

Introduced by Senator Costa

February 3, 1998

An act to amend Section 17539.5 of the Business and Professions Code, relating to sweepstakes solicitations.

LEGISLATIVE COUNSEL'S DIGEST

SB 1476, as introduced, Costa. Sweepstakes solicitation.

Existing law regulating sweepstakes solicitations requires that if a person is solicited by mail or telephone to participate in a sweepstakes and one suggested method of participation is by contacting an information-access service, that there also be a free alternative method of participating that provides all participants with an equal chance of winning.

This bill would prohibit sweepstakes participation by contacting an information-access service, and would prohibit soliciting callers for an information-access service by stating or implying that the person solicited has already been chosen to receive a prize in a sweepstakes.

It would also make technical, conforming changes. Because this bill would broaden the scope of criminal activity, it establishes a new crime.

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 17539.5 of the Business and
2 Professions Code is amended to read:

3 17539.5. (a) For purposes of this section and Sections
4 17539.55 and 17539.6:

5 (1) "Broadcast" means the utilization of radio,
6 television, home videos, movie screens, telephones, or
7 other medium that does not automatically provide the
8 prospective consumer with a printed or written
9 document he or she can read at leisure.

10 (2) "Caller" means a telephone user or end user who
11 calls or may call an information-access service or who
12 receives a telephonic solicitation that results in the
13 recipient being connected to an information-access
14 service.

15 (3) "Carrier" means any regional telephone operating
16 company, interexchange carrier, or local exchange
17 telephone company that provides telecommunications
18 transmission services.

19 (4) "Incentive" means any item or service of value,
20 however denominated, including, but not limited to, any
21 prize, award, gift, or money, or any coupon that can be
22 used in whole or in part to obtain a product or service.

23 (5) "Information provider" means a person who
24 advertises or sells an information-access service and on
25 whose behalf charges are billed.

26 (6) "Information-access service" means any
27 telecommunications service that permits individuals to
28 access a telephone number, and for which the caller is
29 assessed, by virtue of placing or completing the call, a
30 charge that is greater than, or in addition to, the charge
31 for the transmission of the call. Information-access service
32 includes, but is not limited to, telephone numbers with
33 the prefix 900 or 976.

34 (7) "900 number" means any prefixed telephone
35 number used for information-access service and includes,
36 but is not limited to, telephone numbers with the prefix
37 900 or 976.



1 (8) “Prize” means any item of value given to winners
2 in a sweepstakes who have been selected on the basis of
3 lot or chance.

4 (9) “Program” means the audio message that the
5 caller hears or receives upon placing or receiving a call
6 and being connected to an information-access service.

7 (10) “Sell an information service” means to attempt to
8 cause a caller to act in such a manner as to cause that caller
9 to be charged for utilizing an information-access service.

10 (11) “Solicitation” includes all forms of solicitation for
11 information-access services, including, but not limited to,
12 mailings, advertisements in newspapers and magazines,
13 advertisements broadcast by radio or television,
14 advertisements contained in home videos or appearing
15 on movie screens, and telephone solicitations.
16 “Solicitation” does not include simple listings in
17 telephone directories provided those listings are not
18 accompanied by any advertising text.

19 (12) “Sweepstakes” means any procedure for the
20 distribution of anything of value by lot or by chance that
21 is not unlawful under other provisions of law including,
22 but not limited to, the provisions of Section 320 of the
23 Penal Code. Nothing contained in this section shall be
24 deemed to render lawful any activity that otherwise
25 would violate Section 320 of the Penal Code.

26 (b) It is unlawful for any person to engage in any of the
27 following acts in order to encourage any caller to utilize
28 an information-access service:

29 (1) Soliciting callers by use of an automatic dialing
30 device or a live or recorded outbound telephone message.

31 (2) Utilizing signals or tones provided directly or
32 indirectly by the information provider to access the
33 information-access service.

34 (3) Requiring callers to call more than one 900 number
35 or to require calling the same 900 number more than one
36 time in order to receive goods or services represented in
37 the initial solicitation.

38 (4) Utilizing a telephone number other than a 900
39 number from which a caller can be automatically
40 connected to the information-access service.



1 (5) Soliciting callers to call a telephone number other
2 than a 900 number, including, but not limited to, an 800
3 telephone number, when the caller who calls that other
4 number will be referred to a 900 number unless all
5 solicitations for the initial information-access program
6 clearly and conspicuously disclose that a referral will be
7 made and the cost to the caller for calling the 900 number
8 to which the caller will be referred.

9 (6) Soliciting callers to call a number other than a 900
10 number, including, but not limited to, an 800 telephone
11 number, when the caller who calls that number will be
12 asked to accept one or more collect calls unless all
13 solicitations clearly and conspicuously disclose that the
14 caller will be asked to accept one or more collect calls and
15 the cost to the caller for accepting the collect calls. The
16 cost shall be described as cost per minute and cost per
17 hour.

18 (7) Referring a caller from one 900 number to another
19 900 number unless all solicitations for the initial
20 information-access program clearly and conspicuously
21 disclose that a referral will be made and the cost to the
22 caller for calling the 900 number to which the caller will
23 be referred.

24 (8) Advertising that the information-access service is
25 free.

26 (9) Using any printing style, graphic, layout, text,
27 color, or format which states or implies that the
28 solicitation originates from, or was issued by or on behalf
29 of a governmental agency, a public utility, a nonprofit
30 organization, an insurance company, a credit reporting
31 agency, a collection company, or a law firm unless the
32 same is true.

33 (c) It is unlawful for any person to solicit or sell an
34 information-access service unless the following
35 information is clearly and conspicuously disclosed in all
36 solicitations:

37 (1) An accurate description of the information-access
38 service.

39 (2) The name, address, and non-900 telephone
40 number of the information provider.



1 (3) The cost of the call, which shall be disclosed as
2 follows:

3 (A) If the call is billed at a fixed rate, the total cost of
4 the call.

5 (B) If the call is billed on a usage sensitive basis, the
6 cost per minute or other unit of time, and including:

7 (i) In broadcast solicitations, the average cost of the
8 call.

9 (ii) In print solicitations, the average cost or length of
10 the call, except that print solicitations directed to persons
11 in this state shall disclose the average cost of the call.

12 (C) Solicitations in which the length of the program
13 cannot reasonably be determined because the length of
14 the program depends upon the skill of, or the selections
15 or responses made by, the caller, shall be exempt from the
16 cost disclosure provisions of this paragraph.

17 (D) Solicitations that are oral shall include a voice
18 announcement of the cost of the call in clear and
19 understandable language that is clearly audible and
20 articulated at a volume equal to that used to announce the
21 900 number. The cost of the call shall be stated
22 immediately prior to or immediately after the 900
23 number is stated.

24 (E) Solicitations that are broadcast visually shall
25 include, in clear, visible, easily readable, and
26 conspicuously presented letters and numbers, set against
27 a contrasting background, the cost of calling the 900
28 number. The visual disclosure of the cost of the call shall
29 be displayed directly above, below, or adjacent to the
30 number to be called whenever the number is displayed
31 in the commercial. The visual disclosure of the cost of the
32 call shall be a distinct disclosure and shall not be
33 combined in the same paragraph with any other
34 disclosure required to be made pursuant to this section.
35 The lettering of the visual disclosure shall be no less than
36 18 scan lines high and shall be displayed for as long as the
37 number is displayed. Broadcast solicitations shall also
38 include a voice announcement of the cost of the call in
39 clear and understandable language that is clearly audible
40 and articulated at a volume equal to that used to



1 announce the 900 number. The cost of the call shall be
2 stated immediately prior to or after the 900 number is
3 stated.

4 (F) Solicitations that appear in print shall include, in
5 clear, visible, easily readable, and conspicuously
6 presented letters and numbers, the cost of calling the 900
7 number. The printed disclosure of the cost of the call shall
8 be displayed directly above, below, or adjacent to the
9 number. The lettering of the cost disclosure shall be in no
10 less than 10-point type.

11 (4) If the information-access service is aimed at or
12 likely to be of interest to minors, solicitations that appear
13 in print shall contain a statement, in at least the same size
14 print as that used to disclose the 900 number, that persons
15 under the age of 18 years should obtain parental consent
16 before calling. If the solicitation is through a broadcast,
17 this statement shall be of the same audibility as that used
18 to disclose the 900 number.

19 (d) It shall be unlawful for any person to solicit or sell
20 an information-access service that offers the person being
21 solicited the opportunity to participate in a sweepstakes
22 unless:

23 ~~(1) There is available, to all persons who are solicited,~~
24 ~~a free alternative method of participating that provides~~
25 ~~all participants with an equal chance of winning. No~~
26 ~~information-access service shall offer a sweepstakes to~~
27 ~~consumers in this state in which a person calling a 900~~
28 ~~number will receive any benefit beyond that received by~~
29 ~~a person who utilizes an alternative method of entry into~~
30 ~~the sweepstakes. The free alternative method of entry~~
31 ~~shall be clearly and conspicuously disclosed in the~~
32 ~~following manner:~~

33 ~~(A) Solicitations that are broadcast visually shall~~
34 ~~include a visual disclosure of the alternate method of~~
35 ~~entry. The disclosure that one can enter without calling~~
36 ~~the 900 number and instructions on how one may so enter~~
37 ~~shall be displayed in close proximity to the 900 number on~~
38 ~~a static screen against a clean and contrasting~~
39 ~~background. The lettering of the visual disclosure shall be~~
40 ~~made in clear, visible, easily readable, and~~



1 understandable text, shall be no less than 18 scan lines,
2 and shall be displayed for a period of time sufficient to
3 allow a consumer to copy the information. The visual
4 disclosure of the alternate method of entry shall be
5 distinct and shall not be combined in the same paragraph
6 with any other disclosure required to be made pursuant
7 to this section. Solicitations that are broadcast orally shall
8 include an oral disclosure of the alternate method of
9 entry. The disclosure that one can enter for free and how
10 one may so enter shall be made in clear and
11 understandable language that is clearly audible and
12 articulated at a volume equal to that used to announce the
13 900 number and for a period of time sufficient to allow a
14 consumer to copy the information. The oral disclosure
15 shall be made in close proximity to the 900 number. All
16 broadcast solicitations shall include, in addition to the oral
17 or visual disclosure described above, an oral statement
18 that no telephone call is required to enter the
19 sweepstakes.

20 (B) For print solicitations, the disclosure of the
21 existence of the alternate method of entry and detailed
22 instructions on how one may so enter shall be made in
23 clear, visible, and easily readable text in close proximity
24 to the 900 number to be called. The lettering of the
25 disclosure shall be of a size no less than the predominant
26 type size used in the main text of the solicitation and shall
27 not be obscured by any other printed or graphic matter
28 in the solicitation.

29 (2) If the alternate method of entry is by mail, any
30 associated fulfillment that the solicitation represents will
31 be sent to persons who respond by mail shall be
32 completed within 21 days, and the solicitation may not
33 represent that the time for fulfillment of mail-in requests
34 is any longer than the information provider reasonably
35 anticipates it will take to fulfill, which shall, in no event,
36 exceed 21 days.

37 (3) If the alternate method of entry is by mail, and
38 entrants in this state are required to submit a
39 self-addressed envelope to receive any associated
40 fulfillment that the solicitation represents will be sent to



1 persons who respond by mail, entrants shall not be
2 required to affix return postage to their self-addressed
3 envelope.

4 (4) Minors are excluded from participation.

5 (5) The information provider provides a full refund to
6 any caller who requests one upon submission by the caller
7 of proof of payment of the telephone charges, provided
8 that if the caller has not previously requested a refund for
9 the same information access service call, no proof of
10 payment is required.

11 (6) The amount or value of each prize awarded is not
12 dependent on the number of entries received.

13 (7) The information provider obtains unrestricted
14 title or the right to vest title in all prizes prior to the
15 commencement of the sweepstakes.

16 (8) A list of the winners of all major prizes is made
17 available to any person requesting that list and the
18 solicitation contains an address where a person may
19 request a list of the winners. The names and addresses of
20 the winners shall be available to the Attorney General
21 upon request within 30 days after the selection of winners
22 and shall be maintained for a period of not less than three
23 years.

24 (9) All major prizes shall be awarded. Major prizes that
25 are not claimed by those who have been solicited shall be
26 awarded in a subsequent drawing from the names of all
27 who responded to the solicitation but did not receive a
28 major prize. This drawing shall take place not later than
29 30 days after the deadline for responding to the
30 solicitation. For purposes of this section, a major prize is
31 a prize with a substantial cash value.

32 (10) A deadline by which the recipient of the
33 solicitation must respond is clearly and conspicuously
34 disclosed.

35 (11) The disclosed deadline provides those solicited
36 with at least two weeks within which to respond.

37 (12) The solicitation discloses any material restrictions
38 or conditions that must be satisfied before the recipient
39 is entitled to receive any prize offered.



1 ~~(13) The solicitation contains a description of how the~~
2 ~~winner of each prize mentioned is selected.~~

3 (e) Solicitations made to persons in this state offering
4 the opportunity to participate in a sweepstakes shall, with
5 respect to each prize offered, set forth clearly,
6 conspicuously, and in easily readable letters the odds of
7 receiving that prize, described in whole Arabic numerals
8 in a format such as: “1 chance in 100,000” or “1:100,000.”
9 If the odds depend upon the number of entries and the
10 number of persons solicited is controlled by the sponsor
11 of the promotion, the solicitation shall set forth the
12 reasonable expectation of entries. If the odds depend
13 upon the number of entries received and the number of
14 persons solicited is not controlled by the sponsor of the
15 sweepstakes, a statement to the effect that the odds
16 depend on the number of entries received shall be
17 sufficient. If more than one prize is offered, the odds shall
18 be separately stated for each prize. The disclosure
19 required to be made pursuant to this subdivision shall be
20 made immediately adjacent to the first identification of
21 the prize to which it relates or in a separate section
22 entitled “Consumer Disclosure” or “Official Rules.”
23 These titles shall be printed in no less than 10-point
24 boldface type. The consumer disclosure section shall be
25 clearly and conspicuously disclosed in the solicitation.
26 There shall be a statement referring the recipient of the
27 solicitation to the consumer disclosure section in the main
28 text of the solicitation in close proximity to the description
29 of the prizes, and the odds shall be disclosed within the
30 top 25 percent of the consumer disclosure section. If the
31 consumer disclosure section does not appear on the same
32 page as the statement referring the recipient of the
33 solicitation to this section, the statement shall indicate
34 where the consumer disclosure section is located. If the
35 odds appear in the section entitled “Consumer
36 Disclosure” or “Official Rules,” there shall be a clear and
37 conspicuous statement in the main text of the solicitation
38 in close proximity to the description of the prizes that the
39 odds to the recipient of obtaining the prize or prizes will
40 be found elsewhere, and the statement shall set forth

1 where they will be found. It is not a violation of this
2 section to reference the official rules and the odds in the
3 same statement as long as the statement referencing the
4 official rules and the odds is in the main text of the
5 solicitation in close proximity to the description of the
6 prizes. For example, a statement such as: “See official
7 rules (on (reference to location of rules if not on same
8 page)) for odds and other details” or a similar statement
9 meets the requirements of this provision. This provision
10 shall not apply to broadcast solicitations for sweepstakes
11 in which the winners will be selected in a random
12 drawing in which the odds depend on the number of
13 entries received, provided that those solicitations shall
14 disclose where the official rules are available and the
15 official rules shall set forth the odds of winning in
16 accordance with this subdivision.

17 ~~(f) If more than one prize is listed in a solicitation for
18 an information-access service that offers the opportunity
19 to participate in a sweepstakes, the prizes shall be listed
20 in descending order of retail value.~~

21 ~~(g)~~ If any incentive is offered in a solicitation for an
22 information-access service, the solicitation shall clearly
23 and conspicuously disclose all restrictions, qualifications,
24 and deadlines that must be complied with in order to
25 obtain the incentive being offered.

26 ~~(h)~~

27 (g) No person soliciting callers for an
28 information-access service shall represent directly or by
29 implication that the person being solicited is part of a
30 significantly limited group selected to receive an
31 incentive, unless that is true and the number of recipients
32 who will be receiving the solicitation is clearly and
33 conspicuously set forth in the solicitation.

34 ~~(i) No person soliciting callers for an
35 information-access service shall state or imply that the
36 person being solicited has already been chosen to receive
37 a prize in a sweepstakes, will receive one or more of
38 several listed prizes, or may receive one or more of
39 several listed prizes, unless:~~



1 ~~(1) The disclosed deadline in the solicitation is not~~
2 ~~more than six months after the first solicitation for~~
3 ~~participation, provided, however, that this subdivision~~
4 ~~shall not apply to random draw contests where the~~
5 ~~solicitation makes it clear that no participant has yet been~~
6 ~~chosen as the “winner” and the drawing date is clearly~~
7 ~~and conspicuously disclosed.~~

8 ~~(2) No further solicitations for participation in a~~
9 ~~particular sweepstakes is disseminated after the top prize~~
10 ~~listed in the solicitation has been claimed. A drawing~~
11 ~~pursuant to paragraph (9) of subdivision (d) shall~~
12 ~~thereafter be conducted to award any unclaimed prizes.~~

13 ~~(j)~~

14 (h) It is unlawful for any person to solicit or sell an
15 information-access service to any person in the following
16 manner:

17 (1) The solicitation offers to persons in this state who
18 respond to the solicitation by calling a 900 number any
19 incentive that:

20 (A) Requires the recipient to purchase goods or
21 services from the information provider in order to utilize
22 the incentive, ~~provided, however, that.~~ *However,* this
23 subparagraph does not apply to offers where the
24 incentive is a “cents-off” coupon that is usable only for the
25 purchase of the offeror’s own brand name product or
26 products, the total value of the “cents-off” coupon offered
27 is clearly and conspicuously disclosed in the offer, the
28 total value of the “cents-off” coupon does not exceed five
29 dollars (\$5), the “cents-off” coupon is to be utilized to
30 reduce the price of those products at retail stores in the
31 recipient’s area, and at least 60 percent of the revenue per
32 month of the offeror is derived from the sale of the
33 product or products being purchased without the use of
34 the “cents-off” coupons.

35 (B) Requires the recipient to purchase goods or
36 services from any third party in order to utilize the
37 incentive unless:

38 (i) The fact that a purchase or payment is required in
39 order to utilize the incentive is disclosed in the
40 solicitation.



1 (ii) A representative sample of the establishments at
2 which the incentive may be redeemed is disclosed in the
3 solicitation.

4 (iii) If the incentive entitles the recipient to save
5 money on the purchase of goods or services, the incentive
6 is described as a cents-off, discount coupon, or similar
7 term that clearly indicates that it is redeemable only for
8 savings on purchases of goods or services.

9 (2) The solicitation states or implies that the caller is
10 likely to receive one of the prizes offered, by representing
11 in the solicitation that other named persons have already
12 won the other prizes being offered in the solicitation and
13 that the recipient of the solicitation is therefore likely to
14 receive the prize that has not been won by the other
15 persons named in the solicitation, unless the recipient's
16 odds of receiving the remaining prize are clearly and
17 conspicuously disclosed in the solicitation in close
18 proximity to the list of the other named persons.

19 ~~(k)~~

20 (i) Nothing contained in this section shall be deemed
21 to render lawful any activity that otherwise would violate
22 Section 17537.

23 ~~(l)~~

24 (j) No information-access service shall offer a game of
25 skill in which the cost of the call is billed on a usage
26 sensitive basis and in which answers to multiple choice
27 questions of increasing difficulty are required in order to
28 win, unless the solicitation clearly and conspicuously
29 discloses the percentage of contestants anticipated to
30 answer all questions correctly based on prior experience
31 or, if the game is being operated for the first time, based
32 on a good faith estimate.

33 ~~(m)~~

34 (k) This section does not apply to a regional telephone
35 operating company, interexchange carrier, or local
36 telephone company operating in those capacities, that in
37 good faith telecommunicates an information-access
38 program without knowledge that the program or related
39 advertising violates any provision of this section, Section
40 17539.55, or Section 17539.6.



1 ~~(h)~~

2 *(l)* Neither this section, Section 17539.55, nor Section
3 17539.6 applies to the California State Lottery.

4 SEC. 2. No reimbursement is required by this act
5 pursuant to Section 6 of Article XIII B of the California
6 Constitution because the only costs that may be incurred
7 by a local agency or school district will be incurred
8 because this act creates a new crime or infraction,
9 eliminates a crime or infraction, or changes the penalty
10 for a crime or infraction, within the meaning of Section
11 17556 of the Government Code, or changes the definition
12 of a crime within the meaning of Section 6 of Article
13 XIII B of the California Constitution.

14 Notwithstanding Section 17580 of the Government
15 Code, unless otherwise specified, the provisions of this act
16 shall become operative on the same date that the act
17 takes effect pursuant to the California Constitution.

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