

AMENDED IN ASSEMBLY JUNE 17, 2008

AMENDED IN ASSEMBLY JUNE 9, 2008

AMENDED IN SENATE MAY 6, 2008

AMENDED IN SENATE MARCH 24, 2008

**SENATE BILL**

**No. 1400**

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**Introduced by Senator Simitian**

February 21, 2008

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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 all sweepstakes solicitations from representing that a person has been specially selected, as defined, unless that representation is true. The bill would further prohibit sweepstakes solicitations from making various other misleading or false representations. The bill would also require *the official rules*

for a sweepstakes solicitations to disclose information about the date the final winner will be determined. The bill would also prohibit a sweepstakes sponsor, as defined, from charging a fee as a condition of participation or receiving a prize or monetary distribution, as specified, and would prohibit a sweepstakes sponsor from sharing or selling the names or personally identifiable information of its customers or participants without their prior express consent, with specified exceptions.

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: yes.  
 State-mandated local program: 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) Solicitation materials containing sweepstakes  
 4 entry materials and solicitation materials selling information  
 5 regarding sweepstakes shall not represent, taking into account the  
 6 context in which the representation is made, including, without  
 7 limitation, emphasis, print, size, color, location, and presentation  
 8 of the representation and any qualifying language, that a person  
 9 is a winner or has already won a prize or any particular prize unless  
 10 that person has in fact won a prize or any particular prize. If the  
 11 representation is made on or visible through the mailing envelope  
 12 containing the sweepstakes materials, the context in which the  
 13 representation is to be considered, including any qualifying  
 14 language, shall be limited to what appears on, appears from, or is  
 15 visible through, the mailing envelope.  
 16 (b) Solicitation materials containing sweepstakes entry materials  
 17 and solicitation materials selling information regarding sweepstakes  
 18 shall include a clear and conspicuous statement of the  
 19 ~~no-purchase-necessary~~ *no-purchase-or-payment-necessary*

1 message, in readily understandable terms, in the official rules  
2 included in those solicitation materials and, if the official rules do  
3 not appear thereon, on the entry-order device included in those  
4 solicitation materials. The ~~no-purchase-necessary~~  
5 *no-purchase-or-payment-necessary* message included in the official  
6 rules shall be set out in a separate paragraph in the official rules  
7 and be printed in capital letters in contrasting typeface not smaller  
8 than the largest typeface used in the text of the official rules.

9 (c) Sweepstakes entries not accompanied by an order for  
10 products or services shall not be subjected to any disability or  
11 disadvantage in the winner selection process to which an entry  
12 accompanied by an order for products or services would not be  
13 subject.

14 (d) Solicitation materials containing sweepstakes entry materials  
15 and solicitation materials selling information regarding sweepstakes  
16 shall not represent that an entry in the promotional sweepstakes  
17 accompanied by an order for products or services will be eligible  
18 to receive additional prizes or be more likely to win than an entry  
19 not accompanied by an order for products or services or that an  
20 entry not accompanied by an order for products or services will  
21 have a reduced chance of winning a prize in the promotional  
22 sweepstakes.

23 (e) Solicitation materials containing sweepstakes entry materials  
24 and solicitation materials selling information regarding sweepstakes  
25 shall not represent that a person has been specially selected  
26 in connection with a sweepstakes unless it is true.

27 (f) Solicitation materials containing sweepstakes entry materials  
28 and solicitation materials selling information regarding sweepstakes  
29 shall not represent that the person receiving the solicitation has  
30 received any special treatment or personal attention from the  
31 sweepstakes sponsor or any officer, employee, or agent of the  
32 sweepstakes sponsor *unless the representation of special treatment*  
33 *or personal attention is true.*

34 (g) Solicitation materials containing sweepstakes entry materials  
35 and solicitation materials selling information regarding sweepstakes  
36 shall not represent that a person is being notified a second or final  
37 time of the opportunity to receive or compete for a prize, unless  
38 that representation is true.

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

1 shall not represent that a prize notice is urgent or otherwise convey  
 2 an impression of urgency by use of description, phrasing on a  
 3 mailing envelope, or similar method, unless there is a limited time  
 4 period in which the recipient must take some action to claim, or  
 5 be eligible to receive, a prize, and the date by which that action is  
 6 required appears immediately adjacent to each representation of  
 7 urgency in the same print, size, and color as each representation  
 8 of urgency.

9 (i) Solicitation materials containing sweepstakes entry materials  
 10 and solicitation materials selling information regarding sweepstakes  
 11 shall not do any of the following:

12 (1) Simulate or falsely represent that it is a document authorized,  
 13 issued, or approved by any court, official, or agency of the United  
 14 States or any state, or by any lawyer, law firm, or insurance or  
 15 brokerage company.

16 (2) Create a false impression as to its source, authorization, or  
 17 approval.

18 (3) Charge or accept any fee to enter, claim, or win a  
 19 sweepstakes.

20 ~~(j) Solicitation materials containing sweepstakes entry materials  
 21 and solicitation materials selling information regarding sweepstakes  
 22 shall disclose the date the final winner will be~~

23 (j) *The official rules for a sweepstakes shall disclose information  
 24 about the date or dates the final winner or winners will be  
 25 determined.*

26 (k) For purposes of this section:

27 ( 1 ) ~~“ N o - p u r c h a s e - n e e e s s a r y~~  
 28 ~~“No-purchase-or-payment-necessary~~ message” means the  
 29 following statement *or a statement substantially similar to the*  
 30 *following statement:* “No purchase or payment of any kind is  
 31 necessary to enter or win this sweepstakes.”

32 (2) “Official rules” means the formal printed statement, however  
 33 designated, of the rules for the promotional sweepstakes appearing  
 34 in the solicitation materials. The official rules shall be prominently  
 35 identified and all references thereto in any solicitation materials  
 36 shall consistently use the designation for the official rules that  
 37 appears in those materials. Each sweepstakes solicitation shall  
 38 contain a copy of the official rules.

39 (3) “Specially selected” means a representation that a person is  
 40 a winner, a finalist, in first place or tied for first place, or otherwise

1 among a limited group of persons with an enhanced likelihood of  
2 receiving a prize.

3 (l) (1) A sweepstakes sponsor may not charge a fee as a  
4 condition of entering a sweepstakes, claiming or winning a prize,  
5 receiving a monetary distribution, or obtaining information about  
6 a prize or sweepstakes.

7 (2) Sweepstakes sponsors are prohibited from sharing or selling  
8 the names ~~and~~ or personally identifiable information of their  
9 customers and participants related to sweepstakes without the prior  
10 express consent of their customers or participants.

11 (3) *This subdivision shall not be construed to prohibit a*  
12 *sweepstakes sponsor from sharing the names or other personally*  
13 *identifiable information of customers or participants under any*  
14 *of the following circumstances:*

15 (A) *In connection with the administration of the sweepstakes,*  
16 *including fulfillment of prizes and provision of winners' lists.*

17 (B) *With entities that are affiliated with the sweepstakes sponsor*  
18 *by common ownership or control.*

19 (C) *With third parties with whom the sweepstakes sponsor has*  
20 *entered into a marketing agreement with respect to the*  
21 *sweepstakes.*

22 (D) *Between and among the sponsors, promoters,*  
23 *administrators, and operators of a specific sweepstakes.*

24 (4) (A) For the purposes of this section, "sweepstakes sponsor"  
25 means either of the following:

26 ~~(A)~~

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

29 ~~(B)~~

30 (ii) A person or entity that offers, by means of a notice, a prize  
31 to another person in conjunction with any real or purported  
32 sweepstakes that requires or allows, or creates the impression of  
33 requiring or allowing, the person to purchase any goods or services,  
34 or pay any money, as a condition of receiving, or in conjunction  
35 with allowing the person to receive, use, or obtain a prize or  
36 information about a prize.

37 (B) *A person or entity that merely furnishes a prize in connection*  
38 *with a sweepstakes that is operated or administered by another*  
39 *person or entity shall not be deemed to be a sweepstakes sponsor.*

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

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