



California Passes Amended Sweepstakes Law

by Lexy Payne

March 13, 2009

On September 30, 2008, California Governor Arnold Schwarzenegger signed into law the California Omnibus Sweepstakes Bill, Senate Bill 1400. The bill amended Section 17539.15 of the California Business and Professions Code. The objective of the bill was to prevent deceptive advertising in conjunction with the promotion of sweepstakes in California. The new sweepstakes law more closely aligns California's sweepstakes law with the more stringent consumer protection and disclosure requirements mandated by the federal Deceptive Mail Prevention and Enforcement Act and sweepstakes laws in Texas and Colorado. The bill became law on January 1, 2009.

The amendments to Section 17539.1 impose the following requirements and prohibitions:

- The "NO PURCHASE OR PAYMENT NECESSARY" language must be set out in a separate paragraph from the rest of the official rules. In addition, the statement must be in all capital letters, in contrasting typeface, and it must be no smaller than the largest typeface used in the rest of the official rules. If the official rules are not printed on the marketing materials, then the "NO PURCHASE OR PAYMENT NECESSARY" language must be included on the entry form.
- The date the final winners are determined must be disclosed in the official rules.
- A prohibition against charging a fee as a condition to receiving information about a sweepstakes or prize.
- A prohibition against falsely representing that a person receiving the sweepstakes offer has been specially selected.



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- A prohibition against falsely representing that a person is being notified a second or final time about the opportunity to receive or compete for a prize.
- A prohibition against representing that a prize notice is urgent unless there is a limited time period in which a participant must take action to claim a prize or to be eligible to receive a prize. In such cases, the date by which that action must be taken shall be clearly and conspicuously disclosed in the body of the solicitation materials.
- A prohibition against falsely representing that a sweepstakes solicitation has been authorized or approved by the government or approved by any court, official or agency of the United States or any state, or by any lawyer, law firm or insurance or brokerage company; or creating a false impression as to the source, authorization, or approval of the solicitation.

The introduction of the bill was reportedly inspired by an investigation of Publishers Clearing House's sweepstakes solicitations, which resulted in a multi-million dollar settlement. The law was significantly modified from its original draft due in part to pressure from the marketing industry. The prior renditions of the bill contained an "opt-in" consent requirement for selling or sharing information about sweepstakes participants. In addition, an earlier version of the bill appeared to establish that alternate methods of entry would not satisfy the "no consideration" requirement for sweepstakes.

It is anticipated that the enactment of the law will lead to greater review and scrutiny of sweepstakes promotions in California by the Attorney General. Moreover, the amended law requires marketers who advertise sweepstakes to California residents to conform their marketing materials to the amended law's more stringent requirements. Thus, if you are promoting a sweepstakes that includes eligibility in California, you must ensure compliance with the new law's provisions, as well as the myriad other state and federal laws and regulations.

For more information, please call Lexy Payne at 312-554-7931.