

Senate Bill No. 1400

CHAPTER 749

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

[Approved by Governor September 30, 2008. Filed with
Secretary of State September 30, 2008.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1400, 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 or 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 receiving a monetary distribution or obtaining information about a prize or sweepstakes.

Because this bill would expand the advertising prohibitions described above, the violation of which 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.

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

SECTION 1. Section 17539.15 of the Business and Professions Code is amended to read:

17539.15. (a) Solicitation materials containing sweepstakes entry materials or solicitation materials selling information regarding sweepstakes shall not represent, taking into account the context in which the representation is made, including, without limitation, emphasis, print, size, color, location, and presentation of the representation and any qualifying language, that a person is a winner or has already won a prize or any particular prize unless that person has in fact won a prize or any particular prize. If the representation is made on or visible through the mailing envelope containing the sweepstakes materials, the context in which the representation is to be considered, including any qualifying language, shall be limited to what appears on, appears from, or is visible through, the mailing envelope.

(b) Solicitation materials containing sweepstakes entry materials or solicitation materials selling information regarding sweepstakes shall include a clear and conspicuous statement of the no-purchase-or-payment-necessary message, in readily understandable terms, in the official rules included in those solicitation materials and, if the official rules do not appear thereon, on the entry-order device included in those solicitation materials. The no-purchase-or-payment-necessary message included in the official rules shall be set out in a separate paragraph in the official rules and be printed in capital letters in contrasting typeface not smaller than the largest typeface used in the text of the official rules.

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

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

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

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

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

(h) Solicitation materials containing sweepstakes entry materials or 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 is clearly and conspicuously disclosed in the body of the solicitation materials.

(i) Solicitation materials containing sweepstakes entry materials or solicitation materials selling information regarding sweepstakes shall not do either 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.

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

(l) (1) A sweepstakes sponsor may not charge a fee as a condition of receiving a monetary distribution or obtaining information about a prize or sweepstakes.

(2) (A) For the purposes of this section, “sweepstakes sponsor” means either of the following:

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

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

receiving, or in conjunction with allowing the person to receive, use, or obtain a prize or information about a prize.

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

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