

1 HB299
2 106121-1
3 By Representative Wood
4 RFD: Tourism and Travel
5 First Read: 14-JAN-10

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8 SYNOPSIS: Under existing law, there is no specific
9 provision for a civil cause of action to recover
10 monetary penalties for illegal gambling devices.

11 This bill would provide a civil cause of
12 action to recover civil monetary penalties for
13 illegal gambling activities. This bill would
14 provide that the civil remedies would be used in
15 conjunction with existing criminal and civil causes
16 of action. This bill would provide for the
17 distribution of proceeds recovered for the
18 operation of an illegal gambling device.

19
20 A BILL
21 TO BE ENTITLED
22 AN ACT
23

24 To provide a civil cause of action to recover civil
25 monetary penalties for illegal gambling activities; to provide
26 that the civil remedies would be used in conjunction with
27 existing criminal and civil causes of action; and to provide

1 for the distribution of proceeds recovered for the operation
2 of an illegal gambling activity.

3 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

4 Section 1. The Legislature declares and finds the
5 following:

6 (1) It is public policy in the State of Alabama that
7 the monetary incentives to enter into illegal gambling
8 activities should be removed.

9 (2) Owners and operators of illegal gambling
10 facilities and other individuals who profit from illegal
11 gambling activity have considered the payment of criminal
12 fines as a general cost of engaging in these illegal
13 businesses.

14 (3) The purpose of this act is to provide a strict
15 liability scheme that imposes significant civil monetary
16 penalties that will make the costs associated with illegal
17 gambling activity much higher than the potential profits.

18 (4) It is the intent of the Alabama Legislature that
19 these civil remedies be used in conjunction with, and not in
20 place of, any other criminal or civil charges and that nothing
21 in this act shall be deemed to supersede, take precedence
22 over, or preempt any remedy, either criminal or civil,
23 available to any law enforcement agency, or other agency or
24 subdivision of the state.

25 Section 2. All terms used in this act relating to
26 gambling offenses shall have the same meaning as those found
27 in Section 13A-12-20, Code of Alabama 1975.

1 Section 3. No individual or entity may own, operate,
2 possess, lease, or have an indirect or direct financial
3 interest in the operation of a gambling device.

4 Section 4. The following are not a financial
5 interest in the operation of a gambling device for purposes of
6 Section 3:

7 (1) An ownership of investment securities, including
8 shares or bonds, debentures, notes, or other debt instruments
9 which may be purchased on terms generally available to the
10 public and which are any of the following:

11 a. Securities listed on the New York Stock Exchange,
12 the American Stock Exchange, or any regional exchange in which
13 quotations are published on a daily basis, or foreign
14 securities listed on a recognized foreign, national, or
15 regional exchange in which quotations are published on a daily
16 basis.

17 b. In a corporation that had, at the end of the
18 corporation's most recent fiscal year, or on average during
19 the previous three fiscal years, stockholder equity exceeding
20 seventy-five million dollars (\$75,000,000).

21 c. Ownership of shares in a regulated investment
22 company as defined in Section 851 (a) of the Internal Revenue
23 Code of 1986, if the company had, at the end of the most
24 recent fiscal year of the company, or on average during the
25 previous three fiscal years, stockholder equity exceeding
26 seventy-five million dollars (\$75,000,000).

1 (2) An arrangement where an individual is a
2 part-time or full-time employee and is paid less than three
3 times the federal minimum wage, including bonuses.

4 (3) The fair market value payment for items and
5 services unrelated to the operation of a gambling device,
6 excluding any rental payments, and including, but not limited
7 to, plumbing, electrical, or janitorial services, if the
8 amount of payment due is not dependent upon the amount of
9 revenue received from the operation of a gambling device.

10 Section 5. (a) It is a defense to a violation of
11 Section 3 that an individual or entity was unaware that the
12 gambling device was on the premises of the individual or
13 entity. The defendant has the burden of proving by a
14 preponderance of the evidence that the defendant was unaware
15 that the gambling device was on the premises. This defense is
16 only available as to knowledge of the physical gambling
17 device, and not as to the illegality of the machines.

18 (b) It shall be a defense to a violation of Section
19 3 that an individual, entity, or company was merely
20 transporting a gambling device in compliance with all federal
21 and state laws.

22 Section 6. (a) An individual or entity that is found
23 by a preponderance of the evidence to have violated Section 3
24 shall be subject to all of the following:

25 (1) A civil monetary penalty of not less than one
26 thousand dollars (\$1,000) per day the gambling device is in
27 use, per each gambling device, or up to three times the gross

1 receipts derived from the gambling device during the period of
2 time the gambling device was in use, whichever is greater.

3 (2) Forfeiture of all profits resulting from the
4 illegal gambling activities.

5 (3) Forfeiture of any interest in any property, real
6 or otherwise, used in connection with a gambling device.

7 (4) Forfeiture of any property, real or otherwise, a
8 part of which is used as a facility or location in which to
9 operate a gambling device.

10 (b) For purposes of this act, the term "in use"
11 shall mean a gambling device was available to be operated.

12 Section 7. Once a defendant is found to have owned,
13 operated, possessed, leased, or had an indirect or direct
14 financial interest in the operation of a gambling device, then
15 a rebuttable presumption is created that every other gambling
16 device, or substantially similar device, which is found within
17 the same address, structure, or building, which is capable of
18 being in use or which would appear to a reasonable person to
19 be in working order whether or not such device is wired
20 properly or has power, was actually operated by a defendant
21 for purposes of Section 6. The burden is upon the defendant to
22 show that at a particular point in time a gambling device was
23 not in operation or operable.

24 Section 8. The Office of the Attorney General of the
25 State of Alabama and each district attorney shall have the
26 power to institute an action to enforce and collect upon the
27 provisions contained in this action.

1 Section 9. (a) An individual who brings forward
2 non-public and original information to a district attorney or
3 the Attorney General that otherwise would not have been
4 discovered by a law enforcement agency and directly leads to a
5 successful recovery of a civil monetary penalty under this act
6 may share in up to 15 percent of the total recovery of a civil
7 action brought under this act after completion of all appeals.
8 The amount of recovery to be awarded under this section, if
9 any, shall be in the discretion of the trial court. Nothing
10 contained in this section shall be construed as creating a
11 private right of action or authorizing an individual to bring
12 an action in the name of the state.

13 (b) If two or more individuals are eligible for a
14 monetary award under this section, the total amount awarded to
15 the individuals may not exceed 15 percent of the total amount
16 recovered.

17 Section 10. After a successful recovery of a civil
18 monetary penalty or other recovery under this act and after
19 taking out any recovery for an individual pursuant to Section
20 9 and court costs and other costs, the balance of the recovery
21 shall be distributed equally to the investigative agency that
22 brought forth the case and the prosecuting agency.

23 Section 11. This act shall become effective on the
24 first day of the third month following its passage and
25 approval by the Governor, or its otherwise becoming law.