

JAN 20 2010

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# A BILL FOR AN ACT

RELATING TO GAMBLING.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1 SECTION 1. Chapter 712, Hawaii Revised Statutes, is  
2 amended by adding a new section to part III, to be appropriately  
3 designated and to read as follows:

4 "§712- Free play not a defense; when. It shall not be  
5 a defense to an offense charged under this part that free play  
6 was offered, if the free play was offered by mail as an  
7 alternative to play via purchase of:

8 (1) An item that is not bona fide or is offered at a price  
9 that is disproportionate to the value of the item  
10 purchased; or

11 (2) A chance to win if the free play by mail is offered  
12 from a pool different from the pool from which the  
13 chance to win via purchase is drawn."

14 SECTION 2. Section 712-1220, Hawaii Revised Statutes, is  
15 amended to read as follows:



1           "§712-1220 Definitions of terms in this part. In this  
2 part unless a different meaning plainly is required, the  
3 following definitions apply.

4           [~~(1)~~] "Advance gambling activity". A person "advances  
5 gambling activity" if [~~he~~] the person engages in conduct that  
6 materially aids any form of gambling activity. Conduct of this  
7 nature includes but is not limited to conduct directed toward  
8 the creation or establishment of the particular game, contest,  
9 scheme, device, or activity involved, toward the acquisition or  
10 maintenance of premises, paraphernalia, equipment, or apparatus  
11 therefor, toward the solicitation or inducement of persons to  
12 participate therein, toward the actual conduct of the playing  
13 phases thereof, toward the arrangement of any of its financial  
14 or recording phases, or toward any other phase of its operation.  
15 A person advances gambling activity if, having substantial  
16 proprietary control or other authoritative control over premises  
17 being used with [~~his~~] the person's knowledge for purposes of  
18 gambling activity, [~~he~~] the person permits that activity to  
19 occur or continue or makes no effort to prevent its occurrence  
20 or continuation. A person advances gambling activity if [~~he~~]  
21 the person plays or participates in any form of gambling  
22 activity. Conduct that constitutes gambling activity under this



1 definition is not rendered otherwise by the fact that free play  
2 is offered by mail as an alternative to play via purchase of:

3       (1) An item that is not bona fide or is offered at a price  
4           that is disproportionate to the value of the item  
5           purchased; or

6       (2) A chance to win if the free play by mail is offered  
7           from a pool different from the pool from which the  
8           chance to win via purchase is drawn.

9       ~~[(2)]~~ "Bookmaking" means advancing gambling activity by  
10 accepting bets from members of the public upon the outcomes of  
11 future contingent events.

12       ~~[(3)]~~ "Contest of chance" means any contest, game, gaming  
13 scheme, or gaming device in which the outcome depends in a  
14 material degree upon an element of chance, notwithstanding that  
15 skill of the contestants may also be a factor therein.

16       ~~[(4)]~~ "Gambling". A person engages in gambling if ~~[he]~~  
17 the person stakes or risks something of value upon the outcome  
18 of a contest of chance or a future contingent event not under  
19 ~~[his]~~ the person's control or influence, upon an agreement or  
20 understanding that ~~[he]~~ the person or someone else will receive  
21 something of value in the event of a certain outcome. Gambling  
22 does not include bona fide business transactions valid under the



1 law of contracts, including but not limited to contracts for the  
2 purchase or sale at a future date of securities or commodities,  
3 and agreements to compensate for loss caused by the happening of  
4 chance, including but not limited to contracts of indemnity or  
5 guaranty and life, health, or accident insurance.

6       ~~[(5)]~~ "Gambling device" means any device, machine,  
7 paraphernalia, or equipment that is used or usable in the  
8 playing phases of any gambling activity, whether that activity  
9 consists of gambling between persons ~~[or]~~, gambling by a person  
10 involving the playing of a machine~~[-. However, lottery tickets~~  
11 ~~and other items used in the playing phases of lottery schemes~~  
12 ~~are not gambling devices within this definition.]~~, or a lottery.

13       ~~[(6)]~~ "Lottery" means a gambling scheme in which:

14       ~~[(a)]~~    (1) The players pay or agree to pay something of  
15 value for chances, represented and differentiated by  
16 numbers or by combinations of numbers or by some other  
17 medium, one or more of which chances are to be  
18 designated the winning ones; and

19       ~~[(b)]~~    (2) The winning chances are to be determined by a  
20 drawing or by some other method based on an element of  
21 chance; and



1        [~~e~~]     (3)    The holders of the winning chances are to receive  
2                   something of value.

3            [~~7~~]    "Mutuel" means a form of lottery in which the  
4 winning chances or plays are not determined upon the basis of a  
5 drawing or other act on the part of persons conducting or  
6 connected with the scheme, but upon the basis of the outcome or  
7 outcomes of a future contingent event or events otherwise  
8 unrelated to the particular scheme.

9            [~~8~~]    "Player" means a person who engages in gambling  
10 solely as a contestant or bettor.

11           [~~9~~]    "Profit from gambling activity". A person "profits  
12 from gambling activity" if [~~he~~] the person accepts or receives  
13 money or other property pursuant to an agreement or  
14 understanding with any person whereby [~~he~~] the person  
15 participates or is to participate in the proceeds of gambling  
16 activity.

17           [~~10~~]   "Social gambling" [~~is~~] means the same as defined in  
18 section 712-1231.

19           [~~11~~]   "Something of value" means any money or property,  
20 any token, object, or article exchangeable for money or  
21 property, or any form of credit or promise directly or  
22 indirectly contemplating transfer of money or property or of any



1 interest therein, or involving extension of a service or  
2 entertainment."

3 SECTION 3. Statutory material to be repealed is bracketed  
4 and stricken. New statutory material is underscored.

5 SECTION 4. This Act shall take effect on July 1, 2010;  
6 provided that section 1 shall take effect on January 1, 2012.

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INTRODUCED BY: Clarence W. Fischer



**Report Title:**

Gambling; Lottery; Sweepstakes

**Description:**

Amends definition of gambling to clarify that purchase of sweepstakes entry that also provides nominal non-gambling value constitutes gambling even if sweepstakes entry can be obtained without payment of consideration. Eliminates free play, beginning 01/01/2012, as a defense under certain circumstances.

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