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BILL ANALYSIS

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Senate Bill 1114 (as introduced 3-18-04)

Sponsor: Senator Tom George

Committee: Economic Development, Small Business and Regulatory Reform

Date Completed: 6-2-04

### **CONTENT**

The bill would create the "Prize and Sweepstakes Regulation Act" to do the following:

- **Require a sweepstakes solicitor or sponsor to provide the sweepstakes' official rules to individuals solicited to enter the sweepstakes.**
- **Prohibit a sales solicitation that included an opportunity to enter a sweepstakes from falsely representing that a person had already won a prize.**
- **Require a "prize notice" to disclose clearly and conspicuously the name and address of the sweepstakes solicitor and sponsor, restrictions on prizes offered, and other information.**
- **Require a solicitor to deliver a prize to a person before a sales presentation in connection with a prize notice.**
- **Prohibit a sponsor or solicitor from distributing a prize notice that falsely implied that the notice originated from a government agency or other organization.**
- **Provide for civil and criminal penalties for sponsors who violated the Act, and allow a court to award restitution to a person who suffered a loss arising from a prize promotion in violation of the Act.**

"Sweepstakes" would mean a contest or giveaway initiated by a prize notice in which one or more people were selected on the basis of chance from among eligible participants to receive a prize. "Solicitor" would mean a person that gave a prize notice. "Sponsor" would mean a person on whose behalf a solicitor gave a prize notice.

The bill would take effect October 1, 2004.

### **Official Rules**

Sweepstakes entry material would have to include the official rules of the sweepstakes, prominently identified as the official rules governing the sweepstakes. ("Sweepstakes entry material" would mean any written documents required to be submitted to the sweepstakes solicitor or sponsor to enter a sweepstakes.)

"Official rules" would mean a printed statement for a sweepstakes described in sweepstakes entry material that clearly and conspicuously contained all of the following:

- The rules governing the sweepstakes.
- A statement identifying any limitations on eligibility for the sweepstakes.

- A statement identifying the typical entrant's odds of winning the sweepstakes, expressed as ratio of the actual number of prizes to the estimated number of entrants.
- A statement specifying that no purchase was necessary to enter or win.
- Any other disclosure required by law.

### Sales Solicitation

A sales solicitation that included an opportunity to enter a sweepstakes could not represent that a person would be a sweepstakes winner, or had already won a prize, unless that person was the sweepstakes winner or had actually won a prize. If a statement relating to a person's winnings were subject to qualifications, and that statement were on or visible through the mailing envelope containing the sweepstakes entry material, the qualifications also would have to be clearly stated on, or visible through, the mailing envelope.

A sales solicitation that included an opportunity to enter a sweepstakes would be prohibited from representing that an entry in the sweepstakes accompanied by an order for goods or a service was eligible for more prizes, or had a greater chance of winning a prize, than an entry not accompanied by an order for goods or a service; likewise, the solicitation would be prohibited from representing that an entry not accompanied by an order for goods or a service would be eligible for fewer prizes, or had a reduced chance of winning, than an entry that was accompanied by an order.

For every sales solicitation that included entry material for a sweepstakes with a preselected winning number, the sponsor or solicitor would have to ensure that the preselected winning number (and, if applicable, any alternate winning number) was within the range of numbers actually mailed by the sponsor or solicitor for that sweepstakes. If the preselected winning number were not returned at the end of the sweepstakes period, the sponsor or solicitor would have to award the prize offered in that sweepstakes in a random drawing from among other eligible entrants in accordance with the original sweepstakes' terms.

### Prize Notice

"Prize notice" would be defined as a written notice delivered by mail to a person in Michigan that represented that the person had been selected or could be eligible to receive a prize.

A prize notice would have to disclose clearly and conspicuously all of the following information in the official rules:

- The true name or names of the solicitor and sponsor and the address or addresses of the solicitor's and sponsor's place of business.
- If the notice contained an invitation for the person to view, hear, or attend a sales presentation, the approximate length of the sales presentation, and an accurate and complete description of the goods or service that was the subject of the presentation.
- If receipt of the prize were subject to any material restriction, a statement that a restriction applied, a description of the restriction, or a statement containing the location in the notice where the restriction was described.

### Sales Presentation; Prizes

If a prize notice invited a person to view, hear, or attend a sales presentation, the presentation could not begin until the solicitor informed the person of the prize, if any, that had been awarded to the person, and then delivered it to the person.

If the prize were not available, the solicitor would have to provide the person with one of the following items selected by the person: 1) a prize listed in the notice that was available and was of equal or greater value than the prize; 2) the verifiable retail value of the prize in

the form of cash, a money order, or a certified check; or 3) a voucher, certificate, or other evidence of obligation stating that the prize would be shipped to the person within 30 days at no cost to the person. (In the last case, the solicitor would have to honor the voucher or certificate within 30 days of delivery, or else deliver to the person the retail value of the prize in the form of cash, a money order, or a certified check. The sponsor promptly would have to make the payment to the person if the solicitor failed to do so.)

#### Solicitor/Sponsor Requirements

A solicitor or sponsor would be prohibited from doing any of the following:

- Distributing a prize notice that contained language, or was designed in a manner, that would lead a reasonable person to believe that it originated from a government agency, public utility, insurance company, consumer reporting agency, debt collector, or law firm, unless the written prize notice originated from that source.
- Representing directly or by implication that the number of people eligible for the prize was limited, or that a person had been selected to receive a particular prize, unless the representation were true.
- Requiring a person to pay shipping and handling fees to obtain a prize.
- Requiring a person to make a payment, promise to pay, or give the solicitor or sponsor any consideration in order to obtain, be eligible for, or use a prize to determine whether a prize had been won, or which prize had been won.

("Consideration" would mean goods, a service, or money provided or paid to a sponsor or solicitor that was greater in value than the regular first-class postage of a one-ounce letter mailed and delivered in the United States.)

#### Penalties; Restitution

A sponsor or solicitor that violated the Prize and Sweepstakes Regulation Act would be liable for a civil fine between \$100 and \$500 for each violation. A sponsor or solicitor who intentionally violated the Act would be guilty of a misdemeanor punishable by up to one year's imprisonment and/or a maximum fine of \$10,000 for each violation. (It would be evidence of intent if the violation occurred after the Attorney General or a county prosecutor had notified the sponsor or solicitor by certified mail that he or she was in violation of the Act.)

A person who suffered pecuniary loss because of an intentional violation of the Act could bring an action in a court of competent jurisdiction to recover his or her costs, reasonable attorney fees, and \$1,000 or twice the amount of the loss, whichever was greater. A court could award restitution to a person who suffered loss arising from a prize promotion that violated the Act, if proof of the loss were submitted to the satisfaction of the court.

The Attorney General or a county prosecutor would have to investigate violations of the Act, and on behalf of the State could bring an action in a court for one or more of the following: 1) temporary or permanent injunctive or other relief; 2) a sanction or penalty authorized under the Act; and 3) rescission of a contract for goods or services offered in conjunction with a prize promotion that violated the Act.

#### Exceptions

The Act would not apply to any of the following:

- Pari-mutuel betting on horse racing regulated under the Horse Racing Law.
- The State lottery.
- Bingo and other forms of gambling regulated under State law.

- Television or radio broadcast stations licensed by the Federal Communications Commission.
- A charitable solicitation, if it were authorized by and complied with State law.

The bill states that Prize and Sweepstakes Regulation Act would not impose liability on a television or radio broadcast station for advertising or promoting an activity conducted by a person regulated under the Act, whether or not the person was in compliance with the Act.

Legislative Analyst: Claire Layman

### **FISCAL IMPACT**

The bill would have an indeterminate fiscal impact on State and local government.

To the extent that the bill would require the investigation of possible violations and allow prosecution, it would increase costs to the Attorney General as well as county prosecutors and local courts.

There are no data to indicate how many offenders would be convicted of the proposed misdemeanor. Local governments would incur the costs of intermediate sanctions, misdemeanor probation, and incarceration in a local facility, the costs of which all vary by county. Public libraries would benefit from any additional penal fine revenue.

Fiscal Analyst: Bill Bowerman  
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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.