

AMENDED IN ASSEMBLY MARCH 20, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1439

Introduced by Assembly ~~Member~~ *Members Bonta, Frazier, and Salas*

(Coauthors: Assembly Members *Achadjian, Bocanegra, Bonilla, Bonta, Brown, Ian Calderon, Campos, Conway, Cooley, Daly, Eggman, Fox, Gonzalez, Gray, Grove, Roger Hernández, Holden, Jones-Sawyer, Levine, Medina, Melendez, Mullin, Nazarian, Perea, V. Manuel Pérez, Quirk-Silva, Rendon, Ting, and Waldron Waldron, and Wilk*)

(~~Coauthor: Senator~~ *Coauthors: Senators Lara, Pavley, and Vidak*)

January 6, 2014

An act to amend Section 17539.1 of the Business and Professions Code, relating to sweepstakes.

LEGISLATIVE COUNSEL'S DIGEST

AB 1439, as amended, ~~Salas Bonta. Sweepstakes.~~ *Unfair business practices: contests and sweepstakes.*

Existing law *generally regulates false advertising and specifically prohibits certain unfair acts or practices undertaken by, or omissions of, any a person in the operation of a contest, as described, including, among other things, including misrepresenting the odds of winning any a prize or failing to award and distribute all prizes, as specified.* A violation of this provision is a misdemeanor.

This bill would ~~make the provision~~ *apply the prohibition* described above ~~applicable~~ to unfair acts or practices undertaken by, or omissions of, ~~any a~~ person in the operation of a sweepstakes, as defined. The bill would also prohibit using *or offering to use* any method intended to be

used by a person interacting with ~~a gambling-themed or simulated gambling~~ an electronic video monitor to simulate gambling or play gambling-themed games in a business establishment that directly or indirectly implements the predetermination of sweepstakes cash, cash-equivalent prizes, or other prizes of value, or otherwise connects a sweepstakes player or participant with sweepstakes cash, cash-equivalent prizes, or other prizes of value. By creating new crimes, 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 17539.1 of the Business and Professions
- 2 Code is amended to read:
- 3 17539.1. (a) The following unfair acts or practices undertaken
- 4 by, or omissions of, any person in the operation of any contest or
- 5 sweepstakes are prohibited:
- 6 (1) Failing to clearly and conspicuously disclose, at the time of
- 7 the initial contest solicitation, at the time of each precontest
- 8 promotional solicitation and each time the payment of money is
- 9 required to become or to remain a contestant, the total number of
- 10 contestants anticipated based on prior experience and the
- 11 percentages of contestants correctly solving each puzzle used in
- 12 the three most recently completed contests conducted by the person.
- 13 If the person has not operated or promoted three contests he *or she*
- 14 shall disclose for each prior contest if any, the information required
- 15 by this section.
- 16 (2) Failing to promptly send to each member of the public upon
- 17 his *or her* request, the actual number and percentage of contestants
- 18 correctly solving each puzzle or game in the contest most recently
- 19 completed.
- 20 (3) Misrepresenting in any manner the odds of winning any
- 21 prize.

- 1 (4) Misrepresenting in any manner, the rules, terms, or
2 conditions of participation in a contest.
- 3 (5) Failing to clearly and conspicuously disclose with all contest
4 puzzles and games and with all promotional puzzles and games
5 all of the following:
- 6 (A) The maximum number of puzzles or games which may be
7 necessary to complete the contest and determine winners.
- 8 (B) The maximum amount of money, including the maximum
9 cost of any postage and handling fees, which a participant may be
10 asked to pay to win each of the contest prizes then offered.
- 11 (C) That future puzzles or games, if any, or tie breakers, if any,
12 will be significantly more difficult than the initial puzzle.
- 13 (D) The date or dates on or before which the contest will
14 terminate and upon which all prizes will be awarded.
- 15 (E) The method of determining prizewinners if a tie remains
16 after the last tie breaker puzzle is completed.
- 17 (F) All rules, regulations, terms, and conditions of the contest.
- 18 (6) Failing to clearly and conspicuously disclose the exact nature
19 and approximate value of the prizes when offered.
- 20 (7) Failing to award and distribute all prizes of the value and
21 type represented.
- 22 (8) Representing directly or by implication that the number of
23 participants has been significantly limited, or that any particular
24 person has been selected to win a prize unless such is the fact.
- 25 (9) Representing directly or by implication that any particular
26 person has won any money, prize, thing, or other value in a contest
27 unless there has been a real contest in which a meaningful
28 percentage, which shall be at least a majority, of the participants
29 in such contests have failed to win a prize, money, thing, or other
30 value.
- 31 (10) Representing directly or by implication that any particular
32 person has won any money, prize, thing, or other value without
33 disclosing the exact nature and approximate value thereof.
- 34 (11) Using the word “lucky” to describe any number, ticket,
35 coupon, symbol, or other entry, or representing in any other manner
36 directly or by implication that any number, ticket, coupon, symbol,
37 or other entry confers or will confer an advantage upon the recipient
38 that other recipients will not have, that the recipient is more likely
39 to win a prize than are others, or that the number, ticket, coupon,

1 symbol or other entry has some value that other entries do not
2 have.

3 (12) Using *or offering for use* any method intended to be used
4 by a person interacting with ~~a gambling-themed or simulated~~
5 ~~gambling electronic video monitor~~ *an electronic video monitor to*
6 *simulate gambling or play gambling-themed games* in a business
7 establishment that directly or indirectly implements the
8 predetermination of sweepstakes cash, cash-equivalent prizes, or
9 other prizes of value, or otherwise connects a sweepstakes player
10 or participant with sweepstakes cash, cash-equivalent prizes, or
11 other prizes of value.

12 (13) Failing to obtain the express written or oral consent of
13 individuals before their names are used for a promotional purpose
14 in connection with a mailing to a third person.

15 (14) Using or distributing simulated checks, currency, or any
16 simulated item of value unless there is clearly and conspicuously
17 printed thereon the words: SPECIMEN—NONNEGOTIABLE.

18 (15) Representing, directly or by implication, orally or in
19 writing, that any tie breaker puzzle may be entered upon the
20 payment of money qualifying the contestant for an extra cash or
21 any other type prize or prizes unless:

22 (A) It is clearly and conspicuously disclosed that the payments
23 are optional and that contestants are not required to pay money,
24 except for reasonable postage and handling fees, to play for an
25 extra cash or any other type of prize or prizes; and

26 (B) Contestants are clearly and conspicuously given the
27 opportunity to indicate they wish to enter such phase of the contest
28 for free, except for reasonable postage and handling fees the
29 amount of which shall not exceed one dollar and fifty cents (\$1.50)
30 plus the actual cost of postage and which shall be clearly and
31 conspicuously disclosed at the time of the initial contest solicitation
32 and each time thereafter that the payment of such fees is required.
33 The contestants' opportunity to indicate they wish to enter for free
34 shall be in immediate conjunction with and in a like manner as the
35 contestants' opportunity to indicate they wish to play for an extra
36 prize.

37 (b) For the purposes of this section, "sweepstakes" means a
38 procedure, activity, or event, for the distribution, donation, or sale
39 of anything of value by lot, chance, predetermined selection, or
40 random selection that is not unlawful under other provisions of

1 law, including, but not limited to, Chapter 9 (commencing with
2 Section 319) and Chapter 10 (commencing with Section 330) of
3 Title 9 of Part 1 of the Penal Code.

4 (c) This section does not apply to an advertising plan or program
5 that is regulated by, and complies with, the requirements of Section
6 17537.1.

7 (d) Nothing in this section shall be deemed to render lawful any
8 activity that is unlawful pursuant to other law, including, but not
9 limited to, Section 320, 330a, 330b, 330.1, or 337j of the Penal
10 Code.

11 (e) *Nothing in this section shall be deemed to render unlawful*
12 *or restrict otherwise lawful games and methods used by a gambling*
13 *enterprise licensed under the Gambling Control Act or operations*
14 *of the California State Lottery.*

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