

HOUSE BILL REPORT

SSB 6373

As Passed House:

March 3, 2000

Title: An act relating to promotional contests of chance.

Brief Description: Clarifying promotional contests of chance.

Sponsors: Senate Committee on Commerce, Trade, Housing & Financial Institutions (originally sponsored by Senators Gardner, T. Sheldon, Prentice, Rasmussen, Winsley, Hale, Deccio and Shin).

Brief History:

Committee Activity:

Commerce & Labor: 2/23/00.

Floor Activity:

Passed Senate: 2/15/00, 43-3.

Passed House: 3/3/00, 97-1.

Brief Summary of Substitute Bill

- Declares that promotional contests of chance are not gambling activity and defines "consideration" for purposes of laws governing promotional contests of chance.

HOUSE COMMITTEE ON COMMERCE & LABOR

Majority/Minority Report: None. (Bill removed from committee on 3/1/00).

Staff: Pam Madson (786-7166).

Background:

Prior to 1973 promotional contests of chance involving businesses' use of a lure of prizes to attract customers attention where winners are determined by chance, whether the customer paid for a chance to enter or not, was determined by the state's Supreme Court to constitute a lottery under the state's constitution. Advertising schemes such as Bonus Bingo used by certain Safeway stores and the Seattle Times' Guest-Guesser,

a contest to predict weekly winners of certain football games, were declared by the court to be illegal lotteries. When enacting the gambling laws in 1973 the Legislature sought to allow certain advertising promotions as legal under the state's gambling laws.

For a promotion to be a lottery, the elements of consideration, chance, and a prize must be present. The state Supreme Court has defined consideration broadly in this context as consideration that is sufficient to support a contract. In response, the Legislature authorized promotional contests of chance only where the participant engaged in certain actions. Many of the listed actions are those identified by the court as constituting sufficient consideration for a finding that an advertising scheme is a lottery. The list of activities include visiting a business to obtain an entry blank, merely registering for a contest without purchasing anything, making or answering a phone call with a certain response or guess, or paying an admission fee to a fair, show, or exhibition where the product promoter does not receive any of the admission fee.

Retail grocery stores are limited to one promotional contest a year and the contest may only last 14 consecutive days. This limitation does not apply to business promotions by manufacturers.

Application of this law to radio and television broadcasting is preempted by federal law.

Summary of Bill:

The current law with respect to promotional contests of chance is repealed.

Businesses are authorized to conduct promotional contests of chance where the elements of prize and chance are present but the element of consideration is not.

Consideration is defined as anything of value that can be measured in terms of money that must be paid to the promoter or sponsor to participate in a promotional contest.

Consideration is not the following: visiting a business location; placing or answering a telephone call; completing an entry form or customer survey; furnishing a stamped self-addressed envelop; or obtaining a coupon or entry blank through purchase of a newspaper, magazine, or a program at a sporting event.

The contest must be conducted solely for the purpose of advertising or promoting the services and products of a business. No person eligible to receive a prize may be required to pay any consideration to the promoter or business or buy any service or product to participate in the contest. The promoter may give additional entries or

chances if the customer does purchase services or products and the promoter offers another method of entry requiring no consideration.

Gambling equipment or devices may only be used if approved by the Gambling Commission.

The promotional contests of chance law may not be construed to permit noncompliance with the Consumer Protection Act or the deceptive promotional advertising of prizes law.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: The approach taken by the state of Washington in allowing certain promotional contests of chance is different from other states. It limits contests to those having certain forms of entry into the contest. This limits contests that are part of national promotions that use techniques that were not available or not used in past years. The bill takes a different approach and provides a clear framework for the Gambling Commission. The Gambling Commission will still have a role in determining what is authorized.

Testimony Against: None.

Testified: Senator Gardner, prime sponsor; Julie Porter; and Jan Gee, Washington Retail Association and Washington Food Industry.

(For questions) Ed Fleisher, Washington State Gambling Commission; and Sally Gustafson, Attorney General's Office.