

AMENDED IN SENATE MARCH 24, 2008

SENATE BILL

No. 1400

Introduced by Senator Simitian

February 21, 2008

An act to amend Section 17539.15 of the Business and Professions Code, relating to business.

LEGISLATIVE COUNSEL'S DIGEST

SB 1400, as amended, Simitian. Sweepstakes.

Existing law provides that any person who contrives, prepares, sets up, proposes, or draws any lottery is guilty of a misdemeanor.

Existing law defines "sweepstakes" to mean any procedure for the distribution of anything of value by lot or by chance that is not unlawful. Existing law sets forth specified advertising and solicitation requirements with regard to the operation of sweepstakes, as specified.

This bill would *prohibit sweepstakes materials, as defined, from representing that a person has been specially selected, as defined, when more than 25% of the persons receiving the materials received the same materials, and would impose various requirements where less than 25% of the persons received the same materials. The bill would also prohibit sweepstakes materials from making various other misleading or false representations. The bill would also require sweepstakes materials to disclose the date the final winner will be determined. The bill would specify that the operator of any sweepstakes sponsor, as defined, may not condition the collection of a prize upon payment of a fee and would prohibit these sponsors from sharing or selling the names and information of its customers or participants without their express consent. The bill would make other conforming changes.*

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 17539.15 of the Business and Professions
2 Code is amended to read:
3 17539.15. (a) ~~Solicitation-Sweepstakes materials-containing~~
4 ~~sweepstakes entry materials~~ shall not represent, taking into account
5 the context in which the representation is made, including, without
6 limitation, emphasis, print, size, color, location, and presentation
7 of the representation and any qualifying language, that a person
8 is a winner or has already won a prize *or any particular prize*
9 unless that person has in fact won a prize *or any particular prize*.
10 If the representation is made on or visible through the mailing
11 envelope containing the sweepstakes materials, the context in
12 which the representation is to be considered, including any
13 qualifying language, shall be limited to what appears on, appears
14 from, or is visible through the mailing envelope.
15 (b) ~~Solicitation-Sweepstakes materials-containing sweepstakes~~
16 ~~entry materials~~ shall include a prominent statement of the
17 no-purchase-necessary message, in readily understandable terms,
18 in the official rules included in those ~~solicitation~~ *sweepstakes*
19 materials and, if the official rules do not appear thereon, on the
20 entry-order device included in those ~~solicitation~~ *sweepstakes*
21 materials. The no-purchase-necessary message included in the
22 official rules shall be set out in a separate paragraph in the official
23 rules and be printed in capital letters in contrasting typeface not
24 smaller than the largest typeface used in the text of the official
25 rules.
26 (c) Sweepstakes entries not accompanied by an order for
27 products or services shall not be subjected to any disability or
28 disadvantage in the winner selection process to which an entry
29 accompanied by an order for products or services would not be
30 subject.
31 (d) Sweepstakes materials ~~containing sweepstakes entry~~
32 ~~materials~~ shall not represent that an entry in the promotional
33 sweepstakes accompanied by an order for products or services will
34 be eligible to receive additional prizes or be more likely to win
35 than an entry not accompanied by an order for products or services

1 or that an entry not accompanied by an order for products or
2 services will have a reduced chance of winning a prize in the
3 promotional sweepstakes.

4 ~~(e) A person or entity that operates a sweepstakes may not~~
5 ~~charge a fee as a condition of collecting a prize.~~

6 *(e) Sweepstakes materials shall not represent that a person has*
7 *been specially selected when more than 25 percent of the persons*
8 *receiving the sweepstakes materials have received the same*
9 *sweepstakes materials.*

10 *(f) If sweepstakes materials represent that a person has been*
11 *specially selected consistent with subdivision (e), then immediately*
12 *adjacent to that representation, in the same print, size, and color*
13 *as the representation, the solicitation shall include a statement of*
14 *the number of persons in the group, or purported group of persons,*
15 *that received the same sweepstakes materials.*

16 *(g) Sweepstakes materials shall not represent that the person*
17 *receiving the solicitation has received any special treatment or*
18 *personal attention from the sweepstakes sponsor or any officer,*
19 *employee, or agent of the sweepstakes sponsor.*

20 *(h) Sweepstakes materials shall not represent that a person is*
21 *being notified a second or final time of the opportunity to receive*
22 *or compete for a prize, unless that representation is true.*

23 *(i) Sweepstakes materials shall not represent that a prize notice*
24 *is urgent or otherwise convey an impression of urgency by use of*
25 *description, phrasing on a mailing envelope, or similar method,*
26 *unless there is a limited time period in which the recipient must*
27 *take some action to claim, or be eligible to receive, a prize, and*
28 *the date by which that action is required appears immediately*
29 *adjacent to each representation of urgency in the same print, size,*
30 *and color as each representation of urgency.*

31 *(j) Sweepstakes materials shall not do any of the following:*

32 *(1) Simulate or falsely represent that it is a document authorized,*
33 *issued, or approved by any court, official, or agency of the United*
34 *States or any state, or by any lawyer, law firm, or insurance or*
35 *brokerage company.*

36 *(2) Create a false impression as to its source, authorization, or*
37 *approval.*

38 *(k) Sweepstakes materials shall disclose the date the final winner*
39 *will be determined.*

40 ~~(f)~~

1 (l) For purposes of this section:

2 (1) “No-purchase-necessary message” means ~~a statement to the~~
3 ~~effect that no purchase is necessary as a condition of entering the~~
4 ~~promotional sweepstakes. the following statement:~~ “No purchase
5 or payment of any kind is necessary to enter or win this
6 sweepstakes.”

7 (2) “Official rules” means the formal printed statement, however
8 designated, of the rules for the promotional sweepstakes appearing
9 in the ~~solicitation~~ sweepstakes materials. The official rules shall
10 be prominently identified and all references thereto in any
11 ~~solicitation~~ sweepstakes materials shall consistently use the
12 designation for the official rules that appears in those materials.
13 ~~Each sweepstakes solicitation shall contain a copy of the official~~
14 ~~rules. All sweepstakes materials shall contain a copy of the official~~
15 ~~rules.~~

16 (3) “Sweepstakes materials” means any of the following:

17 (A) Sweepstakes entry materials.

18 (B) Solicitation materials connected to or promoting
19 sweepstakes.

20 (C) Solicitation materials selling information regarding
21 sweepstakes.

22 (4) “Specially selected” means a representation that a person
23 is among a limited group of persons with an enhanced likelihood
24 of receiving sweepstakes materials.

25 (m) (1) A sweepstakes sponsor may not charge a fee as a
26 condition of collecting a prize.

27 (2) Sweepstakes sponsors are prohibited from sharing or selling
28 the names and information of their customers and participants
29 related to sweepstakes without the express consent of their
30 customers or participants.

31 (3) For the purposes of this section, “sweepstakes sponsor”
32 means either of the following:

33 (A) A person or entity that operates or administers a sweepstakes
34 as defined in paragraph (12) of subdivision (a) of Section 17539.5.

35 (B) A person or entity that offers, by means of a notice, a prize
36 to another person in conjunction with any real or purported
37 sweepstakes that requires or allows, or creates the impression of
38 requiring or allowing, the person to purchase any goods or
39 services, or pay any money, as a condition of receiving, or in

- 1 *conjunction with allowing the person to receive, use, or obtain a*
- 2 *prize or information about a prize.*

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