

## **PRIZE AND SWEEPSTAKES REGULATION ACT**

**House Bill 5128 (Substitute H-3)**  
**Sponsor: Rep. A.T. Frank**  
**Committee: Consumer Protection**

**House Bill 4582 (Substitute H-1)**  
**Sponsor: Rep. Sharon Gire**  
**First Committee: Regulatory Affairs**  
**Second Committee: Consumer Protection**

**First Analysis (3-5-98)**

### ***THE APPARENT PROBLEM:***

Sweepstakes and prize promotions have become notorious for their misleading and confusing notifications which often lead people to believe that they have already won a prize. In addition, many of these notifications contain hidden charges through required phone calls, merchandise that must be purchased before a prize will be confirmed or delivered, entry fees, shipping and handling fees, and so on. Other promotions may require a person to be subjected, sometimes unknowingly, to a high-pressure sales pitch before being able to claim his or her prize. Prize notifications that do disclose information regarding the odds of winning or the hidden costs involved in actually winning or claiming a prize usually hide or conceal that information in small print or some other manner.

According to the attorney general's office, many of the consumer complaints lodged with the attorney general's office, the Better Business Bureau, the Federal Bureau of Investigation, and the Federal Trade Commission (FTC) stem from people's bad experiences with these kinds of promotions. As a result of a 1994 recommendation by the FTC and the National Association of Attorneys General Telemarketing Committee that state and county law enforcement agencies be given the ability to impose criminal sanctions and obtain civil injunctive relief to deal with sweepstakes scams, several other states have adopted legislation to regulate prize promotions and sweepstakes. It is believed that requiring prominent disclosures in conjunction with any claim that a consumer has won, may have won, or may be eligible to win a prize would still allow legitimate businesses to operate sweepstakes or prize promotions, yet provide a deterrent against to deceitful or fraudulent behaviors.

### ***THE CONTENT OF THE BILLS:***

The bills would create two new acts to provide for enforcement and investigation by the attorney general and county prosecutors of the Prize and Sweepstakes Regulation Act (which would be created by House Bill 4583; that bill was reported from the Regulatory Affairs Committee and is pending before the House). More specifically, the attorney general or a county prosecutor would be required to investigate violations of the Prize and Sweepstakes Regulation Act and, where appropriate, bring an action in circuit court for enforcement of the act. Actions could be brought on the state's behalf by the attorney general or a county prosecutor for injunctions, sanctions specified in the Prize and Sweepstakes Regulation Act, and/or rescission of a contract for goods or services offered in conjunction with a prize promotion that violated the act. Furthermore, in addition to any other penalty or remedy offered under the act, a court could order restitution for an satisfactorily proven loss suffered as a result of a violation of the Prize and Sweepstakes Regulation Act.

The bills would not take effect until one year after the date that they were enacted and both bills are tie-barred to each other and to House Bill 4583.

### ***FISCAL IMPLICATIONS:***

Fiscal information is not available.

### ***ARGUMENTS:***

#### ***For:***

The bills would help county prosecutors and the attorney general to enforce the Prize and Sweepstakes Regulation Act. That act, proposed in House Bill 4583, would

provide a necessary consumer protection tool by requiring full disclosure, in easy to read language and typeset, of whether a person has actually won a prize, and if so, what the prize was and how he or she may redeem it. Too often prize notifications are misleading and confusing, leading a person to believe that he or she has already won a valuable gift, when that is not the case. In addition, a business would be prohibited from requiring a person to pay shipping and handling charges for a prize, purchase merchandise, or even sit through an entire sales presentation before receiving the prize.

Reportedly, people have been bilked out of tens of thousands of dollars buying merchandise in order to stay in contention for the "big" prize they believe they have won. For those on fixed incomes, such as the elderly, this practice is particularly heinous.

For those seeking to use sweepstakes and prize promotions as a con game to prey on the elderly and other consumers, the bills would give the attorney general's office and county prosecutors the enforcement powers necessary to deter scam artists from targeting Michigan residents.

### ***Against:***

The bills are part of an unnecessary package that attempts to restrict businesses from using a legitimate marketing tool. Because some sweepstakes sponsors engage in unacceptable behavior is no reason to set up this sort of unnecessary regulatory framework, particularly since most of that behavior is already prohibited by the Consumer Protection Act or under the state's laws against fraud.

Furthermore, many of the requirements of the Prize and Sweepstakes Regulation Act are unlikely to have any effect. The notification requirements are still dependent upon a clear-headed, intelligent reading of the information provided in order to be effective. Many people still will be convinced that they will win a particular prize, regardless of the size of the print providing the odds.

Finally, why are charities and certain others (horse racing, the state lottery, activities under the bingo act) granted an exemption to the provisions of the Prize and Sweepstakes Regulation Act? If engaging in the actions restricted by the act is so heinous, the restrictions should be equally applied to all whose activities come under the act's provisions.

### ***Response:***

The bills are not unnecessary. Fraud is difficult to establish in court and the Consumer Protection Act does not cover all of the behaviors included in the Prize and Sweepstakes Regulation Act. The abuses in sweepstakes sponsorship and solicitation warrant specific legislation to

protect citizens. Many of the victims of these sweepstakes are older people who are more vulnerable to the deceptive practices used and, because of fixed incomes, are more vulnerable to the loss of money. Reportedly, some senior citizens have paid out tens of thousands of dollars to sweepstakes operators in phone charges or required merchandise orders, only to receive a prize worth less than indicated, a different prize altogether, a discount for merchandise, or no prize at all.

### ***POSITIONS:***

The Michigan Consumer Federation supports the bills.  
(3-4-98)

The Department of Attorney General supports the bills.  
(3-4-98)

Analyst: W. Flory

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■ 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.