



**House
Legislative
Analysis
Section**

Olds Plaza Building, 10th Floor
Lansing, Michigan 48909
Phone: 517/373-6466

LOTTERIES/GIFT ENTERPRISES

**House Bill 4332 (Substitute H-1)
First Analysis (9-21-95)**

**Sponsor: Rep. Gary Randall
Committee: Regulatory Affairs**

THE APPARENT PROBLEM:

It is a common practice for businesses to offer as promotions drawings for merchandise or other prizes where the customer must be on site to register. Some businesses offer discounts to customers by way of recording a percentage for a discount, such as 10, 20, or 30 percent, on a slip of paper and placing it inside a balloon. A customer would then select a balloon and receive the discount recorded inside. However, under the Michigan Penal Code, practices such as these fall under the prohibitions against lotteries and gift enterprises and are against the law. Since the law has been little enforced against retailers in recent years, many businesses do not even realize they are violating a law.

Additionally, the Federal Communications Commission (FCC) prohibits licensees from carrying advertisements for business lotteries prohibited by state law. A broadcaster could be fined or even lose his or her license if found in violation of the FCC rule. Therefore, Michigan broadcasters may not carry advertisements for certain business promotions that, though illegal, are common business activities. Legislation has been proposed that would provide an exemption for businesses conducting certain lotteries and gift enterprises as promotional activities from the ban currently imposed by the penal code.

THE CONTENT OF THE BILL:

The Michigan Penal Code prohibits a person or business from setting up or running a lottery or gift enterprise for money, disposing of property or merchandise by lottery, selling or drawing lottery tickets, or raffling off money or property through games of chance. A violation is a misdemeanor punishable by up to two years in a state prison or by a fine up to \$1,000. (Michigan courts have

interpreted this provision to include the practice whereby businesses offer a discount or prize in exchange for a purchase or on-site registration. The prohibition in the penal code does not apply to the Michigan State Lottery or charity organizations conducting raffles, lotteries, bingo games, etc., which are governed by the McCauley-Traxler-Law-Bowman-McNeely Lottery Act or the Traxler-McCauley-Law-Bowman Bingo Act.)

House Bill 4332 would amend the code to permit a business to conduct a lottery or gift enterprise as a promotional activity if the activity was "clearly occasional and ancillary to the primary business" of a person or company and did not involve the payment of money solely for the chance or opportunity to win a prize. A promotional activity would be defined as "an activity that is calculated to promote public knowledge or awareness of the existence or the nature of a business enterprise or product, but shall not include an activity that is reasonably calculated to or does generate a direct pecuniary gain or profit for the person conducting the activity." The bill would retain the current penalty for violations, but would delete the requirement that a jail term be served in a state prison.

In addition, the code specifies that a person is prohibited from, among other things, advertising or printing lottery tickets for sale, indicating where tickets may be purchased, or enticing a person to purchase a lottery ticket. Though a violation is a misdemeanor under current law, no penalties are specified. Under the bill, a violation would carry a penalty of imprisonment of up to 90 days, a fine of up to \$100, or both. Businesses conducting a lottery as a promotional activity would be exempt from this restriction.

MCL 750.372 and 750.375

House Bill 4332 (9-21-95)

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, no impact on costs or revenues is expected at either the state or local level. (9-19-95)

ARGUMENTS:

For:

Since business promotions consisting of registering on site to win a prize or picking a balloon in order to receive a discount on a purchase are such common practices, and because the law, in regards to business promotions, has been little enforced since the 1970s, many businesses do not realize they are conducting lotteries or gift enterprises in violation of the law. The original purpose of the law was to prevent persons from cheating and defrauding the public through the sale of gambling chances. House Bill 4332, by defining promotional activity and prohibiting money from being exchanged solely for the chance to win a prize, will retain the safeguards the law intended while allowing businesses to engage in promotional activities beneficial to them and their patrons.

Response:

As amended by the committee, "promotional activity" is defined in such a manner as to weaken the effect the bill. Some people are concerned that the language could be interpreted to prohibit profit-making promotions, and therefore would defeat the purpose of the bill.

For:

The Federal Communications Commission (FCC) allows businesses to advertise business lotteries over the air only if the business lottery is allowed by state law. A broadcaster found in violation of the FCC rule faces stiff fines and possible loss of his or her license. In Michigan, a situation has been created where businesses are conducting business lotteries and gift enterprises as promotional activities, yet broadcasters are prevented from advertising these activities, even for regular clients, for fear of FCC sanctions. In the case of advertisements for national chains, this represents a significant loss of advertising revenues, as the chains can simply use the print media for their advertisements involving certain promotions. By allowing businesses to legally conduct lotteries for the purpose of promotions, Michigan's broadcasters can compete equally with the print media and with broadcasters in neighboring states.

POSITIONS:

The Bureau of State Lottery supports the bill. (9-20-95)

The Michigan Association of Broadcasters supports the bill. (9-20-95)

The Michigan Retailers Association supports the concept of the bill. (9-20-95)

The Small Business Association of Michigan supports the bill as introduced, but the association's position is subject to a legal review of the intent of the committee amendment. (9-20-95)