



Olds Plaza Building, 10th Floor
Lansing, Michigan 48909
Phone: 517/373-6466

PRIZE AND SWEEPSTAKES REGULATION ACT

House Bill 4582 as introduced
Sponsor: Rep. Sharon Gire

House Bill 4583 with committee amendment
Sponsor: Rep. Gerald Law

First Analysis (5-6-97)
Committee: Regulatory Affairs

THE APPARENT PROBLEM:

Sweepstakes and prize promotions are frequently used as scams to bilk consumers of their money. The prize notifications for prize promotions and sweepstakes are often misleading and confusing, leading people to believe that they have already won a prize. In addition, many 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). Reportedly, some senior citizens have paid out over \$30,000 to sweepstakes operators in phone charges or required merchandise orders, only to receive a prize worth less than indicated, a different prize altogether, no prize or all, 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 have both the ability to impose criminal sanctions to deter con artists and to obtain civil injunctive relief to quickly stop the scams. Several states have since 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 to scam artists through criminal and civil sanctions.

THE CONTENT OF THE BILL:

House Bill 4583 would create the Prize and Sweepstakes Regulation Act to regulate the notification of and awarding of prizes and establish penalties for violations of the act, and House Bill 4582 would require the attorney general or a county prosecutor to investigate violations of the Prize and Sweepstakes Regulation Act and permit an action to be brought on behalf of the state. The bills are tie-barred to each other.

House Bill 4583 would create the Prize and Sweepstakes Regulation 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, money, or intangible that was greater in value than a first-class postage stamp. Prizes would have to be awarded within one year of the date they were offered.

Prize notice. A "prize notice" would be a notice given 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 conspicuously display certain information required by the bill, and would include the verifiable retail value of prizes, a statement of odds of receiving a prize, and any restrictions to receiving a prize that would apply.

A solicitor or sponsor would be prohibited from, among other things: placing a representation that the person has won a prize on the front of the envelope; 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 notified of the prize he or she had been awarded and awarded the prize.

Prizes. A "prize" would be defined as "a gift, award, or other item or service of value." 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 ("verifiable retail value" would be the demonstrated price at which 1,000 units of the prize had been sold in the trade area in which the prize is to be given or, if the price cannot be so verified, then no more than 1.5 times the amount the solicitor or sponsor paid for the prize); or a voucher, certificate, or other obligation stating that the prize would be shipped within 30 days at no cost to the person.

Penalties. 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 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 \$10,000 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 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.

House Bill 4582 would require the attorney general or a county prosecutor to investigate violations of the Prize and Sweepstakes Regulation Act, and to permit the attorney general or county prosecutor to bring an action on behalf of the state for injunctions, sanctions specified in House Bill 4583, and/or rescission of a contract for goods or services offered in conjunction with a prize promotion that violates the Prize and Sweepstakes Regulation Act. Upon entry of final judgment on an action, if proof of a loss is submitted to the satisfaction of the court, the court could award restitution to a person who suffered loss arising from a prize promotion that violated the provisions of the Prize and Sweepstakes Regulation Act.

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bills would increase state and local costs by a small indeterminate amount as a result of increased administrative costs for the Office of Attorney General and county prosecutors involved in investigations of violations of the act. (4-18-97)

ARGUMENTS:

For:

The bill primarily would be a consumer protection tool by requiring full disclosure, in language easy to understand and typeset so as to be readable, the true status of whether a person has won a prize, and if so, what the prize was 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 bills would not outlaw sweepstakes or prize promotions, just require clear disclosure of information pertaining to a person's true status as far as winning or merely being 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 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 from targeting Michigan residents, and to bring criminal and civil actions against those who would violate the bills' provisions.

POSITIONS:

The Department of Attorney General supports the bills.
(5-2-97)

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.