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BILL ANALYSIS

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Senate Bill 1114 (as passed by the Senate)

Sponsor: Senator Tom George

Committee: Economic Development, Small Business and Regulatory Reform

Date Completed: 9-9-04

RATIONALE

The Michigan Department of the Attorney General has successfully prosecuted sweepstakes promoters for using deceptive practices in their solicitations, but the State does not currently have any laws specifically regulating sweepstakes or their promoters. The Department uses the Consumer Protection Act to prosecute noncharitable promoters of fraudulent or deceptive sweepstakes, and the Charitable Solicitations Act to take action against charitable organizations. Some people have suggested that the State would be better able to protect its residents from false or misleading sweepstakes solicitations by creating a separate statute, rather than relying on a patchwork of antifraud laws that do not directly address the issue.

CONTENT

The bill would create the "Prize and Sweepstakes Regulation Act" to do the following:

- **Require a sweepstakes solicitor or sponsor to provide the sweepstakes' official rules to each individual solicited to enter the sweepstakes.**
- **Prohibit a sales solicitation that included an opportunity to enter a sweepstakes from falsely representing that a person had already won a prize.**
- **Require a "prize notice" to disclose clearly and conspicuously the name and address of the sweepstakes solicitor and sponsor, restrictions on prizes offered, and other information.**
- **Require a solicitor to deliver a prize to a person before a sales**

presentation in connection with a prize notice.

- **Prohibit a sponsor or solicitor from engaging in certain activities, such as requiring a person to pay shipping or handling fees to obtain a prize.**
- **Prescribe civil and criminal penalties for a sponsor or solicitor who violated the Act.**
- **Allow a court to award restitution to a person who suffered a loss arising from a prize promotion in violation of the Act.**

"Sweepstakes" would mean a contest or giveaway initiated by a prize notice in which one or more people were selected on the basis of chance from among eligible participants to receive a prize. "Solicitor" would mean a person who gave a prize notice. "Sponsor" would mean a person on whose behalf a solicitor gave a prize notice.

The bill would take effect October 1, 2004.

Official Rules

The bill would require a sweepstakes solicitor or sponsor to provide the sweepstakes' official rules to each individual solicited to enter the sweepstakes. "Official rules" would mean a printed statement for a sweepstakes described in sweepstakes entry material that clearly and conspicuously contained all of the following:

- The rules governing the sweepstakes.
- A statement identifying any limitations on eligibility for the sweepstakes.
- A statement identifying the typical entrant's odds of winning the sweepstakes, expressed as a ratio of the

- actual number of prizes to the estimated number of entrants.
- A statement specifying that no purchase was necessary to enter or win.
- A statement specifying the verifiable retail value of each prize.
- Any other disclosure required by law.

Sweepstakes entry material would have to include the official rules of the sweepstakes, prominently identified as the official rules governing the sweepstakes. Any sweepstakes entry material or accompanying sales solicitation that referred to an official rule would have to make reference specifically to the official rules. ("Sweepstakes entry material" would mean any written documents required to be submitted to the sweepstakes solicitor or sponsor to enter a sweepstakes.)

Sales Solicitation

A sales solicitation that included an opportunity to enter a sweepstakes could not represent that a person was a sweepstakes winner, or had already won a prize, unless that person was the sweepstakes winner or had actually won a prize. If a statement relating to a person's winnings were subject to qualifications, and that statement were on or visible through the mailing envelope containing the sweepstakes entry material, the qualifications also would have to be clearly stated on, or visible through, the mailing envelope.

A sales solicitation that included sweepstakes entry material would have to contain all of the following:

- A clear and conspicuous statement that no purchase was necessary to enter the sweepstakes. The statement also would have to appear clearly and conspicuously on the entry or order form and in official rules.
- A method by which a person could remove his or her name from any solicitation lists used by the sweepstakes solicitor or sponsor in conducting sales solicitations, either by a call to a toll-free number or by mail to an address identified in the sales solicitation.
- The date of the drawing, along with a statement that the solicitor or sponsor would notify the winners within 60 days of that date, if any prizes in the

sweepstakes were awarded by a random drawing.

A sales solicitation that included an opportunity to enter a sweepstakes could not represent that an entry in the sweepstakes accompanied by an order for goods or a service was eligible for more prizes, or had a greater chance of winning a prize, than an entry not accompanied by an order for goods or a service; likewise, the solicitation could not represent that an entry not accompanied by an order for goods or a service would be eligible for fewer prizes, or had a reduced chance of winning, than an entry that was accompanied by an order.

For every sales solicitation that included entry material for a sweepstakes with a preselected winning number, the sponsor or solicitor would have to ensure that the preselected winning number (and, if applicable, any alternate winning number) was within the range of numbers actually mailed by the sponsor or solicitor for that sweepstakes. The sponsor or solicitor also would have to ensure that, if the preselected winning number were not returned at the end of the sweepstakes period, the sponsor or solicitor would award the prize offered in that sweepstakes in a random drawing from among other eligible entrants in accordance with the sweepstakes' original terms.

Prize Notice

"Prize notice" would be defined as a written notice delivered by mail to a person in Michigan that represented that the person had been selected or could be eligible to receive a prize. The term would not include either 1) a notice given at the request of the person, or 2) a notice informing the person that he or she had been awarded a prize as a result of his or her actual prior entry in a game, drawing, sweepstakes, or other contest, if the person were awarded the prize stated in the notice.

A prize notice would have to disclose clearly and conspicuously all of the following information in the official rules:

- The true name or names of the solicitor and sponsor and the address or addresses of the solicitor's and sponsor's place of business.
- If the notice contained an invitation for the person to view, hear, or attend a

sales presentation, the approximate length of the sales presentation, and an accurate and complete description of the goods or service that was the subject of the presentation.

- If receipt of the prize were subject to any material restriction, a statement that a restriction applied, a description of the restriction, or a statement containing the location in the notice where the restriction was described.

For purposes of the last provision, standard eligibility requirements for participation in the sweepstakes would not be considered a material restriction, if those requirements were set forth in the official rules.

Sales Presentation; Prizes

If a prize notice invited a person to view, hear, or attend a sales presentation, the presentation could not begin until the solicitor informed the person of the prize, if any, that had been awarded to the person; and, if the person had been awarded a prize, delivered to the person the prize or an item selected by the person if the prize were not available.

If a solicitor represented to a person in a prize notice that he or she had been awarded a prize, the solicitor would have to provide the prize to the person unless it was not available. In that case, the solicitor would have to give the person one of the following items selected by the person: 1) a prize listed in the notice that was available and was of equal or greater value; 2) the verifiable retail value of the prize in the form of cash, a money order, or a certified check; or 3) a voucher, certificate, or other evidence of obligation stating that the prize would be shipped to the person within 30 days at no cost to the person. Within 30 days of delivering a voucher, certificate, or other evidence of obligation, the solicitor would have to honor it or deliver to the person the retail value of the prize in the form of cash, a money order, or a certified check. The sponsor promptly would have to make the payment to the person if the solicitor failed to do so.

Except as provided above, if a solicitor or sponsor offered a prize, the solicitor or sponsor would have to award it within one year after the date the winner was notified that he or she had won the prize.

Solicitor/Sponsor Prohibitions

A solicitor or sponsor would be prohibited from distributing a prize notice that contained language, or was designed in a manner, that would lead a reasonable person to believe that it originated from a government agency, public utility, insurance company, consumer reporting agency, debt collector, or law firm, unless the written prize notice originated from that source.

A sponsor or solicitor also would be prohibited from doing any of the following:

- Representing directly or by implication that the number of people eligible for the prize was limited, or that a person had been selected to receive a particular prize, unless the representation were true.
- Requiring a person to pay shipping and handling fees to obtain a prize.
- Establishing a different method of entering a sweepstakes for a person who submitted an order for goods or a service than for a person who had not submitted an order for goods or a service.
- Failing or refusing to remove the name of a person from any solicitation lists used by the solicitor or sponsor in conducting sales solicitations if requested by the person.
- Failing to include the date of the drawing in the sweepstakes entry material or to notify the winners within 60 days of the date of the drawing, if any prizes were awarded by a random drawing.

In addition, a sponsor or solicitor could not require a person to make a payment, promise to pay, or give the solicitor or sponsor any consideration in order to obtain, be eligible for, or use a prize or to determine whether a prize had been won or which prize had been won. ("Consideration" would mean goods, a service, or money provided or paid to a sponsor or solicitor that was greater in value than the regular first-class postage of a one-ounce letter mailed and delivered in the United States.)

Penalties; Restitution

A sponsor or solicitor who violated the proposed Act would be responsible for a State civil infraction and liable for a civil fine between \$100 and \$500 for each violation. A sponsor or solicitor who intentionally

violated the Act would be guilty of a misdemeanor punishable by up to one year's imprisonment and/or a maximum fine of \$10,000 for each violation. It would be evidence of intent if the violation occurred after the Attorney General or a county prosecutor had notified the sponsor or solicitor by certified mail that he or she was in violation of the Act.

The Attorney General or a county prosecutor would have to investigate violations of the Act, and on behalf of the State could bring an action in a court for one or more of the following: 1) temporary or permanent injunctive or other relief; 2) a sanction or penalty authorized under the Act; and 3) rescission of a contract for goods or services offered in conjunction with a prize promotion that violated the Act. Upon entry of final judgment in an action brought by the Attorney General or a county prosecutor, the court could award restitution to a person who suffered loss arising from a prize promotion that violated the Act, if proof of the loss were submitted to the satisfaction of the court.

Also, a person who suffered pecuniary loss because of an intentional violation of the Act could bring an action in a court of competent jurisdiction to recover his or her costs, reasonable attorney fees, and \$1,000 or twice the amount of the loss, whichever was greater.

The proposed remedies, sanctions, and penalties for conduct violating the Act would be in addition to and would not affect the availability of any remedies, sanctions, or penalties under the Michigan Consumer Protection Act or any other State law for that conduct.

Exceptions

The proposed Act would not apply to any of the following:

- Pari-mutuel betting on horse racing regulated under the Horse Racing Law.
- The State lottery.
- Bingo and other forms of gambling regulated under the Bingo Act.
- Television or radio broadcast stations licensed by the Federal Communications Commission.

- A charitable solicitation, if it were authorized by and complied with one of the Acts listed above.

The bill states that the proposed Act would not impose liability on a television or radio broadcast station for advertising or promoting an activity conducted by a person regulated under the Act, whether or not the person was in compliance with the Act.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

The Department of Attorney General presently must rely on the Consumer Protection Act and the Charitable Solicitations Act to take action against deceptive sweepstakes practices, as it did in 1999 against six promoters for tactics aimed at duping people into believing they were about to win large cash awards. Along with the attorneys general of 24 other states, the Michigan Attorney General eventually negotiated a consent decree with one of the nation's largest sweepstakes promoters to change its practices. None of Michigan's existing laws, however, specifically regulates sweepstakes promoters. Creating the "Prizes and Sweepstakes Regulation Act" would help protect the public from sweepstakes scams. The elderly, especially, are often targeted by promoters. Reportedly, a 1998 survey by the AARP and the Attorney General found that 20% of the mail received by senior citizens in a 30-day period was for sweepstakes. The bill would make it clear that solicitors could not mislead people into believing that their chances of winning were better if they made a purchase or that they had to buy something to claim their prize, two common practices among sweepstakes promoters. Instead of winning cash and prizes, consumers are being swindled into purchasing magazine subscriptions, trinkets, and promotional products they do not need.

Legislative Analyst: J.P. Finet

FISCAL IMPACT

The bill would have an indeterminate fiscal impact on State and local government. To the extent that the bill would require the

investigation of possible violations and allow prosecution, it would increase costs to the Attorney General as well as county prosecutors and local courts.

There are no data to indicate how many offenders would be convicted of the proposed misdemeanor. Local governments would incur the costs of intermediate sanctions, misdemeanor probation, and incarceration in a local facility, all of which vary by county. Public libraries would benefit from any additional penal fine revenue.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.