

ASSEMBLY BILL

No. 903

Introduced by Assembly Member Cristina Garcia

February 26, 2015

An act to amend Section 17539.1 of the Business and Professions Code, relating to sweepstakes.

LEGISLATIVE COUNSEL'S DIGEST

AB 903, as introduced, Cristina Garcia. Unfair business practices: contests and sweepstakes.

Existing law generally regulates false advertising and specifically prohibits certain unfair acts or practices undertaken by, or omissions of, a person in the operation of a contest, including misrepresenting the odds of winning a prize or failing to award and distribute all prizes.

Existing law, with certain exceptions, prohibits using or offering to use any method intended to be used by a person interacting with an electronic video monitor to simulate gambling or play gambling-themed games in a business establishment, as defined, that directly or indirectly implements the predetermination of sweepstakes cash, cash-equivalent prizes, or other prizes of value, or otherwise connects a sweepstakes player or participant with sweepstakes cash, cash-equivalent prizes, or other prizes of value. A violation of this provision is a misdemeanor.

This bill would, instead, make violation of that provision punishable as a felony.

By increasing the duties of the local prosecutor, this bill would impose a state-mandated local program.

Existing law specifies that these provisions do not render unlawful or restrict otherwise lawful games and methods used by a gambling

enterprise licensed under the Gambling Control Act or operations of the California State Lottery.

This bill would expand that exemption to include lawful, technologies, and software used by a gambling enterprise licensed under the Gambling Control Act or operations of the California State Lottery.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 17539.1 of the Business and Professions
- 2 Code is amended to read:
- 3 17539.1. (a) The following unfair acts or practices undertaken
- 4 by, or omissions of, any person in the operation of any contest or
- 5 sweepstakes are prohibited:
- 6 (1) Failing to clearly and conspicuously disclose, at the time of
- 7 the initial contest solicitation, at the time of each precontest
- 8 promotional solicitation and each time the payment of money is
- 9 required to become or to remain a contestant, the total number of
- 10 contestants anticipated based on prior experience and the
- 11 percentages of contestants correctly solving each puzzle used in
- 12 the three most recently completed contests conducted by the person.
- 13 If the person has not operated or promoted three contests he or she
- 14 shall disclose for each prior contest if any, the information required
- 15 by this section.
- 16 (2) Failing to promptly send to each member of the public upon
- 17 his or her request, the actual number and percentage of contestants
- 18 correctly solving each puzzle or game in the contest most recently
- 19 completed.
- 20 (3) Misrepresenting in any manner the odds of winning any
- 21 prize.
- 22 (4) Misrepresenting in any manner, the rules, terms, or
- 23 conditions of participation in a contest.

- 1 (5) Failing to clearly and conspicuously disclose with all contest
2 puzzles and games and with all promotional puzzles and games
3 all of the following:
- 4 (A) The maximum number of puzzles or games that may be
5 necessary to complete the contest and determine winners.
 - 6 (B) The maximum amount of money, including the maximum
7 cost of any postage and handling fees, that a participant may be
8 asked to pay to win each of the contest prizes then offered.
 - 9 (C) That future puzzles or games, if any, or tie breakers, if any,
10 will be significantly more difficult than the initial puzzle.
 - 11 (D) The date or dates on or before which the contest will
12 terminate and upon which all prizes will be awarded.
 - 13 (E) The method of determining prizewinners if a tie remains
14 after the last tie breaker puzzle is completed.
 - 15 (F) All rules, regulations, terms, and conditions of the contest.
- 16 (6) Failing to clearly and conspicuously disclose the exact nature
17 and approximate value of the prizes when offered.
- 18 (7) Failing to award and distribute all prizes of the value and
19 type represented.
- 20 (8) Representing directly or by implication that the number of
21 participants has been significantly limited, or that any particular
22 person has been selected to win a prize unless such is the fact.
- 23 (9) Representing directly or by implication that any particular
24 person has won any money, prize, thing, or other value in a contest
25 unless there has been a real contest in which a meaningful
26 percentage, which shall be at least a majority, of the participants
27 in such contests have failed to win a prize, money, thing, or other
28 value.
- 29 (10) Representing directly or by implication that any particular
30 person has won any money, prize, thing, or other value without
31 disclosing the exact nature and approximate value thereof.
- 32 (11) Using the word “lucky” to describe any number, ticket,
33 coupon, symbol, or other entry, or representing in any other manner
34 directly or by implication that any number, ticket, coupon, symbol,
35 or other entry confers or will confer an advantage upon the recipient
36 that other recipients will not have, that the recipient is more likely
37 to win a prize than are others, or that the number, ticket, coupon,
38 symbol, or other entry has some value that other entries do not
39 have.

1 (12) Using or offering for use any method intended to be used
2 by a person interacting with an electronic video monitor to simulate
3 gambling or play gambling-themed games in a business
4 establishment that (A) directly or indirectly implements the
5 predetermination of sweepstakes cash, cash-equivalent prizes, or
6 other prizes of value, or (B) otherwise connects a sweepstakes
7 player or participant with sweepstakes cash, cash-equivalent prizes,
8 or other prizes of value. For the purposes of this paragraph,
9 “business establishment” means a business that has any financial
10 interest in the conduct of the sweepstakes or the sale of the products
11 or services being promoted by the sweepstakes at its physical
12 location. This paragraph does not make unlawful game promotions
13 or sweepstakes conducted by for-profit commercial entities on a
14 limited and occasional basis as an advertising and marketing tool
15 that are incidental to substantial bona fide sales of consumer
16 products or services and that are not intended to provide a vehicle
17 for the establishment of places of ongoing gambling or gaming.
18 *Notwithstanding Section 17534, a violation of this paragraph is*
19 *punishable as a felony.*

20 (13) Failing to obtain the express written or oral consent of
21 individuals before their names are used for a promotional purpose
22 in connection with a mailing to a third person.

23 (14) Using or distributing simulated checks, currency, or any
24 simulated item of value unless there is clearly and conspicuously
25 printed thereon the words: SPECIMEN—NONNEGOTIABLE.

26 (15) Representing, directly or by implication, orally or in
27 writing, that any tie breaker puzzle may be entered upon the
28 payment of money qualifying the contestant for an extra cash or
29 any other type prize or prizes unless:

30 (A) It is clearly and conspicuously disclosed that the payments
31 are optional and that contestants are not required to pay money,
32 except for reasonable postage and handling fees, to play for an
33 extra cash or any other type of prize or prizes; and

34 (B) Contestants are clearly and conspicuously given the
35 opportunity to indicate they wish to enter such phase of the contest
36 for free, except for reasonable postage and handling fees the
37 amount of which shall not exceed one dollar and fifty cents (\$1.50)
38 plus the actual cost of postage and which shall be clearly and
39 conspicuously disclosed at the time of the initial contest solicitation
40 and each time thereafter that the payment of such fees is required.

1 The contestants' opportunity to indicate they wish to enter for free
2 shall be in immediate conjunction with and in a like manner as the
3 contestants' opportunity to indicate they wish to play for an extra
4 prize.

5 (b) For the purposes of this section, "sweepstakes" means a
6 procedure, activity, or event, for the distribution, donation, or sale
7 of anything of value by lot, chance, predetermined selection, or
8 random selection that is not unlawful under other provisions of
9 law, including, but not limited to, Chapter 9 (commencing with
10 Section 319) and Chapter 10 (commencing with Section 330) of
11 Title 9 of Part 1 of the Penal Code.

12 (c) This section does not apply to an advertising plan or program
13 that is regulated by, and complies with, the requirements of Section
14 17537.1.

15 (d) Nothing in this section shall be deemed to render lawful any
16 activity that is unlawful pursuant to other law, including, but not
17 limited to, Section 320, 330a, 330b, 330.1, or 337j of the Penal
18 Code.

19 (e) Nothing in this section shall be deemed to render unlawful
20 or restrict otherwise lawful games, *technologies*, *software*, and
21 methods used by a gambling enterprise licensed under the
22 Gambling Control Act or operations of the California State Lottery.

23 SEC. 2. No reimbursement is required by this act pursuant to
24 Section 6 of Article XIII B of the California Constitution because
25 the only costs that may be incurred by a local agency or school
26 district will be incurred because this act creates a new crime or
27 infraction, eliminates a crime or infraction, or changes the penalty
28 for a crime or infraction, within the meaning of Section 17556 of
29 the Government Code, or changes the definition of a crime within
30 the meaning of Section 6 of Article XIII B of the California
31 Constitution.