

AMENDED IN ASSEMBLY JULY 2, 2008

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

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 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 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~~ addresses 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~~ *would be* 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

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

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

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

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

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

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

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

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

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

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

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

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

(k) For purposes of this section:

~~(1) “No-purchase-or-payment-necessary message” means the~~

(1) “*No-purchase-or-payment-necessary message*” means the following statement or a statement substantially similar to the following statement: “No purchase or payment of any kind is necessary to enter or win this sweepstakes.”

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

(3) “Specially selected” means a representation that a person is 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 (I) (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 or personally identifiable information addresses 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 of~~
14 ~~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 sweepstakes.~~

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

23 (4)

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

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

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

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

38 SEC. 2. No reimbursement is required by this act pursuant to
39 Section 6 of Article XIII B of the California Constitution because
40 the only costs that may be incurred by a local agency or school

1 district will be incurred because this act creates a new crime or
2 infraction, eliminates a crime or infraction, or changes the penalty
3 for a crime or infraction, within the meaning of Section 17556 of
4 the Government Code, or changes the definition of a crime within
5 the meaning of Section 6 of Article XIII B of the California
6 Constitution.

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