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PRIZE AND SWEEPSTAKES REGULATION ACT

House Bill 4751

Sponsor: Rep. Gerald Law

Committee: Regulatory Reform

Complete to 9-14-99

A SUMMARY OF HOUSE BILL 4751 AS INTRODUCED 6-2-99

The bill would create the Prize and Sweepstakes Regulation Act to regulate the notification of and awarding of prizes, and to establish penalties for violations of the act. The bill would prohibit a solicitor (one who gives a prize notice) and a sponsor (one on whose behalf a prize notice is given) from requiring or inviting a person to make, or promise to make, a payment of any consideration to obtain a prize, be eligible for a prize, or determine if the person has won a prize (or which prize had been won). "Consideration" would be defined as a good, service, money, or intangible with a value greater than a first-class postage stamp. Prizes would have to be awarded within one year of the date that the winner was notified that he or she had won a prize.

Sweepstakes entry material. "Sweepstakes entry material" would mean any documents required to enter a sweepstakes. Sweepstakes entry material, or a sales solicitation accompanying entry materials, could not represent that a person was a winner or had already won a prize unless the person was the sweepstakes winner or actually won a prize. The bill would detail the types of information that would be required to be included in the sweepstakes entry material, and would prohibit other practices. For example, it would be prohibited to represent that an entry without an order would have less of a chance to win than an entry that was accompanied by an order for goods or services.

Prize notice. A "prize notice" would be a notice given to a person in the state that represented that the person had been selected or may be eligible to receive a prize. A prize notice would have to be a single document that conspicuously displayed the true names of the solicitor and sponsor and their business addresses; the approximate length of a sales presentation, along with an accurate description of the good or service to be presented, if the notice contained an invitation to attend a sales presentation; and any applicable restrictions on receiving a prize (these latter two would have to be printed in no less than 10-point boldfaced type, and would have to be printed on the cover page of the prize notice if the notice were on more than one page).

Further, a solicitor or sponsor would be prohibited from, among other things, distributing a prize notice that would lead a reasonable person to believe that the notice originated from a government agency, public utility, insurance company, law firm, consumer reporting agency, or debt collector when it did not; and requiring a person to pay shipping or handling fees to obtain or use a prize.

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Sales presentations. If a prize notice invites a person to hear, view, or attend a sales presentation, the solicitor could not begin the presentation until the person was notified of the prize he or she had been awarded and awarded the prize. If the prize awarded were not available, an alternate prize as prescribed by the bill would have to be awarded.

Prizes. A "prize" would be defined as "a gift, award, or other item or service of value." A solicitor would have to provide a prize to a person who had received a prize notice. The bill would regulate the distribution of prizes, and would specify that if a prize was not available, the solicitor could substitute a prize listed in the written prize notice that was available and of equal or greater value; the verifiable retail value of the prize in the form of cash, a money order, or a certified check; or a voucher, certificate, or other obligation stating that the prize would be shipped within 30 days at no cost to the person.

Penalties. The attorney general or a county prosecutor would have to investigate violations of the bill, and could bring an action in circuit court for temporary or permanent injunctive relief, a civil penalty as specified in the bill, or a rescission of a contract for goods or services offered in conjunction with a prize promotion. A person who suffered loss as a result of a prize promotion that violated the bill could be awarded restitution upon the submission of satisfactory proof.

A sponsor or solicitor in violation of the bill's provisions would be liable for a civil fine of not less than \$100 or more than \$5,000 for each violation. A sponsor or solicitor who intentionally violated the bill would be guilty of a felony punishable by not more than two years imprisonment, a fine of up to \$10,000, or both, for each violation. It would be evidence of intent if a violation occurred after the sponsor or solicitor was notified by the Office of the Attorney General or by a county prosecutor by certified mail that he or she was in violation of the bill.

A person who suffered pecuniary loss due to an intentional violation could bring an action to recover his or her costs, reasonable attorney fees, and the greater of \$10,000 or twice the amount of the pecuniary loss.

Exemptions. The bill would not apply to pari-mutuel betting on horse racing regulated by the Horse Racing Law (MCL 431.301 to 431.336), the state lottery established under the McCauley-Traxler-Law-Bowman-McNeely Lottery Act (MCL 432.1 to 432.47), bingo and games regulated under the Traxler-McCauley-Law-Bowman Bingo Act (MCL 432.101-432.120), and charitable solicitations authorized and in compliance with the acts listed above.

Analyst: S. Stutzky

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.