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BILL ANALYSIS

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House Bill 4751 (Substitute H-1 as passed by the House)

Sponsor: Representative Gerald Law

House Committee: Regulatory Affairs

Senate Committee: Economic Development, International Trade and Regulatory Affairs

Date Completed: 9-20-00

CONTENT

The bill would create the "Prize and Sweepstakes Regulation Act" to regulate sweepstakes solicitations, and the notification and awarding of prizes. The bill would do the following:

- Require sweepstakes solicitors and sponsors to give the sweepstakes official rules to individuals solicited to enter.
- Prohibit solicitors and sponsors from requiring a person to pay anything in order to obtain a prize.
- Require sales solicitations to state that no purchase would be necessary to enter a sweepstakes.
- Prohibit sales solicitations from indicating that a person was a winner unless that were true.
- Require a prize to be awarded within one year after a person was notified that he or she had won.
- Provide for investigations, injunctive relief, restitution, and civil and criminal penalties for violations.

Official Rules

A sweepstakes solicitor or sponsor would have to provide the sweepstakes official rules to each individual solicited to enter the sweepstakes. "Official rules" would mean a printed statement that clearly and conspicuously contained all of the following:

- The rules governing the sweepstakes described in the sweepstakes entry material.
- A statement identifying any limitations on eligibility.
- A statement identifying the typical entrant's odds of winning (expressed and labeled as described in the bill).
- A statement specifying that no purchase was necessary to win.
- Any other disclosure required by law.

In addition, sweepstakes entry material would have to include the official rules of the sweepstakes, prominently identified as such. Any sweepstakes entry material or accompanying sales solicitation that referred to an official rule would have to refer specifically to the official rules.

("Solicitor" would mean a person who gave a prize notice. "Sponsor" would mean a person on whose behalf a solicitor gave a prize notice. "Sweepstakes entry material" would mean any written documents required to be submitted to the sweepstakes solicitor or sponsor to enter a sweepstakes.

"Prize notice" would mean a notice delivered by mail to a person in this State that represented that the person had been selected or could be eligible to receive a prize (a gift, award, or other item or service of value offered or given to a person by chance). "Prize notice" would not include a notice given at the request of the person, or a notice informing the person that he or she had been awarded a prize as a result of his or her actual prior entry in a game, drawing, sweepstakes, or other contest, if the person were awarded the prize stated in the notice.)

Sales Solicitation

A sales solicitation that included an opportunity to enter a sweepstakes could not represent that a person was a sweepstakes winner or had already won a prize unless that person were the sweepstakes winner or had actually won a prize. If a statement relating to a person's winning 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 envelope.

A sales solicitation that included sweepstakes entry material would have to contain a clear and conspicuous statement that no purchase was necessary to enter the sweepstakes. That statement also would have to appear clearly and conspicuously on the sweepstakes entry or order form and in sweepstakes official rules.

A sales solicitation that included an opportunity to enter a sweepstakes could not represent either of the following:

- 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 that was not accompanied by such an order.
- That an entry in the sweepstakes that was 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 such 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 do either of the following:

- Ensure that the preselected winning number and, if applicable, any alternate winning number were 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, award the prize offered in that sweepstakes in a random drawing from among other eligible entrants according to the terms upon which the sweepstakes was originally offered.

Prize & Prize Notice

Except as otherwise provided below, if a solicitor or sponsor offered a prize, it would have to be awarded within one year after the date the winner was notified that he or she had won the prize.

A written prize notice would have to be a single document that prominently and conspicuously disclosed all of the following:

- The true name or names of the solicitor or sponsor and the address or addresses of the solicitor's or 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 presentation, and an accurate and complete description of the goods or service that was the subject of the presentation.
- If the receipt of the prize were subject to a restriction, a statement that the restriction applied, a description of the restriction, and a statement containing the location in the notice where the restriction was described.

The information about a sales presentation and the restriction could not be in less than 10-point boldfaced type. If the written prize notice were on more than one page, the information about the sales presentation would have to be on the cover page.

Prohibitions

A solicitor or sponsor would be prohibited from distributing a written 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 prize notice originated from that source.

A solicitor or sponsor also could not represent directly or by implication that the number of persons eligible for the prize was limited or that a person had been selected to receive a particular prize unless the representation were true.

In addition, a solicitor or sponsor could not require or invite a person to pay shipping or handling fees to obtain a prize.

The bill also would prohibit a solicitor or sponsor from 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 or to determine whether a prize had been won or which prize had been won. ("Consideration" would mean goods, a service, or money 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.)

Sales Presentation

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, if the person had been awarded a prize, delivered to the person the prize or the item selected by the person if the prize were not available.

Award of Prize

If a solicitor represented to a person in a written prize notice that the person had been awarded a prize, the solicitor would have to give the prize to the person unless it were not available. If the prize were not available, the solicitor would have to give the person one of the following items selected by the person:

- 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.
- 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.

Within 30 days after delivery of a voucher, certificate, or other evidence of obligation, the solicitor would have to honor it or deliver to the person the verifiable retail value of the prize in the form of cash, a money order, or a certified check. The sponsor would have to make the payment promptly to the person if the solicitor failed to do so.

Violations

The Attorney General or a county prosecutor would have to investigate violations of the proposed Act, and on behalf of the State, could bring an action in the circuit court for one or more of the following:

- Temporary or permanent injunctive or other relief for a violation.
- The sanctions described below.
- Rescission of a contract for goods or services offered in conjunction with a prize promotion that violated the Act.

Upon entry of final judgment in the action, the 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 court's satisfaction.

A sponsor or solicitor who violated the Act would be liable for a civil fine of at least \$100 but not more than \$5,000 for each violation.

A sponsor or solicitor who intentionally violated the Act would be guilty of a felony punishable by

imprisonment for up to two years and/or a fine of up to \$10,000 for each violation. It would be evidence of intent if the violation occurred after the office of the Attorney General or of a county prosecutor had notified a sponsor or solicitor by certified mail that the sponsor or solicitor was in violation of the Act.

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

Exclusions

The proposed Act would not apply to the following:

- Pari-mutuel betting on horse racing permitted and regulated under the Horse Racing Law.
- The lottery established and regulated under the Lottery Act.
- Bingo and other forms of gambling regulated under the Bingo Act.

Also, the Act would not apply to a charitable solicitation if it were authorized by and complied with one of the Acts listed above.

Legislative Analyst: S. Lowe

FISCAL IMPACT

The bill would have an indeterminate fiscal impact on State and local government. Enforcement costs and fine revenue would depend on the number of violations.

There are no data available to indicate how many people would intentionally violate the conditions of sponsoring a sweepstakes. Additionally, the bill would establish a maximum penalty for the offense of two years and/or \$10,000, but cost estimations are based on minimum sentences. Assuming that five people a year would be convicted and each received a prison term of 16 months, given that the average annual cost of incarceration is \$22,000, costs for incarceration would increase \$147,000. If offenders were incarcerated for periods less than 13 months, local units of government would incur the costs of incarceration, which vary by county.

Fiscal Analyst: B. Bowerman
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