

2011 DRAFTING REQUEST

Bill

Received: **01/10/2011**

Received By: **mglass**

Wanted: **As time permits**

Companion to LRB:

For: **Robert Cowles (608) 266-0484**

By/Representing: **Ryan Smith**

May Contact:

Drafter: **mglass**

Subject: **Gambling - miscellaneous**

Addl. Drafters:

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Cowles@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Employee reward contests

Instructions:

See attached

Drafting History:

| <u>Vers.</u> | <u>Drafted</u> | <u>Reviewed</u> | <u>Typed</u> | <u>Proofed</u> | <u>Submitted</u> | <u>Jacketed</u> | <u>Required</u> |
|--------------|----------------------|------------------------|-----------------------|----------------|------------------------|-----------------------|-----------------|
| /? | | | | | | | |
| /1 | mglass 01/12/2011 | kfollett 01/23/2011 | mduchek 01/24/2011 | _____ | sbasford 01/24/2011 | ggodwin 06/02/2011 | |

FE Sent For:

None

<END>

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FE Sent For:

<END>

Gibson-Glass, Mary

From: Smith, Ryan
Sent: Friday, January 07, 2011 4:36 PM
To: Gibson-Glass, Mary
Subject: Draft Request
Attachments: drawing rewrite summary.doc

Mary,

Here's the issue I just called about. Pretty simple draft.

Thanks for getting it to the right person!

Ryan Smith
Chief of Staff
Office of Senator Cowles
800-334-1465

Many companies offer employee incentives or rewards for performance, including new customer referrals. One such practice includes awarding employees with redeemable rewards points and entrance into company wide drawings for referring new customers.

Due to a nuance in state lottery law, an employer was prohibited from incentivizing an employee through both rewards and entrance into company-wide drawings.

Under this former law, an employee's referral of a customer that was rewarded with redeemable points and entry into a company-wide drawing was construed as "consideration" for purposes of Wisconsin lottery law and thus depriving them the legal ability to take part in a company-wide drawing.

Sen. Hansen introduced SB 552 last session to remedy this problem. The bill passed both houses on voice votes and was signed by the Governor as Act 354.

The purpose of SB552 was to amend the lottery statute to make it clear that employee referrals of customers do not constitute "consideration", thereby allowing employees located in Wisconsin to participate in prize drawings conducted as part of employer-sponsored customer referral contests.

However, due to language added by legislative drafters, the new law is equally problematic. Now, instead of the referral being deemed "consideration", the new law prevents the employee from being "compensated" for the referral. So if an enforcement agency deemed that redeemable points awarded to an employee is "compensation", then participation in the company-wide contest/drawing would be considered a violation of the new law.

To accomplish the intended purpose of SB 552/Act 354 a new bill is needed that simply deletes the phrase "*if the employee who makes the referral or identification is not compensated for the referral or identification*" from subsection 945.01(5)(b)2.



State of Wisconsin
2011 - 2012 LEGISLATURE



RMR

LRB-096173

MGG...

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D-N

~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

Gen

- 1 AN ACT ...; relating to: opportunities to win prizes that are received by employees
- 2 as compensation from employers.

Analysis by the Legislative Reference Bureau

X
X
X

Under current statutory law, a person is engaged in gambling if he or she places a bet or participates in or conducts a lottery. The Wisconsin Constitution and current statutory law prohibit gambling except for the state lottery, charitable bingo, charitable raffles, and pari-mutuel wagering.

X
X

Current law exempts from the definition of "bet" an agreement under which an employee is given an opportunity to win a prize, the award of which is determined by chance, in return for referring a potential customer to his or her employer for goods or services offered by the employer. Current law defines "lottery" as an enterprise in which, in exchange for consideration, the participants are given an opportunity to win a prize, the award of which is determined by chance even though it may be accompanied by some skill. Consideration in general is something of value. For purposes of the definition of "lottery," consideration does not include the situation where an employee refers to his or her employer a potential customer but only if the employee is not receiving compensation for the referral. Under the bill, such a referral is outside the definition of consideration regardless of whether the employee receives any compensation.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0961/Edn
MGG:.....

1
gf

Date

X
Although this bill provides that making a customer referral does not constitute consideration for purposes of the statutory prohibition against lotteries, the constitutional issue remains. A court may find that the constitutional prohibition against gambling prohibits contests in which a participant must make a customer referral in order to win a prize. Article IV, Section 24, of the Wisconsin Constitution prohibits gambling except for the state lottery, charitable bingo or raffles, and pari-mutuel wagering. The constitution further specifies three activities that do not constitute consideration for purposes of the prohibition against gambling (listening to the radio or watching television, filling out a coupon or entry blank, and visiting a mercantile establishment without being required to make a purchase or pay an admittance fee.) A court may construe these three items as an exclusive list of items that do not constitute consideration.

Mary Gibson-Glass
Senior Legislative Attorney
Phone: (608) 267-3215

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0961/1dn
MGG:kjf:md

January 24, 2011

Although this bill provides that making a customer referral does not constitute consideration for purposes of the statutory prohibition against lotteries, the constitutional issue remains. A court may find that the constitutional prohibition against gambling prohibits contests in which a participant must make a customer referral in order to win a prize. Article IV, section 24, of the Wisconsin Constitution prohibits gambling except for the state lottery, charitable bingo or raffles, and pari-mutuel wagering. The constitution further specifies three activities that do not constitute consideration for purposes of the prohibition against gambling (listening to the radio or watching television, filling out a coupon or entry blank, and visiting a mercantile establishment without being required to make a purchase or pay an admittance fee.) A court may construe these three items as an exclusive list of items that do not constitute consideration.

Mary Gibson-Glass
Senior Legislative Attorney
Phone: (608) 267-3215

Godwin, Gigi

From: Smith, Ryan

Sent: Thursday, June 02, 2011 2:09 PM

To: LRB.Legal

Subject: Draft Review: LRB 11-0961/1 Topic: Employee reward contests

Please Jacket LRB 11-0961/1 for the SENATE.