

AMENDED IN ASSEMBLY JUNE 9, 2008

AMENDED IN SENATE MAY 6, 2008

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 prohibits certain advertising practices, and makes it a crime to violate any of the provisions governing advertising.

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 *and solicitation materials containing sweepstakes entry materials*, as specified.

This bill would *revise and recast those provisions to, among others, apply those requirements to solicitation materials selling information regarding sweepstakes. The bill would also prohibit sweepstakes materials, as defined, all sweepstakes solicitations* from representing that a person has been specially selected, as defined, ~~when more than 25% of the persons receiving the materials have the same chance of winning, and would require sweepstakes materials that are not subject to that prohibition to include specified information about the number~~

of persons receiving the sweepstakes materials *unless that representation is true*. The bill would ~~also further~~ prohibit sweepstakes materials solicitations from making various other misleading or false representations. The bill would also require sweepstakes materials solicitations to disclose the date the final winner will be determined. The bill would ~~specify that the~~ *also prohibit* a sweepstakes sponsor, as defined, ~~may not condition the collection of a prize upon payment of from charging a fee as a condition of participation or receiving a prize or monetary distribution, as specified,~~ and would prohibit a sweepstakes sponsors sponsor from sharing or selling the names ~~and~~ or information of its customers or participants without their prior express consent. ~~The bill would make other conforming changes.~~

Because this bill would expand the advertising prohibitions described above, the violation of which is a crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

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) ~~Sweepstakes materials~~ *Solicitation materials*
 4 *containing sweepstakes entry materials and solicitation materials*
 5 *selling information regarding sweepstakes* shall not represent,
 6 taking into account the context in which the representation is made,
 7 including, without limitation, emphasis, print, size, color, location,
 8 and presentation of the representation and any qualifying language,
 9 that a person is a winner or has already won a prize or any
 10 particular prize unless that person has in fact won a prize or any
 11 particular prize. If the representation is made on or visible through
 12 the mailing envelope containing the sweepstakes materials, the
 13 context in which the representation is to be considered, including

1 any qualifying language, shall be limited to what appears on,
2 appears from, or is visible through, the mailing envelope.

3 ~~(b) Sweepstakes materials—Solicitation materials containing~~
4 ~~sweepstakes entry materials and solicitation materials selling~~
5 ~~information regarding sweepstakes~~ shall include a clear and
6 conspicuous statement of the no-purchase-necessary message, in
7 readily understandable terms, in the official rules included in those
8 ~~sweepstakes solicitation materials~~ and, if the official rules do not
9 appear thereon, on the entry-order device included in those
10 ~~sweepstakes solicitation materials~~. The no-purchase-necessary
11 message included in the official rules shall be set out in a separate
12 paragraph in the official rules and be printed in capital letters in
13 contrasting typeface not smaller than the largest typeface used in
14 the text of the official rules.

15 (c) Sweepstakes entries not accompanied by an order for
16 products or services shall not be subjected to any disability or
17 disadvantage in the winner selection process to which an entry
18 accompanied by an order for products or services would not be
19 subject.

20 ~~(d) Sweepstakes materials—Solicitation materials containing~~
21 ~~sweepstakes entry materials and solicitation materials selling~~
22 ~~information regarding sweepstakes~~ shall not represent that an entry
23 in the promotional sweepstakes accompanied by an order for
24 products or services will be eligible to receive additional prizes or
25 be more likely to win than an entry not accompanied by an order
26 for products or services or that an entry not accompanied by an
27 order for products or services will have a reduced chance of
28 winning a prize in the promotional sweepstakes.

29 ~~(e) Sweepstakes materials—Solicitation materials containing~~
30 ~~sweepstakes entry materials and solicitation materials selling~~
31 ~~information regarding sweepstakes~~ shall not represent that a person
32 has been specially selected ~~when more than 25 percent of the~~
33 ~~persons receiving the sweepstakes materials have the same chance~~
34 ~~of winning.~~

35 ~~(f) If sweepstakes materials represent that a person has been~~
36 ~~specially selected consistent with subdivision (e), then immediately~~
37 ~~adjacent to that representation, in the same print, size, and color~~
38 ~~as the representation, the solicitation shall include a statement of~~
39 ~~the number of persons in the group, or purported group of persons,~~
40 ~~that received the same sweepstakes materials.~~

1 ~~(g) Sweepstakes materials~~ *in connection with a sweepstakes*
2 *unless it is true.*

3 *(f) Solicitation materials containing sweepstakes entry materials*
4 *and solicitation materials selling information regarding*
5 *sweepstakes shall not represent that the person receiving the*
6 *solicitation has received any special treatment or personal attention*
7 *from the sweepstakes sponsor or any officer, employee, or agent*
8 *of the sweepstakes sponsor.*

9 ~~(h) Sweepstakes materials~~

10 *(g) Solicitation materials containing sweepstakes entry materials*
11 *and solicitation materials selling information regarding*
12 *sweepstakes shall not represent that a person is being notified a*
13 *second or final time of the opportunity to receive or compete for*
14 *a prize, unless that representation is true.*

15 ~~(i) Sweepstakes materials~~

16 *(h) Solicitation materials containing sweepstakes entry materials*
17 *and solicitation materials selling information regarding*
18 *sweepstakes shall not represent that a prize notice is urgent or*
19 *otherwise convey an impression of urgency by use of description,*
20 *phrasing on a mailing envelope, or similar method, unless there is*
21 *a limited time period in which the recipient must take some action*
22 *to claim, or be eligible to receive, a prize, and the date by which*
23 *that action is required appears immediately adjacent to each*
24 *representation of urgency in the same print, size, and color as each*
25 *representation of urgency.*

26 ~~(j) Sweepstakes materials~~

27 *(i) Solicitation materials containing sweepstakes entry materials*
28 *and solicitation materials selling information regarding*
29 *sweepstakes shall not do any of the following:*

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

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

36 (3) *Charge or accept any fee to enter, claim, or win a*
37 *sweepstakes.*

38 ~~(k) Sweepstakes materials~~

39 *(j) Solicitation materials containing sweepstakes entry materials*
40 *and solicitation materials selling information regarding*

1 *sweepstakes* shall disclose the date the final winner will be
2 determined.

3 ~~(j)~~

4 (k) For purposes of this section:

5 (1) “No-purchase-necessary message” means the following
6 statement: “No purchase or payment of any kind is necessary to
7 enter or win this sweepstakes.”

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

23 (3) “Specially selected” means a representation that a person is
24 a winner, a finalist, in first place or tied for first place, or otherwise
25 among a limited group of persons with an enhanced likelihood of
26 receiving a prize.

27 ~~(m)~~

28 (l) (1) A sweepstakes sponsor may not charge a fee as a
29 condition of ~~collecting a prize~~ *entering a sweepstakes, claiming*
30 *or winning a prize, receiving a monetary distribution, or obtaining*
31 *information about a prize or sweepstakes.*

32 (2) Sweepstakes sponsors are prohibited from sharing or selling
33 the names and information of their customers and participants
34 related to sweepstakes without the prior express consent of their
35 customers or participants.

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

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

1 (B) A person or entity that offers, by means of a notice, a prize
2 to another person in conjunction with any real or purported
3 sweepstakes that requires or allows, or creates the impression of
4 requiring or allowing, the person to purchase any goods or services,
5 or pay any money, as a condition of receiving, or in conjunction
6 with allowing the person to receive, use, or obtain a prize or
7 information about a prize.

8 *SEC. 2. No reimbursement is required by this act pursuant to*
9 *Section 6 of Article XIII B of the California Constitution because*
10 *the only costs that may be incurred by a local agency or school*
11 *district will be incurred because this act creates a new crime or*
12 *infraction, eliminates a crime or infraction, or changes the penalty*
13 *for a crime or infraction, within the meaning of Section 17556 of*
14 *the Government Code, or changes the definition of a crime within*
15 *the meaning of Section 6 of Article XIII B of the California*
16 *Constitution.*