

House Bill 2397

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of Attorney General Ellen Rosenblum)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Removes provision under which certain actions of person in soliciting participation in contest or sweepstakes are unlawful practice only if solicitation occurs through use of United States mail.

A BILL FOR AN ACT

1
2 Relating to solicitations of participation in a chance to win a prize; amending ORS 646A.803.

3 **Be It Enacted by the People of the State of Oregon:**

4 **SECTION 1.** ORS 646A.803 is amended to read:

5 646A.803. (1) As used in this section:

6 (a) **“Clear and conspicuous disclosure” means a disclosure that is displayed in a manner**
7 **that is reasonably apparent to the audience to which a solicitation is directed and that:**

8 (A) **Uses consistent terms that do not contradict or substantially alter the terms of the**
9 **solicitation; and**

10 (B) **Is, if the disclosure is written:**

11 (i) **In close proximity to the terms the disclosure purports to clarify, explain or relate;**
12 **and**

13 (ii) **Sufficiently prominent, in terms of placement, font or color contrast, as compared**
14 **with the remainder of the solicitation, as to be reasonably apparent to the audience to which**
15 **the solicitation is directed.**

16 [(a)] (b) **“Contest” means:**

17 (A) **A procedure for awarding a prize in which the outcome depends at least in part on the skill**
18 **of the contestant[.];**

19 (B) [*“Contest” includes any*] **A competition in which a person [is required to] must purchase**
20 **anything, pay anything of value or make a donation in order to participate[.]; and**

21 (C) [*“Contest” also includes*] **A competition that is advertised in a way that creates a reasonable**
22 **impression that [a payment of] paying anything of value, [purchase of] purchasing anything or**
23 **making a donation is a condition of winning a prize or competing for or obtaining information about**
24 **a prize.**

25 [(b)] (c) **“Sweepstakes” means:**

26 (A) **A procedure for awarding a prize that is based on chance[.];**

27 (B) [*“Sweepstakes” includes any such*] **A procedure in which a person [is required to] must**
28 **purchase anything, pay anything of value or make a donation as a condition of winning a prize or**
29 **of receiving or obtaining information about a prize[.]; and**

30 (C) [*“Sweepstakes” also includes any such*] **A procedure that is advertised in a way that creates**
31 **a reasonable impression that [a payment of] paying anything of value, [purchase of] purchasing**

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 anything or making a donation is a condition of winning a prize or receiving or obtaining informa-
 2 tion about a prize.

3 [(c) “Clearly and conspicuously” means the message is conveyed in a manner that is reasonably
 4 apparent to the audience to whom it is directed. In order for a message to be considered clear and
 5 conspicuous, it shall, at a minimum:]

6 [(A) Not contradict or substantially alter any terms it purports to clarify, explain or otherwise re-
 7 late to; and]

8 [(B) In the case of printed solicitations:]

9 [(i) Be in close proximity to the terms it purports to clarify, explain or otherwise relate to; and]

10 [(ii) Be of sufficient prominence in terms of placement, font or color contrast as compared with the
 11 remainder of the solicitation so as to be reasonably apparent to the audience to whom it is directed.]

12 (2) A person engages in an unlawful practice [when] **if**, in the course of the person’s business,
 13 vocation or occupation, the person [uses the United States mail to solicit] **solicits** participation in a
 14 contest and the person does not [clearly and conspicuously disclose in the solicitation] **include a**
 15 **clear and conspicuous disclosure in the solicitation that states:**

16 (a) The maximum number of rounds or levels, if the contest has more than one round or level;

17 (b) The date the final winner will be determined;

18 (c) The maximum total cost the final winner will have paid to the sponsor to participate in the
 19 contest;

20 (d) Whether the final winner must purchase or pay anything of value to a person other than the
 21 sponsor if purchasing or paying is a condition of eligibility;

22 (e) [If the contest involves multiple rounds of increasing difficulty,] An example illustrative of the
 23 last determinative round, or a statement that subsequent rounds will be more difficult, **if the con-**
 24 **test involves multiple rounds of increasing difficulty;**

25 (f) [If the contest is judged by someone other than the sponsor,] The identity of or description of
 26 the qualifications of the judges **if a person other than the sponsor judges the contest;**

27 (g) The method used in judging; and

28 (h) The name and address of the sponsor or the sponsor’s agent.

29 (3) A person engages in an unlawful practice [when] **if**, in the course of the person’s business,
 30 vocation or occupation, the person [uses the United States mail to solicit] **solicits** participation in a
 31 sweepstakes and does not [clearly and conspicuously disclose in the solicitation] **include a clear and**
 32 **conspicuous disclosure in the solicitation that states:**

33 (a) The odds of winning in Arabic numerals, except that if the odds of winning depend on the
 34 number of entries received, a statement to that effect [will be deemed] **is** sufficient;

35 (b) The name and address of the sponsor or the sponsor’s agent[, consistently stated wherever it
 36 is used]; and

37 (c) The procedure for entry without purchase.

38 (4) A person engages in an unlawful practice [when] **if**, in the course of the person’s business,
 39 vocation or occupation, the person solicits participation in a contest or sweepstakes **and:**

40 (a) [By using the United States mail to represent that a person] **Represents falsely in the so-**
 41 **licitation that the recipient of the solicitation** has been selected to receive or has won a partic-
 42 ular prize[, when that is not the case]; or

43 (b) [By using the United States mail to represent that a person] **Represents in the solicitation**
 44 **that the recipient of the solicitation** is a winner, is a finalist, is in first place, or is otherwise in
 45 a limited group of persons with an enhanced likelihood of winning or receiving a prize, [when] **if**

1 more than 25 percent of [*the persons receiving*] **recipients of** the solicitation have the same chance
2 of winning.

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