



**LATE TESTIMONY**

**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
TWENTY-EIGHTH LEGISLATURE, 2016**

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**ON THE FOLLOWING MEASURE:**

S.B. NO. 2429, RELATING TO FANTASY COMPETITIONS.

**BEFORE THE:**

SENATE COMMITTEE ON JUDICIARY AND LABOR

**DATE:** Thursday, February 11, 2016 **TIME:** 9:00 a.m.

**LOCATION:** State Capitol, Room 016

**TESTIFIER(S):** Douglas S. Chin, Attorney General, or  
Lance M. Goto, Deputy Attorney General

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Chair Keith-Agaran and Members of the Committee:

The Department of the Attorney General provides these comments.

The purpose of this bill is to create a new offense of Promoting Fantasy Competition with an affirmative defense provision that effectively permits the prohibited conduct by promoters of fantasy competitions under certain situations. Entities which promote fantasy competitions and cannot assert the defense are subject to a violation, or a lower grade offense than the existing misdemeanor offense of Promoting Gambling in the Second Degree under section 712-1222 of the Hawaii Revised Statutes (“A person commits the offense of promoting gambling in the second degree if the person knowingly advances or profits from gambling activity”).

First, the Department comments that the offense is set forth as follows (page 1, lines 4-13):

- (1) A person commits the offense of promoting fantasy competition if the person knowingly advances or profits from the game or contest and:
  - (a) The person is under twenty-one years of age;
  - (b) The person advertises or promotes the game or contest on a school or college campus; or
  - (c) The person is an athlete or otherwise employed in a professional sport and the contest is in that professional sport.

The elements of the offense contain undefined terms such as “game or contest” and “athlete,” and may lead to proof problems under the criminal standard of proof

beyond a reasonable doubt. On the other hand, the bill does define “fantasy competition” starting on page 2, line 16, but that definition is overbroad and ambiguous.

Second, the Department comments that the conduct prohibited under the proposed offense of Promoting Fantasy Competition is already covered and prohibited under Hawaii law. The effect of this new offense, should it become law, might not represent what the Committee intends. As drafted now, those who are over 21, or those who do not advertise or promote the game or contest on a school or college campus, or those who are not an athlete or otherwise employed in a professional sport and the contest is in that professional sport, do not fall within the elements of the new offense and may still be subject to misdemeanor or even class C felony prosecution under the existing Hawaii penal code.

Third, the affirmative defense provision, starting at page 1 in the bill, at line 15, permits the commission of the offense, provided that “the person limits a player’s bet to no more than \$1,000 per month on a game or contest.” “Bet” and, as mentioned earlier, “game or contest”, are both undefined in the Hawai‘i penal code. Additionally, starting at page 2 in the bill, at line 3, promoters of fantasy competitions are effectively permitted to commit the offense if they identify “highly experienced players” and offer “beginner games” that are “disallowed” to “highly experienced players.” The terms “highly experienced players” and “beginner games” are similarly undefined.

Thank you for the opportunity to testify.