

**ASSEMBLY BILL**

**No. 1439**

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**Introduced by Assembly Member Salas**

**(Coauthors: Assembly Members Bonilla, Bonta, Ian Calderon, Campos, Conway, Cooley, Daly, Fox, Gonzalez, Gray, Grove, Levine, Medina, Melendez, Nazarian, Perea, Quirk-Silva, Rendon, Ting, and Waldron)**

(Coauthor: Senator Lara)

January 6, 2014

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

LEGISLATIVE COUNSEL'S DIGEST

AB 1439, as introduced, Salas. Sweepstakes.

Existing law prohibits certain unfair acts or practices undertaken by, or omissions of, any person in the operation of a contest, as described, including, among other things, misrepresenting the odds of winning any prize or failing to award and distribute all prizes, as specified. A violation of this provision is a misdemeanor.

This bill would make the provision described above applicable to unfair acts or practices undertaken by, or omissions of, any person in the operation of a sweepstakes, as defined. The bill would also prohibit using any method intended to be used by a person interacting with a gambling-themed or simulated gambling electronic video monitor in a business establishment 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.

By creating new crimes, the bill would impose a state-mandated local program.

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 shall  
14 disclose for each prior contest if any, the information required by  
15 this section.

16 (2) Failing to promptly send to each member of the public upon  
17 his 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.

24 (5) Failing to clearly and conspicuously disclose with all contest  
25 puzzles and games and with all promotional puzzles and games  
26 all of the following:

27 (A) The maximum number of puzzles or games which may be  
28 necessary to complete the contest and determine winners.

1 (B) The maximum amount of money, including the maximum  
2 cost of any postage and handling fees, which a participant may be  
3 asked to pay to win each of the contest prizes then offered.

4 (C) That future puzzles or games, if any, or tie breakers, if any,  
5 will be significantly more difficult than the initial puzzle.

6 (D) The date or dates on or before which the contest will  
7 terminate and upon which all prizes will be awarded.

8 (E) The method of determining prizewinners if a tie remains  
9 after the last tie breaker puzzle is completed.

10 (F) All rules, regulations, terms, and conditions of the contest.

11 (6) Failing to clearly and conspicuously disclose the exact nature  
12 and approximate value of the prizes when offered.

13 (7) Failing to award and distribute all prizes of the value and  
14 type represented.

15 (8) Representing directly or by implication that the number of  
16 participants has been significantly limited, or that any particular  
17 person has been selected to win a prize unless such is the fact.

18 (9) Representing directly or by implication that any particular  
19 person has won any money, prize, thing, or other value in a contest  
20 unless there has been a real contest in which a meaningful  
21 percentage, which shall be at least a majority, of the participants  
22 in such contests have failed to win a prize, money, thing, or other  
23 value.

24 (10) Representing directly or by implication that any particular  
25 person has won any money, prize, thing, or other value without  
26 disclosing the exact nature and approximate value thereof.

27 (11) Using the word “lucky” to describe any number, ticket,  
28 coupon, symbol, or other entry, or representing in any other manner  
29 directly or by implication that any number, ticket, coupon, symbol,  
30 or other entry confers or will confer an advantage upon the recipient  
31 that other recipients will not have, that the recipient is more likely  
32 to win a prize than are others, or that the number, ticket, coupon,  
33 symbol or other entry has some value that other entries do not  
34 have.

35 *(12) Using any method intended to be used by a person*  
36 *interacting with a gambling-themed or simulated gambling*  
37 *electronic video monitor in a business establishment that directly*  
38 *or indirectly implements the predetermination of sweepstakes cash,*  
39 *cash-equivalent prizes, or other prizes of value, or otherwise*

1 *connects a sweepstakes player or participant with sweepstakes*  
2 *cash, cash-equivalent prizes, or other prizes of value.*

3 ~~(12)~~

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

7 ~~(13)~~

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

11 ~~(14)~~

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

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

20 (B) Contestants are clearly and conspicuously given the  
21 opportunity to indicate they wish to enter such phase of the contest  
22 for free, except for reasonable postage and handling fees the  
23 amount of which shall not exceed one dollar and fifty cents (\$1.50)  
24 plus the actual cost of postage and which shall be clearly and  
25 conspicuously disclosed at the time of the initial contest solicitation  
26 and each time thereafter that the payment of such fees is required.  
27 The contestants' opportunity to indicate they wish to enter for free  
28 shall be in immediate conjunction with and in a like manner as the  
29 contestants' opportunity to indicate they wish to play for an extra  
30 prize.

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

38 ~~(b)~~

1 (c) This section does not apply to an advertising plan or program  
2 that is regulated by, and complies with, the requirements of Section  
3 17537.1.

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

8 SEC. 2. No reimbursement is required by this act pursuant to  
9 Section 6 of Article XIII B of the California Constitution because  
10 the only costs that may be incurred by a local agency or school  
11 district will be incurred because this act creates a new crime or  
12 infraction, eliminates a crime or infraction, or changes the penalty  
13 for a crime or infraction, within the meaning of Section 17556 of  
14 the Government Code, or changes the definition of a crime within  
15 the meaning of Section 6 of Article XIII B of the California  
16 Constitution.