

Assembly Bill No. 1439

Passed the Assembly August 26, 2014

Chief Clerk of the Assembly

Passed the Senate August 25, 2014

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2014, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

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

LEGISLATIVE COUNSEL'S DIGEST

AB 1439, Salas. 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, a person in the operation of a contest, including misrepresenting the odds of winning a prize or failing to award and distribute all prizes. A violation of this provision is a misdemeanor.

This bill would apply the prohibition described above to unfair acts or practices undertaken by, or omissions of, a person in the operation of a sweepstakes, as defined. The bill would prohibit using or offering to use any method intended to be used by a person interacting with an electronic video monitor to simulate gambling or play gambling-themed games in a business establishment, as defined, 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 bill would also except from this prohibition game promotions and sweepstakes conducted on a limited basis as an advertising and marketing tool incidental to substantial bona fide sales of consumer products or services, as specified.

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 17539.1 of the Business and Professions Code is amended to read:

17539.1. (a) The following unfair acts or practices undertaken by, or omissions of, any person in the operation of any contest or sweepstakes are prohibited:

(1) Failing to clearly and conspicuously disclose, at the time of the initial contest solicitation, at the time of each precontest promotional solicitation and each time the payment of money is required to become or to remain a contestant, the total number of contestants anticipated based on prior experience and the percentages of contestants correctly solving each puzzle used in the three most recently completed contests conducted by the person. If the person has not operated or promoted three contests he or she shall disclose for each prior contest if any, the information required by this section.

(2) Failing to promptly send to each member of the public upon his or her request, the actual number and percentage of contestants correctly solving each puzzle or game in the contest most recently completed.

(3) Misrepresenting in any manner the odds of winning any prize.

(4) Misrepresenting in any manner, the rules, terms, or conditions of participation in a contest.

(5) Failing to clearly and conspicuously disclose with all contest puzzles and games and with all promotional puzzles and games all of the following:

(A) The maximum number of puzzles or games that may be necessary to complete the contest and determine winners.

(B) The maximum amount of money, including the maximum cost of any postage and handling fees, that a participant may be asked to pay to win each of the contest prizes then offered.

(C) That future puzzles or games, if any, or tie breakers, if any, will be significantly more difficult than the initial puzzle.

(D) The date or dates on or before which the contest will terminate and upon which all prizes will be awarded.

(E) The method of determining prizewinners if a tie remains after the last tie breaker puzzle is completed.

(F) All rules, regulations, terms, and conditions of the contest.

(6) Failing to clearly and conspicuously disclose the exact nature and approximate value of the prizes when offered.

(7) Failing to award and distribute all prizes of the value and type represented.

(8) Representing directly or by implication that the number of participants has been significantly limited, or that any particular person has been selected to win a prize unless such is the fact.

(9) Representing directly or by implication that any particular person has won any money, prize, thing, or other value in a contest unless there has been a real contest in which a meaningful percentage, which shall be at least a majority, of the participants in such contests have failed to win a prize, money, thing, or other value.

(10) Representing directly or by implication that any particular person has won any money, prize, thing, or other value without disclosing the exact nature and approximate value thereof.

(11) Using the word “lucky” to describe any number, ticket, coupon, symbol, or other entry, or representing in any other manner directly or by implication that any number, ticket, coupon, symbol, or other entry confers or will confer an advantage upon the recipient that other recipients will not have, that the recipient is more likely to win a prize than are others, or that the number, ticket, coupon, symbol, or other entry has some value that other entries do not have.

(12) Using or offering for use any method intended to be used by a person interacting with an electronic video monitor to simulate gambling or play gambling-themed games in a business establishment that (A) directly or indirectly implements the predetermination of sweepstakes cash, cash-equivalent prizes, or other prizes of value, or (B) otherwise connects a sweepstakes player or participant with sweepstakes cash, cash-equivalent prizes, or other prizes of value. For the purposes of this paragraph, “business establishment” means a business that has any financial interest in the conduct of the sweepstakes or the sale of the products or services being promoted by the sweepstakes at its physical location. This paragraph does not make unlawful game promotions or sweepstakes conducted by for-profit commercial entities on a limited and occasional basis as an advertising and marketing tool that are incidental to substantial bona fide sales of consumer

products or services and that are not intended to provide a vehicle for the establishment of places of ongoing gambling or gaming.

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

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

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

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

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

(b) For the purposes of this section, "sweepstakes" means a procedure, activity, or event, for the distribution, donation, or sale of anything of value by lot, chance, predetermined selection, or random selection that is not unlawful under other provisions of law, including, but not limited to, Chapter 9 (commencing with Section 319) and Chapter 10 (commencing with Section 330) of Title 9 of Part 1 of the Penal Code.

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

(d) Nothing in this section shall be deemed to render lawful any activity that is unlawful pursuant to other law, including, but not

limited to, Section 320, 330a, 330b, 330.1, or 337j of the Penal Code.

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

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.

Approved _____, 2014

Governor