



Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

BILL



ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986

House Bill 4332 (Substitute S-2 as reported)
Sponsor: Representative Gary Randall
House Committee: Regulatory Affairs
Senate Committee: Local, Urban and State Affairs

Date Completed: 4-22-96

RATIONALE

Many business owners in the State have offered drawings for merchandise or other prizes as promotions to draw customers into their retail stores. For example, some retailers offer discounts to customers by recording a percentage discount, such as 10% or 20%, on a slip of paper and placing it inside a balloon. A customer then selects a balloon, pops it, and receives a discount on merchandise as noted on the paper inside the balloon. Under the Michigan Penal Code, practices such as this fall under the prohibitions against lotteries and gift enterprises, but many business owners apparently do not realize that these activities are against the law. Some people believe that lotteries and gift enterprises used by businesses as promotional activities should be permitted.

CONTENT

The bill would amend the Michigan Penal Code to provide an exception to the prohibition against the holding of a lottery or gift enterprise for money or property, by permitting a person to conduct a lottery or gift enterprise as a "promotional activity" that was clearly occasional and ancillary to the person's primary business, if the lottery or gift enterprise did not involve the payment of money solely for the chance or opportunity to win a prize.

("Promotional activity" would mean an activity that was calculated to promote public knowledge or awareness of the existence or the nature of a business enterprise or product, but would not include an activity that was reasonably calculated to or did not generate a direct pecuniary gain or profit for the person conducting the activity.)

The Code currently prohibits a person from setting up or promoting a lottery or gift enterprise for money; disposing of any real or personal property, goods, or merchandise by a lottery or gift enterprise; aiding in or knowingly permitting the setting up, managing, or drawing of a lottery or gift enterprise; and, knowingly allowing money or property to be raffled off or won by throwing dice or by any other game of chance. A person who violates this provision is guilty of a misdemeanor, punishable by imprisonment for up to two years or a fine of up to \$1,000. The bill would create an exception to these provisions, as described above.

The Code also prohibits a person from advertising, printing, or publishing any lottery ticket or gift enterprise; indicating where a lottery ticket or a share of a lottery ticket may be purchased; and enticing a person to purchase a lottery ticket or a share in a ticket. Currently, a person who violates these provisions is guilty of a misdemeanor. Under the bill, a violation would be punishable by imprisonment for up to 90 days and/or a fine of up to \$100.

MCL 750.372 & 750.375

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

Business promotional activities, such as registering customers at a store to win a prize or popping a balloon to reveal a discount on purchase, are common advertising practices used by retail chain stores and small one-owner shops

across the State. Many business owners, however, do not realize that conducting lotteries or gift enterprises violates the Michigan Penal Code's prohibitions against these activities. Originally designed to prevent persons from defrauding the public through the sale of gambling chances, the prohibitions have been enforced infrequently in the past. By defining promotional activity and prohibiting money from being exchanged solely for the chance to win a prize, the bill would retain the safeguards in the Penal Code while allowing businesses to engage in legitimate promotional activities.

Supporting Argument

The Federal Communications Commission (FCC), which licenses the nation's television and radio stations, prohibits businesses from broadcasting advertisements about promotional lotteries, unless this activity is allowed under a state's laws. Broadcasters cannot accept advertising for these types of events without facing serious penalties from the FCC, including stiff fines and possible loss of a broadcasting license. Under the Michigan Penal Code, it is illegal for a business to conduct a promotional lottery, such as a car dealer's offering prizes to persons who visit the dealership and test-drive a car. Many businesses in the State, including stores representing national chain retailers, conduct promotional lotteries and gift enterprises. Broadcasters in the State, however, cannot advertise these activities without risking sanctions from the FCC. This has resulted in Michigan broadcasters' losing significant amounts of advertising revenues, especially from national chain stores. In these situations, national retailers have placed advertisements for promotional lotteries and gift enterprises in print media, or have purchased broadcast time on radio or television stations located outside of Michigan but whose signals reach markets in the State. By allowing businesses legally to conduct promotional lotteries, the bill would enable Michigan's broadcasters to compete with print media outlets and other broadcasters located in neighboring states.

Legislative Analyst: L. Arasim

FISCAL IMPACT

The bill would have an indeterminate, yet likely little, fiscal impact on State or local government.

To the extent that businesses presently are prosecuted and sanctioned, and under the bill

would not be, there could be some cost savings associated with the bill although it is expected to be minimal.

Fiscal Analyst: M. Hansen

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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.