

SENATE BILL No. 1114

March 18, 2004, Introduced by Senators GEORGE, BIRKHOZ, VAN WOERKOM, BERNERO, ALLEN, PATTERSON, TOY, BROWN, JELINEK, GILBERT, SWITALSKI, KUIPERS, GOSCHKA, McMANUS, HARDIMAN, BRATER and BARCIA and referred to the Committee on Economic Development, Small Business and 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, or money provided
5 or paid to a sponsor or solicitor that is greater in value than
6 the regular first-class postage of a 1-ounce letter mailed and
7 delivered in the United States.

1 (b) "Official rules" means a printed statement for a
2 sweepstakes described in a sweepstakes entry material that
3 clearly and conspicuously contains all of the following:

4 (i) The rules governing the sweepstakes.

5 (ii) A statement identifying any limitations on eligibility
6 for the sweepstakes.

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

17 (iv) A statement specifying that no purchase is necessary to
18 enter or win.

19 (v) Any other disclosure required by law.

20 (c) "Person" means an individual, partnership, corporation,
21 limited liability company, association, or other legal entity.

22 (d) "Prize" means a gift, award, or other item or service of
23 value offered or given to a person by chance.

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

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

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

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

6 (g) "Solicitor" means a person that gives a prize notice.

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

9 (i) "Sweepstakes" means a contest or giveaway initiated by a
10 prize notice in which 1 or more persons are selected on the basis
11 of chance from among eligible participants to receive a prize.

12 (j) "Sweepstakes entry material" means any written documents
13 required to be submitted to the sweepstakes solicitor or sponsor
14 to enter a sweepstakes.

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

22 Sec. 4. A sales solicitation that includes an opportunity
23 to enter a sweepstakes shall not represent that a person is a
24 sweepstakes winner or has already won a prize unless that person
25 is the sweepstakes winner or has actually won a prize. If a
26 statement relating to a person's winning is subject to
27 qualifications, and that statement is on or visible through the

1 mailing envelope containing the sweepstakes entry material, the
2 qualifications shall also be clearly stated on or visible through
3 the mailing envelope.

4 Sec. 5. A sales solicitation that includes sweepstakes
5 entry material shall contain a clear and conspicuous statement
6 that no purchase is necessary to enter the sweepstakes. The
7 statement shall also appear clearly and conspicuously on the
8 sweepstakes entry or order form and in sweepstakes official
9 rules.

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

15 (2) A sales solicitation that includes an opportunity to
16 enter a sweepstakes shall not represent any of the 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 material
26 for a sweepstakes with a preselected winning number, the sponsor
27 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
11 solicitor or sponsor offers a prize, the solicitor or sponsor
12 shall award the prize within 1 year after the date the winner is
13 notified that he or she has won the prize.

14 Sec. 7. A prize notice shall clearly and conspicuously
15 disclose all of the following information in the official rules:

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

19 (b) If the notice contains an invitation for the person to
20 view, hear, or attend a sales presentation, the approximate
21 length of the sales presentation, and an accurate and complete
22 description of the good or service that is the subject of the
23 sales presentation.

24 (c) If receipt of the prize is subject to any material
25 restriction, a statement that a restriction applies, a
26 description of the restriction, or a statement containing the
27 location in the notice where the restriction is described. For

1 the purposes of this subdivision, standard eligibility
2 requirements for participation in the sweepstakes are not
3 considered a material restriction, if the standard eligibility
4 requirements are set forth in the official rules.

5 Sec. 8. A solicitor or sponsor shall not do any of the
6 following:

7 (a) Distribute a prize notice that contains language, or is
8 designed in a manner, that would lead a reasonable person to
9 believe that it originates from a government agency, public
10 utility, insurance company, consumer reporting agency, debt
11 collector, or law firm unless the written prize notice originates
12 from that source.

13 (b) Represent directly or by implication that the number of
14 persons eligible for the prize is limited or that a person has
15 been selected to receive a particular prize unless the
16 representation is true.

17 (c) Require a person to pay shipping or handling fees to
18 obtain a prize.

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

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

24 (b) If the person has been awarded a prize, delivers to the
25 person the prize or the item selected by the person under section
26 10 if the prize is not available.

27 Sec. 10. (1) A solicitor who represents to a person in a

1 prize notice that the person has been awarded a prize shall
2 provide the prize to the person unless the prize is not
3 available. If the prize is not available, the solicitor shall
4 provide the person with 1 of the following items selected by the
5 person:

6 (a) A prize listed in the prize notice that is available and
7 that is of equal or greater value.

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

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

13 (2) Within 30 days after delivery of a voucher, certificate,
14 or other evidence of obligation under subsection (1), the
15 solicitor shall either honor the voucher, certificate, or other
16 evidence of obligation or deliver to the person the verifiable
17 retail value of the prize in the form of cash, a money order, or
18 a certified check. The sponsor shall promptly make the payment
19 to the person if the solicitor fails to do so.

20 Sec. 11. (1) The attorney general or a county prosecutor
21 shall investigate violations of this act, and on behalf of this
22 state may bring an action in a court of competent jurisdiction
23 for 1 or more of the following:

24 (a) Temporary or permanent injunctive or other relief for a
25 violation of this act.

26 (b) A sanction or penalty authorized under section 12.

27 (c) Rescission of a contract for goods or services offered in

1 conjunction with a prize promotion that violates this act.

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

7 Sec. 12. (1) A sponsor or solicitor that violates this act
8 is liable for a civil fine of not less than \$100.00 or more than
9 \$5,000.00 for each violation.

10 (2) A sponsor or solicitor that intentionally violates this
11 act is guilty of a misdemeanor punishable by imprisonment for not
12 more than 1 year or a fine of not more than \$10,000.00, or both,
13 for each violation. It is evidence of intent if the violation
14 occurs after the office of the attorney general or of a county
15 prosecutor has notified a sponsor or solicitor by certified mail
16 that the sponsor or solicitor is in violation of this act.

17 (3) A person who suffers pecuniary loss because of an
18 intentional violation of this act may bring an action in a court
19 of competent jurisdiction to recover his or her costs, reasonable
20 attorney fees, and the greater of \$1,000.00 or twice the amount
21 of the pecuniary loss.

22 Sec. 13. (1) This act does not apply to any of the
23 following:

24 (a) Pari-mutuel betting on horse racing permitted and
25 regulated under the horse racing law of 1995, 1995 PA 279,
26 MCL 431.301 to 431.336.

27 (b) The lottery established and regulated under the

1 McCauley-Traxler-Law-Bowman-McNeely lottery act, 1972 PA 239,
2 MCL 432.1 to 432.47.

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

6 (d) Television or radio broadcast stations licensed by the
7 federal communications commission.

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

11 (3) This act does not impose liability upon a television or
12 radio broadcast station for advertising or promoting an activity
13 conducted by a person regulated under this act whether or not the
14 person is in compliance with this act.

15 Enacting section 1. This act takes effect October 1, 2004.