
Commerce & Labor Committee

HB 1821

Brief Description: Regulating sweepstakes.

Sponsors: Representatives Sullivan, Ahern, O'Brien, Nixon, Hunt and Wood.

Brief Summary of Bill

- Broadens consumer protection law regarding promotional advertising of prizes to include sweepstakes and skill contests offered for a commercial purpose.
- Prohibits additional practices and requires additional disclosures.

Hearing Date: 1/15/04

Staff: Susan Kavanaugh (786-7106).

Background:

Consumer protection law dealing with promotional advertising of prizes focuses primarily on prizes offered as an inducement to meet with a salesperson or attend a sales presentation, as with timeshare and vacation club promotions.

Over the past five years, the Office of the Attorney General (Office), which is responsible for enforcing the Consumer Protection Act, has settled with a number of firms that conduct sweepstakes in Washington. Also, in 2002, the Office settled a case involving a skill contest business. Such businesses often solicit customers through direct mail, offering the opportunity to win prizes by paying fees to solve puzzles.

The settlement agreements require certain practices in advertising sweepstakes and skill contests. The intent of the required disclosures and prohibited practices is to give consumers a clear understanding of their odds of winning and any costs of participating in skill contests and sweepstakes.

Summary of Bill:

Consumer protection law regarding promotional advertising of prizes is broadened to include sweepstakes and skill contests offered for a commercial purpose. Many of the prohibitions and requirements of the Office settlements with particular sweepstakes and skill-contest companies are put into law, applying them to all similar businesses. Various other changes are made to reflect

current language and technology used in advertising promotion offers, contests, skill contests and sweepstakes, as well as current organizational structures among businesses in these markets.

Definitions

"Contests", "skill contests," and "sweepstakes" are each defined. Contests involving luck, such as sweepstakes, are distinguished from those involving skill. Also defined are terms used in these activities, such as "official rules" and "specially selected."

"Represent" and "representation" are defined to include both statements and the implications and inferences that would be drawn from them. If a representation is on an envelope or visible through it, the context in which it is to be considered is solely what can be seen without opening the envelope.

The definition of prize is simplified and exemptions are removed. The definitions of "promote" and "promoter" are deleted.

Prohibited Practices

False or misleading statements or suggestions are not allowed in skill contests, contests or sweepstakes promoted via the mail, e-mail, or any type of paid advertising.

Specifically, it is prohibited to say or imply that any of the following is the case unless it is unambiguously true:

- the offer comes from a governmental entity, law office, or accountant;
- the person was selected by chance or specially selected;
- the person is being notified of a prize or opportunity to compete for a second, subsequent, or final time;
- the offer has been sent by something other than bulk mail;
- the offer is urgent, unless a true deadline is specified; and
- a prize has been won, unless the winner will be given it without condition or obligation.

It is also prohibited to do any of the following:

- require any kind of payment or purchase to compete for or claim a prize, except in a skill contest;
- suggest that chance, or anything other than effort and skill, is involved in winning a skill contest;
- give better odds of winning or more prizes to sweepstakes or contest entries accompanied by purchase orders, or indicate that such entries will face better odds or be eligible for more prizes;
- suggest that multiple entries, purchases, payments, or donations will increase the odds of winning;
- misrepresent the odds of winning or rules, terms, and conditions of the sweepstakes or contest, or the number of participants eligible to enter a skill contest;
- offer a prize with the knowledge that there is not a large enough quantity of prizes available to meet the reasonably expected demand;
- say or imply that a person may become a winner under certain conditions, unless those conditions are clearly described;

- request information or action from a person by saying or suggesting that it is needed if a prize has been won, unless the prize has actually been won and the information is needed to deliver the prize; and
- use personalized simulated checks.

It is also prohibited to say or do the following in skill contests:

- say or suggest that skill contest prizes will go to anyone but the winners;
- say or suggest that everyone has an equal aptitude for a skills contest or misrepresent the skill level needed to win a prize;
- say or suggest that the personal feelings of sponsors or other factors give the person receiving the offer an advantage in a skill contest;
- refer to a law or regulation on the envelope of an offer, unless it is legally required;
- misrepresent the position of an individual in a multi-round skill contest relative to other competitors;
- imply that an individual shows special aptitude for a skill contest, unless the individual does;
- offer a skill contest that does not depend on skill or does not increase in difficulty in a systematic way;
- provide help in completing puzzles over the phone, other than explaining rules;
- buy, sell, give or receive consumer information disclosed in a skill contest;
- make customer lists available to others without prohibiting their use for telephone solicitation;
- * send any additional offer within 12 months to anyone who has paid at least \$1,500 in entry fees; and
- * send any additional offer to anyone who has paid at least \$3,500 in entry fees.

Required Disclosures for Contests, Sweepstakes and Skill Contests

All of the following information is required to be included in contests, sweepstakes, or skill contests offered via the mail, e-mail, or any type of paid advertising:

- a statement that the recipient has not won a prize, unless it will be awarded without condition;
- a statement that no purchase or payment is required to enter, or, for skill contests, all fee amounts;
- the value and odds of winning each prize;
- the name and contact information for each contest or sweepstakes sponsor;
- any restrictions on prizes, such as blackout days on a travel award;
- contest rules, including odds or difficulty levels, number of rounds before prize will be awarded, fees (for skill contests), prizes, award date, and deadline for submitting an entry; and
- whether a ticket must be presented to redeem a sweepstakes prize.

The following must also be revealed in skill contest offerings:

- the judges, their qualifications, and the method of judging in skill contests;
- the historical or anticipated ratio of total entry fees to prizes awarded; and
- refund policy.

Additional Provisions

Skill Contest Refunds

In skill contests, refunds must be given at any point before a winner is announced. If a refund request includes information indicating the consumer "lacks the ability to knowingly and voluntarily enter a skills contest," the sponsor must refund funds even in rounds where a winner has been announced, and put the customer on a do-not-contact list.

Rain Checks

When a prize is not available for immediate delivery, the winner must be given a rain check. If the prize is not available within 30 days, the winner must award the cash value of the prize.

Sales Presentations

If a person must listen to a sales presentation in order to receive a prize, this fact must be disclosed in the offer. Before the sales presentation begins, the sponsor must tell the person what prize will be awarded.

Telephone Entries

For contests and sweepstakes in which the consumer enters over the telephone, contest rules must be read to the potential entrant over the telephone and a toll-free line must be available for this purpose. The same requirements apply to situations in which the consumer makes purchases in connection with a sweepstakes entry..

Continuing Obligation Checks

Issuing continuing obligation checks is prohibited for anyone other than a financial institution. Financial institutions may issue such checks only if they are accompanied by a note specifying that the check is a loan.

*Do Not Contact Lists

Skill contest sponsors must put anyone who requests it on a do-not-contact list.

Proposed Substitute Compared to the Original:

The temporary prohibition on further offers to individuals who have spent \$1,500 or more to enter skill contest and the permanent prohibition on further offers to those who have spent at least \$3,500 are both removed.

The requirement to maintain do-not-contact lists on request is also removed.

Definitions are made more specific. References to skill contests are moved to the bill section that addresses them. Numerous changes are made for clarity.

Appropriation: None.

Fiscal Note: Requested on January 12, 2004.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.