transactions, at or below the reporting requirement. The transaction or transactions need not exceed the reporting threshold at any single financial institution on any single day in order to meet the definition of "structure" or "structuring" provided in this paragraph. Among the factors that the finder of fact may consider in determining that a transaction has been designed to avoid a transaction reporting requirement shall be whether the person, acting alone or with others, conducted one or more transactions in currency, in any amount, at one or more financial institutions, on one or more days, in any manner.".

Section 8. Amend § 951(e), Title 11 of the Delaware Code by striking the words "Money Laundering" and by substituting in lieu thereof "A violation of subsection (a).".

Section 9. Amend § 951, Title 11 of the Delaware Code by re-designating sub-paragraph (f) as sub-paragraph (h), and inserting new sub-paragraphs (f) and (g) to read as follows:

"(f) Structuring; avoiding a transaction reporting requirement

A person is guilty of a crime if, with the purpose to evade a transaction reporting requirement of this State or of 31 U.S.C. § 5311, et seq. or 31 C.F.R. § 103, et seq., or any rules or regulations adopted under those chapters and sections, the person:

(1) causes or attempts to cause a financial institution, including a video lottery facility, foreign or domestic money transmitter or an authorized delegate thereof, check casher, person engaged in a trade or business or any other individual or entity required by State or federal law to file a report regarding currency transactions or suspicious transactions to fail to file a report; or

(2) causes or attempts to cause a financial institution, including a video lottery facility, foreign or domestic money transmitter or an authorized delegate thereof, check casher, person engaged in a trade or business or any other individual or entity required by State or federal law to file a report regarding currency transactions or suspicious transactions to file a report that contains a material omission or misstatement of fact; or

(3) structures or assists in structuring, or attempts to structure or assist in structuring, any transaction with one or more financial institutions, including a video lottery facility, foreign or domestic money transmitters or an authorized delegate thereof, check cashers, persons engaged in a trade or business or any other individuals or entities required by State or federal law to file a report regarding currency transactions or suspicious transactions.

(g) A violation of subsection (f) is a Class G felony.”.

Section 10. Amend § 4810, Title 29 of the Delaware Code, by striking sub-paragraph (a) in its entirety, re-numbering sub-paragraph (b) as sub-paragraph (e), and by substituting in lieu of sub-paragraph (a) the following:

(a) No person who is under the age of 18 shall purchase a lottery ticket. No person who is under the age of 21 shall wager on the video lottery, sports lottery or table games in a video lottery facility. Whoever has not reached the specified age and has violated this sub-paragraph shall be guilty of a misdemeanor.

(b) No ticket shall be sold to any person under the age of 18 years, but this shall not be deemed to prohibit the purchase of a ticket for the purpose of making a gift by a person 18 years of age or older to a person less than that age.

(c) No licensed video lottery agent or employee of a video lottery agent shall allow a person under the age of 21 to wager on the video lottery, table games or the sports lottery.

(d) A violation of sub-paragraphs (b) or (c) shall be a misdemeanor, except that the establishment of the following facts shall constitute a defense to any prosecution therefor:

(1) That the underage person falsely represented in writing that he or she was over the minimum age required in this section.

(2) That the appearance of the underage person was such that an ordinary prudent person would believe that the person was over the minimum age required in this section.".

Section 11. Amend § 4811, Title 29 of the Delaware Code by inserting after "subchapter" and before "." the following: ", except for offenses under Section 4810"."

SYNOPSIS

This Bill strengthens certain Delaware criminal statutes applicable to conduct that may occur in a table gaming environment.

Section 1. This amendment to the definition for "cheating device" broadens the scope of that definition to include cheating devices applicable to table games. The new definition includes cards or dice that have been marked, loaded or tampered with, and clarifies that cheating devices may be mechanical, electromechanical, electronic, photographic or computerized in nature.

Section 2. This new definition for "table game" is identical to the definition utilized in Title 29, Chapter 48.

Section 3. Sub-paragraphs (a), (c), (d) and (e) of Section 1471 are amended to include table games. Sub-paragraph (c) is also amended to clarify that cheating may be done on behalf of a third party. Sub-paragraph (d) is amended to broaden the prohibition on manipulating components of a table game, and sub-paragraph (e) is amended to broaden the type of instruments that may be counterfeited to include chips and other wagering instruments. Sub-paragraphs (f) - (l) are new and are added to address specific fraudulent activity incident to table games, such as: (f) shuffle fraud, (g) falsely claiming another's winning wager, (h) dealer collusion, (i) posting wagers after the game outcome is known; (j) decreasing wagers after the game outcome is known; (k) solicitation of game fixing; and (l) use of unlawful electronic devices.

Section 4. Section 4 alters the penalty structure for theft crimes. Section 1472, as it presently exists, makes all violations of this subchapter class A misdemeanors for first offenses and a class G felonies for second and subsequent offenses. The new section preserves this penalty structure for non-theft table crimes, such as possession and use of a cheating device, use of counterfeits, manipulation of game components, and use of unlawful electronic devices. However, the new section increases the penalties for theft crimes such as cheating, altering bets, dealer collusion, late posting or decreasing of wagers. The enhanced penalties for theft crimes are consistent with the penalties for theft crimes generally, and vary based on the amount of the theft. The new Section 1472 also includes a new penalty for game fixing.

Section 5. Because law enforcement officers may not always be on-site to assist in the apprehension of a person committing a violation of Section 1471, this new section gives video lottery agents and their employees or agents the authority to detain patrons for questioning when they have probable cause to believe a violation of that section has occurred. It also provides civil and criminal qualified immunity to the video lottery agent for conducting questioning and detaining a suspect, and requires that law enforcement be summoned without delay and that the video lottery agent post notice of its detention authority.

Section 6. Section 6 amends the definition of "money laundering" to including knowingly engaging in a transaction with criminal proceeds with the intent of evading currency transaction reporting requirements.

Sections 7-9. Sections 7-9 address a current gap in Delaware law by prohibiting persons from structuring financial transactions or otherwise attempting to evade the filing of a currency transaction report. Section 7 defines "structuring" to include transactions arranged for the purpose of evading currency transaction reporting requirements, such as breaking down transactions into smaller sums or engaging in transactions over a series of days. Section 8 preserves money laundering, as it exists under current law, as a Class D felony. Section 9 creates a new prohibition against causing or attempting to cause a financial institution not to file a currency transaction report or to file a misleading currency transaction report, as well as "structuring" a transaction to avoid a currency transaction report. This new prohibition would be a Class G felony.

Sections 10-11. Section 10 enhances the penalties for underage gaming by specifying the penalties for persons under the required age who use the lottery and creating a penalty for video lottery agents who allow underage persons to take part in lottery games. Section 11 allows underage gaming prosecutions to be heard in courts other than Superior Court.

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