

## BILL ANALYSIS

Senate Research Center

H.B. 2530  
By: Junell (Ellis, Rodney)  
Business & Commerce  
5/7/2001  
Engrossed

### DIGEST AND PURPOSE

Numerous Texas citizens receive sweepstakes entries from businesses such as Publishers Clearing House and American Family Publishers that invite people to enter a sweepstakes in which the prize money is millions of dollars. Because of the sometimes misleading presentation of the sweepstakes material, many people have been deceived into thinking that they have already won money or another prize. New York, California, Florida, Ohio, and Illinois are among 31 states that have filed suit against Publishers Clearing House for deceptive trade practices. In October 1999, Texas Attorney General John Cornyn filed a lawsuit against Publishers Clearing House for numerous violations of the Deceptive Trade Practices Act. The suit alleges that the sweepstakes company made a variety of misleading representations through mail order solicitations designed to deprive money from recipients, primarily from elderly recipients. H.B. 2530 delineates conduct in which a person may not engage when offering a sweepstakes and provides penalties.

### RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### SECTION BY SECTION ANALYSIS

SECTION 1. Amends Title 4, Business & Commerce Code, by adding Chapter 43, as follows:

#### CHAPTER 43. SWEEPSTAKES

Sec. 43.001. DEFINITIONS. Defines “imply,” “sweepstakes,” and “video sweepstakes.”

Sec. 43.002. OFFENSES. (a) Prohibits a person offering a sweepstakes primarily through the mail, exclusive of mailed newspapers and magazines, from taking certain actions.

(b) Prohibits a person from operating a video sweepstakes in this state.

(c) Provides that the prohibition of operating a video sweepstakes as set out in Subsection (b) does not authorize any otherwise illegal activity and does not apply to a facility operated by a nonprofit organization of military veterans.

Sec. 43.003. ACTS NOT PROHIBITED. Provides that Section 43.002(a)(12) does not prohibit a person from making a statement in the official rules of the sweepstakes describing the method to be used in choosing a winner or prohibit a person from notifying the winner after the sweepstakes has ended.

Sec. 43.004. CIVIL PENALTY. (a) Authorizes the attorney general to initiate an action under this section by filing suit in a district court in Travis County or in any county in which a violation occurred.

(b) Requires the court, for each violation found, to award the plaintiff a civil penalty of not less than \$5,000 or more than \$50,000.

(c) Requires that if the material accompanying or relating to a sweepstakes or an offer to enter a sweepstakes contains multiple statements, implications, representations, or offers that are prohibited by this chapter, each statement, implication, representation, or offer is a separate violation and is to result in a separate civil penalty. Provides that if the material is sent by mail, facsimile, electronic mail, or other similar mass distribution, each individual who receives the material constitutes an additional and separate group of violations of this chapter.

(d) Provides that if another person knew or should have known that a person was offering a sweepstakes in violation of this chapter, and if that other person provided names and addresses of residents of this state to the person offering the sweepstakes or provided any services connected with the mailing, sending by facsimile, electronic mail, or other similar mass distribution of information about the sweepstakes or an opportunity to enter the sweepstakes, the other party is jointly and severally liable with the person offering the sweepstakes for the cumulative civil penalties that result from providing those names and addresses or services.

(e) Requires the court, if the attorney general substantially prevails, to award the attorney general reasonable expenses incurred in recovering a civil penalty under this section, including court costs, reasonable attorney's fees, reasonable investigative costs, witness fees, and deposition expenses.

(f) Requires that a civil penalty recovered under this section to be deposited in the state treasury.

(g) Authorizes a court to also award injunctive relief or other equitable or ancillary relief that is reasonably necessary to prevent future violations of this chapter.

SECTION 2. Effective date: September 1, 2001.