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PRIZE AND SWEEPSTAKES REGULATION ACT

House Bill 4751 as passed by the House Second Analysis (1-12-00)

Sponsor: Rep. Gerald Law
Committee: Regulatory Reform

THE APPARENT PROBLEM:

Mailings by sweepstakes operators can be misleading and confusing, often leading people to believe that they have already won a prize when that is not the case. In addition, many prize notifications contain hidden charges (through required phone calls or merchandise orders before a prize is confirmed or delivered, entry fees, shipping and handling fees, and so on) that can add up to hundreds or thousands of dollars. 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. If a prize notification should happen to contain disclosure information as to odds of winning or if merchandise must first be purchased, and so forth, it often is in very small print that is hard to read, or buried so deep in the text of the notification that the information is obscured.

Of particular concern is that senior citizens appear to be targeted more heavily by sweepstakes operators than others. In 1995, the American Association for Retired Persons (AARP) and the Michigan Department of Attorney General jointly conducted the "Senior Sting," in which the attorney general's office monitored the mail of senior citizens. Twenty percent of the 1,766 solicitations received by 106 households in a 30-day period were for sweepstakes entries (as compared to less than 15 percent for credit card or other types of solicitations).

More recently, the U.S. Senate has conducted hearings on deceptive practices used by various companies as part of a state and federal crackdown on misleading sweepstakes mailings. One retiree, in testimony before the Senate Permanent Subcommittee on Investigation, told about how he was lured by what seemed to be personal inscriptions to spend over \$15,000 on magazines and merchandise. He believed that in so doing, he was increasing his chances to win a big prize (*U.S. News & World Report*, 3-22-99). Reportedly, some senior citizens have paid out over \$30,000 to sweepstakes operators in phone charges or required merchandise orders, only to receive no prize at all, a prize worth less than indicated, a different prize

altogether, or a "prize" consisting of a discount on merchandise such as cookware.

Further, according to information from the attorney general's office, prize promotions and sweepstakes are responsible for many consumer complaints lodged with the attorney general's office, the Better Business Bureau, the Federal Bureau of Investigation, and the Federal Trade Commission (FTC). The situation led to the FTC conducting a federal-state crackdown in 1996 known as "Operation Jackpot" and to the National Association of Attorneys General Telemarketing Committee recommendation in 1994 that state and county law enforcement agencies be given both the ability to impose criminal sanctions to deter con artists and to obtain civil injunctive relief to quickly stop the scams.

There has been a flurry of actions taken at the state and federal levels to protect consumers from deceptive prize notification mailings. Several states have adopted legislation in recent years to regulate prize promotions and sweepstakes, and some states have sued companies engaging in mass prize promotions. A May 28, 1999 press release by the Florida attorney general reported a \$4 million settlement between American Family Publishers and the states of Florida, Indiana, South Carolina, and West Virginia. Though the company did not admit any wrongdoing, it did agree as part of the settlement to revise aspects of its sweepstakes solicitations, including printing official rules in larger print and refraining from telling recipients that they are winners or members of a smaller group of finalists unless it is true. Several bills to regulate prize notifications have been introduced in Congress over the past few legislative sessions. The Deceptive Mail Prevention and Enforcement Act, S. 335 of 1999, was passed by the U.S. Senate in August and is now pending committee action in the House of Representatives.

In a warning given in August of 1999, Michigan Attorney General Jennifer Granholm accused six

companies of violating the Consumer Protection Act and warned that they may be sued if they continue to use deceptive practices such as duping people, primarily the elderly, into buying magazine subscriptions and other products in order to increase the odds of winning a prize. Many believe 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 to misleading practices through criminal and civil sanctions.

THE CONTENT OF THE BILL:

The bill would create the Prize and Sweepstakes Regulation Act to regulate the notification of and awarding of prizes, and to establish penalties for violations of the act. The bill would prohibit a solicitor (one who gives a prize notice) and a sponsor (one on whose behalf a prize notice is given) from requiring or inviting a person to make, or promise to make, a payment of any consideration to obtain a prize, be eligible for a prize, or determine if the person has won a prize (or which prize had been won). "Consideration" would be defined as a good, service, or money paid to a sponsor or solicitor with a value greater than a first-class postage stamp. Prizes would have to be awarded within one year of the date that the winner was notified that he or she had won a prize.

Sweepstakes entry material. "Sweepstakes entry material" would mean any written documents required to enter a sweepstakes. A sales solicitation that included an opportunity to enter a sweepstakes could not represent that a person was a winner or had already won a prize unless the person was the sweepstakes winner or actually won a prize. The bill would detail the types of information that would be required to be included in the sweepstakes entry material, and would prohibit other practices. For example, it would be prohibited to represent that an entry without an order would have less of a chance to win than an entry that was accompanied by an order for goods or services.

Prize notice. A "prize notice" would be a notice delivered by mail to a person in the state that represented that the person had been selected or may be eligible to receive a prize. A prize notice would have to be a single document that conspicuously displayed the true names of the solicitor and sponsor and their business addresses; the approximate length of a sales presentation, along with an accurate description of the good or service to be presented, if the notice contained an invitation to attend a sales presentation; and any

applicable restrictions on receiving a prize (these latter two would have to be printed in no less than 10-point boldfaced type, and would have to be printed on the cover page of the prize notice if the notice were on more than one page).

Further, a solicitor or sponsor would be prohibited from, among other things, distributing a prize notice that would lead a reasonable person to believe that the notice originated from a government agency, public utility, insurance company, law firm, consumer reporting agency, or debt collector when it did not; and requiring a person to pay shipping or handling fees to obtain or use a prize.

Sales presentations. If a prize notice invites a person to hear, view, or attend a sales presentation, the solicitor could not begin the presentation until the person was both notified of the prize he or she had been awarded and awarded the prize. If the prize awarded were not available, an alternate prize as prescribed by the bill would have to be awarded.

Prizes. A "prize" would be defined as "a gift, award, or other item or service of value offered or given to a person by chance." A solicitor would have to provide a prize to a person who had received a prize notice. The bill would regulate the distribution of prizes, and would specify that if a prize was not available, the solicitor could substitute a prize listed in the written prize notice that was available and of equal or greater value; the verifiable retail value of the prize in the form of cash, a money order, or a certified check; or a voucher, certificate, or other obligation stating that the prize would be shipped within 30 days at no cost to the person.

Penalties. The attorney general or a county prosecutor would have to investigate violations of the bill, and could bring an action in circuit court for temporary or permanent injunctive relief, a civil penalty as specified in the bill, or a rescission of a contract for goods or services offered in conjunction with a prize promotion. A person who suffered loss as a result of a prize promotion that violated the bill could be awarded restitution upon the submission of satisfactory proof.

A sponsor or solicitor in violation of the bill's provisions would be liable for a civil fine of not less than \$100 or more than \$5,000 for each violation. A sponsor or solicitor who intentionally violated the bill would be guilty of a felony punishable by not more than two years imprisonment, a fine of up to \$10,000, or both, for each violation. It would be evidence of intent if a violation occurred after the sponsor or

solicitor was notified by the Office of the Attorney General or by a county prosecutor by certified mail that he or she was in violation of the bill.

A person who suffered pecuniary loss due to an intentional violation could bring an action to recover his or her costs, reasonable attorney fees, and the greater of \$1,000 or twice the amount of the pecuniary loss.

Exemptions. The bill would not apply to pari-mutuel betting on horse racing regulated by the Horse Racing Law (MCL 431.301 to 431.336), the state lottery established under the McCauley-Traxler-Law-Bowman-McNeely Lottery Act (MCL 432.1 to 432.47), bingo and games regulated under the Traxler-McCauley-Law-Bowman Bingo Act (MCL 432.101-432.120), and charitable solicitations authorized and in compliance with the acts listed above.

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bill could increase state and/or local costs related to investigation and legal activities by the attorney general and county prosecutors if violations were perceived and investigations or other legal actions were begun. Further, since the bill would prescribe fines and penalties for violations, the provisions could increase civil fine revenues, which are distributed to local libraries, to the extent that violations occurred. (1-11-00)

ARGUMENTS:

For:

Primarily, the bill would be a consumer protection tool, requiring full disclosure, in language easy to understand and typeset so as to be readable, of the true status of whether a person has won a prize, and if so, what the prize is and how to 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. Information pertaining to redemption requirements, such as attending a sales presentation, calling a phone number at a charge of \$3.95 a minute, or purchasing certain merchandise, may be in print too tiny for many sight-impaired persons to read, obscured deep in the pages of text of the notification, or nonexistent. A person who believes that he or she has won, or is about to win, a valuable prize may be unwittingly lured to purchase a product that he or she neither wants, needs, or can afford. 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.

The bill would not outlaw sweepstakes or prize promotions, just require clear disclosure of whether a person has won or is merely eligible to win a prize, the true value of a prize, the odds of winning the stated prize, whether the person had to attend a sales presentation, and so on. 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 promised prize. For legitimate businesses conducting business promotions, the bill in essence would require only that additional information be included in the prize notification. For those seeking to use sweepstakes and prize promotions as a con game to prey on the elderly and other consumers, the bill would give the attorney general's office and county prosecutors the enforcement powers necessary to deter scam artists and to bring criminal and civil actions against those who would violate the bill's provisions. In addition, the bill would allow an individual who had suffered monetary losses to also bring an action to recover at least \$1,000. For those citizens who were unwittingly bilked out of their savings, the bill would provide relief.

Against:

The bill would be nearly impossible to enforce, especially since it involves businesses that are based in other states. Since there is federal legislation pending before Congress, it would be better to let the federal government handle the issue. Besides, some in the industry are already beginning to change their notification practices in favor of clearer disclosures.

Response:

Though Michigan cannot violate the federal Interstate Commerce Law, the state does have authority to regulate the conduct of business within the state by out-of-state companies. The bill would, therefore, enable the attorney general's office and county prosecutors to file actions against companies using misleading or deceptive notification practices. Though some states have been able to reach settlements under existing consumer protection laws, the bill could force companies to change their practices so that people would not be financially injured, as opposed to bringing suit after the fact. Further, though legislation is moving through Congress, the federal legislation states that it would not preempt state law. Since the proposed federal law deals with other issues (such as skill contests) that the bill does not address, House Bill

4751 would complement the federal law if enacted. However, in light of the financial hardship suffered by people who are duped by misleading or confusing prize and sweepstakes notifications, the state should not wait for the federal government to act. There is a long precedent in state government to protect consumers and especially to protect vulnerable populations such as the elderly. Regulation of sweepstakes and prize promotions would be in line with previous consumer protection legislation.

POSITIONS:

The Department of Consumer and Industry Services has no formal position on the bill. (1-11-00)

Analyst: S. Stutzky

■ 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.