

HOUSE BILL No. 4751

June 2, 1999, Introduced by Reps. Law, Howell, Caul, Bisbee, Van Woerkom, DeRossett, Woronchak, Faunce, Richardville, Hager, Julian, Koetje, Toy, Shackleton, DeWeese and Green and referred to the Committee on Regulatory Reform.

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 relating to the regulation of certain prizes and sweepstakes; 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) "Consideration" means a good, service, money, or intan-
5 gible that is greater in value than the regular first-class
6 postage of a 1-ounce letter mailed and delivered in the United
7 States.

1 (b) "Official rules" means a formal printed statement, in
2 10-point type on a single document, that contains all of the
3 following:

4 (i) The rules governing the sweepstakes described in the
5 sweepstakes entry material.

6 (ii) A statement identifying any limitations on
7 eligibility.

8 (iii) A statement identifying the typical entrant's odds of
9 winning, expressed in Arabic numerals as a ratio in which the
10 numerator equals the actual number of each prize to be distrib-
11 uted and the denominator equals the total number of entrants that
12 the solicitor or sponsor has reasonably calculated will likely
13 enter the sweepstakes. The odds shall be labeled "TYPICAL
14 ENTRANT'S ODDS OF WINNING", in contrasting typeface, not smaller
15 than 10-point type, and shall be listed separately for each prize
16 with the phrase "1 out of [insert total number of anticipated
17 entrants]".

18 (iv) A statement specifying that no purchase is necessary to
19 win.

20 (v) Any other disclosure required by law.

21 (c) "Person" means an individual, partnership, corporation,
22 association, or other legal entity.

23 (d) "Prize" means a gift, award, or other item or service of
24 value.

25 (e) "Prize notice" means a notice given to a person in this
26 state that represents that the person has been selected or may be
27 eligible to receive a prize.

1 (f) "Prize notice" does not include any of the following:

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

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

7 (g) "Solicitor" means a person who gives a prize notice.

8 (h) "Sponsor" means a person on whose behalf a solicitor
9 gives a prize notice.

10 (i) "Sweepstakes entry material" means any documents
11 required to enter a sweepstakes.

12 Sec. 3. A sweepstakes solicitor or sponsor shall provide
13 the sweepstakes' official rules to each individual solicited to
14 enter the sweepstakes. A sweepstakes solicitor or sponsor shall
15 not require or invite a person to make a payment or to promise to
16 pay or give the solicitor or sponsor any consideration in order
17 to obtain, be eligible for, or use a prize or to determine
18 whether a prize has been won or which prize has been won.

19 Sec. 4. Sweepstakes entry material or a sales solicitation
20 that accompanies sweepstakes entry material shall not represent
21 that a person is a sweepstakes winner or has already won a prize
22 unless that person is the sweepstakes winner or has actually won
23 a prize. If a statement relating to a person's winning is
24 subject to qualifications, and that statement is on or visible
25 through the mailing envelope containing the sweepstakes entry
26 material, the qualifications shall also be clearly stated on or
27 visible through the mailing envelope.

1 Sec. 5. A sales solicitation that accompanies sweepstakes
2 entry material shall contain a conspicuous statement in bold
3 print specifying that no purchase is necessary to enter the
4 sweepstakes. Additionally, that statement shall appear conspicu-
5 ously and in bold print on the sweepstakes entry material and on
6 sweepstakes official rules.

7 Sec. 6. (1) Sweepstakes entry material shall include the
8 official rules of the sweepstakes, prominently identified as the
9 official rules governing the sweepstakes. Any sweepstakes entry
10 material or accompanying sales solicitation that refers to an
11 official rule shall specifically reference the official rules.

12 (2) Sweepstakes entry material or a sales solicitation
13 accompanying sweepstakes entry material shall contain a conspicu-
14 ous statement in bold print specifying that no purchase is neces-
15 sary to enter the sweepstakes and shall not represent any of the
16 following:

17 (a) That an entry in the sweepstakes accompanied by an order
18 for a good or service is eligible for more prizes, or has a
19 greater chance of winning a prize, than an entry that is not
20 accompanied by an order for a good or service.

21 (b) That an entry in the sweepstakes that is not accompanied
22 by an order for a good or service will be eligible for fewer
23 prizes, or has a reduced chance of winning, than an entry that is
24 accompanied by an order for a good or service.

25 (3) For every sales solicitation that includes entry mate-
26 rial for a sweepstakes with a preselected winning number, the
27 sponsor or solicitor shall do either of the following:

1 (a) Ensure that the preselected winning number and, if
2 applicable, any alternate winning number, is within the range of
3 numbers actually mailed by the sponsor or solicitor for that
4 sweepstakes.

5 (b) If the preselected winning number is not returned at the
6 end of the sweepstakes period, award the prize offered in that
7 sweepstakes in a random drawing from among other eligible
8 entrants in accordance with the terms upon which the sweepstakes
9 was originally offered.

10 (4) Except as otherwise provided in section 10, if a solici-
11 tor or sponsor offers a prize, that prize shall be awarded within
12 1 year after the date the winner is notified that he or she has
13 won the prize.

14 Sec. 7. (1) A written prize notice shall be a single docu-
15 ment that prominently and conspicuously displays all of the fol-
16 lowing information:

17 (a) The true name or names of the solicitor and sponsor and
18 the address or addresses of the solicitor's and sponsor's place
19 of business.

20 (b) 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 (c) 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 (2) The information required in a written prize notice under
4 subsection (1)(b) shall be in not less than 10-point boldfaced
5 type. If the written prize notice is on more than 1 page, the
6 information required under subsection (1) shall be on the cover
7 page of that written prize notice. The information required
8 under subsection (1)(c) shall be in not less than 10-point bold-
9 faced type.

10 Sec. 8. A solicitor or sponsor shall not do any of the
11 following:

12 (a) Distribute a written prize notice that contains lan-
13 guage, or is designed in a manner, that would lead a reasonable
14 person to believe that it originates from a government agency,
15 public utility, insurance company, consumer reporting agency,
16 debt collector, or law firm unless the written prize notice orig-
17 inates from that source.

18 (b) Represent directly or by implication that the number of
19 persons eligible for the prize is limited or that a person has
20 been selected to receive a particular prize unless the represen-
21 tation is true.

22 (c) Require or invite a person to pay shipping or handling
23 fees to obtain a prize.

24 Sec. 9. If a prize notice invites a person to view, hear,
25 or attend a sales presentation, the sales presentation shall not
26 begin until the solicitor does all of the following:

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

3 (b) If the person has been awarded a prize, delivers to the
4 person the prize or the item selected by the person under section
5 7 if the prize is not available.

6 Sec. 10. (1) A solicitor who represents to a person in a
7 written prize notice that the person has been awarded a prize
8 shall provide the prize to the person unless the prize is not
9 available. If the prize is not available, the solicitor shall
10 provide the person with 1 of the following items selected by the
11 person:

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

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

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

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

26 Sec. 11. (1) The attorney general or a county prosecutor
27 shall investigate violations of this act, and on behalf of this

1 state may bring an action in the circuit court for 1 or more of
2 the following:

3 (a) Temporary or permanent injunctive or other relief for a
4 violation of this act.

5 (b) The sanctions authorized under section 12.

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

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

13 Sec. 12. (1) A sponsor or solicitor who violates this act
14 is liable for a civil fine of not less than \$100.00 or more than
15 \$5,000.00 for each violation.

16 (2) A sponsor or solicitor who intentionally violates this
17 act is guilty of a felony punishable by imprisonment for not more
18 than 2 years or a fine of not more than \$10,000.00, or both, for
19 each violation. It is evidence of intent if the violation occurs
20 after the office of the attorney general or of a county prosecu-
21 tor has notified a sponsor or solicitor by certified mail that
22 the sponsor or solicitor is in violation of this act.

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

1 Sec. 13. (1) This act does not apply to the following:

2 (a) Pari-mutuel betting on horse racing permitted and regu-
3 lated under the horse racing law of 1995, 1995 PA 279,
4 MCL 431.301 to 431.336.

5 (b) The lottery established and regulated under the
6 McCauley-Traxler-Law-Bowman-McNeely lottery act, 1972 PA 239,
7 MCL 432.1 to 432.47.

8 (c) Bingo and other forms of gambling regulated under the
9 Traxler-McCauley-Law-Bowman bingo act, 1972 PA 382, MCL 432.101
10 to 432.120.

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