

BILL ANALYSIS

Senate Research Center

H.B. 2530
By: Junell (Ellis, Rodney)
Business & Commerce
5/9/2001
Committee Report (Amended)

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. C.S.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,” “direct marketing,” “conducting,” “magazines,” “newspapers,” and “catalogues.”

Sec. 43.002. OFFENSES. Prohibits a person conducting a sweepstakes through direct marketing from taking certain actions.

Sec. 43.003. APPLICATION OF CHAPTER; ACTS NOT PROHIBITED. (a) Provides that this chapter does not apply to any sweepstakes that is conducted through advertisements or inserts in magazines, newspapers or catalogues sent through the mail.

(b) Provides that this chapter does not apply to any charitable raffle regulated by Chapter 2002, Occupations Code.

(c) Provides that this chapter does not apply to any sweepstakes regulated by the Alcoholic Beverage Code.

(d) Provides that this chapter does not apply to any company that is an air carrier subject to Title 49 U.S.C.

(e) Provides that this chapter does not apply to a drawing for the opportunity to

participate in a hunting, fishing, or other recreational event conducted by the Parks and Wildlife Department.

(f) Provides that if the one and only use of mail, facsimile, or electronic mail is for consumers to return their entry forms to the sponsor of the contest, then this chapter does not apply to the sweepstakes.

(g) Provides that this chapter does not prohibit a sweepstakes sponsor from making a statement in the official rules of the sweepstakes describing the method to be used in choosing a winner, and this chapter does not prohibit a sweepstakes sponsor from notifying the winner after she or he has been elected.

(h) Provides that this chapter does not prohibit a sweepstakes sponsor, after determining the winner, from obtaining an affidavit from the person selected to verify that she or he is eligible to win the prize and has complied with the rules of the sweepstakes.

(i) Provides that this chapter never prohibits any person from offering a non-sweepstakes prize, gift, premium, giveaway, skill contest, coupon, rebate, or other incentive or promotion of any kind so long as that non-sweepstakes incentive or promotion is not conducted through direct marketing.

(j) Provides that this chapter does not apply to a sweepstakes if the most valuable prize to be awarded is less than \$20,000.00. Provides that the value of a prize is measured by the highest number among its face value, its fair market value and its financial present value.

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 any person either:

(i) provides names, addresses, fax numbers or electronic mail addresses of any residents of this state so that such information can be used in conducting a sweepstakes in violation of this chapter; or

(ii) provides any services connected with mailing, sending by facsimile, electronic mail, or other similar mass distribution any materials connected with a sweepstakes that violates this chapter; and

such person knew or should have known that the sweepstakes was in violation of this chapter, then each such person is jointly and severally liable for that portion of the cumulative civil penalties that resulted from their conduct.

(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 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.