



Advertising and Promotions Law

ALERT
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California Enacts Bill Amending Sweepstakes Law

On September 30, California's governor signed Senate Bill 1400 into law, which takes effect January 1, 2009. According to the bill's sponsor, California was one of the first states to pass a sweepstakes law in 1998, but it has not substantially updated its law since then, while other states, including Texas, Colorado and Oregon, have enacted sweepstakes laws with more stringent consumer protection provisions. SB 1400 as enacted contains several new disclosures for sweepstakes, but does not prohibit the sharing of customer and participant information, as an earlier version did (See our May 2008 Alert "California Sweepstakes Bill Gaining Momentum" for a summary of the earlier version).

The bill adds the following new requirements:

1. That the official rules disclose information about the date or dates the final winner or winners will be determined.
2. That solicitation materials containing sweepstakes entry materials, or solicitation materials selling information regarding a sweepstakes, shall not represent:
 - that a person has been specially selected in connection with a sweepstakes unless it is true;
 - that the person receiving the solicitation has received any special treatment or personal attention from the sweepstakes sponsor or any officer, employee, or agent of the sweepstakes sponsor unless the representation of special treatment or personal attention is true;
 - that a person is being notified a second or final time of the opportunity to receive or compete for a prize, unless that representation is true;
 - that a prize notice is urgent, or otherwise convey an impression of urgency, unless there is a limited time period in which the recipient must take some action to claim, or be eligible to receive, a prize, and the date by which that action is required is clearly and conspicuously disclosed in the body of the solicitation materials.
3. Solicitation materials containing sweepstakes entry materials or solicitation materials selling information regarding sweepstakes should not simulate or falsely represent that it is a document authorized, issued, 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 create a false impression as to its source, authorization, or approval.
4. A sweepstakes sponsor may not charge a fee as a condition of receiving a monetary distribution or obtaining information about a prize or sweepstakes. "Sweepstakes sponsor" means either of the following: (a) a person or entity that operates or administers a sweepstakes as defined in Cal. Bus. and Prof. Code Section 17539.5 or (b) a person or entity that offers, by means of a notice, a prize to another person in conjunction with any real or purported sweepstakes that requires

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or allows, or creates the impression of requiring or allowing, the person to purchase any goods or services, or pay any money, as a condition of receiving, or in conjunction with allowing the person to receive, use, or obtain a prize or information about a prize. A person or entity that merely furnishes a prize in connection with a sweepstakes that is operated or administered by another person or entity shall not be deemed to be a sweepstakes sponsor.

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Advertising and Promotions Group

IVY KAGAN BIERMAN	IBIERMAN@LOEB.COM	310.282.2327
CHRISTIAN D. CARBONE	CCARBONE@LOEB.COM	212.407.4852
MARC CHAMLIN	MCHAMLIN@LOEB.COM	212.407.4855
CRAIG A. EMANUEL	CEMANUEL@LOEB.COM	310.282.2262
KENNETH R. FLORIN	KFLORIN@LOEB.COM	212.407.4966
DANIEL D. FROHLING	DFROHLING@LOEB.COM	312.464.3122
JAMES P. GOODKIND	JGOODKIND@LOEB.COM	310.282.2138
DAVID W. GRACE	DGRACE@LOEB.COM	310.282.2108
THOMAS A. GUIDA	TGUIDA@LOEB.COM	212.407.4011
MARY E. INNIS	MINNIS@LOEB.COM	312.464.3133
BRUCE L. ISHIMATSU	BISHIMATSU@LOEB.COM	310.282.2322

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MICHAEL MALLOW	MMALLOW@LOEB.COM	310.282.2287
DOUGLAS N. MASTERS	DMASTERS@LOEB.COM	312.464.3144
DOUGLAS E. MIRELL	DMIRELL@LOEB.COM	310.282.2151
DANIEL G. MURPHY	DMURPHY@LOEB.COM	310.282.2215
TERRI J. SELIGMAN	TSELIGMAN@LOEB.COM	212.407.4985
BARRY I. SLOTNICK	BSLOTNICK@LOEB.COM	212.407.4162
BRIAN R. SOCOLOW	BSOCOLOW@LOEB.COM	212.407.4872
JAMES D. TAYLOR	JTAYLOR@LOEB.COM	212.407.4895
EDWARD G. WIERZBICKI	EWIERZBICKI@LOEB.COM	312.464.3155
MICHAEL P. ZWEIG	MZWEIG@LOEB.COM	212.407.4960