



# HOUSE BILL No. 6162

November 12, 1996, Introduced by Rep. Law and referred to the Committee on Regulatory Affairs.

A bill to prohibit the payment of money or other consideration as a condition of awarding a prize under certain circumstances; to prescribe the disclosure of certain information to certain persons; to prescribe the powers and duties of certain state and local officials; and to prescribe penalties and provide remedies.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Sec. 1. This act shall be known and may be cited as the  
2 "prize and sweepstakes regulation act".

3       Sec. 2. As used in this act:

4       (a) "Person" means an individual, partnership, corporation,  
5 association, or other legal entity.

6       (b) "Prize" means a gift, award, or other item or service of  
7 value.

1 (c) "Prize notice" means a notice given to a person in this  
2 state that represents that the person has been selected or may be  
3 eligible to receive a prize.

4 (d) "Prize notice" does not include any of the following:

5 (i) A notice given at the request of the person.

6 (ii) A notice informing the person that he or she has been  
7 awarded a prize as a result of his or her actual prior entry in a  
8 game, drawing, sweepstakes, or other contest, if the person is  
9 awarded the prize stated in the notice.

10 (e) "Solicitor" means a person who gives a prize notice.

11 (f) "Sponsor" means a person on whose behalf a solicitor  
12 gives a prize notice.

13 (g) "Verifiable retail value" of a prize means either of the  
14 following:

15 (i) A price at which the solicitor or sponsor can demon-  
16 strate that not less than 1,000 units of the prize have been sold  
17 by a person other than a solicitor or sponsor in the trade area  
18 in which the prize notice is given.

19 (ii) If the solicitor or sponsor is unable to satisfy sub-  
20 paragraph (i), no more than 1.5 times the amount the solicitor or  
21 sponsor paid for the prize.

22 Sec. 3. (1) A solicitor or sponsor shall not require or  
23 invite a person to make a payment or to promise to pay or give  
24 any consideration in order to obtain, be eligible for, or use a  
25 prize, or to determine whether a prize has been won or which  
26 prize has been won.

1       (2) If a solicitor represents to a person that the person  
2 has been selected or may be eligible to receive a prize, the  
3 solicitor shall not request and the solicitor or sponsor shall  
4 not accept a payment or promise of payment for an item or service  
5 from the person before the person receives a written prize notice  
6 that complies with section 4.

7       (3) Except as otherwise provided in section 7, if a solici-  
8 tor or sponsor offers a prize, that prize shall be awarded within  
9 1 year of the date it is offered.

10       Sec. 4. (1) A written prize notice shall prominently and  
11 conspicuously display all of the following information:

12       (a) The true name or names of the solicitor and sponsor and  
13 the address or addresses of the solicitor's and sponsor's actual  
14 principal place or places of business.

15       (b) The verifiable retail value of each prize the person has  
16 been selected or may be eligible to receive.

17       (c) If the notice lists more than 1 prize that the person  
18 has been selected or may be eligible to receive, a statement of  
19 the odds the person has of receiving each prize.

20       (d) If the notice contains an invitation for the person to  
21 view, hear, or attend a sales presentation, the approximate  
22 length of the sales presentation, and an accurate and complete  
23 description of the good or service that is the subject of the  
24 sales presentation.

25       (e) If receipt of the prize is subject to a restriction, a  
26 statement that a restriction applies, a description of the

1 restriction, and a statement containing the location in the  
2 notice where the restriction is described.

3 (f) Any limitations on eligibility.

4 (g) Any other disclosures required by law.

5 (2) The verifiable retail value and the statement of odds  
6 required in a written prize notice under subsection (1) shall be  
7 stated in immediate proximity to each listing of the prize in  
8 each place the prize appears on the written prize notice and  
9 shall be in the same size and boldness of type as the prize.

10 (3) The statement of odds required in a written prize notice  
11 under subsection (1) shall include, for each prize, the total  
12 number of prizes to be given away and the total number of written  
13 prize notices to be delivered. The number of prizes and written  
14 prize notices shall be stated in Arabic numerals. The statement  
15 of odds shall be in the following form: " . . . (number of  
16 prizes) out of . . . written prize notices."

17 (4) The verifiable retail value required in a written prize  
18 notice under subsection (1) shall be in the following form:  
19 "verifiable retail value: \$ . . . .".

20 (5) The information required in a written prize notice under  
21 subsection (1)(d) shall be on the first page of the written prize  
22 notice in not less than 10-point boldfaced type or the largest  
23 print on the notice, whichever is larger. The information  
24 required under subsection (1)(e) and (f) shall be in not less  
25 than 10-point boldfaced type or the largest print on the notice,  
26 whichever is larger.

1       Sec. 5. A solicitor or sponsor shall not do any of the  
2 following:

3       (a) Place on an envelope containing a written prize notice a  
4 representation that the person to whom the envelope is addressed  
5 has been selected to receive a prize.

6       (b) Distribute a written prize notice that contains lan-  
7 guage, or is designed in a manner, that would lead a reasonable  
8 person to believe that it originates from a government agency,  
9 public utility, insurance company, consumer reporting agency,  
10 debt collector, or law firm unless the written prize notice orig-  
11 inates from that source.

12       (c) Represent directly or by implication that the number of  
13 persons eligible for the prize is limited or that a person has  
14 been selected to receive a particular prize unless the represen-  
15 tation is true.

16       (d) Require or invite a person to pay shipping or handling  
17 fees or any other charges to obtain or use a prize.

18       (e) Fail to award all prizes described in a prize notice  
19 within 1 year after the first distribution of the notice.

20       Sec. 6. If a prize notice invites a person to view, hear,  
21 or attend a sales presentation, the sales presentation shall not  
22 begin until the solicitor does all of the following:

23       (a) Informs the person of the prize, if any, that has been  
24 awarded to the person.

25       (b) If the person has been awarded a prize, delivers to the  
26 person the prize or the item selected by the person under section  
27 7 if the prize is not available.

1       Sec. 7. (1) A solicitor who represents to a person in a  
2 written prize notice that the person has been awarded a prize  
3 shall provide the prize to the person unless the prize is not  
4 available. If the prize is not available, the solicitor shall  
5 provide the person with 1 of the following items selected by the  
6 person:

7       (a) A prize listed in the written prize notice that is  
8 available and that is of equal or greater value.

9       (b) The verifiable retail value of the prize in the form of  
10 cash, a money order, or a certified check.

11       (c) A voucher, certificate, or other evidence of obligation  
12 stating that the prize will be shipped to the person within 30  
13 days at no cost to the person.

14       (2) Within 30 days after delivery of a voucher, certificate,  
15 or other evidence of obligation under subsection (1), the solici-  
16 tor shall either honor the voucher, certificate, or other evi-  
17 dence of obligation or deliver to the person the verifiable  
18 retail value of the prize in the form of cash, a money order, or  
19 a certified check. The sponsor shall promptly make the payment  
20 to the person if the solicitor fails to do so.

21       Sec. 8. (1) A sponsor or solicitor who violates this act is  
22 liable for a civil fine of not less than \$100.00 or more than  
23 \$5,000.00 for each violation.

24       (2) A sponsor or solicitor who intentionally violates this  
25 act is guilty of a felony punishable by imprisonment for not more  
26 than 2 years or a fine of not more than \$10,000.00, or both, for  
27 each violation. It is evidence of intent if the violation occurs

1 after the office of the attorney general or of a county  
2 prosecutor has notified a sponsor or solicitor by certified mail  
3 that the sponsor or solicitor is in violation of this act.

4 (3) A person who suffers pecuniary loss because of an inten-  
5 tional violation of this act may bring an action in the circuit  
6 court to recover his or her costs, reasonable attorney fees, and  
7 the greater of \$10,000.00 or twice the amount of the pecuniary  
8 loss.

9 Sec. 9. (1) The attorney general or a county prosecutor  
10 shall investigate violations of this act, and on behalf of this  
11 state may bring an action in the circuit court for 1 or more of  
12 the following:

13 (a) Temporary or permanent injunctive or other relief for a  
14 violation of this act.

15 (b) The sanctions authorized under section 8.

16 (c) Rescission of a contract for goods or services offered  
17 in conjunction with a prize promotion that violates this act.

18 (2) Upon entry of final judgment in an action authorized  
19 under subsection (1), the court may award restitution to a person  
20 who suffered loss arising from a prize promotion that violates  
21 this act if proof of the loss is submitted to the satisfaction of  
22 the court.

23 Sec. 10. (1) This act does not apply to the following:

24 (a) Pari-mutuel betting on horse racing permitted and regu-  
25 lated under the horse racing law of 1995, Act No. 279 of the  
26 Public Acts of 1995, being sections 431.301 to 431.336 of the  
27 Michigan Compiled Laws.

1       (b) The lottery established and regulated under the  
2 McCauley-Traxler-Law-Bowman-McNeely lottery act, Act No. 239 of  
3 the Public Acts of 1972, being sections 432.1 to 432.47 of the  
4 Michigan Compiled Laws.

5       (c) Bingo and other forms of gambling regulated under the  
6 Traxler-McCauley-Law-Bowman bingo act, Act No. 382 of the Public  
7 Acts of 1972, being sections 432.101 to 432.120 of the Michigan  
8 Compiled Laws.

9       (2) This act does not apply to a charitable solicitation if  
10 the charitable solicitation is authorized by and complies with 1  
11 of the acts listed in subsection (1).